

## Minutes 14 DECEMBER 2010



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 14 December 2010, commencing at 5.31pm.

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

<b>385</b>	<b>Councillor Ken Jordan Councillor Peter Kafer</b>	It was resolved that the apology from Cr Bruce Mackenzie be received and noted.
<b>386</b>	<b>Councillor Ken Jordan Councillor Shirley O'Brien</b>	It was resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 23 November 2010 be confirmed.
		No declarations of interest were received.

Cr Geoff Dingle presented the Mayor with an Award received at the recent Local Government & Shires Associations of NSW, Excellence in the Environment Awards 2009/10.

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

Council received a Highly Commended – Division C, Natural Environment Policies, Planning and Decision Making Award for Council's Conservation Assessment Tool (CAT). Acknowledgements of the work by Sally Whitelaw and Lincoln Carter.

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# MAYORAL MINUTES

# MAYORAL MINUTE

ITEM NO. 1

FILE NO: A2004-0216

## SECTION 94 CONTRIBUTIONS – AFFORDABLE HOUSING POLICY

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### THAT COUNCIL:

- 1) Investigate Section 94 Contributions with respect to an Affordable Housing Policy.
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### ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

387	<b>Councillor Bob Westbury</b>	There being no objection the Mayoral Minute was adopted.
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# MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: 3200-003

**MOTION TO CLOSE MEETING TO THE PUBLIC**

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGERS OFFICE

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2)(d) (ii) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary Meeting Council agenda namely **Tariffs and Charges 2011 – 2012 for Port Stephens Beachside Holiday Parks and Samurai Beach Resort.**
  
  - 2) That the reasons for closing the meeting to the public to consider this item be that the report and discussion will include:
    - a) details of commercial information of a confidential nature that would, if disclosed, confer a commercial advantage on a competitor of the Council.
  
  - 3) That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as it may prejudice Council's commercial position and Council should have the same protection for its confidential commercial activities as that applying to other persons.
  
  - 4) That the minutes of the closed part of the meeting are to be made public as soon as possible after the meeting and the report is to remain confidential.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

388	Councillor John Nell Councillor Peter Kafer	It was resolved that the recommendation be adopted.
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**ITEM NO. 2**

**FILE NO: PSC2005-4316 & T19-2010**

**MOTION TO CLOSE MEETING TO THE PUBLIC**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Item 2 on the Ordinary Council agenda namely **Supply, Delivery and Installation Holiday Cabins at Shoal Bay Holiday Park – Contract No. T19-2010**.
  
- 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 **Supply, Delivery and Installation Holiday Cabins at Shoal Bay Holiday Park – Contract No. T19-2010**.
  
- 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.

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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>389</b>	<b>Councillor John Nell</b> <b>Councillor Peter Kafer</b>	It was resolved that the recommendation be adopted.
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ITEM NO. 3

FILE NO: A2004-0840

**MOTION TO CLOSE MEETING TO THE PUBLIC**

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

**RECOMMENDATION:**

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

**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>390</b>	<b>Councillor John Nell Councillor Peter Kafer</b>	It was resolved that the recommendation be adopted.
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ITEM NO. 4

FILE NO: PSC2009-00384

**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)(g) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Information Paper Item 4 on the Ordinary Council meeting agenda namely **Unauthorised Depot : Cabbage Tree Road, Williamtown.**
  
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information concerning the commercial arbitration and legal costs incurred and advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.
  
- 3) That disclosure of the information would, on balance, be contrary to the public interest, as it would prejudice Council's legal position and Council has an obligation to protect its interests and the interests of ratepayers.
  
- 4) That the report of the closed part of the meeting remain confidential until the matter is settled.

**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

391	<p><b>Councillor John Nell</b>  <b>Councillor Peter Kafer</b></p>	<p>It was resolved that the recommendation be adopted.</p>
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Cr Steve Tucker entered the meeting at 5.33pm.

Cr Caroline De Lyall entered the meeting at 5.35pm.

# **COUNCIL COMMITTEE RECOMMENDATIONS**

**ITEM NO. 1**

**FILE NO: 16-2010-526-1**

**DEVELOPMENT APPLICATION FOR TWO (2) STOREY DWELLING AT NO. 5 BAYSIDE STREET (PRIVATE ROAD), NELSON BAY**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Not support the State Environmental Planning Policy 1 (SEPP 1) variation to Clause 19 of the Port Stephens Local Environmental Plan 2000 (LEP) for the construction of a two storey dwelling at number 5, Lot 42 Bayside Street (Private Road), Nelson Bay.
- 2) The applicant be given the opportunity to modify and/or re-design the proposed dwelling to more closely align with the existing development consent DA 16/2007/154/1 and/or the current planning controls applicable to the site.
- 3) Council note that if the applicant chooses not to modify and/or re-design the proposed dwelling then the application be determined by Council staff under delegation.
- 4) Refuse the request to release, vary or modify the instrument setting out the terms of easements and restrictions under the provisions of 88B of the Conveyancing Act 1919 affecting number 5, Lot 42 Bayside Street (Private Road), Nelson Bay be because:-
  - the proposed development is of a size, bulk and scale that significantly exceeds the existing dual occupancy development consent that enabled the creation of Lot 42 and Lot 43 as an integrated dual occupancy (DA 16/2007/154/1);
  - the proposed development is of a size, bulk and scale that significantly exceeds the statutory requirements and would be an overdevelopment of the small lot No 42 created for an integrated dual occupancy development.

**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**

**RECOMMENDATION:**

	<p><b>Councillor Bruce MacKenzie Councillor Frank Ward</b></p>	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Support the development application for two (2) storey dwelling at No. 5 Bayside Street, Nelson Bay.</li> <li>2. Support the request to release, vary or modify the instrument setting out the terms of easements and restrictions under</li> </ol>
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## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

		<p>the provisions of 88B of the Conveyancing Act 1919 affecting number 5, Lot 42 Bayside Street (Private Road), Nelson Bay.</p> <p>3. Council indicated its support for the development application and delegate determination to the General Manager, with the proposed condition be subject to consultation with the Mayor.</p>
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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 Ken Jordan, Frank Ward, Shirley O'Brien, Bob Westbury, Glenys Francis, Peter Kafer, John Nell, Steve Tucker, Caroline De Lyall, Bruce MacKenzie and Sally Dover.

Those against the motion: Crs. Geoff Dingle.

### ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

<b>392</b>	<b>Councillor Frank Ward Councillor John Nell</b>	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 Peter Kafer, Glenys Francis, Caroline De Lyall, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Bob Westbury.

Those against the Motion: Nil.

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### BACKGROUND

The purpose of this report is to present to Council, at the request of Councillor Mackenzie:-

1. A request to vary a Development Standard, being Clause 19 of the Port Stephens Local Environmental Plan 2000 (LEP);
2. A request to release, vary or modify an instrument setting out the terms of easements and restrictions under the provisions of 88B of the Conveyancing Act 1919; and

3. A development application to Council for the construction of a detached dwelling.

Development Application number 16-2010-526-1 seeks consent to erect a two (2) storey dwelling house upon Lot 42, DP 270430, 5 Bayside Street, Nelson Bay.

This parcel of land was previously subdivided as part of DA 16-2007-154-1 for a detached dual occupancy and two lot subdivision of Lot 40, DP 270430 (868.9m<sup>2</sup>).

The subdivision created Lots 42 (419.9m<sup>2</sup>) and 43 (449.1m<sup>2</sup>), which have a smaller site area than generally required in the Residential 2(a) Zone (500m<sup>2</sup>), due to their creation as part of an integrated dual occupancy. Neither of the dwellings associated with the dual occupancy development (16-2007-154-1) have been constructed. The applicant proposes the construction of a dwelling significantly larger than dwelling approved for Lot 42.

Dual Occupancy is also subject to a maximum Floor Space Ratio (FSR) of 0.5:1 (which includes both dual occupancy dwellings) and a maximum height of 8.0 metres. It is noted that the combined FSR's for the two approved dwellings was 0.48:1 and complied with this statutory requirement.

The site is subject to a Section 88B Instrument restriction which states that "No dwelling shall be erected, or, if erected, permitted to remain on any lot so burdened unless such a dwelling is in accordance with the Development Consent 16-2007-154-1 granted by Port Stephens Council". This is to inform owners and Council assessment staff that the lot was created for the purpose of a dual occupancy development. As such any development associated with this allotment must be assessed against the parameters tabled for dual occupancy development.

Since the approval of DA 16-2007-154-1, Council has amended its Development Control Plan to require dual occupancy development to be constructed prior to the completion of associated subdivisions. This removes the potential for future owners lodging applications for dwellings that do not comply with the original development consent such as proposed in this application.

### **The request to vary a development Standard, being Clause 19 of the Port Stephens Local Environmental Plan 2000 (LEP)**

The proposed two storey dwelling which is the subject of this application has a FSR of 0.65:1, is on an undersized Lot and does not comply with the requirements of the LEP. Hence the development as proposed is not permissible unless Council supports a variation to the development standards within Clause 19 of the LEP with extracts summarised below:-

#### **19 Dwelling-houses, dual occupancy housing and urban housing**

- 1) Consent must not be granted to the erection of a dwelling-house, dual occupancy housing or urban housing on land in a zone, or on land within a precinct of the Nelson Bay (West) Area, specified in the Table to this subclause, unless:

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

- a) the allotment on which the building is proposed to be erected has an area of not less than the minimum area for each dwelling specified in the Table in respect of the type of housing, zone or precinct concerned, and
- b) The ratio of the gross floor area of the building to the site area of the allotment does not exceed the ratio identified for the relevant zone or precinct concerned, and
- c) The height of the building does not exceed the maximum height identified for the relevant zone or precinct concerned.

**Table**

Housing type	Zone	Precinct (where specified)	Minimum site area per dwelling	Floor space ratio	Maximum height
Dwelling house	2 (a),	Unspecified areas	500 m <sup>2</sup>	0.5:1	9 m

Council is required to assess the request to vary the standards and determine whether the applicant has demonstrated that the LEP controls are considered unreasonable or unnecessary in this instance.

The applicants' have stated their reasons for the variation by way of a submission which should be referred to and is attached. (Attachment 3)

The table below summarises the statistics relevant to the proposal and the variations to the LEP sought.

<b>Proposed Development (SEPP 1 Variation)</b>				
Attribute	Proposed	Required	Compliance	% Variation
Lot Size	420m <sup>2</sup>	500m <sup>2</sup>	No (LEP)	16% decrease in specified min. lot size (15% too small)
Floor Space Ratio (FSR)	0.65:1	0.50:1	No (LEP)	30% increase in specified FSR (30% over-development)

The Lot size for the proposed dwelling is 16% too small, being 80m<sup>2</sup> below the required 500m<sup>2</sup>.

The floor space ratio of 0.65:1 is 30% larger than the required 0.5:1.

This confirms that the size, bulk and scale of the development significantly exceeds the statutory requirements and would be an overdevelopment of the small lot created ostensibly for an integrated dual occupancy development.

The Department of Planning has advised that Council can assume concurrence for SEPP 1 variations to height and FSR requirements. When considering variations to Lot size and FSR Council must take 'special care when dealing with applications to extend non-conforming development by more than 10%', (as per the requirements of Clause 11 Department of Planning Circular B1).

The request to vary the LEP development standard is not reasonable in the circumstances. The development application is not permissible and should be refused, unless the Council agrees to support the SEPP1 variation to the LEP standard.



**The request to release, vary or modify the instrument setting out the terms of easements and restrictions under the provisions of 88B of the Conveyancing Act 1919.**

The site is subject to a Section 88B Instrument restriction which states that "No dwelling shall be erected, or, if erected, permitted to remain on any lot so burdened unless such a dwelling is in accordance with the Development Consent 16-2007-154-1 granted by Port Stephens Council". This is the safeguard imposed by Council to prevent further intensification and prevent unreasonable increases in density.

The Section 88B Instrument restriction also serves to inform purchasers, owners and Council assessment staff that the lot was created for the purpose of a dual occupancy development. For any development associated with Lot 42 it is appropriate that it be as per the existing development consent (DA 16/2007/154/1) or alternatively assessed against the normal requirements as part of an integrated dual occupancy development with Lot 43.

A copy of the 88B instrument affecting the allotment is. (Attachment 4)

Council has the authority to release, vary or modify the terms of this easement and would have to do so should it wish to support this proposal in its current form.

The proposed development is of a size, bulk and scale that significantly exceeds the existing development consent, statutory requirements and would be an overdevelopment of the small lot No 42 created ostensibly for an integrated dual occupancy development. The release, variation or modification of the 88B instrument affecting the allotment in this case is not supported.

#### **The development application for the construction of a detached dwelling**

A detailed merit assessment is not required for development that is not permissible, however is discussed for the benefit of Council and to support the recommendations made.

Council's LEP and the Principles and Development Controls contained in Section B6 of Port Stephens Development Control Plan 2007 (Single and Dual Occupancy Dwellings) identify matters to be assessed during the development assessment process. These matters include height, bulk and scale, side and rear setbacks, energy efficiency, private open space and privacy and amenity and the objectives of the DCP are to minimise these impacts upon adjacent dwellings and land.

The table below summarises and compares some key aspects of the currently approved dwelling, (DA 16-2007-154-1) the proposed dwelling and the relevant Council policies or development standards. This enables a direct comparison to the originally approved dual occupancy development for this allotment.

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

<b>Originally Approved Dual Occupancy Development DA 16-2007-154-1</b>			
<b>Attribute</b>	<b>Proposed</b>	<b>Required</b>	<b>Compliance</b>
Lot Size	420m <sup>2</sup>	500m <sup>2</sup>	No (LEP)
Front Setback	3.87m	6.00m	No
Side Setbacks	East- 6.55m	2.00m	Yes
	West- 1.70m	2.00m	No
Rear Setbacks	1.70m (upper storey)	6.00m	No
	1.70m (lower storey)	2.00m	No
Site Coverage	Proposed 49%	Max. 60%	Yes
Floor Space Ratio (FSR)	0.48:1	0.50:1	Yes (LEP)
Building Height	7.5m (approx)	8.00m	Yes (LEP)

<b>Proposed Development (SEPP 1 Variation &amp; DA 16/2010/526/1)</b>				
<b>Attribute</b>	<b>Proposed</b>	<b>Required</b>	<b>Compliance</b>	<b>% Variation</b>
Lot Size	420m <sup>2</sup>	500m <sup>2</sup>	No (LEP)	16% decrease in specified min. lot size (15% too small)
Front Setback	4.010m	6.00m	No	
Side Setbacks	East- 3.17m	2.00m	Yes	
	West- 2.0m	2.00m	Yes	
Rear Setbacks	1.70m (upper storey)	6.00m	No	
	1.70m (lower storey)	2.00m	No	
Site Coverage	<60%	Max. 60%	Yes	
Floor Space Ratio (FSR)	0.65:1	0.50:1	No (LEP)	30% increase in specified FSR (30% over-development)
Building Height	8.959m (approx)	9.00m	Yes	
Building Height Dual Occupancy	8.959m (approx)	8.00m	No	As per the existing DA 16-2007-154-1

Reference to the tables confirms that the proposed development does not comply in the two critical LEP areas of assessment under clause 19, most notably Floor Space Ratio (FSR) and Lot size.

Overall height of the proposal would not have been compliant as part of the original dual occupancy development which has an 8 metre height limit compared to the proposed height of 8.959m. These three critical areas all indicate an overdevelopment of the site.

The other areas of non-compliance are front, side and rear boundary setbacks.

The proposed reduced setbacks from the property results in an unacceptable level of overshadowing, loss of privacy and amenity of surrounding residential allotments.

The development application plans are available for the Council in the Councillor rooms and should be referred to prior to the meeting.

### **FINANCIAL/RESOURCE IMPLICATIONS**

Nil.

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

The proposed two storey dwelling which is the subject of this application has an excessive FSR of 0.65:1, is on an undersized Lot and does not comply with the requirements of LEP and DCP 2007 for dual occupancy development. Hence the development as proposed is not permissible unless Council supports a variation to the development standards within Clause 19 of the LEP. The development application is inconsistent with Council's Policy and also inconsistent with the existing dual occupancy development consent.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

This proposed development would be an over-development of this allotment. The allotment has already been intensified by way of an approved dual occupancy and subdivision to provide for a density greater than what was intended for the original subdivision; the safeguard to prevent further intensification and an increase in density is the 88B restriction which the applicant is asking Council to vary.

### **CONSULTATION**

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

### **OPTIONS**

Adopt the recommendations.

- 1) Reject or amend the recommendations.
- 2) Refuse Development Application 16-2010-526-1 for the reasons listed below:
  - i. The proposed two storey dwelling which is the subject of this application does not comply with the requirements of Clause 19 Port Stephens Local Environmental Plan 2000 and is not permissible.
  - ii. The development is inconsistent with the provisions and Residential 2(a) zone objectives of Port Stephens Local Environmental Plan 2000. The development is out of character with the immediate streetscape and does not maintain an acceptable level of residential amenity.

- iii. The development does not comply with the design requirements of Section B6 – Single and Dual Occupancy Dwellings, of Port Stephens Development Control Plan 2007. The development will have an unacceptable impact on the streetscape, visual privacy, amenity, useable open space, and boundary setbacks of the adjoining or adjacent properties.
- iv. The development is an overdevelopment of the site and incompatible with the immediate streetscape in terms of height, bulk and scale. The development poses an unacceptable residential amenity impact in terms of privacy, solar access. The development is contrary to the public interests and expectations, of an orderly and predictable built environment consistent with Council policies.

### **ATTACHMENTS**

- 1) Locality Plan.
- 2) Assessment.
- 3) Applicants SEPP 1 objection.
- 4) 88B Instrument.

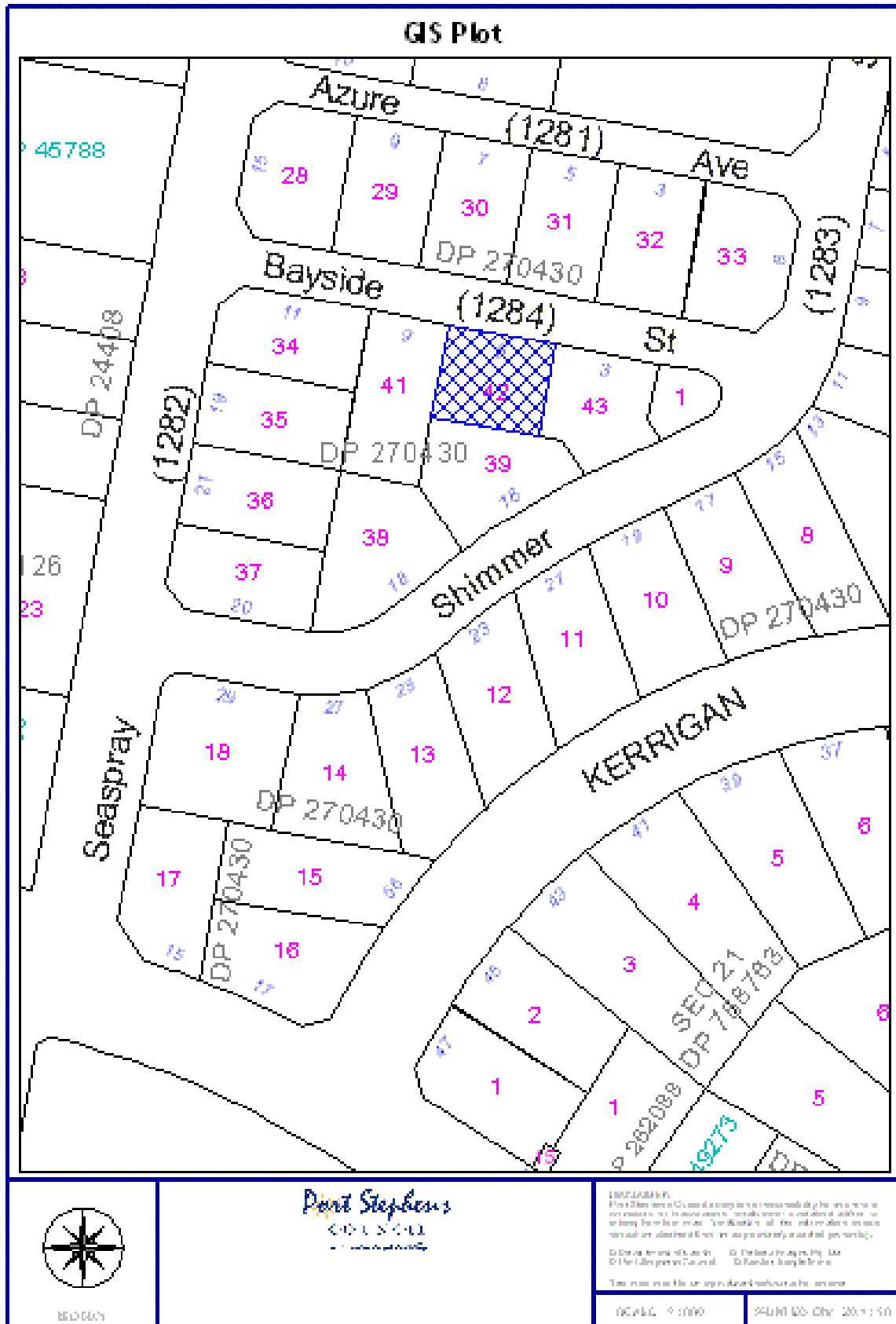
### **COUNCILLORS ROOM**

Development Application Plans – DA 16-2010-526-1  
Applicant submitted Statement of Environmental Effects  
BASIX Certificate (288510S)  
Shadow Diagrams 9am and 3pm Winter Solstice

### **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1



**ATTACHMENT 2**

**ASSESSMENT**

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

**THE PROPOSAL**

Two Storey Dwelling

**THE APPLICATION**

Owner	MR S G & MRS L T LLOYD
Applicant	MR S G & MRS L T LLOYD
Detail Submitted	Site plan, floor plan, elevations, shadow diagram, BASIX Certificate, Statement of Environmental Effects, Structural Engineers Detail (reinforced concrete slab on-ground).

**THE LAND**

Property Description	Lot 42, DP 270430
Address	5 Bayside Street (Private Road), Nelson Bay
Area	419.9m <sup>2</sup>
Dimensions	Regular shaped 22.1 x 19 metres
Characteristics	A fall of 1.0 metre from SE to NW and clear of vegetation.

**THE ASSESSMENT**

**1. Planning Provisions**

LEP 2000 – Zoning	2(a) – Residential "A" Zone
Relevant Clauses	Clauses 16, 17 and 19
Development Control Plan	Port Stephens Development Control Plan 2007
State Environmental Planning Policies	SEPP 1

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

<b>Originally Approved Dual Occupancy Development DA 16-2007-154-1</b>			
<b>Attribute</b>	<b>Proposed</b>	<b>Required</b>	<b>Compliance</b>
Lot Size	420m <sup>2</sup>	500m <sup>2</sup>	No (LEP)
Front Setback	3.87m	6.00m	No
Side Setbacks	East- 6.55m	2.00m	Yes
	West- 1.70m	2.00m	No
Rear Setbacks	1.70m (upper storey)	6.00m	No
	1.70m (lower storey)	2.00m	No
Site Coverage	Proposed 49%	Max. 60%	Yes
Floor Space Ratio (FSR)	0.48:1	0.50:1	Yes (LEP)
Building Height	7.5m (approx)	8.00m	Yes (LEP)

<b>Proposed Development (SEPP 1 Variation &amp; DA 16/2010/526/1)</b>				
<b>Attribute</b>	<b>Proposed</b>	<b>Required</b>	<b>Compliance</b>	<b>% Variation</b>
Lot Size	420m <sup>2</sup>	500m <sup>2</sup>	No (LEP)	16% decrease in specified min. lot size (15% too small)
Front Setback	4.010m	6.00m	No	
Side Setbacks	East- 3.17m	2.00m	Yes	
	West- 2.0m	2.00m	Yes	
Rear Setbacks	1.70m (upper storey)	6.00m	No	
	1.70m (lower storey)	2.00m	No	
Site Coverage	<60%	Max. 60%	Yes	
Floor Space Ratio (FSR)	0.65:1	0.50:1	No (LEP)	30% increase in specified FSR (30% over-development)
Building Height	8.959m (approx)	9.00m	Yes	
Building Height Dual Occupancy	8.959m (approx)	8.00m	No	As per the existing DA 16-2007-154-1

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

<b>ATTRIBUTE</b>	<b>PROPOSED</b>	<b>REQUIRED</b>	<b>COMPLIES</b>
Allotment size	419.9m <sup>2</sup>	500m <sup>2</sup>	No
Front setback	4.010 m	6.0 m	No
Side setbacks	2.0 m from west boundary	2.0 m	Yes
	3.17 from east boundary	2.0 m	Yes
Rear boundary setback	1.7 m	2.0 m to lower storey and 6.0 m to upper storey	No
Site coverage	< 60%	Maximum 60%	Yes
Floor to Space Ratio (FSR)	0.65:1	0.5:1	No
Building height	8.959 m	9.0 m	Yes
Building height	8.959 m	8.0 m	Dual Occupancy

Discussion

Council's Local Environmental Plan 2000 (LEP) requires a minimum site area of 500m<sup>2</sup> in the Residential 2(a) Zone. This allotment of 419.9m<sup>2</sup> was created as part of Development Application 16-2007-154-1 which sought and was granted consent for a dual occupancy and two lot subdivision. Condition number 13 of that consent reads

*"Subdivision of proposed Lot 40a and Lot 40b has been granted for the purpose of a dual occupancy and development of the land should be in accordance with Development Consent 16-2007-154-1. If the Subdivision Certificate is sought prior to construction, the title of these properties shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition. Council shall be nominated as the sole authority permitted to alter/remove the endorsement."*

Assessment of the dwellings which were approved to be erected upon these allotments considered the reduced allotment sizes, the proposed height of approximately 7.40 metres and Floor to Space Ratios which were 0.454:1 for Lot 40a and 0.411:1 for Lot 40b, that is, a combined FSR of 0.433:1 for the original Lot 40.

This proposal has a maximum height of 8.959 metres and FSR of 0.65 :1 which is considered to be an over-development of the allotment. To achieve an FSR of this size, the design requires unacceptable variations to both front and rear setbacks. The front setback of 4.010 metres is a setback agreed upon by both Council and Landcom for this particular subdivision. The proposed rear setback of 1.7 metres is considered unacceptable. B6.8 of Council's DCP requires a rear setback of 2.0 metres for the lower storey and 6.0 metres for the upper storey. The reduced rear setback proposed together with an increase in height, results in a shadow diagram which causes an unacceptable level of overshadowing to the property at the rear (Lot 39).



## **2. Likely Impact of the Development**

It is considered that the construction of a dwelling of the proposed height, bulk and scale will negatively impact upon the adjacent Lot 39. The likely impacts are overshadowing which will result in a reduced level of solar access to the property at the rear. This may result in the property owner having difficulty designing a dwelling which satisfies or can meet BASIX requirements and/or incorporate a satisfactory level of passive solar access/design. Further, the area available to be set aside for private open space will be limited and privacy and amenity compromised.

## **3. Suitability of the Site**

This site was created to accommodate a dwelling of lesser height, Floor to Space Ratio, bulk and scale. The proposed dwelling is considered to be an over-development of the site due to its height, FSR, bulk and scale.

## **4. Submissions**

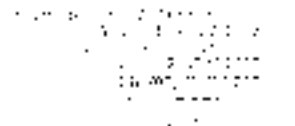
Nil received

## **5. Public Interest**

Not applicable

ATTACHMENT 3

SEPP 1 OBJECTION



# SEPP 1 Objection

*Pursuant To State Environmental Planning Policy - Development Standards*

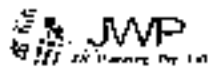
Proposed Dwelling  
5 Bayside Street, Nelson Bay

Objection to Maximum Floor Space Ratio and Minimum Site Area Development  
Standards for a Dwelling House in 2(a) Residential Zone Port Stephens City Council  
Local Environmental Plan 2000 (as amended)

Applicant:  
Mr Steve Lloyd  
Reference No. 1070917

JW Planning Pty Ltd  
P.O. Box 1715 Valence NSW 2218  
www.jwplanning.com.au

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JWP Planning Pty Ltd

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**1.0 Overview**

This document contains an objection to the State Environment Planning Policy No. 1 (Development Standards) (SEPP 1) to Clause 19 of the Port Stephens City Council Local Environmental Plan 2000 (LEP 2000), which states that a dwelling house with a maximum floor space ratio of 0.5:1 and the minimum site area is to be 100m<sup>2</sup>.

The following will indicate how development with an objection allowed to the above development standard can be carried out in accordance with the Environmental Planning and Assessment Act (1979), and how the development standard in this instance, is considered to be unreasonable and unnecessary.

This objection is made in accordance with Clause 6 of SEPP 1.

**2.0 Site Locality and Context**

The site is located off Bayside Street, Nelson Bay. The legal description of the lot is Lot 42 DP 270430 (subject site), and the site has a frontage to Bayside Street of 22.5 metres, with a site area of approximately 620m<sup>2</sup>. The site is currently vacant.

The site is surrounded by recently constructed residential dwellings to the north and west, and vacant allotments to the south and east (Figure 1).

Figure 1 Site Context



Note: All residential property shown includes recently constructed dwellings in the site context.

4575 - 02 - 2010 - Planning Issue for Use of the Subject Site

Figure 2 Existing Development West of Subject Site



Figure 3 Existing Development North of Subject Site

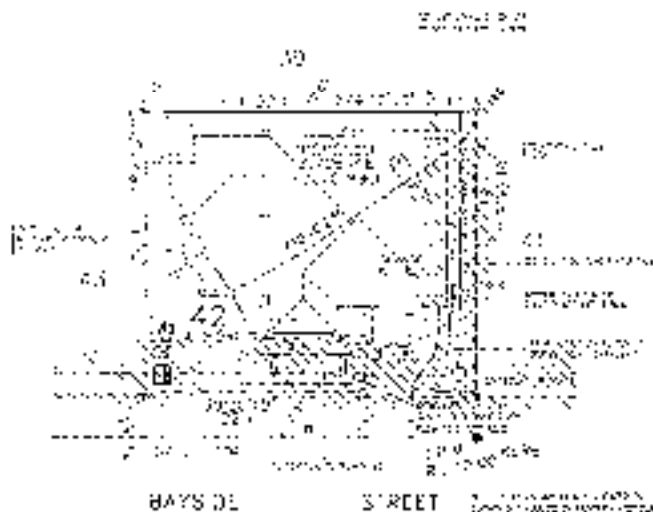


Site Plan for Proposed Dwelling House, Bayview Street, Port Stephens

**3.0 The Proposal**

The proposal seeks the erection of a two-storey four bedroom dwelling house including a double garage. A site plan of the proposal is provided at **Figure 4**.

**Figure 4 Site Plan Proposed Dwelling House**



Detailed plans of the dwelling house are provided under separate cover.

The proposed dwelling house responds to the minimum requirements of the Port Stephens Development Control Plan Part 4 as outlined in **Table 1**.

31 Port Stephens Council House, 100-102 Street, Port Stephens

Table 1 Response to Part B6 Port Stephens DCP

DCP	Criteria	Complies	Comment
			Proposed dwelling responds to the existing and emerging future character of the street being a modern two storey structure in keeping with the dwellings adjoining.
B6.3	Streetscape & Front Setback	✓	<p>The proposal faces the street with legible pedestrian access to the front entry.</p> <p>The proposal includes a setback consistent with the adjoining dwelling.</p> <p>A fire setback provided by the garage of the dwelling, ensuring vehicles cannot be parked within the driveway without impeding pedestrian movement along the footpath.</p>
B6.4	Heritage	Yes	<p>Proposal is not located in a heritage precinct.</p> <p>The proposal meets the floor space ratio required by the Port Stephens LEP, and further referred to in this section of the DCP.</p> <p>The proposed dwelling responds appropriately to the bulk and scale of other dwellings in its context, as indicated by the Figure 2 and 3.</p> <p>Further, the dwelling will have no impact on the amenity of the adjoining properties where the site orientation ensuring adequate sunlight is achieved to each adjoining alignment between June and August (see CI notes to site plan diagrams provided by others).</p>
B6.5	Bulk and Scale	No	<p>No issues are currently identified with the site however the proposal does provide opportunities for deep parking zones within the front portion of the site as required by Council.</p> <p>The dwelling also has a site coverage of 51%, well below the maximum requirement of 60%.</p> <p>The 1:1 ratio compliance of the floor space ratio standard is therefore deemed to be achievable, given the proposal responds to the requirements of other development controls within this section of the DCP.</p>
B6.6	Cut and Fill	✓	<p>All cut and fill will be at the natural ground level by more than 1m at any one point.</p>
B6.7	Building Height	✓	<p>The proposal does not exceed the 9m building height stipulated by the DCP and LEP.</p>

W. J. Stephens Ltd

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**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

5/10/10 (Copy) – Council Agenda – Layout 9 (continued)

DCP	Criteria	Complies	Comment
			<p>The proposal is provided with a 1.1m setback to the rear of the lot, which is consistent with the DCP requirement of 2m.</p> <p>The 2<sup>nd</sup> storey portion of the dwelling is within a 2m setback to the side boundaries, in accordance with the DCP.</p>
B6.8	Side & Rear Setbacks	No	<p>The proposed front of the 2<sup>nd</sup> storey to the rear boundary (being within the 1m setback) will be in the City of Port Stephens' setback on the amenity of the lot, adjacent to the site to the south.</p> <p>Providing the additional setback requested by Council would only serve to shift the shadow cast onto this property slightly and would not significantly reduce the shadow cast over the site.</p>
B6.9	Building Design Elements	✓	<p>The proposed dwelling uses a number of architectural treatments, including arched or window and door treatments, to ensure the dwelling maintains the desirable street identity of the precinct.</p> <p>Colour and materials used within the dwelling will reinforce the design elements of the proposal.</p>
B6.10	Privacy Screening	✓	<p>Dwelling conforms with the requirements of PASA.</p> <p>The shadow diagrams prepared for the dwelling indicate the availability of sunlight to each adjoining street.</p>
B6.11	Private Open Space	✓	<p>Over 50m<sup>2</sup> of private open space provided for the dwelling, accessed directly from a living room.</p> <p>The open space faces north to ensure it is provided with adequate solar access.</p> <p>The open space will be provided with an appropriate fence treatment to ensure privacy is maintained from Bayside Street.</p>
B6.12	Privacy and Amenity	✓	<p>The dwelling has appropriately considered privacy and amenity, ensuring all 2<sup>nd</sup> storey windows do not provide overlooking opportunities onto neighbouring allotments. Further, the private open space will not be impacted by overlooking from existing development in the context.</p>
B6.13	Backyard Fences and Walls	✓	<p>The backyard fence will not exceed a height of 1.8m.</p>

20 December 2010

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SEWER COLLECTION – Dwellings House Bayside Street Network Pa.

DCP	Criteria	Complies	Comment
B6.14	Vehicle or Access & Parking	✓	The dwelling is provided with 2 vehicle spaces.
B6.15	Stormwater & Greywater	✓	The plans of the proposal include measures to appropriately manage stormwater runoff in accordance with the DCP. The proposal includes the use of rainwater tanks that will allow for reuse of water for toilet flushing, clothes washing and landscaping.
B6.16	Landscaping	✓	Landscaping details are provided for significant landscaping.
B6.17	Site Facilities & Services	✓	The dwelling will be provided with gas and electricity connection underground. Adequate space exists for garbage bins to be located out of view from Bayside Street. The plans include provision of a clothes line behind the front building line.
B6.18	Sheds	N/A	The proposal does not meet the criteria of a shed.

**4.0 SEPP 1 Objection**

This objection is to the development standard contained within Clause 19 of the Port Stephens LEP 2000 where the maximum floor space ratio for a dwelling house is 0.5:1 and the minimum site area for a dwelling is 600m<sup>2</sup>. The floor space ratio of the dwelling is 0.55:1 and the lot size is 479.9m<sup>2</sup>.

Accordingly, the departure from the development standard in this instance is considered justified as:

- The proposal will result in development consistent with the existing and emerging streetscape of the context. The dwelling house represents a two storey form and volume that complements the type of dwellings recently constructed, or under construction, within the immediate local context. The minor non-compliance will therefore not result in a dwelling that contrasts with the typical form of Bayville Street.
- The dwelling house will not result in significant overshadowing or overlooking of adjoining allotments. The design of the dwelling responds to the site orientation and context, maintaining amenity for existing and future development in the adjoining allotments.
- The proposal remains consistent with all other objectives of the Port Stephens LEP 2000 and DCP. As illustrated by the plans of the proposal supporting documentation and Table 1, the proposal is generally consistent with all other relevant considerations under LEP 2000 and the Single and Dual Occupancy Dwellings section of the DCP.

**5.0 SEPP 1 Tests**

The Land and Environment Court of NSW (LEC) and the Court of Appeal has established criteria for the preparation of SEPP 1 objections and in determining whether a SEPP 1 objection can be rejected by a consent authority. When considering a SEPP 1 objection a consent authority is required to undertake an assessment to vary a development standard and not a mere assessment of the development proposal as a whole.

These tests were first introduced in *Written Property Group v North Sydney Council* (2001) 45MTC 46 (4 April 2001). The proposal addresses the tests in the following manner:

**1. Is the planning control in question a development standard?**

Clause 19 of the LEP 2000 states:

- (1) *For and notwithstanding to the creation of a development, dual occupancy housing or urban housing on land in a zone, or on land within a precinct of the Nelson Bay (West) Area, specified in the Table to this subclause, means:*
  - (a) the allotment on which the building proposed to be erected has an area of site less than the minimum area for each allotting specified in the Table in respect of the type of housing, dual occupancy or development; and
  - (b) the ratio of the gross floor area of the building to the site area of the allotment does not exceed the ratio specified for the relevant zone or precinct concerned; and
  - (c) the height of the building does not exceed the maximum height specified for the relevant zone or precinct concerned;
- (2) *State Emergency, Fire Planning Policy No. 1—Development Standards does not apply to the minimum site area for each allotting specified in the Table to this subclause (1), other than for:*
  - (a) a dwelling not in the Nelson Bay (West) Area; or
  - (b) a dwelling not a suburban lot for that purpose before the date of commencement of Port Stephens Local Environmental Plan 2000 (Amendment No. 13).

The planning control relating to the proposals object of is therefore a development standard.

This statement was created prior to the commencement of the RGC LEP (2000) and a SEPP 1 objection can therefore apply to the dwelling.

**2. What is the underlying object or purpose of the standard?**

The Port Stephens (LSP), Section 66, provides guidance on the purpose of the standard, where the principles for bulk and scale include:

- The bulk and scale of a dwelling should be sympathetic to the local street scene;*
- The bulk, scale and location of a new dwelling should maintain the visual and amenity of adjacent dwellings and land;*

This is considered to be the underlying object of the standard.

3. Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (j) of the EP&A 1979?

The objects of (i) & A Act (1979) are

(i) to encourage

(j) the proper management, development and conservation of natural and artificial resources, including agricultural and natural areas, forests, minerals, water, soils, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

The proposed dwelling will be for the development of an object consistent with the overall aim of context.

This will have no impact on natural or artificial resources.

(j) the promotion and co-ordination of the orderly and economic use and development of land.

The proposal promotes the orderly and economic use of the land by providing for the construction of a dwelling that is capable of supporting the form of the structure with deviation from the amenity allowed both within and outside of the subject site.

4. Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case? Also, is a development that complies with the development standard unreasonable and unnecessary?

Compliance with the development standard is not unreasonable and unnecessary as

- the proposal is in general accordance with all other relevant planning instruments, including PSC & EP 2000 and Section 86 of the DCPP, and
- maintaining the development standard would provide the balanced development of the subject site, considerate of the site's context and the capabilities of the land.

5. Is the objection well founded?

Noting the objection to the objection allows for the creation of a dwelling house consistent with the intended, and operative, housing form and typology of the local context. This dwelling will not introduce a precedent or unacceptable bulk and scale for dwellings in Bays de Sheer, given the design responds to all other relevant planning instruments.

**6.0 Conclusion**

The objection satisfies the applicable SFPP 1 and 1a applied, and had there not been development and subsequent use of land in an economic manner.

Moreover, the development standard would not use a dwelling that is considerate of both the sites capabilities and the context and would not be in the continued sustainable development of this unique area of Nelson Bay.

Accordingly, the development standard is considered unreasonable and inconsistent in the circumstances of this particular case.

ATTACHMENT 4

88B INSTRUMENT

DOCUMENT 2 (Sheet 2 of 3 sheets) - See also DOCUMENT 1 (Sheet 1 of 3 sheets) and DOCUMENT 3 (Sheet 1 of 3 sheets) for full details of the instrument.

DOC 2  
cPlan

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A PRENDRE INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B CONVEYANCING ACT 1919**

DOCUMENT 2

(Sheet 2 of 3 sheets)

Plan

Subdivision of Lot 40 in DP 270433 covered by Council Clerk's Certificate No 2901/96 dated 13<sup>th</sup> Dec 1997

**DP270430**

**PART 2 (Terms) cont:**

1. **Terms of easement, profit a prendre, restriction, or positive covenant numbered five in the plan:**

No dwelling shall be erected or if erected, permitted to remain on any lot so burdened unless such a dwelling is in accordance with Development Consent 16-2007-154 granted by Port Stephens Council.

Name of person or authority empowered to release, vary or modify the terms of easement or restrictions numbered five, referred to in abovementioned plan:

Port Stephens Council

For and on Behalf of Port Stephens Council by its authorised Officer :

Signed For and on behalf of  
St George Bank Ltd:

Witness of the above signature  
by an authorised officer of the bank  
Registered in the State of New South  
Wales  
Name: Colin Flint  
Address: 100/102 The Esplanade  
Port Stephens NSW 1582  
Signed: \_\_\_\_\_  
Name of Officer  
Director/Manager/Secretary

Colin Flint

PETER PETERS

Doc 2011/90

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

Source: LRF 2/Dec/10 DP 270430 & Plan of Subdivision 2010 of the DP 270430 covered by Council Clerk's Certificate No. 12007/10 dated 11.12.10. Electronic Documents supplied by LRF NSW for Your Internal Use Only

DOC 2  
ePlan

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A PRENDRE  
INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF  
LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION  
88B CONVEYANCING ACT 1919**

(Sheet 1 of 3 sheets)

Plan: DP270430  
Subdivision of Lot 40 in DP 270430 covered  
by Council Clerk's Certificate No. 12007/10  
dated 11.12.10.

Full name and address of owner of the land: Darren Steven Ingram & Karen Lisa Ingram  
6 Clarendon Avenue  
Ragoon Hill NSW 2700

Full name and address of the mortgagee of the land: St George Bank Limited  
St George House  
4-16 Montgomery Street  
Kogarah NSW 2217

**PART 1 (Creation)**

Number of Item shown in the intention panel on the plan.	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1	Restriction on the use of land	Lot 42 and Lot 43	Port Stephens Council

880 201110





**ITEM NO. 2**

**FILE NO: 16-2010-22-1**

**DEVELOPMENT APPLICATION FOR TWO STOREY DWELLING AT NO. 227 FORESHORE DRIVE, CORLETTE.**

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

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Not support the State Environmental Planning Policy 1 (SEPP 1) variation to Clause 19 of the Port Stephens Local Environmental Plan 2000 (LEP) for the construction of a two storey dwelling at number 227 Lot 340 Foreshore Drive, Corlette.
- 2) Refuse Development Application for a two storey dwelling at number 227 Lot 340 Foreshore Drive, Corlette DA16-2010-22-1 for the following reasons:
  - The proposed two storey dwelling which is the subject of this application does not comply with the requirements of Clause 19 Port Stephens Local Environmental Plan 2000 and is not permissible.
  - The development is inconsistent with the provisions and Residential 2(a) zone objectives of Port Stephens Local Environmental Plan 2000. The development is out of character with the immediate streetscape and does not maintain an acceptable level of residential amenity.
  - The development does not comply with the design requirements of Section B6 – Single and Dual Occupancy Dwellings, of Port Stephens Development Control Plan 2007. The development will have an unacceptable impact on the streetscape, visual privacy, amenity, useable open space, and boundary setbacks of the adjoining or adjacent properties.
  - The development is an overdevelopment of the site and incompatible with the immediate streetscape in terms of height, bulk and scale. The development poses an unacceptable residential amenity impact in terms of privacy, solar access. The development is contrary to the public interests and expectations, of an orderly and predictable built environment consistent with Council policies.
  - The proposed construction of a dwelling is unsuitable for the proposed development site as it is susceptible to and significantly affected by sea level rise, inundation, erosion and flooding when assessed against Section 79C of the Environmental Planning and Assessment Act 1979. The proposed development is inconsistent with the provisions of Port Stephens Local Environment Plan 2000 - in particular, the Residential 2(A) Zone objectives and considerations for development on land affected by or susceptible to environmental constraints including sea level rise, inundation, and erosion and flooding.

## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

- The Designed Ground Floor Levels are below the minimum acceptable Flood Planning Level (FPL) for this location of 3.5m AHD;

### COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010

#### RECOMMENDATION:

	<b>Councillor Bruce MacKenzie</b> <b>Councillor Caroline De Lyall</b>	That Council defer Item 2 to allow for a site inspection by Councillors.
--	--	--

### ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

<b>393</b>	<b>Councillor John Nell</b> <b>Councillor Ken Jordan</b>	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 Peter Kafer, Glenys Francis, Caroline De Lyall, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Bob Westbury.

Those against the Motion: Nil.

### BACKGROUND

**The purpose of this report is to present development application 16-2010-22-1 for a proposed two storey dwelling to replace the existing single storey cottage at No. 227 Foreshore Drive, Corlette to Council for determination at the request Councillor MacKenzie.**

- 1. a request to vary a development Standard, being Clause 19 of the Port Stephens Local Environmental Plan 2000 (LEP); and**
- 2. a development application to Council for the construction of a detached dwelling.**

Consent has been sought for the demolition of an existing single storey house and the construction of a new two storey dwelling on Lot 340 DP: 27845, 227 Foreshore Drive Corlette. The subject site is zoned 2(a) – Residential "A" which is described in Port Stephens Local Environment Plan 2000 (LEP).

The subject site is significantly constrained being;

- a. on a restricted Lot size of 247square metres; and
- b. identified as potentially and significantly affected by sea level rise, storm surge, wave run-up, inundation and flooding.

**The request to vary a development Standard, being Clause 19 of the Port Stephens Local Environmental Plan 2000 (LEP)**

The proposed two storey dwelling which is the subject of this application has a Floor Area of 225.5m<sup>2</sup>, a FSR of 0.91:1, is on a severely constrained lot of 247m<sup>2</sup> and does not comply with the requirements of LEP. Hence the development as proposed is not permissible unless Council supports a variation to the development standards within Clause 19 of the LEP with extracts summarised below:-

**19 Dwelling-houses, dual occupancy housing and urban housing**

(1) Consent must not be granted to the erection of a dwelling-house, dual occupancy housing or urban housing on land in a zone, or on land within a precinct of the Nelson Bay (West) Area, specified in the Table to this subclause, unless:

- (a) the allotment on which the building is proposed to be erected has an area of not less than the minimum area for each dwelling specified in the Table in respect of the type of housing, zone or precinct concerned, and
- (b) the ratio of the gross floor area of the building to the site area of the allotment does not exceed the ratio identified for the relevant zone or precinct concerned, and
- (c) the height of the building does not exceed the maximum height identified for the relevant zone or precinct concerned.

**Table**

<b>Housing type</b>	<b>Zone</b>	<b>Precinct (where specified)</b>	<b>Minimum site area per dwelling</b>	<b>Floor space ratio</b>	<b>Maximum height</b>
Dwelling house	2 (a),	Unspecified areas	500 m <sup>2</sup>	0.5:1	9 m

Council is required to assess the request to vary the standards and determine whether the applicant has demonstrated that the LEP controls are considered unreasonable or unnecessary in this instance.

The applicants' have stated their reasons for the variation by way of a submission which should be referred to and is attached. (Attachment 5)

The table below summarises the statistics relevant to the proposal and the variations to the LEP sought.

<b>Proposed Development (SEPP 1 Variation)</b>				
<b>Attribute</b>	<b>Proposed</b>	<b>Required</b>	<b>Compliance</b>	<b>% Variation</b>
Floor Space Ratio (FSR)	0.91:1 Total Floor Area of Building is 308m <sup>2</sup> Total Floor area for purpose of calculating FSR is 225.5m <sup>2</sup> approximately (excluding 43.5 m <sup>2</sup> garage for two vehicles, staircase of 4m <sup>2</sup> and 1st Floor Deck of 35m <sup>2</sup> )	0.50:1 123.5m <sup>2</sup>	No (LEP)	82% increase in specified FSR (102m <sup>2</sup> or 82% over-development)

The floor space ratio of 0.91 is 82% or 102m<sup>2</sup> larger than the required 0.5:1 or maximum of 102m<sup>2</sup>.

The total floor area of 308m<sup>2</sup> is relevant and assists in assessing the bulk and scale of the development. The total floor coverage ratio is 1.25:1 when the deck, stairwell and garage are included.

This confirms that the size, bulk and scale of the development significantly exceeds the statutory requirements and would be an overdevelopment of the existing small lot of only 247m<sup>2</sup>.

The Department of Planning has advised that Council can assume concurrence for SEPP 1 FSR requirements. When considering variations to Lot size and FSR Council must take *'special care when dealing with applications to extend non-conforming development by more than 10 %'*, (as per the requirements of Clause 11 Department of Planning Circular B1). This proposal is a non-conforming development and at a FSR increase of 82% is significant.

The request to vary the LEP development standard is not reasonable in the circumstances. The development application is not permissible and should be refused, unless the Council agrees to support the SEPP1 variation to the LEP standard.

**The development application for the construction of a detached dwelling**

A detailed merit assessment is not required for development that is not permissible, however is discussed for the benefit of Council and to support the recommendations made.

Council's LEP and the Principles and Development Controls contained in Section B6 of Port Stephens Development Control Plan 2007 (Single Dwellings) identify matters to be assessed during the development assessment process. These matters include height, bulk and scale, side and rear setbacks, energy efficiency, private open space and privacy and amenity and the objectives of the DCP are to minimise these impacts upon adjacent dwellings and land.

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

The table below summarises and compares some key aspects of the proposed dwelling and the relevant Council policies or development standards.

<b>Proposed Development</b>				
<b>Attribute</b>	<b>Proposed</b>	<b>Required</b>	<b>Complys</b>	<b>Variat'n</b>
<b>NSW Sea Level Rise Policy Statement</b>	Subject to Coastal erosion and flooding risk – Proposed Floor Level of 2.5m AHD.	Flood Planning Level for habitable rooms of 3.4m AHD.	<b>No</b>	900mm
<b>LEP Requirements</b>				
Min. Area Per Dwelling	247m <sup>2</sup>	500m <sup>2</sup>	Yes	Existing
<b>Floor Space Ratio</b>	<b>0.91:1</b>	<b>0.5:1</b>	<b>No</b>	<b>82% SEPP 1 Variat'n</b>
Height	8.910m	9m	Yes	
<b>DCP Requirements</b>				
Number of storeys (except for loft spaces)	2	2	Yes	
Building Line Setback	2.0m	6m	<b>No</b>	
Side Setbacks	Northern Boundary (2 Storey) 1190m Southern Boundary (1 Storey) 200mm Eastern Boundary (2 Storey) 2.0m	2m 0.9m 6m	<b>No</b> <b>No</b> <b>No</b>	
Rear Setbacks Foreshore	Western Boundary 1.380m	4.5m	<b>No</b>	
Views	Two storey cottage with a ridge height of RL 10.460 with a construction Pad FGL of RL 1.550m	No objections received after closing date of advertisement	Yes.	
Resident parking	2	2	Yes	
Retaining Walls	No boundary retaining walls		Yes	
BASIX	Water Score 40 Energy Score 40 Thermal comfort pass	Target 40 Target 40 Target pass	Yes Yes Yes	
Acid Sulphate	Proposed development - Slab on ground.	Class 5.	Yes	

Reference to the table confirms that the proposed development does not comply with the Floor Space Ratio (FSR) provisions under clause 19 of the LEP. This critical area all indicates an overdevelopment of the site.

Other areas of non-compliance are front, side and rear boundary setbacks as well as the site being subject to Coastal erosion and flooding risk.

The proposed reduced setbacks from the property results in an unacceptable level of overshadowing, loss of privacy and amenity of surrounding residential allotments.

Council's attention is directed to the document "flood policy sea level rise" the purpose of which is:-

*"The purpose of this report is to advise Council of the current Government Policy on Sea Level Rise, to update Council's previous resolution on Sea Level Rise and to place on exhibition a draft Development Control Plan Chapter B13 "Areas Affected by Flooding and/or Inundation" of the Port Stephens Development Control Plan 2007, including "Areas Affected by Flooding and/or Inundation" to repeal and replace Councils existing Flood Policy and include a Sea Level Rise component to residential habitable floor levels."*

The application was referred to Council's Strategic Engineer for advice on minimum floor levels and compliance with Council's adopted planning benchmark for sea level rise. (Council Resolution 155 dated 19<sup>th</sup> May 2009).

The Strategic Engineer has advised:

- *"To prevent storm surge inundation all habitable floor levels should be to the Flood Planning Level of RL 3.4m AHD.*
- *The FPL for non habitable rooms, garages and laundry only may proceed to be designed at RL 2.8m AHD (5% AEP flood event in the year 2100).*
- *All construction below 3.4 AHD will be required to consist of flood compatible materials*
- *A collapsible style retaining wall inside the property boundary, adjacent to the public reserve boundary will be required."*

The plans submitted indicate that the proposed ground lower floor area level for habitable rooms is RL 2.500, which is 900mm below the flood planning level of 3.4m AHD. The proposed floor level for the upper cottage floor is Reduced Level RL5.520 and the garage to be located at RL 1.850. If the reduced levels indicated on the plans are Australian Height Datum Levels, then there are no concerns raised with the upper floors as it stands above the minimum sea level change of 3.4m AHD. This minimum level is recommended to minimise the chances of storm surge inundation of the habitable rooms. A merit assessment, under the provisions of Section 79C of the Environmental Planning and Assessment Act, has confirmed that the site is not suitable for the proposed dwelling design and the application, as submitted, can not be supported.

The applicant has been advised in writing and verbally, of the adopted 3.4m AHD minimum floor level requirements and given the opportunity to redesign the proposed dwelling. Despite this, the applicant has sought a determination by Council without a redesign with the ground floor levels at RL 2.500m.

It is noted that the plans submitted do not comply with the current flood plan level and also, do not comply with the previous adopted flood plan level of 2.8m AHD for the area. Examination of Council's records revealed that the existing development adjoining the property No 227 Foreshore Drive has a habitable room ground floor level of RL 2.120 approved in 1998.

The development application plans are available for the Council in the Councillor rooms and should be referred to prior to the meeting.

### **FINANCIAL/RESOURCE IMPLICATIONS**

The financial/resource implications are difficult to determine as Council may accept a significant legal/financial liability if consent is issued for a dwelling house that exceeds the FSR provisions of the LEP on a property identified as subject to significant sea level rise, inundation and flooding. Council is best advised to follow due process and complete a full and proper assessment ensuring that all environmental impacts and factors are fully addressed.

### **LEGAL AND POLICY IMPLICATIONS**

Council may increase legal liability in cases of property damage and/or loss of life where approval has been given to construct residential dwellings contrary to policy in flood prone areas whilst being specifically aware of the risks.

To issue consent may also set a further undesirable precedent in regard to flood level, sea level rise and climate change, resulting in difficulty to implement climate change policy at a later date.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Approval of this application increases the proposed dwelling's susceptibility to the effects of sea level rise, inundation, flooding and the associated consequences due to climate change. The cumulative effects of such decisions may have long term adverse social, economic and environmental implications.

The long term social implications directly attributable to flood inundation include, but are not limited to:

- risks to public safety
- community disruption
- direct and indirect damages caused by inundation (property damage, loss of goods and personal possessions)
- emotional, mental and physical health costs
- provision of food and accommodation for evacuees
- loss of wages and opportunity cost to the public.

The temporary and intermittent impacts of unsuitable development on such land may contribute to long term and incremental environmental pollution through

erosion, waterborne debris, residual debris, structural failure of dwellings, fences, outbuildings and other structures.

## **CONSULTATION**

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

The applicant has been advised that in addition to the matter relating to sea level change, the proposed development does not comply with Port Stephens Council Local Environmental Plan 2000 in respect to Floor Space Ratio and compliance with Council's Development Control Plan 2007 in respect to distances of external walls to adjoining boundary alignments. The applicant will be seeking application to vary the requirements subject to Council approval.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Locality Plan
- 2) Assessment
- 3) Council's Resolution of 19 May 2009
- 4) NSW Sea Level Rise Policy Statement
- 5) Applicants SEPP 1 submission

## **COUNCILLORS ROOM**

- 1) Plans including (Landscape, Site Analysis, Site Roof Plan, Ground Floor/1<sup>st</sup> Floor and Elevations)
- 2) Photos

## **TABLED DOCUMENTS**

Nil.



ATTACHMENT 1  
LOCALITY PLAN



**ATTACHMENT 2  
ASSESSMENT**

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

**THE PROPOSAL**

The application seeks approval for a Two Storey Dwelling to replace the existing cottage.

**THE APPLICATION**

Owner Applicant	Mr R. G & Goodall. Designed Dimension Pty Ltd.
Detail Submitted	Statement of Environmental Effects Development Application Plans Drawing No DD157 Page 1 to 9 Dated 02-08-10.

**THE LAND**

Property Description	Lot 340 DP 27845
Address	227 Foreshore Drive Corlette
Area	247.1m <sup>2</sup>
Dimensions	The development site is a regular shape having a frontage to Foreshore Drive of 15.240m and a rear width of 15.365m. The site's northern boundary is 15.24m and the southern boundary is 17.19m.
Characteristics	The site currently contains a single Storey weatherboard Dwelling and single storey garage. The existing single storey dwelling on site is proposed to be demolished in the context of this application. The site contains a lawn, and is predominantly clear of vegetation. The site is generally flat at the front and slopes toward the Reserve at the rear.

**THE ASSESSMENT**

**1. Planning Provisions**

Environmental Planning and Assessment Act 1979

N.S.W Sea Level Rise Policy Statement

State Environmental Planning Policies      SEPP 71

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

LEP 2000 – Zoning  
Relevant Clauses

2(a) Residential  
16, 19, 37 & 38

Development Control Plan

Port Stephens DCP 2007

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
<b>NSW Sea Level Rise Policy Statement</b>			
<b>Minimum Habitable Floor Area</b>	2.500m AHD	3.4m AHD	<b>No</b>
<b>LEP Requirements</b>			
Min. Area Per Dwelling	247m <sup>2</sup>	500m <sup>2</sup>	Yes
Floor Space Ratio	0.76:1	0.5:1	<b>No</b>
Height	8.910m	9m	Yes
<b>DCP Requirements</b>			
Number of storeys (except for loft spaces)	2	2	Yes
Building Line Setback	2.0m	6m	<b>No</b>
Side Setbacks	Northern Boundary (2 Storey) 1190m	2m	<b>No</b>
	Southern Boundary (1 Storey) 200mm	0.9m	<b>No</b>
	Eastern Boundary (2 Storey) 2.0m	6m	<b>No</b>
Rear Setbacks Foreshore	Western Boundary 1.380m	4.5m	<b>No</b>
Views	Two storey cottage with a ridge height of RL 10.460 with a construction Pad FGL of RL 1.550m	No objections received after closing date of advertisement.	Yes.
Resident parking	2	2	Yes
Retaining Walls	No boundary retaining walls		Yes

## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

BASIX	Water Score 40 Energy Score 40 Thermal comfort pass	Target 40 Target 40 Target pass	Yes Yes Yes
Acid Sulphate	Proposed development designed to be Slab on ground	The site is classified Acid Sulphate Soils Class 5. No works permitted below 2 metres or more that will structural affect the proposed building.	Yes

### NSW Sea Level Rise Policy

The development in respect to the dwelling site and proposed finished floor level is inconsistent with the objectives of the NSW Sea Level Rise Policy and its intended purpose of safeguarding development from inundation from sea water due to sea level rise and other factors relating to climate change.

### Port Stephens Local Environmental Plan 2000

Consent of a two (2) storey dwelling in the form proposed is considered consistent with the provisions of Port Stephens Council Local Environmental Plan 2000 except in the instance of flooding risk in association with Sea Level Rise.

The design fails to take into account the environmental constraints of the site.

### **Clause 19**

The proposed development is consistent with the development standards of minimum site area per dwelling, but not consistent for floor space ratio specified within Clause 19 of the Port Stephens LEP 2000. **Concurrence has been approved from the NSW Department of Planning for the variation to the Floor space Ratio as shown on plans.**

The proposed development is considered to be consistent with the development standard of height specified within Clause 19 of the Port Stephens LEP 2000

### **Clause 37**

#### **Objectives for development on flood prone land**

*The objectives for development on flood prone land are:*

- (a) to minimise risk to human life and damage to property caused by flooding and inundation through controlling development, and*
- (b) to ensure that the nature and extent of the flooding and inundation hazard are considered prior to development taking place, and*
- (c) to provide flexibility in controlling development in flood prone localities so that the new information or approaches to hazard management can be employed where appropriate.*

It is considered that the development with its proposed finished floor level of RL2.500m is inconsistent with the provisions of this clause and do not satisfy the intent of the objectives. The adoption of a climate change sea level rise increase of .90m with a linear increase till the year 2100 indicates that this development will be unsustainable at its proposed levels within a limited time period.

**Clause 38**

**Development on flood prone land**

*(1) A person shall not carry out development for any purpose on flood prone land except with the consent of the consent authority.*

*(2) Before granting consent to development on flood prone land the consent authority must consider the following:*

*(a) the extent and nature of the flooding or inundation hazard affecting the land,*

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

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

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

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

In the consideration of (2) of clause 38 it is considered that the proposed development is inconsistent with the objectives of subclauses (a), (c), (d) and (e) given the proposed ground floor level of RL 2.500m. The flood planning level (FPL) to accommodate for Climate Change, Sea Level Rise at this location is 3.4m AHD.

The applicants proposed figure of RL 2.500m does not address the adopted 0.9m increase for Climate Change, Sea Level Rise in the year 2100. The projected increase of sea level rise in the year 2050 of 400mm is well within the expected, assumed life span of the structure. As a result it is expected, based on these figures that the development will be compromised by the increase of sea level and associated climate change phenomenon during its practical lifespan.

The most practical mitigation measure to offset the effects of Climate Change, Sea Level Rise available to the development is the adoption of the new Flood Planning Level (FPL) of 3.5m AHD. Given the proposed FFL level of RL 2.500m, the safe and flood free floor level of the development will be compromised.

The social impact is hard to quantify however, the effects of flooding and inundation of seawater into dwellings is well documented. Given the level of development within the coastal fringe it would be acceptable to consider that the ability of emergency services to service individual households would be limited at best. The frequency of flooding events is a main factor in the amenity of the occupants. In the context of climate change, predictions would indicate that a sea level rise coupled

with increased storm events and increased severity that flooding events in this location would increase.

The development is inconsistent with the provisions of the NSW Sea Level Rise Policy and adopted sea level rise increase of .91m in the year 2100. This has been recently amended by the New South Wales Government Guidelines to 0.9m

**State Environmental Planning Policy No. 71 – Coastal Protection**

The development is considered to be contrary to the provisions of Clause 16 SEPP 71.

Clause 16 states:

The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.

**Port Stephens Development Control Plan 2007**

The application was lodged on 12/01/2010. The performance based design requirements of Port Stephens Development Control Plan 2007 are relevant to the assessment of this application. Assessment of the key design considerations are addressed below:

**Streetscape, Building Height, Bulk and Scale**

The proposed two (2) storey dwelling is not considered to have a serious impact on the surrounding development and associated land uses that comprise residential occupancies.

This matter has been considered and the development in its current form is acceptable in regards to bulk, scale and height.

The objectives and control principles of the DCP indicate that the bulk and scale of a dwelling in 2(a) Residential should be sympathetic to the local street content. The development is to take into consideration its design elements to minimise the impact on the amenity of the adjacent dwellings and land.

The proposal does not comply with the floor space ratio and site coverage objectives. However, due to the size of the allotment, the design presents a compromise with the two neighbouring developments and is it considered generally to comply with the intent of Council's Development Control Plan 2007 Clause B6.5.

**Privacy**

There are no issues with privacy as the proposal has allowed privacy screens at each end of the first floor balconies to protect the adjoining properties.

### **Boundary Setbacks**

The boundary setback on the all boundaries is not consistent with the intent of the DCP 2007. However the site is considered to be infill development and as such needs to be considered by Council with the lodgement an Application to vary the requirements of the Development Control Plan 2007 in regards to building line setbacks to all of boundary alignments.

### **Site Coverage**

The development is not compliant with the requirements of floor space ratio and site coverage specified in Clause 19 of the LEP.

The proposed development exceeds the floor space Ratio of 0.5:1. Further consideration has been given to the Development Application as the applicant has requested for variation under a SEPP 1 Application to Council. This matter has been forward to the NSW Department of Planning request concurrence in favour of such variation due to the allotment size and existing building precedence within the surrounding area. Written concurrence has been received from the Department given approval for such variation.

### **Acoustic Privacy**

Whilst external open space forms part of typical residential development, the resulting elevated open space associated with the dwelling and external balcony areas has the potential to have a minor impact on acoustic privacy.

### **Solar Access**

With respect to overshadowing, given the orientation of the allotment and size of the allotment it is considered that the development is not in compliance with the provisions of DCP 2007 in respect to solar access.

### **Views**

The development site and adjacent properties immediately, contain excellent water views of Port Stephens. There were no submissions responding to matters in relation to the reduction of scenic views surrounding the proposed residential development.

### **Parking & Traffic**

The parking and traffic arrangements are in accordance with Council's Development Control Plan 2007.

The development provides garage parking for two (2) cars.

### **Usable Open Space**

The size of the allotment provides extensive ground level open space accessible from living areas.

### **Landscaping**

The proposal provides adequate planter and garden bed landscape areas.

## **Flora and Fauna**

The development site is not identified as containing any threatened flora or fauna or endangered ecological communities. It is not considered that this development will result in adverse impacts to, or pose an unacceptable risk to, threatened flora and fauna.

## **2. Likely Impact of the Development**

The impact of the proposed development on the site is unsuitable as it is susceptible to and significantly affected by sea level rise, inundation and flooding.

The Designed Ground Floor Levels are below the minimum acceptable Australian Height Datum (AHD) benchmark levels for sea level rise for this location (0.91m for the year 2100 for use in developing FPL for AEP flooding events, adopted by Council at its meeting on the 19<sup>th</sup> May 2009). This has been recently amended by the New South Wales Government Guidelines to 0.9m

The proposed development is inconsistent with the provisions of Port Stephens Local Environment Plan 2000 - in particular, the Residential 2(A) Zone objectives and considerations for development on land affected by or susceptible to by sea level rise, inundation and flooding.

Otherwise, the proposed development is generally consistent with the requirements of Port Stephens Local Environmental Plan 2000 and Development Control Plan 2007. The bulk and scale of a two storey dwelling in the form proposed is generally consistent with the intent and objectives of the controls.

## **3. Suitability of the Site**

The site is constrained as it is susceptible to and significantly affected by likely sea level rise and associated climate change phenomenon, inundation and flooding and hence is unsuitable for the proposed dwelling in its current form.

## **4. Acid Sulphate Soils**

The land is subject to acid sulphate soils Class 5.

## **5. Submissions**

The application was advertised and notified in accordance with Port Stephens Development Control Plan 2007. No submission was received.

## **6. Public Interest**

The proposed building is in keeping with the design characteristics, suitability and appearance within the existing streetscape. However, the proposed dwelling is not consistent with public expectations in relation to the predicted impacts of climate change.



ATTACHMENT 3  
 COUNCIL'S RESOLUTION OF 19 MAY 2009

ORDINARY MEETING – 19<sup>TH</sup> MAY 2009

ITEM NO. 8

FILE NO: PSC2005-4473

**ADOPTION OF A SEA LEVEL RISE PLANNING FIGURE**

REPORT OF: DAVID BROYD – GROUP MANAGER SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Council adopt a planning benchmark for sea level rise of 0.91m for the year 2100 with an assumed linear increase from present day levels as the basis for Council staff to proceed with risk assessment, policy development, and planning and development decisions.
- 2) Review these figures on an as needs basis when new information becomes available such as the release of future Intergovernmental Panel on Climate Change assessment reports and guidelines being drafted by the NSW Departments of Planning and Environment and Climate Change.
- 3) Continue to investigate Climate Change impacts on both Council and the community to determine appropriate responses.

COMBINED STRATEGIC & OPERATIONS COMMITTEE – 12<sup>TH</sup> MAY 2009

RECOMMENDATION:

	<p><b>Councillor Glenys Francis</b>  <b>Councillor John Nell</b></p>	<p>That Council:-</p> <ol style="list-style-type: none"> <li>1) Council adopt a planning benchmark for sea level rise of 0.91m for the year 2100 with an assumed linear increase from present day levels as the basis for Council staff to proceed with risk assessment, policy development, and planning and development decisions.</li> <li>2) Review these figures on an as needs basis when new information becomes available such as the release of future Intergovernmental Panel on Climate Change assessment reports and guidelines being drafted by the NSW Departments of Planning and Environment and Climate Change.</li> <li>3) Continue to investigate</li> </ol>
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**ORDINARY MEETING – 19<sup>TH</sup> MAY 2009**

		<p>Climate Change impacts on both Council and the community to determine appropriate responses.</p> <p>4) That Council continue to consult with the community using the Residents Panel and other forums and report back to Council following the consultation.</p>
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**ORDINARY COUNCIL – 19<sup>TH</sup> MAY 2009**

155	<p>Councillor John Nell Councillor Glenys Francis</p>	<p>It was resolved that the Operations Committee recommendation be adopted.</p>
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ITEM NO. 8

FILE NO: PSC2005-4473

### ADOPTION OF A SEA LEVEL RISE PLANNING FIGURE

REPORT OF: DAVID BROYD – GROUP MANAGER SUSTAINABLE PLANNING

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#### RECOMMENDATION IS THAT COUNCIL:

- 1) Council adopt a planning benchmark for sea level rise of 0.91m for the year 2100 with an assumed linear increase from present day levels as the basis for Council staff to proceed with risk assessment, policy development, and planning and development decisions.
- 2) Review these figures on an as needs basis when new information becomes available such as the release of future Intergovernmental Panel on Climate Change assessment reports and guidelines being drafted by the NSW Departments of Planning and Environment and Climate Change.
- 3) Continue to investigate Climate Change impacts on both Council and the community to determine appropriate responses.

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#### BACKGROUND

The purpose of this report is to provide Council with information on recent developments involving the management of sea level rise by NSW coastal councils and recommends the adoption of a sea level rise figure to provide a basis for decision-making and future planning associated with climate change adaptation. The report also discusses the advice recently released by the NSW government in relation to planning for sea level rise and outlines the legal and policy implications.

It should be noted that sea level rise is only one aspect of climate change that will affect Port Stephens. More instances of extreme storms, a greater number of extreme hot days and incremental increases in temperature will also have effects on both public and private assets. While there has been a considerable volume of studies undertaken in the area of sea level rise the impact of other climate change variables is yet to be fully understood. More investigations will need to be undertaken in these areas to determine appropriate responses. Given that sea level rise is already occurring Council has a responsibility to undertake a risk management approach to current and future decisions.

In support of the reality of sea level rise the NSW government made the following statement in the February 2009 draft Sea Level Rise Policy Statement which is to be used in planning guidelines being prepared by the NSW Department of Planning. *'Over the 20th Century, global sea levels have risen by 17 cm and are continuing to rise. Sea level rise is a gradual process and will have medium to long term impacts. The best national and international projections of sea level rise along the NSW coast are for a rise relative to 1990 mean sea levels of up to 40 cm by 2050 and 90 cm by 2100<sup>1</sup>. There is no scientific evidence to suggest that sea levels will stop rising beyond 2100 or that the current trends will be reversed.'* DECC (2009).

<sup>1</sup> Department of Environment and Climate Change Technical Note: Scientific Basis of the 2009 Sea Level Rise Benchmark.

STRATEGIC & OPERATIONS COMBINED MEETING – 12<sup>TH</sup> MAY 2009

addition to sea level rise. Putting this into perspective the following levels are provided:

Mean Tide level	- RL 0.0 metres AHD (Australian Height Datum)
Mean High Water	- RL 0.5 m AHD
King Tide (eg 12 January 2009)	- RL 1.0 m AHD
Design 1% Water Level	- RL 1.5 m AHD
Design Extreme Water level	- RL 1.6 m AHD
Design 1% Water Level plus 0.91 m sea level rise	- RL 2.4 m AHD
Design Extreme Water level plus 0.91 m sea level rise	- RL 2.5 m AHD

Council's current standard for minimum floor level for Port Stephens is 2.5 metres AHD while that for Fern Bay is 2.3 metres which include 0.5 metre freeboard. These levels may need to be increased to include freeboard above sea level rise.

Council is also undertaking a Climate Change Risk Adaptation project under the Federal Government's Local Adaptation Pathways Program. The project, which will conclude in June 2009, firstly involves undertaking an organisational risk assessment to identify and assign priorities to risks that climate change impacts pose to Council's operations and responsibilities. The second stage involves developing an adaptation action plan that will assist council to plan for the impacts of climate change both within council's businesses and to set in place policies and practices to help the community avoid the major impacts of climate change over the coming decades. This will involve developing strategies for managing risks that are well understood and identifying where further investigation is necessary for risks that are not well enough understood to determine an appropriate management strategy.

The initial stages of the Local Adaptation Pathways Program has highlighted that Port Stephens Council's main areas of exposure in relation to sea level rise are flooding, engineering, infrastructure and planning. A considerable amount of work will need to be undertaken to determine the extent of council's exposure and it is likely that council, and the community, face some difficult decisions in the near future.

The Coastline Management Manual (CMM) lists a number of potential 'Hazard Management Options', which could be adopted/adapted by Council as part of its adaptation response to sea level rise. The appropriate response will vary from location to location, depending in part, on whether the area is in public or private ownership, the level, and form of development, level of affectation etc. Examples of options suggested in the CMM are given below.

**STRATEGIC & OPERATIONS COMBINED MEETING – 12<sup>TH</sup> MAY 2009**

**Hazard Management Options Suggested by Coastline Management Manual**

Category	Management Option Examples
Environmental Planning	Restrictive Zonings Planned Retreat Voluntary Purchase
Development Controls	Building Setbacks Relocatable Buildings Planned Retreat
Dune Management	Dune Reconstruction and revegetation Dune Protection and/or Maintenance
Protective Works	Seawalls Groynes Beach Nourishment Offshore Breakwaters

**LINKS TO CORPORATE PLANS**

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

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

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

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

**ENVIRONMENTAL SUSTAINABILITY** – Council will protect and enhance the environment while considering the social and economic ramifications of decisions.

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

This report also aligns with Goal 7 of the Council Plan: Sustaining the Environment: Mitigate the effects of climate change and population growth on the environment.

**FINANCIAL/RESOURCE IMPLICATIONS**

The adoption of sea level rise planning benchmarks may have significant implications for Council's current planning legislation. Adaptation strategies relating to sea level rise in floodplain risk management, estuarine risk management, and coastline risk management through out the LGA will need to be considered for incorporation into relevant Council policies.

**LEGAL AND POLICY IMPLICATIONS**

Climate change and its effects are referred to in a number of State Government policies including the NSW Coastal Policy 1997.

STRATEGIC & OPERATIONS COMBINED MEETING – 12<sup>TH</sup> MAY 2009

The NSW Coastal Policy 1997 which in relation to climate change recommends an approach to minimise risks based on ecologically sustainable development principles. This policy also has an objective to recognise and consider the potential effects of climate change in the planning and management of coastal development.

The NSW Coastal Policy 1997 is given statutory effect through State Environmental Planning Policy 71 – Coastal Protection and through a Ministerial Direction to local councils under section 117 of the Environmental Planning and Assessment Act 1979.

In February 2009 the NSW Department of Environment and Climate Change released a draft Sea Level Rise Policy Statement which once adopted will supersede the 1988 NSW Coastline Hazard Policy.

The Legal Industry has also suggested that Climate Change has significant implications with respect to Council in its role as a consent authority. Lake Macquarie Council, who has already adopted a sea level rise planning figure, received the following advice from its solicitor:

*"In relation to development assessment, the consensus amongst practitioners and academics seems to be that councils will owe a duty of care to landowners in their consideration of individual development applications in coastal areas that are most at risk of climate change."*

*"A reasonable council located on the coast in an area prone to erosion and storm damage, would foresee that its decisions to approve development may place landholders at risk from the effects of climate change. Scientific evidence and impacts already observed make this clearly foreseeable. In order to meet their duty of care, councils can either refuse consent, or allow the development to proceed with conditions that attempt to reduce the risk. Councils when assessing development should consult the NSW Coastline Management Manual 1990 and the NSW Coastal Policy 1997. It is probably also advisable to create a management plan specific to the locality. As long as a council makes a genuine and serious attempt to alleviate the potential risks of climate change, then it is likely that a council's duty of care will be satisfied."*

In addition to suggesting that Council as a consent authority has a duty to consider climate change in its consideration and determination of development applications The Lake Macquarie City Solicitor also recommended that Council consider:

1. Determining a "normal building and component design life" to be used as a guide for estimating the period of time a building will be located at a particular site (in the absence of more detailed or specific data provided by the proponent).
2. Using, without delay, the information currently available on sea level rise projections to assist with determination of development applications upon land likely to be affected by rising sea levels and flooding.

**STRATEGIC & OPERATIONS COMBINED MEETING – 12<sup>TH</sup> MAY 2009**

3. Making such information available in response to applications for certificates called "Development Restrictions Certificate Flooding/Tidal Inundation" and in relation to certificates under section 149 of the EPA Act 1979.

**BUSINESS EXCELLENCE FRAMEWORK**

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

These outcomes align with the following Business Excellence principles:-

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

**SUSTAINABILITY IMPLICATIONS**

**SOCIAL IMPLICATIONS**

Sea level rise, and the wider impacts of climate change, will impact on the lives and wellbeing of Port Stephens residents, particularly those living in the low lying and coastal areas. The effects relating to impacts on property can be largely avoided with appropriate planning; however more work will need to be undertaken in relation to planning for the effects of increased instances of extreme heat, particularly on our aging population.

**ECONOMIC IMPLICATIONS**

Climate change has the potential to significantly impact on the financial resources of the Council and the broader community. Such impacts are likely to be considerably greater if left unaddressed as Council could be seen as not fulfilling its duty of care and could be left open to future litigation.

**STRATEGIC & OPERATIONS COMBINED MEETING – 12<sup>TH</sup> MAY 2009**

**ENVIRONMENTAL IMPLICATIONS**

Climate Change and sea level rise has the potential to have significant impacts on the natural environment. Of particular concern is the impact on coastal salt marsh, an Endangered Ecological Community which fringes the estuary and is building block of the ecosystem. Coastal wetlands are also at risk as are wildlife corridors. While the adoption of a sea level rise planning figure will go some way to recognising these impacts further adaptation initiatives will need to be implemented to counteract the effects of climate change on the regions biodiversity.

**CONSULTATION**

In the preparation of this report consultation has been undertaken with the Managers of Integrated Planning and Development and Building and Legal Services.

Future consultation and education with the community will be vital to making future decisions as to how council responds all aspects of Climate Change. In the meantime it is proposed that council continue to investigate the impacts of climate change on its own operations and carry out work to determine which areas of the LGA will be at risk of coastal inundation from sea level rise. Once this further information is available it is proposed to report back to Council with a view to undertaking community education.

Also, there is an Inter-Group team and consultants (funded by the Commonwealth Government grant) providing extensive input into the Local Adaptation pathways Program.

Also, this issue has been extensively discussed by the Directors of Planning/equivalents of member councils of Hunter Councils.

**OPTIONS**

- 1) Adopt, reject or amend the recommendation

**ATTACHMENTS**

Nil

**COUNCILLORS ROOM**

Nil

**TABLED DOCUMENTS**

- 1) Position Paper: Adoption of a Regionally Consistent Planning Level in Response to Climate Induced Sea Level Rise (HCCREMS Directors Forum, 26 June 2008).



ATTACHMENT 4  
NSW SEA LEVEL RISE POLICY STATEMENT



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Cover (clockwise from main photo):

Belinger River flooding at Myleslon (Col's Harbour Advocate);

coastal erosion at Old Star (P. Watson, OFCCW);

flooding from the Richmond River at Corak, January 2006 (B. Eggers, Richmond Valley

Council); coastal erosion at Belongil Beach, Byron Bay (P. Watson, DECCW)

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October 2009

## Introduction

The NSW Government acknowledges that increased sea levels will have significant medium to long-term social, economic and environmental impacts. As an integral part of the state's response to climate change, the Government is committed to supporting coastal communities in adapting to long-term rising sea levels in a manner that minimises the resulting social disruption, economic costs and environmental impacts. Sea level rise is a global problem that will impact locally on the NSW coastline and will require action by communities, the Government and local councils.

Coastal communities and environments are particularly vulnerable to climate change due to the potential for permanent coastal inundation and increasing coastal hazards associated with changing weather patterns and extreme weather events. This policy statement deals with sea level rise only and represents an important component of the Government's response to climate change.

This policy statement outlines the Government's objectives and commitments in regards to sea level rise adaptation. It outlines the support that the Government will provide to coastal communities and local councils to prepare and adapt to rising sea levels.

## The Impacts of rising sea levels

Over the period 1870–2001, global sea levels rose by 20 cm, with a current global average rate of increase approximately twice the historical average<sup>1</sup>. Sea levels are expected to continue rising throughout the twenty-first century and there is no scientific evidence to suggest that sea levels will stop rising beyond 2100 or that the current trends will be reversed.

Sea level rise is an incremental process and will have medium to long-term impacts. The best national and international projections of sea level rise along the NSW coast are for a rise relative to 1990 mean sea levels of 40 cm by 2050 and 90 cm by 2100<sup>1</sup>. However, the Intergovernmental Panel on Climate Change (IPCC) in 2007 also acknowledged that higher rates of sea level rise are possible.

In simple terms, sea level rise will raise the average water level of oceans and estuaries. As the average water level rises, so too will high and low tide levels affecting the natural processes responsible for shaping the NSW coastline. Exactly how the coast and estuaries will respond is complex and often driven by local conditions but, in general, higher sea levels will lead to:

- increased or permanent tidal inundation of land by seawater
- recession of beach and dune systems and to a lesser extent cliffs and bluffs
- changes in the way that tides behave within estuaries
- saltwater extending further upstream in estuaries

<sup>1</sup> Refer to the Department of Environment, Climate Change and Water 2009 Technical note, *Derivation of the NSW Government's sea level rise planning benchmarks* for further details.

- higher saline water tables in coastal areas and
- increased coastal flood levels due to a reduced ability to effectively drain low-lying coastal areas

These physical changes will have an impact on coastal ecosystems, access to and use of public and private assets, historical and cultural heritage values, arable land used for agriculture, freshwater access, public and private infrastructure, and low lying areas of coastal land that are affected by flooding.

Sea level rise will also affect coastal hazards such as beach erosion during storms and coastal flooding. As the sea level rises, severe erosion of beaches during storms will affect areas further inland, while the depth of floodwaters and the areas affected by flooding will increase due to a reduced ability to effectively drain low lying coastal areas. Climate change will also affect the frequency and intensity of storms, further exacerbating the effects of sea level rise. Such hazards will further impact coastal ecosystems, historical and cultural heritage values, agriculture and infrastructure, and residential and other urban land uses on land around beaches, estuaries, bays and harbours.

### Related NSW Government initiatives

The NSW Government currently has in place policies, programs and legislation that allow for ecologically sustainable growth in coastal areas, while reducing the risks to life and property from coastal hazards and flooding. These are also relevant to managing the projected increased risks from sea level rise.

The NSW Coastal Policy 1997 sets the overall strategic direction for coastal management in NSW and is based on the principles of ecologically sustainable development. It aims to facilitate the development of the coastal zone in a way that protects and conserves its values. One of the policy's goals is to recognise and accommodate coastal processes and hazards, including a related objective to recognise and consider the potential effects of climate change in the planning and management of coastal development. The NSW Coastal Policy is given statutory effect through State Environmental Planning Policy 71 – Coastal Protection and through a Ministerial Direction to local councils under section 117 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The State Environmental Planning Policy 71 – Coastal Protection (SEPP 71) also requires that both land use planning and development assessment within the NSW Coastal Zone consider the likely impact of coastal processes and coastal hazards on development and any likely impacts of the development on coastal processes and coastal hazards.

In 2006 the State Government gazetted the new Standard Instrument – Principal Local Environmental Plan. Clause 5.3 of the Standard Instrument prevents the granting of development consent on land that is wholly or partly within the NSW Coastal Zone, unless consideration has been given to the effect of coastal processes and coastal hazards and potential impacts, including sea level rise on the proposed development, and arising from the proposed development.

Two additional NSW Government policies of relevance to sea level rise are the 1988 NSW Coastline Hazard Policy and the NSW Flood Prone Land Policy. This Sea Level Rise Policy Statement supersedes the 1988 NSW Coastline Hazard Policy. Most of the objectives from that policy were included in the NSW Coastal Policy 1997, which remains current. Other objectives from the NSW Coastline Hazard Policy are updated by this Sea Level Rise Policy Statement.

### NSW Sea Level Rise Policy Statement

The NSW Flood Preparedness Policy remains in effect and has a primary objective to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property, and to reduce private and public losses resulting from floods.

These policies are supported by the Government's Coastal, Estuary and Floodplain Management programs, which provide technical policy support and grants to local councils in order to identify and manage coastal hazards and flooding risks. The hazards associated with sea level rise have been incorporated into these programs from as early as 1990, and the benchmarks established under this policy statement will support the consistent consideration of sea level rise across these activities.

### The NSW Government's objective and commitments for action on adapting to sea level rise

The NSW Government has an objective to see coastal communities adapt to rising sea levels in a manner that minimises the resulting social disruption, economic costs and environmental impacts. To assist in meeting this objective, the Government will support local councils and the community in adapting to sea level rise by:

1. promoting an adaptive risk-based approach to managing the impacts of sea level rise
2. providing guidance to local councils to support their sea level rise adaptation planning
3. encouraging appropriate development on land projected to be at risk from sea level rise
4. continuing to provide emergency management support to coastal communities during times of floods and storms
5. continuing to provide up-to-date information to the public about sea level rise and its impacts

Further details of these commitments are provided below:

#### 1. Promoting adaptive risk-based management

The NSW Government will promote an adaptive, risk-based approach to managing the impacts of sea level rise. The adaptive risk-based approach recognises that there are potentially significant risks from sea level rise and that the accuracy of sea level rise projections will improve over time.

Planning and investment decisions should therefore consider the sea level rise projections over timeframes that are consistent with the intended timeframes of the decision. For example, those decisions should consider likely sea levels over the expected life of an asset in order to decide on how the asset can be located or designed, thereby avoiding or minimising any associated impacts. This early consideration will minimise the initial costs of considering sea level rise and the future costs of adapting to sea level rise, such as through relocation of affected buildings or infrastructure.

The NSW Government has adopted sea level rise planning benchmarks to support this adaptive risk-based approach. These benchmarks will enable the consistent consideration of sea level rise within this adaptive risk-based management approach. The primary purpose of the benchmarks is to provide guidance supporting consistent consideration of sea level rise impacts, within applicable decision-making frameworks. This will include strategic planning and development assessment under the EP&A Act and infrastructure planning and renewal.

specific future obligations to reduce the impacts of coastal hazards and flooding caused by sea level rise on private property.

Landowners affected by current and future coastal hazards may seek approval from their local council to construct works on their land to protect their property. These works may be approved under the EP&A Act where they do not cause adverse impacts on coastal processes beyond the property boundary or on public amenity or the environment. Private landowners will not normally be permitted to construct works on State-owned land to protect their property. All required approvals must be obtained before any works commence and unauthorised works may be removed at the landowner's cost.

#### 4. Community support during emergencies

The Government currently provides emergency management support to coastal communities during and following floods and major storms. This support is normally coordinated by the State Emergency Service, operating under the *State Emergency and Rescue Management Act 1989*. This Government will continue to provide this support to coastal communities likely to be affected by sea level rise.

The Government's direct community support will be focused on emergency management. The Government currently does not provide compensation to the owners or potential developers of land affected by coastal hazards or flood risks, except for some compensation and other payments that may be made in relation to an emergency or disaster. This arrangement will continue and will include land where these hazards or risks are increased by sea level rise. Compensation will not be provided for any impact on property titles due to erosion or sea level rise.

#### 5. Information availability

The Government has provided information to the community on sea level rise projections and the likely impacts of sea level rise on low-lying coastal areas. The Government will continue to provide up to date information on sea level rise and its impacts, and will continue to work with local councils to provide information on the impacts of sea level rise on local flooding and coastal hazards.

Continuing public access to current and credible information on sea level rise is important for various reasons, including:

- supporting community adaptation to sea level rise;
- supporting the community and the private sector to make appropriate investment decisions in coastal areas;
- assisting the insurance industry to price risks from sea level rise in their insurance policies.

NSW Sea Level Rise Policy Statement

The use of the benchmarks will be required when undertaking coastal and flood hazard assessments in accordance with the Coastal Management and Floodplain Development Manuals. It is a necessary statutory requirement that the preparation of local environmental planning give effect to and be consistent with these manuals.

The NSW sea level rise planning benchmarks are an increase above 1990 mean sea levels of 40 cm by 2050 and 90 cm by 2100, with the two benchmarks allowing for consideration of sea level rise over different timeframes. The benchmarks were established by considering the most credible national and international projections of sea level rise<sup>2</sup> and take into consideration the uncertainty associated with sea level rise projections. The Government will continue to monitor sea level rise observations and projections and will periodically review these planning benchmarks, with the next review likely to coincide with the release of the fifth IPCC report, due in 2014.

The sea level rise planning benchmarks can be used for purposes such as:

- incorporating the projected impacts of sea level rise on predicted flood risks and coastal hazards
- designing and upgrading of public and private assets in lowlying coastal areas where appropriate, taking into account the design life of the asset and the projected sea level rise over this period
- assessing the influence of sea level rise on new development (see below for further details)
- considering the impact of sea level rise on coastal and estuarine habitats (such as salt marshes) and identifying valuable habitats at most risk from sea level rise
- assessing the impact of changed salinity levels in estuaries, including implications for access to fresh water

## 2. Supporting local councils

The NSW Government recognises that local councils are responsible for many of the land use planning and development assessment decisions made in coastal areas. Local councils prepare studies to identify areas at risk from coastal flooding and coastal hazards through the coastal, estuary and floodplain management programs, and the NSW Government will continue to provide assistance. Priority for funding assistance will be given to areas of greatest current and future risk from flooding and coastal hazards. These studies will provide information on the influence of sea level rise on coastal hazards and flood risk, which can be considered at the land use planning and development assessment stage.

The Government will also continue to provide guidance and assistance to local councils on reducing the risks to private and public property from coastal hazards. The risks from coastal hazards are significant and are projected to increase with sea level rise. Government financial assistance to local councils is unlikely to extend to protecting or purchasing at risk properties at risk from coastal hazards and sea level rise.

When allocating funding assistance to local councils for coastal protection works, the

..

<sup>2</sup> Refer to the Department of Environment, Climate Change and Water Technical Note, *Derivation of the NSW Government sea level rise planning benchmarks*.

4

NSW Sea Level Rise Policy Statement

Government will give priority to public safety and protecting valuable publicly-owned assets, and then to private land. The criteria that the Government will use to allocate any funds to local councils to protect or voluntarily purchase private property will include the:

- magnitude of current and future hazards
- cost-effectiveness of management actions
- contribution to the project's costs from the local council and benefiting landowners, taking into consideration genuine hardship for affected coastal residents
- effectiveness of the proposed arrangements for maintaining any proposed works
- ability of the project to accommodate sea level rise.

Where assistance is provided to reduce the impacts of coastal hazards, the Government does not assume any responsibility for these hazards. The Government will continue to provide funding assistance to local councils for coastal hazard studies and management planning.

These criteria will not affect the NSW Coastal Lands Protection Scheme, where the criteria for land purchase under the scheme does not include coastal hazard reduction.<sup>3</sup>

### 3. Supporting appropriate coastal development

Provisions under the EP&A Act require consent authorities to consider coastal and flooding hazards in their planning and development approval decisions. The NSW Coastal Policy and coastal regional strategies also require consideration of sea level rise, as does the Standard Instrument for Local Environmental Plans where relevant.

The sea level rise planning benchmarks will support consistent consideration of the influence of sea level rise on any coastal hazards and flooding risks that may influence a development or redevelopment site. The benchmarks are not intended to be used to predict development of and land is projected to be affected by sea level rise. The goal is to ensure that such development recognises and can appropriately accommodate the projected impacts of sea level rise on coastal hazards and flooding over time, through appropriate site planning, design and development control.

Department of Planning guidelines will describe how sea level rise should be considered in land use planning and development assessment. These guidelines will provide assistance to local councils, landowners, infrastructure providers and developers.

Coastal hazards and flooding are natural processes and the Government considers that the risks to properties from these processes appropriately rest with the property owners, whether they be public or private. This will continue where these risks are increased by sea level rise. Under both statute and common law, the Government does not have nor does it accept

<sup>3</sup>The Coastal Lands Protection Scheme is used to bring significant coastal lands into public ownership. The criteria for acquisition under the Scheme are to promote public access to the coastal foreshore, to maintain the scenic quality of the NSW coast, and to protect ecological sites of regional, state and/or national significance.



ATTACHMENT 5  
 APPLICANTS SUBMISSION



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 E council@portstephens.nsw.gov.au  
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OFFICE USE ONLY

Application No:

Date of Receipt:

**Request for Variation to Development Standards  
 under State Environmental Planning Policy No. 1 (SEPP 1)**

Any application which seeks to vary a development standard of the Port Stephens Local Environmental Plan or any other environmental planning instrument requirement must be supported by a written request. In seeking a variation to one (or more) standard, you must be able to demonstrate the following:

1. Identify the development standard to which the SEPP 1 objection applies.
2. Identify the objectives of the applicable zone.
3. Identify the underlying objectives of the applicable development standard.
4. Whether compliance with the development standard is consistent with the aims in Clause 2 of SEPP 1.
5. Reasons given to support the variation.
6. State why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

It is not appropriate to request Council to vary a development standard for economic reasons, to achieve a higher density (which may be out of character with the surrounding area) or to enable a "standard design" to fit on the site. The request must establish the need for the variation based on the objectives of the zone, the constraints and attributes of the site, and considering the underlying objective(s) of the relevant development standard or instrument requirement. Applications that cannot reasonably establish these criteria will not be supported by Council.

This form can be used as the basis of a SEPP1 objection. Before completing this form, you should discuss any variation sought (including the underlying objective) with Council's Assessment and Planning Section. This will assist Council in making a speedy assessment of your request, without the need to seek further information.

Applicant Details

Name **DESIGNED DIMENSION**  
 Address **142 GLEBE RD MERRITT** Postcode **2291**

Development Description

**CONSTRUCTION OF 2 STOREY BRICK VANDER RESIDENCE**

Property Description

Lot No **340** DP / SP **27845** Section  Parcel   
 House No **227** Street Name **FORESHORE DR**  
 Town **CORVETTE**

Variation Sought

Identify which Development standard is to be varied and by what degree (%)

- Height ..... %variation
- Floor Space Ratio ..... %variation
- Density (Lot Size) ..... %variation
- Other Please specify (SEPP or REPI) ..... %variation

Variation Justification

Consider the underlying objective(s) of the relevant development standard being varied. Remember if in any doubt Council's Assessment and Planning section is available to discuss these or any other matter relating to your request for variation.

Identify the development standard to which the SEPP 1 objection applies

THE SEPP 1 OBJECTION APPLIES TO THE INCREASED FLOOR SPACE RATIO.

Identify the objectives of the applicable zone

0.5:1 IS COUNCILS POLICY

Identify the underlying objectives of the applicable development standard

COUNCIL'S POLICY IS TO HAVE A MAXIMUM FSR OF 0.5:1 TO ALLOW FOR LANDSCAPING AND REDUCE BULK AND SCALE. HOWEVER DUE TO THE SIZE OF OUR SITE WE HAVE ACHIEVED 0.7:1 ON A NORMAL 500m<sup>2</sup> SITE WE WOULD ACHIEVE COUNCILS REQUEST.

Whether compliance with the development standard is consistent with the aims in Clause 3 of SEPP 1

COMPLIANCE WITH THE DEVELOPMENT STANDARDS IS  
CONSISTENT WITH THE AIMS OF THE SEPP 1.


Reasons given to support the variation

DUE TO THE SIZE OF THE PROPOSED LOT IT IS  
NEAR IMPOSSIBLE TO MEET COUNCILS POLICY  
FOR 4 FLOOR SPACE RATIO .....

State why compliance with the development standard is unreasonable or unnecessary in the  
circumstances of the case

THE SIZE OF THE SITE IS ONLY APPROX 245m<sup>2</sup>  
SO TO COMPLY WITH THE REGULATION WOULD  
RESULT IN BUILDING A ONE BEDROOM COTTAGE  
WHICH IS NOT PRACTICAL. ....

Applicant's signature

 2/10 10.08.10

**ITEM NO. 3**

**FILE NO: PSC 2009-06567**

**UPDATE ON PREPARATION OF NEW PRINCIPAL LOCAL ENVIRONMENTAL PLAN FOR PORT STEPHENS**

**REPORT OF: BRUCE PETERSON - ENVIRONMENT AND DEVELOPMENT PLANNING, MANAGER**

**GROUP: SUSTAINABLE PLANNING**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt Option 1 to continue to prepare a draft Planning Proposal (Principal LEP) in accordance with the Environmental Planning and Assessment Act, 1979

**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**

**RECOMMENDATION:**

	<b>Councillor Bruce MacKenzie Councillor Steve Tucker</b>	<p>That Council:</p> <ol style="list-style-type: none"> <li>1) Adopt Option 1 to continue to prepare a draft Planning Proposal (Principal LEP) in accordance with the Environmental Planning and Assessment Act, 1979.</li> <li>2) Any interested Councillors can seek additional information to be presented.</li> </ol>
--	---	---

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

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

Those against the motion: Nil.

**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>394</b>	<b>Councillor John Nell Councillor Peter Kafer</b>	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 Peter Kafer, Glenys Francis, Caroline De Lyall, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Bob Westbury.

Those against the Motion: Nil.

The purpose of this Report is to provide an update on the progress of the preparation of a new draft Principal Local Environmental Plan (LEP) to replace the existing Port Stephens LEP 2000 and present options for the continued Councillor involvement in its development. The Report includes details of the information available from the community used to inform the development of a draft Planning Proposal so far. Council's legal obligations under the Environmental Planning and Assessment Act, 1979 for preparing a Principal LEP are also included.

## **BACKGROUND**

Local environmental plans (LEP) are an integral element of the current NSW Planning System. Although prepared by local councils, LEP's are required to be made by the Minister for Planning.

As part of the NSW Planning Reform Agenda, all councils are required to prepare a new LEP to comply with the Standard Instrument (Local Environmental Plans) Order, 2006 within a designated time period. Port Stephens Council is required to prepare a draft Principal LEP in the new Standard Instrument Template format for referral to the DoP (pre-exhibition) in 2011.

### **Existing Planning Position**

#### Lower Hunter Regional Strategy (2006)

In October 2006, the NSW State Government Cabinet endorsed the Lower Hunter Regional Strategy (LHRS). The Strategy identifies that Port Stephens will be required to accommodate a significant amount of additional population. The Strategy provides that 60% of new dwellings will be provided in new release areas and 40% will be provided within the existing urban areas. The targets proposed by the Strategy are 12,500 new dwellings and 6,100 additional jobs.

#### Port Stephens Futures Strategy

The Port Stephens Futures Strategy was adopted by Council on the 13 October 2009. The development of the Strategy commenced in October 2008 with a series of workshops across the LGA, followed by a Forum in May 2009 which brought the community together to develop a set of values and a vision for the future. The Strategy will provide the direction for the Principal LEP by the development of a robust future vision for the LGA.

Port Stephens Community Settlement and Infrastructure Strategy (2007)

The Community Settlement and Infrastructure Strategy (CSIS) was adopted by Council on the 24 April 2007 and seeks to plan and manage the future settlement patterns of the Port Stephens Local Government Area (LGA) up to 2031. The Department of Planning (DoP) have consistently advised Council that the Strategy is not consistent with the LHRS and as a result has declined to endorse the Strategy, primarily due to a number of technical issues.

An amended document was placed on exhibition from 25 August to 23 September 2010. As a result of the DoPs requirements for consistency with the LHRS and Council's need for an endorsed planning strategy to inform the Principal LEP, a revised document will be presented to Council's consideration.

The fundamental approach of the new revised document is to develop sustainable communities with commercial, residential and industrial land being placed strategically to mutually support each other.

Port Stephens Local Environmental Plan 2000

The current LEP has been in force since 29 December 2000. Over the years there have been several amendments to the document. The LEP 2000 will be translated into the Principal LEP where practicable and appropriate.

Port Stephens Development Control Plan 2007

Development Control Plan (DCP) 2007 was the result of consolidating Council's existing DCP's at the time into one single document and updating a range of provisions and controls. As this DCP references and supports the current practices and policies established in LEP 2000, several consequential amendments will need to occur to ensure the DCP is consistent with the Principal LEP. Also this review is a timely opportunity to consider how the document has operated over that last two years and consider feed back from the community of its application and quality of outcomes.

Port Stephens Sustainability Policy

The Port Stephens Sustainability Policy provides Council with a clear mandate to undertake all of its operations in a sustainable manner. This Policy is a major consideration in the preparation of all Council documents including LEP's. This Policy is currently under review; however, the principles are sound and will be used to inform the development of the Principal LEP.

**Planning Process**

A Principal LEP must be developed in accordance with the provisions of the Environmental Planning and Assessment Act, 1979 (the Act). The legal frame work around the preparation of LEP's is extensive. The reform agenda of the DoP has further increased the requirements with the introduction of the Standard Instrument Template, additional section 117 directions, changes to the Act, new SEPPs, practice

notes and planning circulars all of which are undergoing constant additions and changes/clarification in interpretation. The steps in the process are outlined below:

- 1) **DoP endorsed Planning Strategy to act as a Local Environmental Study (LEP)** – the revised CSIS (Planning Strategy and Futures Strategy) will perform this role.
- 2) **Review gaps in the current policy framework** – this analysis was undertaken in 2007. The analysis identified the need to review the rural, commercial and industrial lands. This work has now been completed and included in the revised Planning Strategy.
- 3) **Council resolution to prepare an LEP** – on the 7 July 2009 Council resolved to prepare a new Principal LEP in accordance with the provisions of the Act. Although the report was written prior to the 1 July 2009 when the legislation changed and the resolution occurred after the changes, the result being that the resolution could not be enacted as a complete Planning Proposal had not been considered by the Council. A new resolution will be required when a completed draft Planning Proposal is presented to Council in 2011.
- 4) **Preparation of a Planning Proposal (s54 as amended on 1 July 2009)** - to formally refer the draft Planning Proposal to the DoP requesting a S56 Gateway Determination.
- 5) **Gateway Determination** – Following a Council resolution to adopt a draft Planning Proposal, the document is referred to the DoP for a Gateway Determination. the Minister for Planning (or Delegate) will review Councils Planning Proposal and advise:
  - a) Not to proceed or
  - b) Proceed (usually with amendments).

The Determination would include requirements for exhibition, community consultation and time frames.
- 6) **Exhibition** – Council would place the draft Planning Proposal and supporting information on exhibition in accordance with the requirements listed in the Gateway Determination. Council can not exhibit the draft Planning Proposal with out the authorisation of the Department of Planning under s56 of the Act.
- 7) **Review of submissions** – following exhibition period all submissions would need to be reviewed and a summary of issues raised included in the final report to Council.
- 8) **Final Council Report** – Council would consider a revised draft Planning Proposal and the recommended responses to submissions which may include changes to the final document.
- 9) **Referral of Final draft Planning Proposal to DoP** – any changes resolved by Council would be made prior to the forwarding of the final draft to the Minister to make the Plan.

## **FINANCIAL/RESOURCE IMPLICATIONS**

The financial impacts associated with the development of the Principal LEP including the background studies and community engagement have been addressed in a previous Council report which identified the legal requirements of having to prepare a Principal LEP, the background information lacking from current studies and

additional technical staffing resources required to meet the timeframe set by the DoP. This Report does not request any further funding at this point in time.

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

The Standard Instrument (Local Environmental Plans) Order was gazetted on 31<sup>st</sup> March 2006. The Order prescribes a standard form and content of principal local environmental plans within NSW under the Environmental Planning & Assessment Act.

Draft Principal LEPs are required to be prepared in accordance with the standard instrument and incorporate the relevant mandatory provisions before they can be publicly exhibited or recommended for gazettal. Local plans across NSW are required to use the same planning instrument. Councils are able to include limited localised planning objectives and provisions specific to their area, as well as within predetermined parameters, selected zoning, additional land uses in zones, heritage items, and development standards such as height and minimum lot sizes.

Public exhibition of the draft Planning Proposal must include a copy of the standard instrument. Under the standard instrument Council can not:

- add new zones or create sub-zones prohibit uses that are mandated as permissible in a zone
- permit uses that are mandated as prohibited in a zone
- add local provisions that are inconsistent with the mandatory provisions
- change the standard dictionary by altering or adding to the standard definitions
- change the clauses numbering
- change the format
- change the wording of the provisions

Any local provisions must be consistent with relevant State or regional planning guidance and the mandatory provisions in the standard instrument.

The exhibition of the draft Planning Proposal cannot occur unless the Director-General is satisfied that the draft LEP has been prepared in accordance with the standard instrument. Council can not exhibit a draft Planning Proposal without a Gateway Determination.

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The Principal LEP will be developed in accordance with the fundamental objective of developing/enhancing and supporting a sustainable Port Stephens community.



## **CONSULTATION**

Council requires the approval of the Department of Planning to undertake the public consultation of a draft Planning Proposal. This does not occur until Council resolves to refer a draft Planning Proposal to DoP and receives a Gateway Determination. As a result the following information has been utilised to date to inform officers of the communities' and Councillors expectations for the future of Port Stephens:

### Community

- Futures Strategy, including a review of the submissions received during the public exhibition process
- The revised Planning Strategy (formally CSIS) and the submissions received during the August/September 2010 public exhibition
- Submissions received during exhibition of draft Strategies i.e. Nelson Bay
- Review of matters raised in Council report on development applications
- Discussions and advice from government agencies i.e. Hunter Water Corporation, RTA, Department of Environment, Climate Change and Water, etc

### Councillors

- 5 x Councillors workshops
- 10 x Two-Way Conversations
- 10 x Ward Councillor meetings

The following is a summary of the proposed consultation with the full details to be included in the report to Council which recommends referring a draft Planning Proposal (Principal LEP) to the DoP for a Gateway Determination:

- Community consultation based on planning districts
- Community consultation based on planning Wards
- Informal "drop in" centres
- Public Hearing
- Residents panel consultation

The exhibition would also be supported with Fact Sheets covering details of the draft Planning Proposal such as zones, changes from the exiting LEP to the proposed, suburb based details and information on the legal process Council is required to follow.

## **OPTIONS**

To allow the continued development of a draft Planning Proposal the following options for Councillors are provided:

### **Option 1 – Standard Legislative Process**

- a) Undertake a full day workshop with Councillors in January/February to discuss land use zones and corresponding mapping
- b) Undertake second workshop to review requested amendments/issues and opportunities to address them
- c) Two Way Conversation prior to report to Council a draft Planning Proposal

- d) Council resolve to refer the draft Planning Proposal to the Department of Planning for Gateway Determination prior to formal community consultation in accordance with the Act.

This is the preferred option as it is in accordance with the requirements of the Act. Additional workshops would be added should councillors require more information.

**Option 2 – Preliminary Community Consultation with no draft Planning Proposal**

- a) Undertake a full day workshop with Councillors in January / February to discuss land use zones and corresponding mapping.
- b) Undertake second workshop to review requested amendments / issues.
- c) Hold meetings with representatives of the Residents Panel (demographically and geographically statistically valid) based on planning districts to discuss potential land use zones (recommended by Councillors).
- d) Two-Way Conversation to discuss the outcomes of community consultation.
- e) Prepare for Council a draft Planning Proposal.
- f) Council resolve to refer draft Planning Proposal to DoP for Gateway Determination.

This is not the preferred option. Firstly, the information provided by the community to date has been quite comprehensive and well thought through allowing a clear understanding of the community's expectations for their area in the future. Secondly, to step outside the legal process may expose Council to greater intervention from the Department of Planning as well as the risk of misleading the community on the level of variation of the Standard Template Instrument and State policy position as it has no specific direction from the DoP. This approach may create disharmony in the community who have spent considerable time providing extensive comments or raising issues on matters which are outside Councils control.

Also until Council resolves under section 54 to prepare and refer to the DoP a draft Planning Proposal the document has no legal status. In accordance with the Act, Council can not legally exhibit a draft Planning Proposal without a Gateway Determination from the DoP. The Gateway Determination process will provided both Council and the community with detail on what document is likely to be supported by the Minister who has the legal ability to make the Plan.

**Option 3 - Preliminary Community Consultation with no draft Planning Proposal including Public Hearings**

- a) Undertake a full day workshop with Councillors in January / February to discuss land use zones and corresponding mapping.
- b) Undertake second workshop to review requested amendments / issues.
- c) Hold meetings with representatives of the Residents Panel (demographically and geographically statistically valid) based on planning districts to discuss potential land use zones (recommended by Councillors).
- d) Hold community consultation with Focus Groups representing key planning districts to discuss potential changes to land use zones (recommended by Councillors) in the format of a Public Hearing (similar to land reclassifications) facilitated by an independent consultant.

- e) Two-Way Conversation to discuss the outcomes of community consultation.
- f) Prepare for Council a draft Planning Proposal.
- g) Council resolve to refer draft Planning Proposal to DoP for Gateway Determination.

This is not the recommended option. This option raises the same issues as Option 2 in regard to the legal framework of the Act and community expectations. Further, the cost of an independent consultant has not been costed or budgeted.

#### **Option 4 – Do Nothing**

Don't undertake any further work on the development of a draft Planning Proposal and continue with the existing LEP 2000.

This is not the preferred option. Council has been directed to prepare a new Principal LEP in the Standard Template format by the DoP. Should Council not proceed the Minister for Planning may under the Act prepare a Planning Proposal on Council's behalf excluding both the Council and community from the process.

#### **ATTACHMENTS**

Nil.

#### **COUNCILLORS ROOM**

Nil.

#### **TABLED DOCUMENTS**

Nil.

**ITEM NO. 4**

**FILE NO: 16-2003-577-2**

**DEVELOPMENT APPLICATION FOR ADDITIONS TO HOTEL AT NO. 37 FERODALE ROAD MEDOWIE**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application 16-2003-577-2 for additions to Hotel at No.37 Ferodale Road Medowie subject to the conditions contained in Attachment 3.

**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**

**RECOMMENDATION:**

	<b>Councillor John Nell</b> <b>Councillor Glenys Francis</b>	That Council defer Item 4 to allow for additional information, including crime statistics to be provided to Councillors.
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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 Ken Jordan, Frank Ward, Shirley O'Brien, Bob Westbury, Glenys Francis, Peter Kafer, John Nell, Steve Tucker, Geoff Dingle, Caroline De Lyall, Bruce MacKenzie and Sally Dover.

Those against the motion: Nil.

The amendment of being put became the motion.

**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>395</b>	<b>Councillor John Nell</b> <b>Councillor Ken Jordan</b>	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 Peter Kafer, Glenys Francis, Caroline De Lyall, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Bob Westbury.

Those against the Motion: Nil.

## **BACKGROUND**

**The purpose of this report is to present the development application to Council for determination. That is an application for additions to Hotel at No.37 Ferodale Road Medowie.**

The Bull and Bush Hotel has been operating on the subject site since March 2009 under temporary development consent 16-2008-57-1 which allowed extended operating hours for a twelve month trial period. The trial period expired on 3<sup>rd</sup> March 2010.

The original approved trading hours under Development Consent 16-2003-577-1 were;

- 10.00am to 10:00pm Mondays and Tuesdays,
- 10:00am to 12:00 midnight Wednesdays to Saturdays inclusive and
- 10:00am to 9:00pm on Sunday.

Development Consent (16-2008-57-1) was granted by the Land and Environment Court with a twelve month consent issues allowing the following trading hours.

- Monday to Saturday: 5.00am to 3.00am
- Sunday: 5.00am to midnight.

The subject application (16-2003-577-2) seeks to permanently approve the modified trading hours.

The amended trading hours equate to a total weekly increase from 91 hours to 151 hours as provided for in the twelve month trial which was given consent by the Land and Environment Court.

The application also seeks to *incorporate as part of the Development Consent, specific conditions, being some, but not all of those conditions of Development Consent 16-2008-57-1 which are already incorporated in the Development Consent for a 12 month trial period by way of the notice.*

The trial conditions sought to be included in the consent for the hotel are conditions 1, 2, 4-12, 16-24, 27 and 28. These conditions relate to;

- 1)Standard Condition
- 2)Environmental Planning and Assessment Act, 1979
- 4)Trading Hours
- 5)Maximum patronage signage
- 6)Requirements for display of consent
- 7)Requirements for alterations to operations
- 8)Restrictions on take away liquor

- 9) Building Code of Australia
- 10) Building Code of Australia
- 11) Noise
- 12) Noise
- 16) Security Plan of Management
- 17) Entertainment Requirements
- 18) Noise
- 19) RSA Register
- 20) Security Person Register
- 21) Patron Numbers Record
- 22) Courtesy Bus Register
- 23) Signage
- 24) Contacts for Community Contact and Consultation Line
- 27) Restrictions on times of entry
- 28) definitions

Conditions 3, 13, 14 and 15 have not been requested to be transferred as they relate to a time limit on the consents validity and the provisions for modifying consent 16-2003-577-1.

Conditions 25 and 26 have not been requested to be transferred as the applicant is seeking to modify these conditions as outlined below.

The applicant has also proposed that the following conditions be incorporated into the amended consent to replace the omitted conditions 25 and 26.

- *No alcohol is to be served 30 minutes prior to the closing time of the premises.*
- *The person entitled to act on this consent must, at no costs to Port Stephens Council, cause an independent audit of compliance with these conditions by an independent security consultant to be lodged with Council by 30 June in each Calendar year. The audit shall include covert surveillance of the Premises at a time when a use is undertaken of the Premises and must include the assessment of any condition requiring the keeping of a register. Each audit report must be provided to Council within 28 days of the publication of the audit.*

The modifications and additional conditions seek to make the extended operating hours approved by DA 16-2008-57-1 permanent and to change the requirement for half yearly covert inspections to an annual obligation.

It is considered that the proposed annual compliance inspection of the hotel be carried out by Council for an annual fee payable by the proprietors of the Bull and Bush Hotel. The above proposed condition of consent has been modified to reflect this.

#### **History of applications for Bull & Bush Hotel**

In respect of previous approvals for the Bull and Bush hotel. Although there have been a number of minor applications for matters such as garages and carports, following is a summary of major applications;

Substantial alterations and additions to the hotel (DA 16-2003-577-1)– approved 12 August 2003. The submitted documentation included detailing of the requested hours of operation as being;

- 10.00am to 10:00pm Mondays and Tuesdays,
- 10:00am to 12:00 midnight Wednesdays to Saturdays inclusive and
- 10:00am to 9:00pm on Sunday.

These hours of operation were approved.

In January 2008 an application (DA 16-2008-57-1) was lodged for a Place of Public Entertainment and extension to trading hours. The trading hours requested were;

- Monday to Saturday: 5.00am to 3.00am
- Sunday: 5.00am to midnight.

The application was ultimately approved by the Land and Environment Court in March 2009 subject to 28 conditions of consent.

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

Should Council reject the recommendation and refuse the development application, the applicant may appeal to the Land and Environment Court. Defending Council's determination would have financial implications for Council.

#### **LEGAL AND POLICY IMPLICATIONS**

The development application is consistent with Council's Policy.

Should Council reject the recommendation and refuse the development application, the applicant may appeal to the Land and Environment Court.

#### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The hotel currently has temporary consent to operate at the hours requested. It is not considered that reaffirming the temporary status of these hours to a more permanent entitlement will have any adverse social impacts.

The proposed development will have economic benefits for the licensee of the Bull and Bush Hotel. Other than this aspect, no other economic implications flowing from the proposed development are likely except marginal benefit in terms of retaining customers in Medowie rather than those customers attending similar hotel premises elsewhere.

#### **CONSULTATION**

The application was exhibited in accordance with Council policy and two (2) submissions were received. These are discussed in the Attachments.

**OPTIONS**

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

**ATTACHMENTS**

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

**COUNCILLORS ROOM**

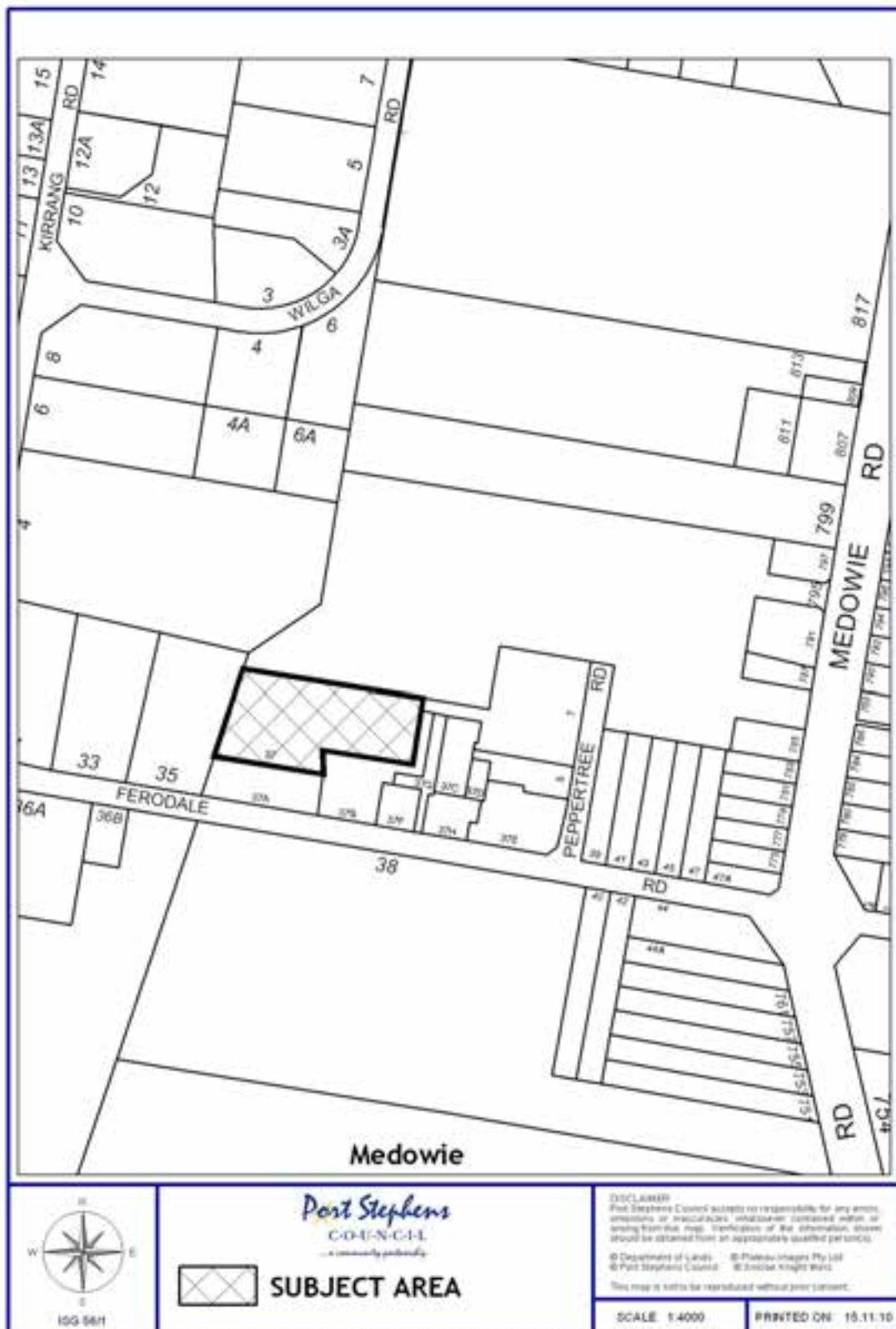
Nil.

**TABLED DOCUMENTS**

Nil.



ATTACHMENT 1  
LOCALITY PLAN



**ATTACHMENT 2  
ASSESSMENT**

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

**THE PROPOSAL**

This application seeks to modify consent 16-2003-577-1 to bring it into line with the trading hours included within consent 16-2008-57-1. The modifications seek to make the extended operating hours permanent and to change the requirement for half yearly covert inspections to an annual obligation.

The extended trading hours approved in 16-2008-57-1 are;

- Monday to Saturday: 5.00am to 3.00am
- Sunday: 5.00am to midnight.

The application also seeks to incorporate as part of the Development Consent, specific conditions, being some, but not all of those conditions of Development Consent 16-2008-57-1 which are already incorporated in the Development Consent for a 12 month trial period by way of the notice.

The trial conditions sought to be included in the consent for the hotel are conditions 1, 2, 4-12, 16-24, 27 and 28.

Conditions 3, 13, 14 and 15 have not been requested to be transferred as they relate to a time limit on the consents validity and the provisions for modifying consent 16-2003-577-1.

Conditions 25 and 26 have not been requested to be transferred as the applicant is seeking to modify these conditions as specified below.

The applicant has also proposed that the following conditions be incorporated into the amended consent to replace the omitted conditions 25 and 26.

- *No alcohol is to be served 30 minutes prior to the closing time of the premises.*
- *The person entitled to act on this consent must, at no costs to Port Stephens Council, cause an independent audit of compliance with these conditions by an independent security consultant to be lodged with Council by 30 June in each Calendar year. The audit shall include covert surveillance of the Premises at a time when a use is undertaken of the Premises and must include the assessment of any condition requiring the keeping of a register. Each audit report must be provided to Council within 28 days of the publication of the audit.*

It is considered that the proposed annual compliance inspection of the hotel be carried out by Council for an annual fee payable by the proprietors of the Bull and Bush Hotel. This fee is to be CPI adjusted on an annual basis. The above proposed condition of consent has been modified to reflect this. The amended condition

## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

leaves the responsibility for the audit with Council's Development and Building Section and incorporates the annual compliance inspection fee to be annually indexed.

### THE APPLICATION

Owner	Tunwish Pty Ltd
Applicant	Tunwish Pty Ltd
Detail Submitted	Cover Letter

### THE LAND

Property Description	Lot:1 DP: 703734
Address	37 Ferodale Road Medowie
Area	9,674m <sup>2</sup>
Dimensions	The subject site has an irregular shape with general dimensions of 73.3m x 146.67m.
Characteristics	The subject site is located on the western periphery of the township of Medowie and within the towns commercial precinct. Land in the immediate vicinity of the subject site is used for a variety of non-residential uses, including retail, commercial, rural and open space. The site contains a hotel and motel that was erected circa 1984 and the site is devoid of landscaping except for tree plantings along the western and northern boundaries.

### THE ASSESSMENT

#### 1. Planning Provisions

LEP 2000 – Zoning	3(a) – General Business
Relevant Clauses	21
Development Control Plan	N/A
State Environmental Planning Policies	Nil
Discussion	

**Port Stephens Local Environmental Plan 2000 (LEP)**

Clause 21 – Business Zones

The subject site is zoned 3(a) Business General “A” Zone, which permits a range of commercial and retail activities as well as tourist developments and industries compatible with a commercial area. The proposal has been considered against the relevant objectives of the 3(a) zone and no areas of non-compliance have been identified.

Assessment comments are provided below:

Objectives of the 3(a) Business Zone include:

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

The existing hotel, with attached motel, is located within an established commercial area and has operated from this site since approximately 1984.

The proposal to which this modification is associated is considered to be a “hotel” under the LEP and is permissible within the 3(a) zone. The proposal is also considered to be consistent with the zone objectives. There are no specific planning provisions in the LEP relevant to hotels.

Port Stephens Development Control Plan 2007 (DCP)

There are no specific provisions of the DCP relating to licensed premises.

**2. Likely Impact of the Development**

It is considered that approval of the modification will not result in any additional impacts to the community given that development consent 16-2008-57-1 has allowed the premises to operate as proposed for a period of 12 months.

The Police Licensing Coordinator has advised that the crime statistics for the preceding 12 month period indicate that there have been no increases in alcohol related issues on and around the hotel premises as a result of the extended operating hours afforded by DA consent 16-2008-57-1.

**3. Suitability of the Site**

The subject site is considered to be suitable for the proposed development.

**4. Submissions**

During the public exhibition of the proposal two (2) submissions were received. Both submissions were in objection to the proposal.

The submissions state that extending the hours of operation to the hotel will relate in an increase in antisocial behaviour, rubbish and vandalism in the local area.

The application does not seek to extend the hours of operation beyond those currently approved by development consent 16-2008-57-1 and as such it is not considered that this proposal will result in an increase in antisocial behaviour.

The Police Licensing Coordinator has advised that the crime statistics for the preceding 12 month period indicate that there have been no increases in alcohol related issues on and around the hotel premises as a result of the extended operating hours afforded by DA consent 16-2008-57-1.

#### **5. Public Interest**

It is considered to be in the public interest to allow the premises to continue trading in the hours permitted by the temporary approval 16-2008-57-1.

**ATTACHMENT 3  
CONDITIONS**

1. The Development Consent No. 16-2003-577-1 has been superseded by this Modified Development Consent No. 16-2003-577-2. The Development Consent No. 16-2003-577-1 must be surrendered to the Council prior to acting on the modified consent.
2. 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.
3. The development shall take place in accordance with the plans and documentation submitted with the application.
4. Landscaping shall be carried out in accordance with the details submitted. The landscaping must be completed prior to issue of Occupation Certificate.
5. The Advices provided by council's Disability Access Officer (enclosed) are to be indicated on the plans, where application, with the application for Construction Certificate.
6. A monetary contribution is to be paid to Council, pursuant to Section 94 of the Environmental Planning and Assessment Act, 1979, towards the provision of the following public facilities in the locality:-

Roads and/or Intersections                    (\$2,322)

Note:

- a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan No. 3-Medowie. 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 commencement of use.
  - c) The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of 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.
7. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
  8. 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.

9. Occupation of any buildings shall not take place until the building has been completed in accordance with the approved plans, specifications and conditions of this approval unless approval to occupy an incomplete building is granted by Council or an accredited certifier. Approval to occupy will not be given if any health or safety defects exist. NOTE: If an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.
10. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - a) stating that unauthorised entry to the work site is prohibited, and
  - b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed.

This clause does not apply to:

- a) work carried out inside an existing building, or
  - b) building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
11. If the work involved in the erection or demolition of a building:
    - a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
    - b) building involves the enclosure of a public place.

A hoarding or fence must be erected between the work site and the public place.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

- a) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- b) Any such hoarding, fence or awning is to be removed when the work has been completed.

12. Approval to occupy, close or partially close the footpath adjacent to the property to which this approval relates shall be the subject of a separate application. Without specific approval, storage of materials on or closure of the footpath is prohibited.
13. The building site is to be adequately protected and drainage controlled to ensure that erosion and sediment movement is restricted to the site. Council and the Environmental Protection Authority may issue 'on the spot' fines if breaches of the Clean Waters Act 1970 are detected. The applicant/builder will be responsible for restoration of any erosion and removal of sediment from the stormwater drainage system.
14. Vehicular access to the property, during construction of the dwelling is to be via an all weather access for delivery of materials & trades.
15. A waste containment facility to Council's requirements, is to be provided on the building site immediately after the first concrete pour for the building and is to be regularly serviced. Council and the Environmental Protection Authority may issue 'on the spot' fines if breaches of the Environmental Offences and Penalties Act, are detected.

Note: Your attention is drawn to your responsibility to control any litter arising from building works associated with this approval.

16. Approved toilet accommodation for all workmen on the building site is to be provided from the time work commences until the building is complete.
17. Retain all live trees protected by Council's Tree Preservation Order, other than those affected by the location of the building and driveways. Approval for removal of trees is limited to a distance of three (3) metres from the building and a three (3) metre wide driveway strip. A development application must be made to Council for the removal or pruning of any other tree or trees on the property (\$15.00 application fee applies)
18. If the soil conditions require it retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided, and adequate provision must be made for drainage.

Note: Where retaining walls exceed 600 mm in height and/or are adjacent to property boundaries, details of the method of construction are to be submitted to Council for approval prior to erection.

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

19. A "KEEP PORT STEPHENS WATERWAYS POLLUTION FREE" sign is to be displayed for public viewing on the site at the commencement of site works and during construction of the development and is to remain in place until completion of works.



20. Occupation of any buildings shall not take place until the building has been completed in accordance with the approved plans, specifications and conditions of this approval unless approval to occupy an incomplete building is granted by Council or an accredited certifier. Approval to occupy will not be given if any health or safety defects exist. NOTE: If an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.
21. Council's Food Surveillance Officer is to be given 48 hours notice for inspection and approval or otherwise of the food preparation, storage and service areas prior to occupation of the premises. Occupation of the premises is not to be approved until approval is given by Council's Food Surveillance Officer.
22. A fire safety schedule pursuant to Section 168 of the Environmental Planning & Assessment Amendment Regulation 2000 will be attached to the construction certificate which specifies the fire safety measures that should be implemented in the building premises.
23. A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to Council or to an accredited certifier together with a copy to Council (if not the 'principle certifying authority', and a copy to the Commissioner of New South Wales Fire Brigades. A further copy of the certificate must also be prominently displayed in the building.
24. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
  - a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
  - b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.
25. NOTE: The conditions relating to building construction do not represent an exhaustive assessment under the provisions of the Building Code of Australia (BCA) as no construction certificate application has been received by Council. Design amendments may be required for BCA compliance, which may necessitate amendment of this approval under S96 of the Environmental Planning & Assessment Act 1979.
26. Note: The Commonwealth Disability Discrimination Act introduced in 1992 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.

## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

27. Food preparation, storage and service areas are to be designed and constructed to comply with Council's Food Premises Code. A floor plan and cross-section of the proposed area is to be submitted to Council's Food Surveillance Officer for approval prior to the issue of a construction certificate. Such details should include details of floor, walls and ceiling finishes and of any benches, equipment, fittings and mechanical ventilation.
28. NOTE: Prior to occupation and/or operation of the proposed altered licensed premises, the Licensee shall make a renewed application to Council for approval to operate a place of public entertainment.
29. The trading hours of the Premises as a place of public entertainment shall be:  
Monday to Saturday: 5:00 am to 3:00 am  
Sunday: 5:00 am to 12:00 midnight
30. A sign in letters at least 50mm high is to be displayed in a prominent position with the entertainment area with the following text: "MAXIMUM 240 PEOPLE IN THIS AREA"/
31. A copy of this consent and a plan showing the entertainment area is to be conspicuously displayed within the place of public entertainment.
32. Any alterations to the Place of Public Entertainment with respect to size, structure, fittings and arrangement of furnishings that impact on the available floor area or paths of travel to the exits for occupants are to be approved by Council and consent given prior to their implementation.
33. Patrons of the hotel shall not be permitted to take liquor away from the premises after the bottle shop has closed and removal of liquor on other occasions shall be as provided in the PoM attached as Annexure "B". In particular, no removal of open containers or glasses shall be allowed and there shall be no sale of liquor in unopened containers for consumption off the premises..
34. The development application has not been assessed against the provisions of the Building Code of Australia. A Section 96 application under the Environmental Planning & Assessment Act 1979 will be required if design amendments are necessary to comply with the provisions of the Building Code of Australia.
35. The proposed use of the premises and the operation of all plant and equipment shall not give rise to a sound level at any point on a residential boundary greater than 5dB above the L90 background levels in any octave band with centre frequencies from 31.5Hz to 5kHz inclusive. When the L90 background levels in the 31.5Hz and the 63 octave bands are below 55dB and 35dB respectively or alternatively acceptable methods of measurement.
36. The use of the premises and the operation of all plant and equipment shall not give rise to any offensive noise as defined in the Protection of Environment Operations Act.

37. That the use of the Premises comply with the Security POM except where inconsistent with these conditions, in which case these conditions shall prevail to the extent of any inconsistency (copy attached as Annexure "B").
38. When entertainment is provided at the Premises after 8pm the Premises must comply with the following:
- a. An RSA Monitor is present at the Premises at all times when there are more than 150 patrons inside the Premises; and
  - b. One (1) Security Persons are present at the Premises when there are less than 99 patrons inside the Premises, and
  - c. Two (2) Security Persons are present at the Premises when there are between 100 and 199 patrons inside the Premises;
  - d. Three (3) Security Persons are present at the Premises when there are between 200 and 299 patrons inside the Premises;
  - e. Four (4) Security Persons are present at the Premises when there are between 300 and 399 patrons inside the Premises;
  - f. Five (5) Security Persons are present at the Premises when there are between 400 and 450 patrons inside the Premises;
  - g. No more than 450 persons (including patrons) are inside the Premises (including outdoor areas) at any time; and
  - h. An adequate Courtesy Bus Service is available to patrons of the Premises at all times after 11.00pm; and
  - i. A Taxicab Booking Service is provided to patrons of the Premises at no charge to those patrons; and
  - j. A Complaints Register is maintained at the Premises; and
  - k. A Complaints Service is provided.
  - l. The Licensee for the Premises remains a current member of the Port Stephens Liquor Accord for such time as that Liquor Accord operates.
39. That noise emitted from the Premises must be inaudible in any habitable room for any residential premises between 12am and 7am on any day.
40. For the purpose of monitoring compliance with condition 38 (a) above, an RSA Monitor Register must be kept at the Premises and must be available for inspection by Police or Council officers at all hours that the Premises are open for trade to the public. The RSA Monitor Register must accurately record the dates and times an RSA Monitor was present at the Premises and the name of each RSA Monitor.
41. For the purpose of monitoring compliance with conditions 38 (b) – 17 (d) (inclusive) above, a Security Person Register must be kept at the Premises and must be available for inspection at all hours that the Premises are open for trade to the public. The Security Person Register must accurately record the dates and times a Security Person is present at the Premises.
42. For the purpose of ensuring compliance with conditions 38 (a) – 17 (g) (inclusive) above, the number of patrons and other people in the Premises must be estimated when above 100 persons and accurately determined using appropriate measures when numbers exceed 200. Numbers shall be recorded every hour from 10pm to closing time each evening, when numbers

exceed 100. For the purpose of this clause, an appropriate measure for accurately determining numbers above 200 is an initial head count followed by the use of hand held mechanical counters operated by Security Persons at points of entry and egress from the Premises.

43. For the purpose of monitoring compliance with condition 38 (f) above, each person driving a Courtesy Bus must maintain an accurate register recording the numbers of patrons transported during each half hour that the Courtesy Bus Service is provided.
44. A sign, not less than 600mm in length and 400mm in width, must be erected on the exterior of the Premises, in a location visible from Ferodale Road, on which the words "Complaints and Reports" followed by number of the telephone service for the Community Contact and Consultation Line.
45. The telephone number for the Community Contact & Consultation Line shall be included in each advertisement for any use at the Premises and must be made available to the Medowie Progress Association and to any community based newsletter or newspaper that is distributed to the Medowie community.
46. That no patron be permitted entry to the Premises after 1.00am and before 5am on any day.
47. In the Consent, the following phrases have the following meanings:

**"adequate Courtesy Bus Service"** means a service as described at page 10 of the PoM attached as Annexure "B" to this Consent.

**"Complaints Register"** means a register maintained and kept at the Premises that is available for inspection by Police or a Council officer at the Premises at any time the Premises are open for trade to the public and that records each of the following details in respect to each complaint of anti-social conduct received about the operation of the Premises:

- (a) Date the complaint was received;
- (b) Time the complaint was received;
- (c) Name of the complainant
- (d) Name of the person recording the complaint in the Register
- (e) The precise terms of the complaint
- (f) The action taken, if any, in respect to the complaint.

**"Complaints Service"** means a telephone service provided at the Premises that is capable of receiving telephone calls at the Premises;

**"Premises"** means the Bull & Bush Hotel situated at 37 Ferodale Road, Medowie.

**"RSA Monitor"** means a person holding a "recognised RSA certificate", as defined in cl.39 of the **Liquor Regulation 2008** who at the time of performance of the function of RSA Monitor performs the primary function of identifying and assisting in the management of patrons of the premises who are becoming intoxicated;

**“Security Person”** means a person holding each of the following that is engaged to provide security services at the Premises:

(a) a Class 1A and/or a Class 1C security licence under the **Security Industry Act 1997**; and

(b) a “recognised RSA certificate”, as defined in cl.30 of the **Liquor Regulation 2008**, at the time of performing the function of providing security services, does so as a sole function;

**“Security POM”** means the document titled “BULL & BUSH HOTEL – SECURITY PLAN OF MANAGEMENT - December 2008” that is attached to this Consent as Annexure B;

**“Taxicab Booking service”** means where an employee of the Premises will, on behalf of any patron of the Premises, contact a taxi cab operator, or a co-operative of taxi cab operators, to request a taxi cab attend the Premises to transport the patron from the Premises.

48. No alcohol is to be served 30 minutes prior to the closing of the Premises.
49. The person entitled to act on this Consent must pay an annual fee of \$2100 to be CPI adjusted annually, to Port Stephens Council to allow an independent audit of compliance with the conditions of consent 16-203-577-2 by 30 June in each Calender year. The audit shall include covert surveillance of the Premises at a time when a use is undertaken of the Premises and must include the assessment of any condition requiring the keeping of a register.

ADVICES

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

- a) Plans in respect of an application for a Construction Certificate must be submitted to the Hunter Water Corporation for checking & stamping prior to application for the Construction Certificate being made.
- b) Prior to commencement of work, submit to Council the name and, contract licence number of the builder.
- c) If the value of the work is \$25,000 or more, you will need to pay a levy to the Long Service Corporation prior to issue of the construction certificate. You can either pay the Long Service Levy Corporation direct and show us your receipt OR you can pay us and we'll send your money to them.

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

**ITEM NO. 5**

**FILE NO: 16-2009-981-1**

**DEVELOPMENT APPLICATION FOR A BOUNDARY REALIGNMENT AT NO.7 & NO.9 CROMARTY LANE BOBS FARM**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Consider the draft conditions of consent for DA 16-2009-891-1 as provided in Attachment 3.

**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**

**RECOMMENDATION:**

	<p><b>Councillor Bruce MacKenzie</b>  <b>Councillor Shirley O'Brien</b></p>	<p>That Council determine to grant consent to the development application for a boundary realignment at No. 7 &amp; 9 Cromarty Lane, Bobs Farm with the following conditions of consent:</p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning &amp; Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.</li> <li>3. A Subdivision Certificate must be obtained from Council within five (5) years of the date of this consent, otherwise this approval will lapse. The applicant must</li> </ol>
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		<p>submit a completed Subdivision Certificate Application Form (with applicable fee), six (6) copies of the Survey Plan, two (2) copies of any 88B Instrument and a check list demonstrating compliance with the conditions of this development consent.</p> <p>4. The development has been granted an approval from the NSW Rural Fire Service dated 17 March 2010 under their relevant legislation. Where conditions are imposed by the authority the development shall comply with the general terms of approval.</p> <p>5. At the commencement of Subdivision Certificate and in perpetuity, the property around the existing dwelling on proposed Lot 1487 shall be managed as follows:-</p> <p style="padding-left: 40px;">a) north for a distance of 35 metres as an inner protection area;</p> <p style="padding-left: 40px;">b) east and south to a distance of 20 metres as an inner protection area; and</p> <p style="padding-left: 40px;">c) west for a distance of 55 metres as an inner protection area as outlined within Section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for asset protection zones'.</p> <p>6. At the issue of Subdivision Certificate and in perpetuity the entire property around the existing dwellings on proposed Lot 1488 to a distance of 20 metres shall be managed as an inner protection area (IPA) as outlined within Section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection 2006 and the NSW</p>
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		<p>Rural Fire Service's document "Standards for asset protection zones".</p> <p>7. Water, electricity and gas are to comply with Section 4.1.3 of "Planning for Bush Fire Protection 2006".</p> <p>8. Property access roads shall comply with Section 4.1.3(2) of "Planning for Bush Fire Protection 2006".</p> <p>9. The existing building on proposed Lot 1487 is 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.</p> <p>10. All trees within the proposed properties created via boundary realignment are protected by Council's Tree Preservation Order. This development consent permits clearing for proposed fencing of new boundaries (to a maximum of 3.0 metres of clearing either side of the boundary/fence line) <u>only</u>.</p> <p>No clearing of remaining vegetation is permitted to occur. Tree clearing on these properties for any other purpose requires separate approval under Council's Tree Preservation Order.</p> <p>11. All unapproved fill and waste shall be removed from the site prior to issue of subdivision certificate and the site remediated to its state prior to</p>
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		<p>importation of materials.</p> <p>12. In accordance with State Environmental Planning Policy No. 55 - Remediation of Land, all remediation work must be carried out in accordance with any contaminated land planning guidelines issued under section 145C of the Act, any guidelines in force under the Contaminated Land Management Act 1997, and the remediation plan approved under this consent.</p> <p>13. In accordance with State Environmental Planning Policy No. 55 - Remediation of Land, a notice of completion of remediation work must be provided to Council within 30 days of the completion of remediation work. The notice must include particulars as specified by clause 18 of State Environmental Planning Policy No. 55.</p> <p>14. Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council immediately upon discovery.</p>
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Cr Frank Ward left the meeting at 7.00pm prior to voting on Item 5.

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

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

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

Those against the motion: Nil.

**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>396</b>	<b>Councillor Ken Jordan Councillor Sally Dover</b>	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 Peter Kafer, Glenys Francis, Caroline De Lyall, Ken Jordan, Steve Tucker, Shirley O'Brien, John Nell, Frank Ward, Sally Dover and Bob Westbury.

Those against the Motion: Cr Geoff Dingle.

**BACKGROUND**

This report was considered by Council on 19 October 2010 with the final resolution to support the proposal as per the following resolution:

**At the Ordinary Council Meeting of 19 October 2010, it was resolved:**

**That the Council Committee recommendation be adopted, being that Council support the Development Application in principal and request that the Sustainable Planning Group Manager prepare a .report with conditions being prepared and presented at the next Council Meeting.**

The draft conditions of consent for DA 16-2009-891-1 are provided in Attachment 3.

Council considered the report at it's Ordinary Council Meeting of 28 September 2010, it was resolved that Council defer the matter to allow for further information to be provided to the next Council Committee meeting. A further locality plan was provided and proposed subdivision plan provided in Councillors Room.

The purpose of this report is to present draft conditions as required by Council's resolution of 19 October 2010.

The applicant lodged the development application for proposed boundary realignment with Council on 23 December 2009. An assessment was undertaken and this revealed the need to request additional information regarding the purpose for which the boundary realignment was proposed and an assessment of vegetation on-site and the impacts of the proposal on this existing vegetation given the site constraints.

Council's mapping system identified the site as comprising Ecologically Endangered Communities (EEC) - Swamp Sclerophyll Forest/Swamp Mahogany Paperbark Forest and Coastal Salt Marsh. In addition, the mapping system identified the site as containing potential 'preferred koala habitat' under Council's Comprehensive Koala Plan of Management (CKPoM).

The land was also identified as bushfire prone land and the application triggered the integrated development provisions, requiring a Bushfire Safety Authority pursuant to Section 100B of the NSW Rural Fires Act be issued by the NSW Rural Fire Service (RFS). A Bushfire Safety Authority was granted from RFS and their 'general terms of approval' include the provision of an inner protection area (IPA) to be managed for both proposed lots. An (IPA) be managed around the existing dwelling on proposed Lot 1487, of north 35 metres, east and south 20 metres, and west 55 metres. An (IPA) be managed around the existing dwellings on proposed Lot 1488 of 20 metres.

As requested, additional information was submitted by the applicant advising of the intended purpose or use of the proposed lots and need for vegetation removal for future use and fencing. The applicant advised that the owner of the smaller lot is seeking to increase their lot area to provide an increase in land for two ponies to graze and exercise. Furthermore, that the new boundaries would be fenced, with approximately 3.0 metres of clearing to be undertaken either side of the proposed boundary/fence line to allow for construction and its future maintenance. The applicant did not provide any additional information at this stage that assessed the vegetation and potential impacts of the proposal on existing vegetation.

In the absence of the submission of a Flora and Fauna Assessment of vegetation on site and the impacts of the proposal on this existing vegetation being submitted by the applicant, Council's Environmental Projects Officer inspected the property on 21 April 2010 to determine whether Council's mapping system was accurate in identifying the existence of an EEC, and has advised that:-

*"the site inspection revealed vegetation on site that is likely to comprise of an EEC. As the boundary adjustment will result in loss of vegetation in this area, a Flora and Fauna Assessment is needed to confirm or deny the existence of the EEC, and if it exists on site will require an assessment of significance (7 Part test) as per the Threatened Species Conservation Act 1995 to determine the impact on the endangered vegetation. The applicant is encouraged to re-align boundaries so as not to result in any vegetation removal."*

Further, whilst on-site it was established that Council's Mapping System (which identifies the site as containing 'preferred koala habitat' under the provisions of Council's CKPoM) was not accurate in this instance. Therefore, there was no further information or assessment needed in relation to the provisions of Council's CKPoM and State Environmental Planning Policy 44 (SEPP 44) in this instance.

In response to the outstanding information request relating to the existence of EEC, the applicant submitted a Flora and Fauna Assessment Report that had previously been submitted for the assessment of Development Application 16-2000-572-1 (proposed three (3) lot boundary adjustment that created Lots 1479 and 1486). This

report is only relevant to one (1) lot (Lot 1479) the subject of this development application and was prepared back in August 2000.

Whilst it was considered questionable as to the relevance and appropriateness of relying on this report for the subject development application, this additional information was referred for further assessment and Council's Consultant Ecologist advised that:-

*"a site inspection on 1 June 2010 found that the site contains Swamp Oak Floodplain EEC. Since an EEC occurs on the site an Impact Assessment on the Swamp Oak Floodplain EEC is required. The Flora and Fauna Assessment Report for the previous boundary realignment that was provided is insufficient as it did not include the current site and is ten years old."*

This advice was provided to the applicant on 16 June 2010, and reiterated on 7 July 2010 with notification that should the outstanding Flora and Fauna assessment not be received by 21 July 2010, the application would be determined based on the information submitted with the application, with a likely outcome of refusal. To date no further information has been received, addressing the above, in support of the proposal.

A Councillor inspection was scheduled and undertaken on 3 July 2010 at the request of Cr Bruce Mackenzie.

The requirement for lodgment of a Flora and Fauna Assessment Report is triggered due to the existence of Endangered Ecological Communities on-site, proposed vegetation removal and potential long-term degradation through land use activities (as proposed) and fragmentation of vegetation resulting from the boundary realignment in accordance with the requirements of the Environmental Planning and Assessment Act 1979 (EP & A Act) and Threatened Species Conservation Act 2005 (TSC Act). A Flora and Fauna Assessment Report determines whether or not an EEC exists and if exists, then undertakes an assessment of significance (7 Part Test) to determine the impact on the EEC in accordance with the TSC Act and EP and A Act. Note, in instances where an assessment determines that a proposal will likely have significant impact as a result of the development, then a Species Impact Study (SIS) is required under the same legislation.

Council as consent authority in determining a development application has a responsibility to adequately consider the environmental impacts resulting from development proposals in accordance with the provisions of the EP and A Act and TSC Act. Under the provisions of Section 5A of the EP and A Act Council must take into account in deciding whether there is likely to be a significant effect on an EEC, each of the factors listed in Part 5A(2), (which is known as the 7 part test) and the Threatened Species Assessment Guidelines.

With insufficient information submitted, the Section 79C assessment undertaken for this development application has not be able to give appropriate consideration to potential environmental impacts resulting from this proposal in accordance with the requirements of the EP and A Act. As a result the application must be recommended for refusal as outlined in the Recommendations of this report.

## **FINANCIAL/RESOURCE IMPLICATIONS**

Nil.

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

The application seeks to remove vegetation that likely contains an EEC. Council assessment staff requested the submission of a current up-to-date Flora and Fauna Assessment Report over the site the subject of the application, addressing the removal of the vegetation indicated to be EEC and assessing the impact of this vegetation removal.

Failure to submit the necessary documentation would serve as a strong basis of defence of the recommendation for refusal if it were supported by Council and then challenged by the applicant in any Court proceedings.

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed boundary realignment is considered to have no identifiable social or economic implications.

However significant adverse natural environmental implications are a relevant consideration of the proposal. The degree of potential environmental impact has previously been detailed and it is considered that approval of the boundary realignment, subsequent clearing and intended land use activities have the potential to adversely impact upon an EEC. It has been concluded that approval of the boundary realignment would not be in the public interest, and should only be considered after a Flora and Fauna assessment has been undertaken, that demonstrates that the development is satisfactory in terms of environmental considerations, and is considered unlikely to result in any environmental degradation or long term impacts on the EEC.

## **CONSULTATION**

This development application was not exhibited given the proposed boundary realignment is not a form of development that requires public exhibition in accordance with Council policy.

## **OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Plan.
- 2) Assessment.
- 3) Draft Conditions

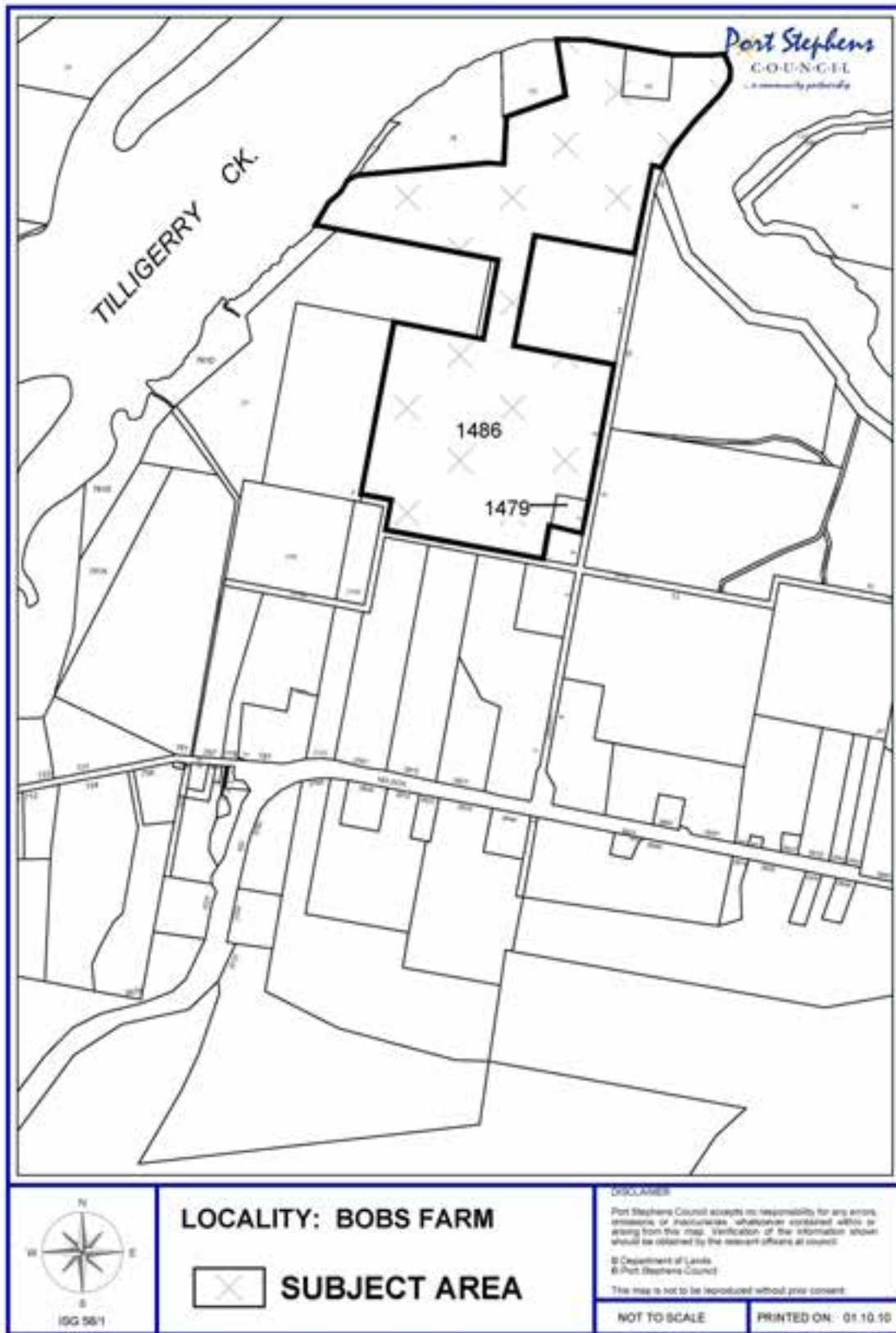
**COUNCILLORS ROOM**

- 1) A3 copy of site plan.

**TABLED DOCUMENTS**

Nil.

ATTACHMENT 1  
LOCALITY PLAN





**ATTACHMENT 2  
ASSESSMENT**

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

**THE PROPOSAL**

The proposal relates to the realignment of the northern and eastern boundaries of Lot 1479 DP 1106462. The northern boundary is to be moved approximately 230 metres to the north and the eastern boundary is to be moved approximately 90 metres further east, thereby increasing the total area of this allotment to 2.4 hectares.

The purpose of the boundary realignment is to increase the lot size of the smaller parcel (Lot 1479) to provide for an increase in land area to support two (2) ponies to graze and exercise. The realigned boundaries are proposed to be fenced, with 3.0 metres of clearing (either side of the boundary) to be undertaken to enable fence construction and future maintenance.

As a result Lot 1479 will increase in size from 1.0 hectare to 2.4 hectares and Lot 1486 will decrease in size from 76.4 hectares to 74.0 hectares.

**THE APPLICATION**

Owner	Mr B Cromarty, MR D Howes & Ms S Miller
Applicant	Mr B Cromarty
Detail submitted	Correspondence from Duggan Mather Surveyors (for applicant), Flora and Fauna assessment for 2000 subdivision of historical lots 1479 & 1480.

**THE LAND**

Property Description	Lot 1479 DP 1035435 & Lot 1486 DP 1106462
Address	7-9 Cromarty Lane Bobs Farm
Total Area	81.4ha (Lot 1479 – 1 ha and Lot 1486 – 76.4ha)
Characteristics	Lot 1479 – small rectangular shaped lot with a 100m frontage to Cromarty Lane. Lot 1486 – large irregular shaped lot with a 590m frontage to Cromarty Lane. The land overall is flat and has areas of vegetation, with frontage to both Cromarty and Upton Lanes, and access from Cromarty Lane.



Site inspections were undertaken that confirmed the existence of an EEC.

The requirement for lodgment of a current Flora and Fauna Assessment over the relevant allotments the subject of the application is triggered due to the existence of EEC on-site, proposed vegetation removal, potential long-term degradation through land use activities (as proposed) and the requirements of the Threatened Species Conservation Act and Environmental Planning and Assessment Act 1979.

Council as consent authority in undertaking an assessment of a development application has a responsibility to adequately consider the environmental impacts resulting from the subject proposal in accordance with provisions of Section 5A and Part 79C of the EP & A Act 1979.

Insufficient information has been submitted with the development application to adequately consider the provisions of the Act and therefore, it is recommended to refuse the application as outlined in the Recommendations of this report.

### **State Environmental Planning Policy 71 – Coastal Protection**

The aims of SEPP 71 include both the protection and management of the natural, cultural, recreational and economic attributes of the New South Wales coast, and to protect and preserve native coastal vegetation. Specifically, the matters for consideration outlined in Clause 8 include 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. The proposal is considered to be inconsistent with aims of the SEPP, and based on the information submitted to date, Council is unable to consider the necessary matters outlined in the SEPP.

### **Port Stephens Local Environmental Plan 2000**

#### Clause 11 – Rural Zonings

The land is zoned 1(a) Rural Agriculture "A" Zone and the proposal for boundary re-alignment is a permissible form of subdivision as permitted by Clause 12 of LEP 2000. However, based on the information submitted, the proposal is considered to be inconsistent with the following zone objectives:-

*(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,*

*(d) protecting or conserving (or both protecting and conserving) - trees and other vegetation in environmentally sensitive localities where the*

*conservation of the vegetation is likely to reduce land degradation or biodiversity.*

Clause 12 – Subdivision Within Rural Zones Generally

Subdivision is permissible in the 1(a) Rural Agriculture zone, to change a common boundary with an adjoining allotment, but not so as to create additional allotments. The proposal is therefore permissible pursuant to Clause 12 of LEP 2000.

The purpose of the boundary realignment is to increase the size of the smaller parcel to accommodate both grazing and exercising of two ponies. Whilst this use is consistent and compatible as an agricultural activity within the zone, the need to clear for boundary fencing (3.0 metres either side of boundary) and ongoing maintenance and the likely potential for long term degradation of existing vegetation due to the intended grazing and exercising of ponies is considered likely to pose a threat to existing vegetation and is considered inconsistent environmentally with the zone objectives as outlined above.

Clause 44 – Appearance of land and buildings

Based on the information submitted, it is difficult to consider in the assessment of the application the provisions of Clause 44 (3)(f) – *the likely extent and effect of carrying out the development on vegetation on the land concerned* and therefore, the proposal is considered inconsistent with the provisions of Clause 44 of LEP 2000.

**Development Control Plan 2007**

B1 Subdivision and Street and B2 Environment and Construction Management

Note, for the most part this Section B1 Subdivision and Streets is not of direct relevance to rural boundary re-alignments. That said, the proposed boundary realignment is considered generally consistent with the key principles around creating regular shaped lot boundaries and provision of access and services (both of which are, existing for both properties).

However, the proposal is inconsistent with the principle of creating allotments that maintain the significant natural site features, as the boundary realignment will result in vegetation removal for fencing of new boundaries, introduction of horse grazing and exercise within an area that contains an EEC and fragmentation of an EEC onto multiple land parcels, rather than retaining where possible a consolidated area of vegetation on one land holding.

Furthermore, Section B2 - vegetation management and tree management principles and controls are of relevance and based on the proposal and the information submitted in support of the application without inclusion of a Flora and Fauna Assessment, the proposal is considered inconsistent with Section B2 of DCP 2007.

## **2. Likely Impact of Development**

As outlined, the proposal relates to a boundary realignment, resulting in clearing of an area 3.0 metres either side of boundary for fencing purposes and the ongoing use of the land for the purposes of grazing and exercising ponies. Initial clearing for the purposes of fencing and the on-going potential for degradation of existing vegetation due to the land use activity is likely to result in an unacceptable impact on vegetation identified as an Endangered Ecological Community.

## **3. Suitability of the Site**

The subject site is zoned 1(a) – Rural Agriculture, and the proposed boundary realignment is permissible pursuant to Clause 12 of Local Environmental Plan 2000.

The land was also identified as bushfire prone land and the application triggered the integrated development provisions requiring a Bushfire Safety Authority (BSA) in accordance with Section 100B of the NSW Rural Fires Act. A BSA was granted by NSW Rural Fire Service and their 'general terms of approval' require the provision of an Inner Protection Area (IPA) to be managed for both proposed lots, an (IPA) to be managed around the existing dwelling on proposed Lot 1487, of North 35.0 metres, East and South 20.0 metres, and West 55.0 metres, and an (IPA) to be managed around the existing dwellings on Proposed Lot 1488 of 20.0 metres.

These requirements can be achieved on-site without further impact.

However, given that the subject site is identified as containing an EEC, and the proposal involves clearing of this vegetation, it is considered that the site is unsuitable for this development without an adequate assessment being undertaken of both existing vegetation onsite and likely impacts resulting from vegetation removal and long-term land use activities associated with the development proposal.

## **4. Submissions**

The proposed boundary realignment was not required to be publicly exhibited in accordance with Council's Notification Policy.

## **5. Public Interest**

The proposal is inconsistent with legislative requirements and as such it would not be in the public interest to support the application to realign the boundaries, resulting in removal of potential EEC without having made an adequate assessment of environmental impacts associated with the proposal.

**ATTACHMENT 3  
DRAFT CONDITIONS**

15. 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.
16. 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.
17. A Subdivision Certificate must be obtained from Council within five (5) years of the date of this consent, otherwise this approval will lapse. The applicant must submit a completed Subdivision Certificate Application Form (with applicable fee), six (6) copies of the Survey Plan, two (2) copies of any 88B Instrument and a check list demonstrating compliance with the conditions of this development consent.
18. The development has been granted an approval from the NSW Rural Fire Service dated 17 March 2010 under their relevant legislation. Where conditions are imposed by the authority the development shall comply with the general terms of approval.
19. At the commencement of Subdivision Certificate and in perpetuity, the property around the existing dwelling on proposed Lot 1487 shall be managed as follows:-
  - a) north for a distance of 35 metres as an inner protection area;
  - b) east and south to a distance of 20 metres as an inner protection area; and
  - c) west for a distance of 55 metres as an inner protection area as outlined within Section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
20. At the issue of Subdivision Certificate and in perpetuity the entire property around the existing dwellings on proposed Lot 1488 to a distance of 20 metres shall be managed as an inner protection area (IPA) as outlined within Section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
21. Water, electricity and gas are to comply with Section 4.1.3 of "Planning for Bush Fire Protection 2006".
22. Property access roads shall comply with Section 4.1.3(2) of "Planning for Bush Fire Protection 2006".
23. The existing building on proposed Lot 1487 is 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.

24. All trees within the proposed properties created via boundary realignment are protected by Council's Tree Preservation Order. This development consent permits clearing for proposed fencing of new boundaries (to a maximum of 3.0 metres of clearing either side of the boundary/fence line) only.

No clearing of remaining vegetation is permitted to occur. Tree clearing on these properties for any other purpose requires separate approval under Council's Tree Preservation Order.

**ITEM NO. 6**

**FILE NO: PSC2008-1759**

**REVIEW OF ROADSIDE MEMORIALS POLICY**

**REPORT OF: BRUCE PETERSEN - ENVIRONMENTAL & DEVELOPMENT PLANNING,  
MANAGER**

**GROUP: SUSTAINABLE PLANNING**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Revoke the Roadside Memorials Policy (**Attachment 1**) and adopt the revised Roadside Memorials Policy (**Attachment 2**).

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**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**

**RECOMMENDATION:**

	<b>Councillor Steve Tucker Councillor Shirley O'Brien</b>	That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>397</b>	<b>Councillor Ken Jordan Councillor Peter Kafer</b>	It was resolved that the recommendation be adopted.
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**BACKGROUND**

At the Council Meeting of 14 September 2010 it was resolved that Item 3 be deferred to allow for a 2 way conversation with Councillors.

The purpose of this report is to seek Council's endorsement of the revised Roadside Memorials Policy following public exhibition.

Changes to the Policy during the review process have been made to the size of permissible roadside tributes, consistent with Roads and Traffic Authority's Roadside Memorials Policy. The Policy Statement has been reviewed to align with the Roads Act and to provide adequate guidance to those seeking to install a Roadside Memorial.

Council, at its meeting on 23<sup>rd</sup> February, 2010 resolved to place the revised Policy on Public Exhibition. During Public Exhibition a number of media articles were published and a radio interview conducted with 1233 ABC which resulted in verbal praise for



Councils approach to this sensitive matter. No formal written submissions were received.

### **FINANCIAL/RESOURCE IMPLICATIONS**

Nil.

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

There are no legal or policy implications with the recommendation of this report. Adoption and implementation of the policy will align Council with RTA policy and reduce exposure to public liability risk.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

### **CONSULTATION**

Consultation has been conducted with:  
Roads and Traffic Authority, Hunter Region  
The Group Manager - Facilities and Services

No submissions were received in response to the public exhibition.

### **OPTIONS**

- 1) Accept the recommendations; or
- 2) Reject the recommendations; or
- 3) Require certain modifications to the draft policy before adoption

### **ATTACHMENTS**

- 1) Roadside Tributes and Memorials Policy. (Recommended for revocation).
- 2) Draft Roadside Memorials and Tributes Policy (Recommended for adoption).

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1



Adopted:28/01/03  
Minute No:024  
Amended:  
Minute No:

**FILE NO: 5685-013**

**TITLE: ROADSIDE TRIBUTES AND MEMORIALS**

**RESPONSIBLE OFFICER: PHIL BUCHAN**

**POSITION TITLE: TRANSPORT PLANNING MANAGER**

**BACKGROUND**

In December 1995 Council adopted a report prepared by the Road Safety Officer recommending the installation of white crosses marking the location of fatal road crashes within the road reservations. The initiative was supported by research from Newcastle University which suggested that young male motorists who observed roadside crosses demonstrated a lower propensity to drive at excessive speed along that section of road.

There are many examples where people have placed their own roadside tributes or memorials to mark the location where someone has been killed as a result of a car crash. An issue facing road authorities today is what to do about the inappropriate location of some tributes, particularly where a tribute is considered to be either a traffic or pedestrian hazard in close proximity to residential dwellings or public places.

An assessment of the location of fatal crashes over the past 10 years within Port Stephens has revealed that the majority occur on roads that are not under the care and control of Council. In these instances, typically on State Roads, the RTA is the appropriate road authority. As such Council is unable to install or approve these tributes. Contact with the RTA has confirmed that the Authority has its own policy dealing with "Roadside Tributes". This example has been followed to develop a Council policy supporting the principles of the RTA policy and addressing specific issues that impact on Council.

## **OBJECTIVE**

To establish a framework that provides direction for Council staff and information to the public on issues relating to roadside tributes such as flowers and cards or memorials such as plaques and religious symbols, including small crosses.

## **PRINCIPLES**

1. To provide consistent information on the placement, removal, modification or relocation of roadside tributes and memorials.
2. To recognise the deep emotions attached to roadside tributes and memorials and be sensitive in dealing with the issues regarding their location within or adjacent to Council's roads.
3. To limit Council's exposure to the potential road safety hazard and public liability risks of roadside tributes and memorials.
4. To assist Council to manage the road assets under its care and control.

## **POLICY STATEMENT**

### **DEFINITION**

A roadside tribute or memorial is an object that symbolically marks a location where a person has died as a result of a road related incident. The object, usually flowers, cards, a plaque or a cross is placed within or adjacent to the road reserve.

### **POSITION**

Council will not encourage the placement of fixed tributes or memorials, Council recognises that some families will want to express their grief in this way. The placement of tributes and memorials within road environments will be reviewed in accordance with the following principles.

1. Council will not permit any person to place a memorial or tribute, other than a floral tribute, along a road within a built up area. *(A built up area is generally defined by existence of street lighting and having a speed limit of 60 km/hr or less)*
2. Roadside memorials such as crosses if placed in rural road environments, will not be permitted to exceed a height of 700mm and width of 400mm. The material composition and location of these memorials will be considered in respect to their potential risk to road users.
3. Council, as the Road Authority, will intervene in order to preserve road safety, to address possible exposure to public liability and to remove inappropriately located or unsightly objects and structures.

**ADVICE**

It is acknowledged that most tributes or memorials will appear soon after the event without anyone seeking advice from Council. Council respects the wishes of those families wanting to place these types of tributes and will provide sympathetic advice for people making inquiries of this nature. The placement of roadside floral tributes is a matter for individual families. Council will not install or maintain memorials or tributes on behalf of families or individuals.

**REMOVAL**

In the event there are concerns regarding a tribute or memorial placed in the road reservation, approval for the removal, relocation or modification can be given by the Facilities and Services Group Manager or a nominated delegate responsible for the local road network. In general Council will take any necessary and appropriate action to ensure that memorials do not present themselves as road side hazards. For example solid obstacles placed within a clear zone or objects that restrict the road user's line of sight. Other situations where removal or relocation may be required include road construction or maintenance activities.

**RELATED POLICIES**

Code of Conduct

**REVIEW DATE**

January 2006

**RELEVANT LEGISLATIVE PROVISIONS**

Roads Act 1999

Road Transport (Safety & Traffic Management) Act 1999

**IMPLEMENTATION RESPONSIBILITY**

Facilities & Services Group

ATTACHMENT 2



**DRAFT POLICY**

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Adopted :  
Minute No.  
Amended:  
Minute No.

**FILE NO:**

PSC2008-1759 **Community Relations – Memorials– Roadside Memorials**

**TITLE:**

Roadside Memorials and Tributes

**REPORT OF:**

Road Safety Officer

**BACKGROUND**

A roadside memorial or tribute symbolically marks a location where a person has died as a result of a motor vehicle crash or other road related incident. Structures such as crosses or objects such as wreaths, cards and photographs are often placed as close as possible to the location of the crash.

The policy provides guidance for Council staff in the removal of roadside memorial structures and assessing the appropriateness of crosses and items of tribute that have been installed or placed in the road environment following fatal crashes.

**OBJECTIVE**

To establish a framework that provides direction for Council staff and information to the public on issues relating to roadside memorials such as crosses, plaques and the placement of tributes such as flowers, cards and photographs.

## **PRINCIPLES**

- To provide consistent information on the placement, removal, modification or relocation of roadside memorials and tributes.
- To recognise the deep emotions attached to roadside memorials and tributes and to be sensitive in dealing with the issues regarding their location within or adjacent to Council's roads.
- To limit Council's exposure to the potential road safety hazard and public liability risks to roadside memorials and tributes.
- To assist Council to manage the road assets under its care and control.

## **POLICY STATEMENT**

Council respects the wishes of families wanting to place memorials and tributes and will provide sympathetic advice for people making enquiries of this nature. Council does not however, encourage the placement of such memorials and tributes, and will not install or maintain memorials or tributes on behalf of families or individuals.

The placement of memorials and tributes within road environments will be reviewed in accordance with the following:

- Council will not permit any person to place a memorial or tribute, other than a floral tribute, along a road within a built up area.
- Roadside memorials such as crosses if placed in rural road environments will not be permitted to exceed a height of 500 mm and width of 400 mm. Structures will be made of frangible material and the location will be considered in respect to the potential risk to road users.
- Where Council is the road authority:
  - Intervention will take place in order to preserve road safety and to inhibit exposure to public liability.
  - Unightly or inappropriately placed objects and structures will be removed.

Additionally, Section 138 of the Roads Act states:

- (1) A person must not:
- a. Erect a structure or carry out a work in, on or over a public road, or
  - b. Dig up or disturb the surface of a public road, or
  - c. Remove or interfere with a structure, work or tree on a public road, otherwise than with the consent of the appropriate road authority.

Council will take any necessary and appropriate action to ensure that memorials do not present themselves as road side hazards. Through assessment, memorials that are constructed of solid materials, placed within a clear zone or restrict a road user's line of sight will be recommended for removal or relocation where possible in consultation with the family. In the event of road construction or maintenance activities, removal or relocation may also be necessary.

In the event there are concerns regarding a memorial or tribute, approval and action on the modification, relocation or removal will be undertaken by the Facilities and Services Group Manager or nominated delegate responsible for the local road network.

**RELATED POLICIES**

Port Stephens Council Code of Conduct

**REVIEW DATE**

2013

**RELEVANT LEGISLATIVE PROVISIONS**

Roads Act 1993 No 33

Section 138 Works and Structures

**IMPLEMENTATION RESPONSIBILITY**

Manager - Integrated Planning Section (Assessment of memorials)

Group Manager - Facilities and Services (Direction to remove, relocate or modify)

ITEM NO. 7

FILE NO: A2004-0212

**ESTABLISHMENT OF THE PORT STEPHENS STRATEGIC ARTS AND CULTURE COMMITTEE AND ASSOCIATED NETWORKS**

REPORT OF: BRUCE PETERSEN - ENVIRONMENTAL & DEVELOPMENT PLANNING,  
MANAGER

GROUP: SUSTAINABLE PLANNING

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the Constitution Schedule for the Port Stephens Strategic Arts and Culture Committee as per **Attachment 1**.
  - 2) Nominate one councillor from each ward to the 'Strategic Arts and Cultural Committee', with each to also lead a sub-committee 'Lifestyle Network' for their ward.
- 

**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**

**RECOMMENDATION:**

	<p><b>Councillor John Nell</b> <b>Councillor Peter Kafer</b></p>	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Adopt the recommendation.</li> <li>2. All Cultural Sub-Committees have 2 delegates.</li> </ol>
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<p><b>398</b></p>	<p><b>Councillor Peter Kafer</b> <b>Councillor Steve Tucker</b></p>	<p>It was resolved that the Council:-</p> <ol style="list-style-type: none"> <li>1. Adopt the Council Committee recommendation.</li> <li>2. Councillors Nell, Kafer and Tucker be the respective Ward delegates to the Strategic Arts and Cultural Committee.</li> </ol>
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**BACKGROUND**

The purpose of this report is to seek the adoption of the Constitution Schedule of the Port Stephens Strategic Arts and Culture Committee.

On 24 September 2009 Council resolved unanimously to:



- 1) Establish a Section 355b Committee called the 'Culture Port Stephens Strategic committee', to:

Advise Council on cultural matters

Partner in the delivery of Council's new Cultural Plan once adopted

Facilitate communications between cultural organisations and the broader community

Assist with strategic and facility planning

Provide training to member organisations

Form project and strategy based working groups on an as-needs basis to assist in the delivery of the Cultural Plan

Advocate to other levels of Government on cultural matters

Provide an umbrella for cultural organisations where, by mutual agreement between the group and Council, they are incorporated as part of Council and be covered under Council's insurance

Establish an Event Organisers Network and Galleries Network as sub-committees of the 'Cultural Port Stephens Strategic Committee'.

- 2) Nominate and elect 2 Councillors to participate in the 355b 'Culture Port Stephens Strategic Committee'.

- 3) Establish 7 local Arts Councils as sub-committees to the 'Culture Port Stephens Strategic Committee' covering Western Area, Medowie, Tilligerry Peninsula, Tomaree Peninsula, Rural East, Raymond Terrace and Karuah.

The Port Stephens Strategic Arts and Culture Committee is a key element of Council's Cultural framework which is: -

- Guided by the cultural priorities identified in Council's Community Strategic Plan;
- Led by the Port Stephens Strategic Arts and Culture Committee;
- Delivered through its networks and partners;
- Supporting community driven initiatives through the Cultural Projects Fund;
- Promoting opportunities to participate through the cultural directory and website ([www.culturehunter.org/port-stephens](http://www.culturehunter.org/port-stephens))

Delegates to the Port Stephens Strategic Arts and Culture Committee will need to be nominated before the Port Stephens Strategic Arts and Culture Committee can be convened for its inaugural Annual General Meeting. An organisational chart of the committee delegate structure is provided in Attachment 2.

Following the above resolution of Council, further internal and external consultation has been undertaken to refine the structure and how it would operate as per Attachment 1.

As Council had resolved to establish seven place-based 'Arts Councils', ten local workshops were held June/July 2010 to determine the most effective scale / structure for the network. Through the workshops it was identified that while community members felt a sense of belonging at a more local level, for the purposes of partnering and networking, the three Wards were found to be the best scale for

place-based cultural networks. The structure supporting Council's Strategic Arts and Culture Committee has been amended to reflect changes as per **Attachment 2**.

Establishing the Ward-based Lifestyle Network:

These sub-committees to the Port Stephens Strategic Arts and Culture Committee will involve/invite anyone involved in the cultural life of the area. Initial functions of the network include:

Advise Council on the local cultural priorities

Maintain contact with organisations supported through the Cultural Projects Fund

Broker local collaboration on community driven projects

Establishing the Events Network:

This sub-committee to the Port Stephens Strategic Arts and Culture Committee will involve/invite event organisers / venue operators / event services. Initial functions of the network include:

Building the capacity of event organisers to comply with Council's events processes through introducing Council's new Events manual which outlines the various Council processes, including road closures, venue hire, temporary food licences, DA, funding, marketing, waste, etc. A workshop will also be conducted on how to do a risk treatment plan for their own events

Improve programming to minimise clashes & increase cross-promotion, toward promoting a year round range of opportunities for both locals and visitors to participate (as identified in the Community Strategic Plan, point 6.2.1).

Mapping of existing venues/sites (as identified in the Community Strategic Plan, point 6.6.2) & the current and projected needs for related infrastructure.

Maintain contact with organisations supported through the Cultural Projects Fund

Establishing the Performing Arts Network:

This sub-committee to the Port Stephens Strategic Arts and Culture Committee will involve/invite musical groups including choirs & bands / theatre groups / dance groups / school performing arts programs / training organisations, including the Newcastle Conservatorium / performing arts venues such as halls, commercial venues, and public space. Initial functions of the network include:

Design and deliver the Choir Development Program (resolved by Council on 28 September 2010)

Mapping of existing venues/sites (as identified in the Community Strategic Plan, point 6.6.2) & the current and projected needs for related infrastructure.

Advise Council on the design of public space toward activating area through events and busking (as identified in the Community Strategic Plan, point 6.6.3)

Maintain contact with organisations supported through the Cultural Projects Fund

Establishing the Visual Arts Network:

This sub-committee to the Port Stephens Strategic Arts and Culture Committee will involve/invite community run exhibition spaces (currently 7 across Port Stephens) / Art Show management committees / visual arts groups including: photography clubs, painting groups / private galleries / school visual arts programs / training organisations including community colleges, Newcastle University and TAFE Art

School / other visual arts venues such as studios, workshop spaces, commercial sites, public space. Initial functions of the network:

Establish the 'Port Stephens Galleries' framework (as identified in the Community Strategic Plan, point 6.1.1) to for rotating exhibitions and cross promotion.

Advise Council on the development and management of the Council Art Collection

Advise on development of a Public Art Framework and Policy (as identified in the Community Strategic Plan, point 6.6.3 & 6.6.4)

Advise Council on the design of public space toward activating area through public art (as identified in the Community Strategic Plan, point 6.6.3)

Mapping of existing venues/sites (as identified in the Community Strategic Plan, point 6.6.2) and the current / projected needs for related infrastructure.

Maintain contact with organisations supported through the Cultural Projects Fund

Establishing the Cultural Economy Team:

This sub-committee to the Port Stephens Strategic Arts and Culture Committee will involve/invite Chamber of Commerce & Tourism / Economic and Cultural Development / training organisations (including the Conservatorium, TAFE and University) / arts industry operators / bodies. Initial functions of the network:

Advocate for opportunities for those aspiring to enter the creative industries to access training (as identified in the Community Strategic Plan, point 6.3.2)

Promote development of the Cultural Directory to reflect the expertise available to perform/exhibit/sell creative products and services (as identified in the Community Strategic Plan, point 6.2.1.)

Building the capacity of cultural groups and practitioners to partner with the business/commercial sectors (as identified in the Community Strategic Plan, point 6.3.1)

Broker opportunities for local cafes, restaurants and clubs to provide exhibition and performance spaces (as identified in the Community Strategic Plan, point 6.3.3)

## **FINANCIAL/RESOURCE IMPLICATIONS**

355(b) Committees are provided with a \$1,000 annual subsidy. There is no current budget allocation for this Committee but this allocation can be covered in the existing cultural development budget.

Other programs led / advised by the Committee would operate within the existing cultural development budget. It would serve as the selection panel, advising Council on the allocation of funding for the Cultural Projects Fund.

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

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

The constitution of the Port Stephens Strategic Arts and Culture Committee consists of the Standard 355(b) Committee Constitution adopted by Council, 24 June 2003, Minute No 251, and a customised schedule of the Committee's individual activities.

The Committee will be managed and provided with support as outlined in the Volunteer Strategy Framework.

Those participating in the committee structure are operating as representatives of organisations, separate from Council. The operations of the organisations are not covered by Council through association with the Committee.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Establishment of the cultural development framework:

- Increases community participation in planning for arts and culture
- Increases community partnerships in delivery of cultural development initiatives
- Builds capacity of community and partners to deliver outcomes.
- More efficient use of Council resources
- Addresses the cultural implications across Council operations.
- Aligns the efforts of the community, therefore potentially increasing quality, efficiency and outcomes.
- Links those in the community working toward common interests.
- more strategic and delivered as a community partnership.
- Promotes the culture and lifestyle of Port Stephens
- Promotes opportunities for participation in the cultural life of Port Stephens.
- Creates opportunities for employment through creative industries and cultural tourism

### **CONSULTATION**

The role of the committee has been designed in line with the stakeholders' perceived Council role for culture. This was derived from a Cultural Futures Forum and survey of Cultural Organisations conducted last year.

Other Council committees relating to culture have been advised of the intention to establish the cultural committee, and discussed opportunities to have delegates to the cultural committee. These include:

- Port Stephens Sister Cities Committee
- Aboriginal Strategic Committee
- Heritage Advisory Committee
- Halls Forum (representing Hall 355(b) Committees)

Council's Social Planning Coordinator, Volunteer Strategy Coordinator, Risk Management Coordinator and Executive Officer have provided input to the Committee's Schedule to Constitution.

**OPTIONS**

- 1) To accept the recommendations.
- 2) To amend the recommendations.
- 3) To reject the recommendations.

**ATTACHMENTS**

- 1) Port Stephens Strategic Arts and Culture Committee constitution schedule
- 2) Port Stephens Strategic Arts and Culture Committee organisational chart

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ATTACHMENT 1

SCHEDULE TO CONSTITUTION

To be read in conjunction with 355(b) Committee Standard Constitution

Item 1	Name of Committee	<u>Strategic Arts and Culture Committee</u>
Item 2	Name of Council Group/Team	Sustainable Planning Group, Social Planning Team
Item 3	Functions delegated by Council to committee	<ol style="list-style-type: none"> <li>1. The Committee will fulfil the functions of an advisory body to Port Stephens Council on matters related to culture and the arts, including but not limited to:                     <ol style="list-style-type: none"> <li>a. Delivery of cultural priorities identified in the Community Strategic Plan within available financial and in-kind resources</li> <li>b. Recommendations to Council on the annual allocation of Cultural Projects Funding.</li> <li>c. Development of policies and procedures, programs and projects to enrich the cultural life of Port Stephens.</li> <li>d. Identifying the existing and future requirements for arts and cultural facilities across Port Stephens.</li> <li>e. Requests from the Port Stephens Council or by officers of Port Stephens Council as to the suitability of specific projects. These requests may be a result of arts applications or suggestions from various sectors of the community.</li> <li>f. Sub-committees, working groups or task forces of the Committee, should be formed to advise or consult with the Committee on specific matters or to take responsibility for putting into action the Committee's agenda. Membership can draw on expertise outside the committee membership.</li> </ol> </li> <li>2. The Committee will operate as a community partnership in the delivery of cultural priorities identified in the Community Strategic Plan, including:                     <ol style="list-style-type: none"> <li>a. Facilitate the 'Culture Port Stephens Network', linking those active in the arts, culture and lifestyle of Port Stephens.</li> <li>b. Facilitate communications between cultural organisations and the broader community</li> <li>c. Form strategy based working groups on an as-needs basis to assist in the planning for the delivery of cultural priorities. Membership can draw on expertise outside the committee membership.</li> <li>d. Form project/working groups on an as-needs basis to assist in the delivery of cultural projects and programs. Membership can draw on expertise outside the committee membership.</li> <li>e. Oversee networks which link organisations with common interests, including but not limited to: Event Organisers Network and Galleries Network.</li> <li>f. Assist with the promotion of arts and culture.</li> <li>g. Provide cultural development opportunities, including training and programs</li> <li>h. Maintain relationships with peak and regional cultural organisations</li> <li>i. Advocate to other levels of Government on cultural matters</li> </ol> </li> <li>3. That the sub-committees serve as Networks to:                     <ol style="list-style-type: none"> <li>a. Advise Council on cultural matters relating to their area of</li> </ol> </li> </ol>
	(Objectives)	

interest/expertise

- b. Build the capacity of those active in the cultural fields, through provision of workshops, briefings, training and resources
  - c. Broker relationships between external groups where there is common ground
4. Any funds raised by the Strategic Arts and Culture Committee and its networks shall be used to either:
- a. develop projects/programmes which it undertakes in its own right subject to the approval of Council, or
  - b. transfer to Council to be used by that body on cultural facilities and programs in the area.

Those participating in the committee structure are operating as representatives of organisations, separate from Council. The operations of the organisations are not covered by Council through association with the committee.

Item 4 Restrictions on functions delegated

All works undertaken will be with the knowledge and approval of Community Planner for Cultural Development

Item 5 Policies, legislation the committee is required to comply with

Principle policies & legislation including but not limited to:

- OH&S 2000
- OH&S Regulations 2001
- LGA & Regulations 1993 (amendments)
- PPIPA 1998
- State Records Act, 1998
- Code of Conduct
- Code of Meeting Practice
- Accessing Information Policy
- Child Protection Policy
- Volunteers Policy
- Government Information (Public Access) Act 2009 (GIPAA)

Item 6 Date on which constitution concludes

September of Council Election each four years. Council to re-adopt constitution within three months following election.

Item 7 Maximum number and make up of committee members

**Strategic Committee Membership**

The Committee consists of delegates from:

1. Council, being three Councillors, one representing each Ward
2. Delegates from Ward-based Local Lifestyle Networks (operating as sub-committees under the Committee). Each Lifestyle Network has two delegates each from a different community/district.
  - a. Central Ward Lifestyle Network (two delegates)
  - b. West Ward Lifestyle Network (two delegates)
  - c. East Ward Lifestyle Network (two delegates)
3. Existing council committees/ relating to culture, including but not limited to:
  - a. Aboriginal Strategic Committee (one delegate from each Local Aboriginal Land Council)
  - b. Heritage Advisory Committee (one delegate)

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COUNCIL

- c. Halls Forum (representing Hall 355(b) Committees) (one delegate)
- d. Youth Interagency (two delegates, one service provider and one youth representative)
- e. Port Stephens Sister Cities Committee (one delegate)
- 4. Networks to link organisations with common interests (operating as sub-committees under the Committee). Including but not limited to:
  - a. Events Network (one delegate)
  - b. Visual Arts Network – covering galleries, art shows & groups (two delegates)
  - c. Performing Arts Network, covering music, dance & theatre groups & venues (two delegates)
  - d. Cultural Economy Team (one delegate)
- 5. Peak and Regional Cultural Representatives as invited/nominated (up to 5 delegates)

**Network/Sub Committee Membership**

Each network/sub committee shall consist of a minimum of three (3) general committee members and five (5) executive members (Chair, Deputy Chair, Committee Delegate, Secretary and Treasurer).

Item 8 Councillors

One Councillor per ward, as resolved by Council.

Item 9 Council employees

Minimum of two Council staff to attend Committee meetings.

**Council Officer:**

Community Planner – Cultural Development

**Other related staff, attending on an as-needed / advisory basis:**

- Social Planning Coordinator - Community Cultural Development, Aboriginal culture
- Community Development Officer - Community Cultural Development
- Community Planner Youth - Community Cultural Development, participation of young people in cultural life, liaison with schools
- Volunteer Strategy Coordinator – Halls, committee governance
- Strategic (land use) Planning – heritage, place making,
- Heritage Advisor - heritage
- Library Services Coordinator – library services and facilities
- Civil Assets Engineer - art in public space (public art, busking, design of public space)
- Economic Development – creative industries, cultural tourism, events
- Marketing and Communications Coordinator – promotion, media relationships, civic events
- Others as required

Item 10 Name of financial institution and type of account N/A

Item 11 Name of any account operated by the committee N/A



Item 12	Area assigned to committee and/or map	N/A
Item 13	Additional clauses or amendments to Standard Constitution or Schedule.	<p>Clause 10 Finances – not applicable as Council staff manage finances.</p> <p>Clause 17 Strategic Arts and Culture Committee Specific Requirements</p> <p>Additional clause which does not replace or amend existing constitution.</p> <p>17.1 Roles of Committee Delegates.</p> <p>a) Participate in the meetings of the committee / sub-committee they are representing, to:</p> <p style="margin-left: 20px;">a. Keep the committee informed and engaged in the opportunities and outcomes of the Committee meetings</p> <p style="margin-left: 20px;">b. Tabling and speaking to the Committee meeting minutes</p> <p style="margin-left: 20px;">c. Tabling and speaking to the Committee meeting recommendations</p> <p style="margin-left: 20px;">d. Seek input from the committee / sub-committee on matters being considered by the Committee</p> <p>b) Participate as a member of the Culture Port Stephens Committee, and:</p> <p style="margin-left: 20px;">e. Represent the interests and activities of the committee / sub-committee they represent, when participating in Committee discussion / decision making</p> <p style="margin-left: 20px;">f. Tabling Minutes of the network/sub-committee one week prior the Committee Meeting, with matters/recommendations for consideration by the Committee to be identified for addition to the agenda</p> <p style="margin-left: 20px;">g. Speaking to the committee / sub-committee meeting minutes and recommendations</p> <p>17.2 Role of Council Officer</p> <p>a) The Council Officer supporting the Committee shall be the Port Stephens Council's Community Planner, Cultural Development, or other officer as determined by the General Manager.</p> <p>b) The Council Officer will be there in an advisory capacity and is not entitled to vote.</p> <p>c) The Council Officer shall fulfil an advisory and administrative role and be authorised to implement and execute policy recommendations made by the Strategic Arts and Culture Committee.</p> <p>d) Elections for Office Bearers shall be conducted by the Council Officer.</p> <p>17.3 Committee Meetings</p> <p>a) The Committee shall meet no less than four (4) times per annum to consider policy matters concerning cultural development and promotion for Port Stephens. The Committee will set the times and places of the meetings, however they should be held on a regular basis wherever possible. The Committee shall determine its own meeting procedures.</p> <p>b) At a meeting of the Committee, a quorum shall constitute half the membership plus one.</p> <p>c) The Executive shall consist of a Chairperson, Two (2) Deputy Chairpersons, who shall be members of the Culture Port Stephens</p>
	To be listed in full - body of constitution not to be altered.	

*Port Stephens*  
COUNCIL

Committee and be elected from the members present at the Annual Meeting. Elections for Office Bearers shall be conducted by the Council Officer. The Treasurer and Secretary functions will be managed by Council staff.

- d) Committees, Networks, Sub-committees and Peak organisations will advise the Secretary in writing within fourteen (14) clear days from the participating organisation Annual General Meeting of the name and address of their appointed delegates, plus two (2) alternates for the ensuing year. Any alteration to such representative must be given in writing to the Secretary of the Committee.
- e) Only One (1) appointed delegate has at any one meeting the power to speak and vote.
- f) In the event of the absence of a delegate, an alternate delegate may attend on behalf of that committee/sub-committee/organisation, and have the power to vote. On the absence of no delegate attending for three consecutive weeks, that committee/sub-committee/organisation be requested to nominate a new delegate to attend.
- g) Each Committee member may vote only once regardless of the number of organisations they represent.
- h) The Committee meetings are open to the public and all Councillors are may attend.
- i) The Committee shall hold a minimum of one (1) public forum per year. All members of the local community, who have expressed an interest in arts and culture, shall be invited to the forum.

#### 17.4 Networks/Sub-Committees

- a) The objective of the networks/sub-committees shall be to deliver cultural development projects and programs in partnership.
- b) Membership/Executive of networks / sub-committees shall consist of the Executive, being a Chair, Deputy Chair, Committee Delegate, Secretary and Treasurer, who are duly elected at an annual general meeting. A minimum of three (3) general committee members make the balance of the committee.

#### 17.5 Networks/Sub Committee Meetings

- a) At a meeting of the network/sub-committees, half plus one shall constitute a quorum.
- b) Should any member of the network/sub-committee not attend three (3) consecutive meetings without leave of absence their position shall be declared vacant.
- c) Any vacancy in the network/sub-committee shall be filled at the next meeting.
- d) The Office Bearers shall be elected at the Annual General Meeting of the network/sub-committee.
- e) A representative from Port Stephens Council shall attend meetings as necessary, but shall have no voting rights.
- f) The meetings are open to the public and all Councillors are entitled to attend.
- g) Minutes of the network/sub-committee are to be tabled one week prior the Committee Meeting, with matters/recommendations for consideration by the Committee to be identified for addition to the agenda.

*Port Stephens*  
COUNCIL

Strategic Arts and Culture Committee – Constitution Schedule  
Page 5

Item 14 Changes to constitution or  
Schedule –

Constitution Adopted Council Meeting:

Adopted by Council:

Meeting Date:

Minute No:

Resolution:

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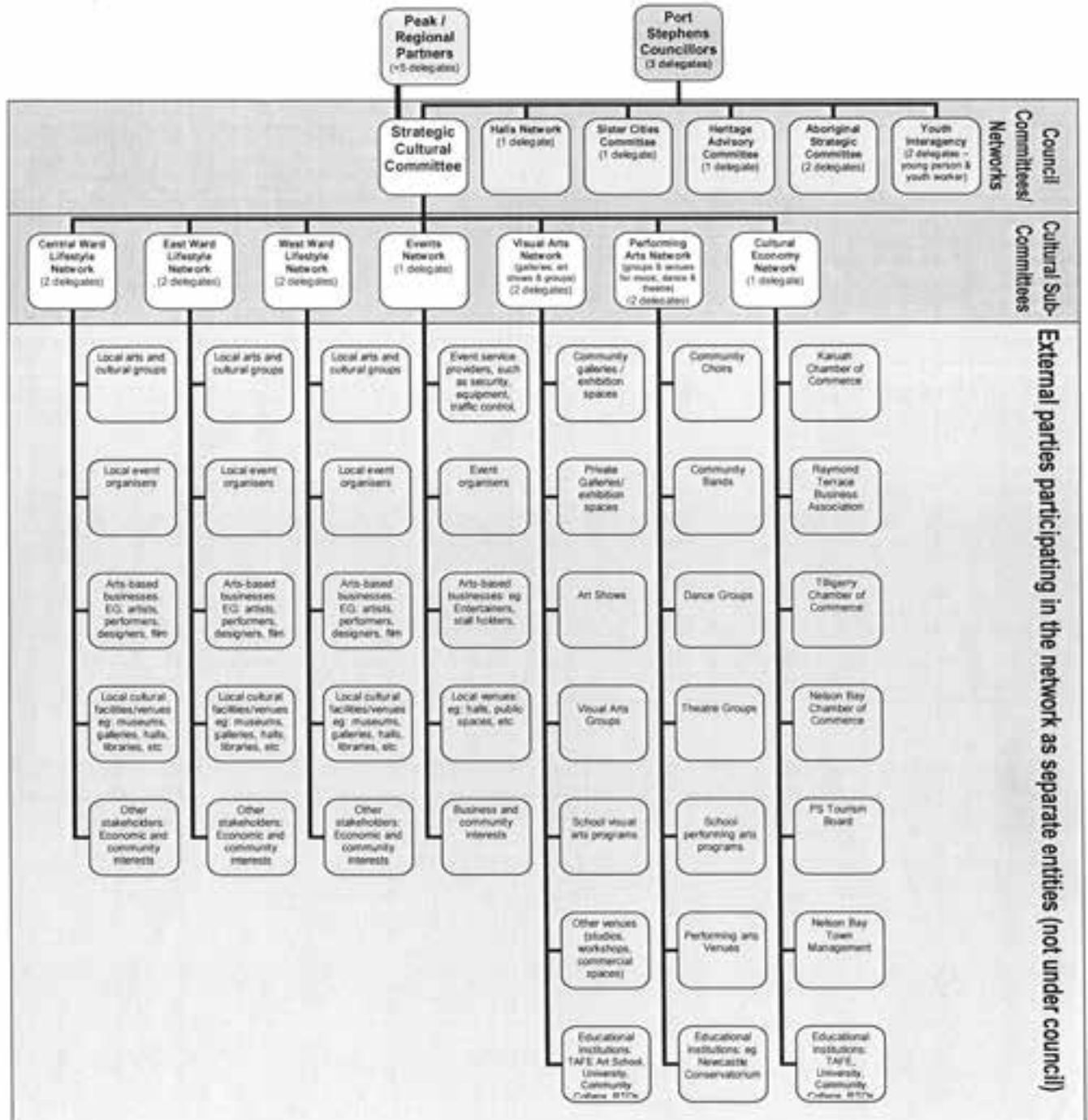
*Port Stephens*  
COUNCIL

Strategic Arts and Culture Committee – Constitution Schedule

Page 6

ATTACHMENT 2

# Port Stephens Strategic Arts & Culture Committee



**ITEM NO. 8**

**FILE NO: A2004-0511**

**LOCAL TRAFFIC COMMITTEE MEETING – 2 NOVEMBER 2010**

**REPORT OF: PAUL PROCTER – ACTING INTEGRATED PLANNING, MANGER**  
**GROUP: SUSTAINABLE PLANNING**

-----  
**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the recommendations contained in the minutes of the local Traffic Committee meeting held on 2<sup>nd</sup> November 2010.

-----  
**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**

**RECOMMENDATION:**

	<b>Councillor Bob Westbury</b> <b>Councillor John Nell</b>	That the recommendation be adopted.
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**MATTER ARISING**

	<b>Councillor John Nell</b> <b>Councillor Peter Kafer</b>	That Council refer the matter of the speed of traffic traveling north along Taylors Beach Road to the Traffic Committee.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>399</b>	<b>Councillor Ken Jordan</b> <b>Councillor Peter Kafer</b>	It was resolved that the Council Committee recommendation be adopted.
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**MATTER ARISING**

<b>400</b>	<b>Councillor Ken Jordan</b> <b>Councillor Peter Kafer</b>	It was resolved that the Matter Arising be adopted.
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## **BACKGROUND**

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

## **FINANCIAL/RESOURCE IMPLICATIONS**

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

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

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

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

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

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

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

## **CONSULTATION**

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

## **MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

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

Additional consultation was undertaken for Item C2 – Wallawa Road. Survey leaflets were distributed to properties within the affected area as well as mailed out to property owners. A notice of the survey was also advertised in the 'Examiner' newspaper.

### **OPTIONS**

- 1) Adopt all or part of the recommendations.
- 2) Reject all or part of the recommendations.
- 3) Council may choose to adopt a course of action for a particular item other than that recommended by the Traffic Committee. In which case Council must first notify both the RTA and NSW Police representatives in writing. The RTA or Police may then lodge an appeal to the Regional Traffic Committee.

### **ATTACHMENTS**

- 1) Local Traffic Committee Meeting Minutes 2 November 2010.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**

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**LOCAL TRAFFIC COMMITTEE MEETING  
HELD ON TUESDAY 2<sup>ND</sup> NOVEMBER, 2010  
AT 9:30AM**

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**Present:**

Cr Bob Westbury – Mayor, Cr Peter Kafer, Cr Geoff Dingle - Port Stephens Council, Snr Cnst John Simmons NSW Police, Mr Bill Butler – RTA, Mr Joe Gleeson (Chairperson), Mr Graham Orr, - Port Stephens Council

**Apologies:**

Mr Craig Baumann MP, The Hon. Mr Frank Terenzini MP, Brian Moseley – Hunter Valley Buses, Mr Mark Newling – Port Stephens Coaches, Ms Michelle Page – Port Stephens Council,

**A. ADOPTION OF MINUTES OF MEETING HELD 5<sup>TH</sup> OCTOBER, 2010**

**B. BUSINESS ARISING FROM PREVIOUS MEETING**

**C. LISTED MATTERS**

**D. INFORMAL MATTERS**

**E. GENERAL BUSINESS**



**PORT STEPHENS  
LOCAL TRAFFIC COMMITTEE AGENDA**

**INDEX OF LISTED MATTERS  
TUESDAY 2<sup>ND</sup> NOVEMBER, 2010**

---

- A. ADOPTION OF THE MINUTES OF 5<sup>TH</sup> OCTOBER, 2010**
- B. BUSINESS ARISING FROM PREVIOUS MEETING**
- 605\_10/10 GOVERNMENT ROAD SHOAL BAY – CONCERNS REGARDING DANGEROUS BEND
- C. LISTED MATTERS**
- 33\_11/10 DIGGERS DRIVE TANILBA BAY – REQUEST FOR INSTALLATION OF PARKING RESTRICTIONS AT TANILBA BAY PUBLIC SCHOOL
- 34\_11/10 WALLAWA ROAD NELSON BAY – EVALUATION OF THE 3 MONTH TRIAL OF TRAFFIC CALMING DEVICES
- 35\_11/10 PALMERS WAY NELSON BAY – REQUEST FOR INSTALLATION OF NO STOPPING ALONG THE ENTRANCE TO THE TOMAREE SPORTS COMPLEX
- D. INFORMAL MATTERS**
- E. GENERAL BUSINESS**

**B. BUSINESS ARISING FROM PREVIOUS MEETING**

---

**Item:** 605\_10/10

**GOVERNMENT ROAD SHOAL BAY – CONCERNS REGARDING DANGEROUS BEND**

**Requested by:** a resident

**File:**

**Background:**

A constituent of Craig Baumann MP raised an issue with regard to a dangerous bend in Government Road Shoal Bay. These concerns have also been raised directly with Council and with NSW Police. The issue is with the bend adjacent to property no. 122 Government Road. Concerns have been raised that drivers travel too fast around the bend and that there have been a number of run-off road type accidents as a result.

**Discussion:**

The Roads and Traffic Authority has advised Council that a blackspot nomination was received from a community member for the bend in Government Road. Upon further investigation it is apparent that the criteria are not met for blackspot funding as there are no reported injury accidents at the location during the last 5 years. Council officers updated the Committee with regard to actions being taken: The signage has been upgraded as requested and an assessment of the street lighting will be undertaken. A speed survey was carried out recently and the results have been passed to Police to assist in enforcement.

**Committee's advice:**

The Committee members noted that the road has a 50km/h speed limit with 35km/h advisory signage at the bends. The upgrade of signage and ongoing investigations by Council officers supports the seriousness with which Council regards the issue of road safety at this location.

**Listed Matters**

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**Item: 33\_11/10**

**DIGGERS DRIVE TANILBA BAY – REQUEST FOR INSTALLATION OF PARKING RESTRICTIONS AT TANILBA BAY PUBLIC SCHOOL**

**Requested by:** Port Stephens Council

**File:** PSC2005-4019/282

**Background:**

Construction works have been recently completed on the extension of Diggers Drive Tanilba Bay into the Landcom subdivision. The road now extends past the rear entrance to Tanilba Bay Public School. Council's Road Safety Officer has conducted on-site inspections and confirms that large numbers of students are now using the school gate onto Diggers Drive when arriving at or departing from school.

**Comment:**

The Traffic Inspection Committee noted that the increasing activity on Diggers Drive now warrants implementation of parking restrictions especially at school drop-off and pick-up times, to improve safety for children.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule167 – No Stopping signs, Rule168 – No Parking signs

RTA signs database – R5-400, R5-41

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

**Recommendation to the Committee:**

Approve installation of 'No Stopping' and part-time 'No Parking' in Diggers Drive Tanilba Bay, as shown on the attached sketch, Annexure A.

**Discussion:**

The Committee noted that school buses are continuing to use the King Albert Avenue entrance to the school for drop-off and pick-up. This has provided some separation of the activity with most parents now opting to use Diggers Drive.

The RTA representative advised that the '40' school zone is to be expanded to cover the newly constructed road and nearby intersections.

**Support for the recommendation:**

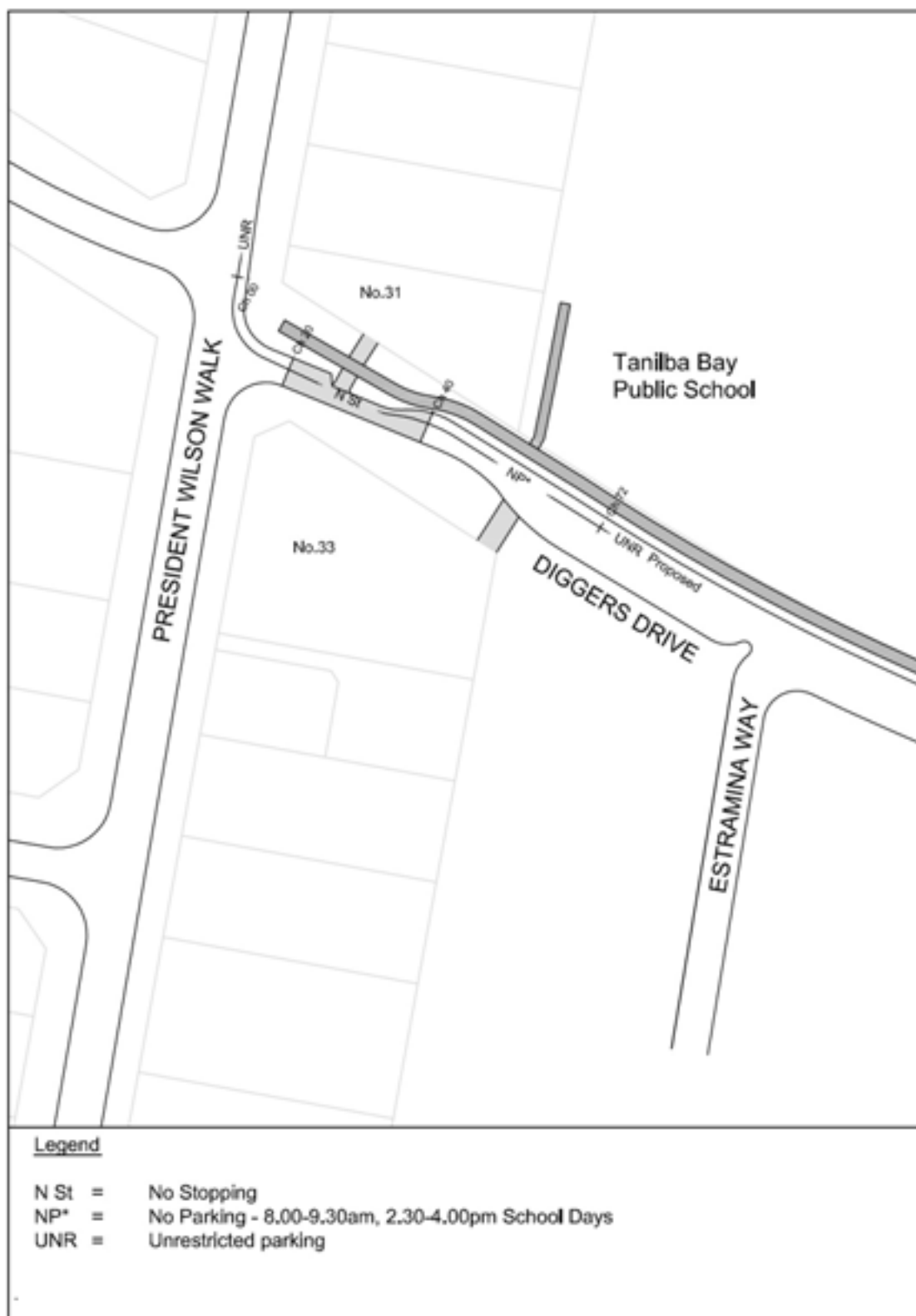
1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	

MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

PORT STEPHENS TRAFFIC COMMITTEE  
Tuesday 2 November 2010

ITEM NO. 33\_11/10  
Street: Diggers Drive

ANNEXURE A  
Page 1 of 1



**Item: 34\_11/10**

**WALLAWA ROAD NELSON BAY – EVALUATION OF THE 3 MONTH TRIAL OF TRAFFIC CALMING DEVICES**

**Requested by:** Port Stephens Council

**File:** PSC2009-04981

**Background:**

In February 2009 Port Stephens Council approved a 3 month trial of traffic calming in Wallawa Road, Nelson Bay and a subsequent report to Council following the trial. The trial period has now elapsed and Council has conducted a survey of residents and other affected stakeholders to determine the effectiveness of the traffic calming.

Traffic speed and volume surveys were conducted in Wallawa Road before and during the speed cushion trial. The results show a decrease in both the speed and volume of vehicles travelling in Wallawa Road (see Annexure B).

**Comment:**

A summary of the survey responses and the data collected by Council before and during the trial is attached

**Legislation, Standards, Guidelines and Delegation:**

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

**Recommendation to the Committee:**

For discussion

**Discussion:**

The Committee noted a good response to the survey with 108 responses received from the approximately 300 surveys distributed however this also means that there are approximately 200 of the surveyed residents who did not respond.

The Committee also noted that the observed reductions in traffic speed and volume have not convinced all residents of the benefit of the traffic calming.

The RTA representative asked whether there were ongoing complaints being received from Wallawa Road. The Police representative advised that Police are still receiving complaints however complaints to Council have reduced markedly in recent months.

Further review of the survey responses shows that the residents of Wallawa Road most affected by the traffic calming devices (those with properties between Galoola Drive and Spinnaker Way) are less opposed to the speed cushions and are in favour of further traffic calming. The responses of these Wallawa Road residents shows 40% in favour of making the existing speed cushions permanent and 75% in favour of further traffic calming e.g. Full-width speed humps.

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

Port Stephens Coaches advise that proposed alterations to bus services will see a reduction in total number of buses using Wallawa Road in the near future.

**Committee's recommendation:**

The Traffic Committee recommended that the speed cushions remain in Wallawa Road. The results from the speed and volume surveys indicating reductions in the speed and volume of traffic using Wallawa Road and the absence of any reported traffic accidents in the last 12 months justifies the speed cushions remaining indefinitely. The Committee also recommends that Council improves the central delineation to overcome the issue of vehicles being able to avoid the speed cushions by driving along the centre of the road.

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	

**SUMMARY**

Results from the evaluation survey distributed to residents and affected stakeholders indicate that the majority of respondents are in favour of removing the speed cushions and returning the road to the former conditions. There were a total of 108 responses to the survey from a distribution of approximately 300. A common theme amongst the comments received by Council has been the lack of pedestrian facilities in Wallawa Road and the need to improve safety for pedestrians.

**DETAILED RESPONSES**

The survey asked respondents to answer a number of questions regarding the speed cushions and the responses are provided below, broken down into overall responses and Wallawa Road resident responses:

- 6) Do you feel that driver behaviour has changed in Wallawa Road since the speed cushions were installed?

**Vehicles seem to travel at slower speeds**

- Overall - 66% of respondents **agree** or **strongly agree**
- Wallawa residents – 67% **agree** or **strongly agree**

**Traffic volumes have decreased**

- Overall - 53% of respondents **agree** or **strongly agree**
- Wallawa residents – 58% **agree** or **strongly agree**

- 7) Do you feel that pedestrian/cyclist safety has changed in Wallawa Road since the speed cushions were installed?

**Pedestrians are safer**

- Overall – 76% of respondents **disagree** or **strongly disagree**
- Wallawa residents – 77% **disagree** or **strongly disagree**

**Cyclists are safer**

- Overall – 79% of respondents **disagree** or **strongly disagree**
- Wallawa residents – 80% **disagree** or **strongly disagree**

- 8) Do you feel that life has changed for residents in Wallawa Road since the speed cushions were installed?

**The street feels safer**

- Overall - 65% of respondents **disagree** or **strongly disagree**
- Wallawa residents – 64% **disagree** or **strongly disagree**

**The street is quieter**

- Overall –67% of respondents **disagree** or **strongly disagree**
- Wallawa residents – 63% **disagree** or **strongly disagree**

**Property driveway access is safer**

- Overall – 74% of respondents **disagree** or **strongly disagree**
- Wallawa residents – 64% **disagree** or **strongly disagree**

- 9) Do you feel that on-street parking has changed since the speed cushions were installed?

**More vehicles are parked legally**

- Overall - 79% of respondents disagree or strongly disagree
- Wallawa residents – 83% **disagree** or **strongly disagree**

**Vehicles are still being parked on the footpath**

- Overall – 90% of respondents **agree** or **strongly agree**
- Wallawa residents – 86% **agree** or **strongly agree**

**Council rangers should enforce parking laws to make it safer for pedestrians**

- Overall – 58% of respondents **disagree** or **strongly disagree**
- Wallawa residents – 63% **disagree** or **strongly disagree**

10) Would you like to see the speed cushions made permanent in the current format in Wallawa Road?

- Overall - 70% of respondents said "**No**"
- Wallawa Rd (between Galoola and Spinnaker) – 60% said "**No**"

11) Do you think that more traffic calming is required in Wallawa Road e.g. full width speed humps?

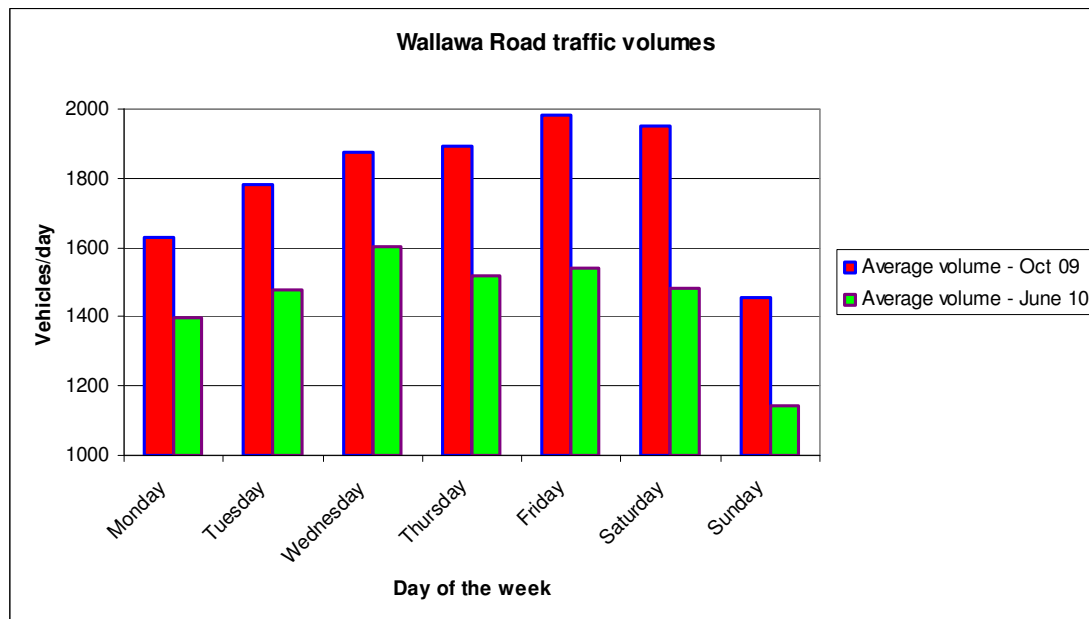
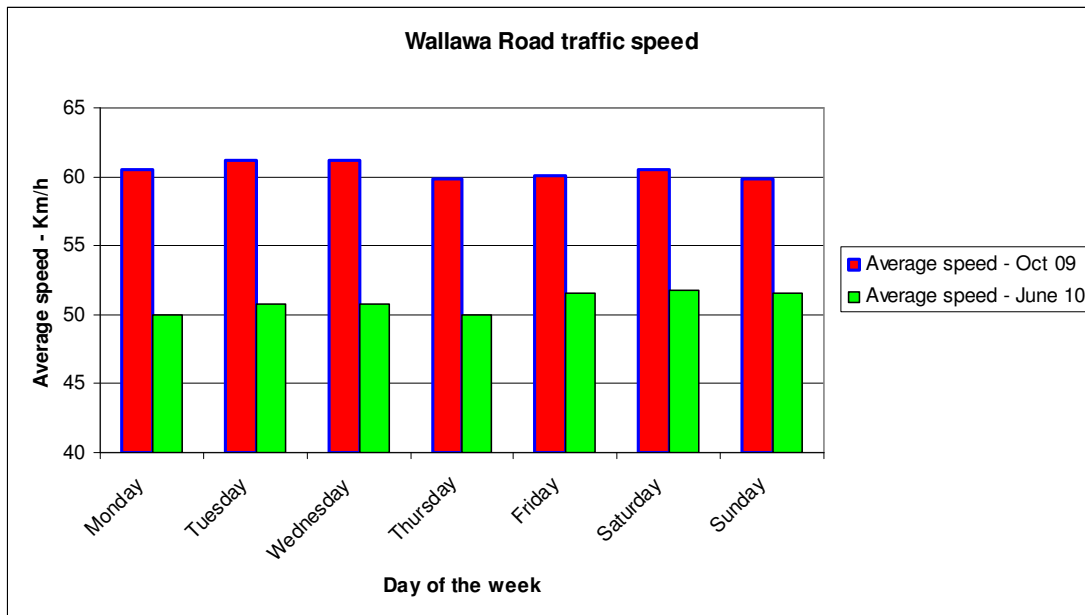
- Overall - 54% of respondents said "**No**"
- Wallawa Rd (between Galoola and Spinnaker) – 75% said "**Yes**"

12) If you could change one thing in Wallawa Road what would it be?

- Overall - 26.7% chose – "Close the road"  
14% chose "Make it one-way"  
40.7% chose "Make it safer for pedestrians"  
18.6% chose "Make parking safer"
- Wallawa residents – 37% chose "Close the road"  
17% chose "Make it one-way"  
35% chose "Make it safer for pedestrians"  
11% chose Make parking safer



Summary of before and after traffic data



**Item: 35\_11/10**

**PALMERS WAY NELSON BAY – REQUEST FOR INSTALLATION OF NO STOPPING ALONG THE ENTRANCE TO THE TOMAREE SPORTS COMPLEX**

**Requested by:** Council Rangers

**File:**

**Background:**

Port Stephens Council Rangers have requested installation of parking restrictions along the entrance road to the Tomaree Sports Complex. The parking restrictions are required to control parking from visitors to the weekend markets as well as to sporting events.

The entrance road has approximately 6 metres of pavement width with log barriers and fences to the sides. One side of the road is already 'No Stopping' however when vehicles are parked opposite, the road is narrowed to only 1 lane.

**Comment:**

The Police representative suggested that some 'No Parking' be installed to allow pick-up and drop-off rather than all 'No Stopping'.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule167 – No Stopping signs, Rule168 – No Parking signs  
RTA signs database – R5-400, R5-41  
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

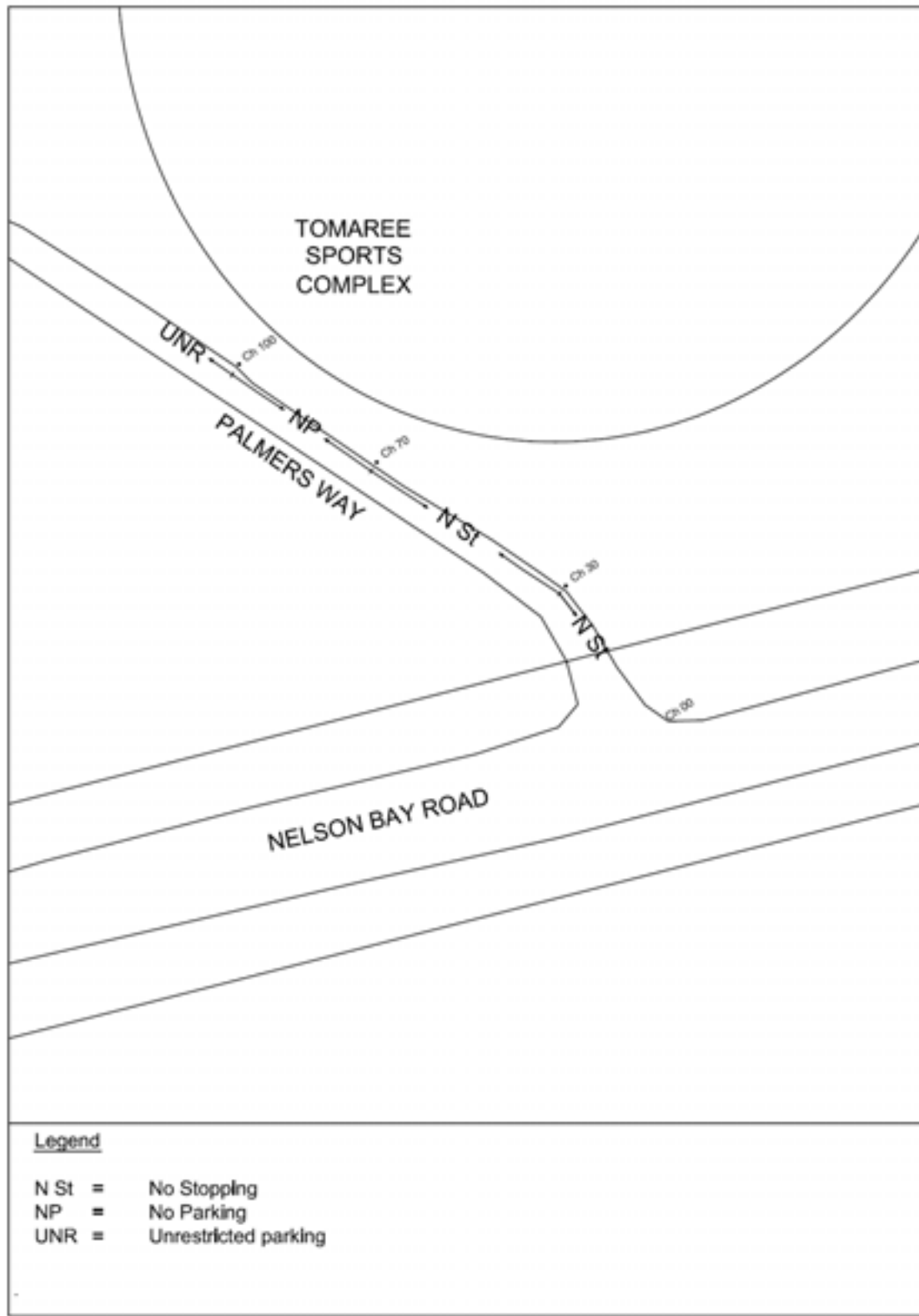
**Recommendation to the Committee:**

Approve installation of 30m of 'No Parking' and 'No Stopping' from the end of the 'No Parking' to Nelson Bay Road, as shown on the attached sketch (Annexure A).

**Discussion:**

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



**D. INFORMAL MATTERS**

NIL

**E. GENERAL BUSINESS**

**Item: 602 08/10**

**KIRRANG DRIVE MEDOWIE - COMPLAINT THAT BUSES ARE NOT USING DESIGNATED BUS STOPS WHEN PICKING-UP OR SETTING-DOWN SCHOOL STUDENTS**

**Requested by:** Cr Dingle

**File:** PSC2005-3143/076

**Background:**

Councillor Dingle again raised concerns regarding buses stopping and picking up and dropping off passengers in Medowie away from the gazetted and sign posted bus stops, this practice need to cease as it might be convenient for some students with less distance to walk but in many cases the buses are stopping at intersections and locations where there is no standing space or the road edge is unsuitable.

**Discussion:**

The Traffic Committee discussed the issue of whether school bus stops are required to be designated and it was noted that many rural bus stops do not have a 'j' pole and it was noted that in Medowie the school buses do not follow the public bus routes.

**Committees Advice:**

The Traffic Committee requested that Council liaise with Hunter Valley Buses to request that drivers be instructed to use designated bus stops wherever possible.

**Item: 603 08/10**

**MEDOWIE ROAD MEDOWIE – HEAVY VEHICLE NOISE**

**Requested by:** Cr Dingle

**File:**

**Background:**

Medowie residents have made representations regarding the number of heavy vehicles using Medowie Road and the noise that they make. Council has been asked to install noise reduction signage to assist in reducing the noise made by heavy vehicles braking as they enter the town.

A letter has been sent by Council to the RTA requesting installation of noise reduction signage on Medowie Road however no response has been received to date.

**Discussion:**

The RTA representative advised that the sign required – G9-291, is not delegated for Council approval.

**Committees Advice:**

Council to follow up with the RTA regarding installation of the sign.

**ITEM NO. 9**

**FILE NO: PSC2005-4181**

**ACQUISITION OF DRAINAGE EASEMENT – BOAT HARBOUR**

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

-----  
**RECOMMENDATION IS THAT COUNCIL:**

- 1) Grants authority for Councils Seal and signatures to be affixed to 88B Instrument creating a drainage easement over Lot 7027 DP1053966 being Crown Land.

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**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**  
**RECOMMENDATION:**

	<b>Councillor John Nell</b> <b>Councillor Shirley O'Brien</b>	That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>401</b>	<b>Councillor Ken Jordan</b> <b>Councillor Peter Kafer</b>	It was resolved that the recommendation be adopted.
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**BACKGROUND**

The purpose of this report is to recommend Council executes the necessary document to create the Easement once executed by Land and Property Management Authority as property owner. A previous report was resolved by Council at its Meeting dated 28th April 2009 (109) granting authority for Councils Seal and signatures to be affixed to a Transfer Granting Easement (TGE). The replacement of the TGE with an 88B Instrument is to ensure a plan will be registered at Land & Property Management (LPI) and therefore assisting in any future investigations of the property. A TGE does not require a survey plan.

**FINANCIAL/RESOURCE IMPLICATIONS**

Facilities and Services budget cover the costs of creating the easement and compensation payable under the Land Acquisition (Just Terms Compensation) Act 1991.

**LEGAL, POLICY AND RISK IMPLICATIONS**

Nil - The previous resolution of Council endorsed the Transfer Granting Easement (TGE). The 88B Instrument replaces the TGE document to achieve the same result.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil – as the previous resolution covered these matters.

**CONSULTATION**

Drainage Engineer, Engineering Services Manager, Principal Property Advisor and Land and Property Information Authority (formerly Department of Lands)

**OPTIONS**

- 1) Accept recommendation
- 2) Reject the recommendation

**ATTACHMENTS**

- 1) Copy of previous Minutes dated 28th April 2009
- 2) New 88B Instrument

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ATTACHMENT 1

1

ORDINARY MEETING - 28 APRIL 2009

ITEM NO. 7

FILE NO: PSC2005.4181

ACQUISITION OF DRAINAGE EASEMENT – BOAT HARBOUR

REPORT OF CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER

RECOMMENDATION IS THAT COUNCIL:

- ii Grants authority for Council's Seal and signatures to be affixed to Transfer Granting Easement creating a drainage easement over Lot 7327 DP1053966 being Crown Land

OPERATIONS COMMITTEE - 14 APRIL 2009

RECOMMENDATION:

Councillor Bruce MacKenzie	That the recommendation be adopted
Councillor Bob Westbury	

ORDINARY COUNCIL - 24 APRIL 2009

109	Councillor John Nell Councillor Bob Westbury	It was resolved that the recommendation be adopted
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ATTACHMENT 1

OPERATIONS COMMITTEE – 14<sup>th</sup> APRIL 2009

ITEM NO. 7

FILE NO: PSC2005-4181

**ACQUISITION OF DRAINAGE EASEMENT – BOAT HARBOUR**

REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER

**RECOMMENDATION IS THAT COUNCIL:**

- 11 Grants authority for Council Seal and signatures to be affixed to Transfer Granting Easement creating a drainage easement over Lot 7027 DP1053966 being Crown Land

**BACKGROUND**

The purpose of this report is to recommend Council executes the necessary document to create the Easement once executed by Department of Lands as property owner.

Some time ago Council diverted an existing pipeline to prevent further erosion of the sandy beach. Previously the stormwater discharged from an open drain onto the sandy beach but it now discharges onto a rock platform to the north. The pipeline has been in place for a considerable time but Council needs to create an easement over the pipeline as it is within an area of Crown Reserve. The easement is necessary to protect Council and ensure Council can satisfactorily maintain the pipeline. See ATTACHMENT 1 for location of easement.

**LINKS TO CORPORATE PLANS**

The links to the 2006-2012 Council Plan are -

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

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

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

**ENVIRONMENTAL SUSTAINABILITY** – Council will protect and enhance the environment while considering the social and economic ramifications of decisions.

**FINANCIAL/RESOURCE IMPLICATIONS**

Fees and Services budget cover the costs of creating the easement and compensation payable under the Land Acquisition (Just Terms Compensation) Act 1991.

ATTACHMENT 1

OPERATIONS COMMITTEE – 14<sup>th</sup> APRIL 2009

**LEGAL AND POLICY IMPLICATIONS**

Compensation will be determined by the Valuer General and will need to be paid. Council's Seal is required for this document to be registered at L.P. Registrar of the documents will finalise the matter and the title will be adjusted.

**BUSINESS EXCELLENCE FRAMEWORK**

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

These outcomes align with the following Business Excellence principles -

- 1) **CUSTOMERS** - Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.
- 2) **CONTINUOUS IMPROVEMENT** - Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.
- 3) **CORPORATE AND SOCIAL RESPONSIBILITY** - Behave in an ethically, socially and environmentally responsible manner.
- 4) **SUSTAINABLE RESULTS** - Focus on sustainable results, value and outcomes.

**SUSTAINABILITY IMPLICATIONS**

**SOCIAL IMPLICATIONS**

stormwater previously eroded the sandy beach to form a huge open gutter. The diverted pipeline now has allowed this sandy beach to reform making it more usable by the general public for recreation.

**ECONOMIC IMPLICATIONS**

Beach maintenance will be reduced resulting in less funds being spent for this purpose due to the outlet now being onto a rock platform.

**ENVIRONMENTAL IMPLICATIONS**

Reduced erosion on the beach because of stormwater discharge has been reduced and will allow the natural beach formation to re-establish.

**CONSULTATION**

Drainage Engineer  
Engineering Services Manager  
Principal Property Advisor  
Department of Lands

ATTACHMENT 1

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OPERATIONS COMMITTEE – 14<sup>TH</sup> APRIL 2009

OPTIONS

- 1) Accept recommendation
- 2) Reject the recommendation

ATTACHMENTS

- 1) Location of easement

COUNCILLORS ROOM

Nil

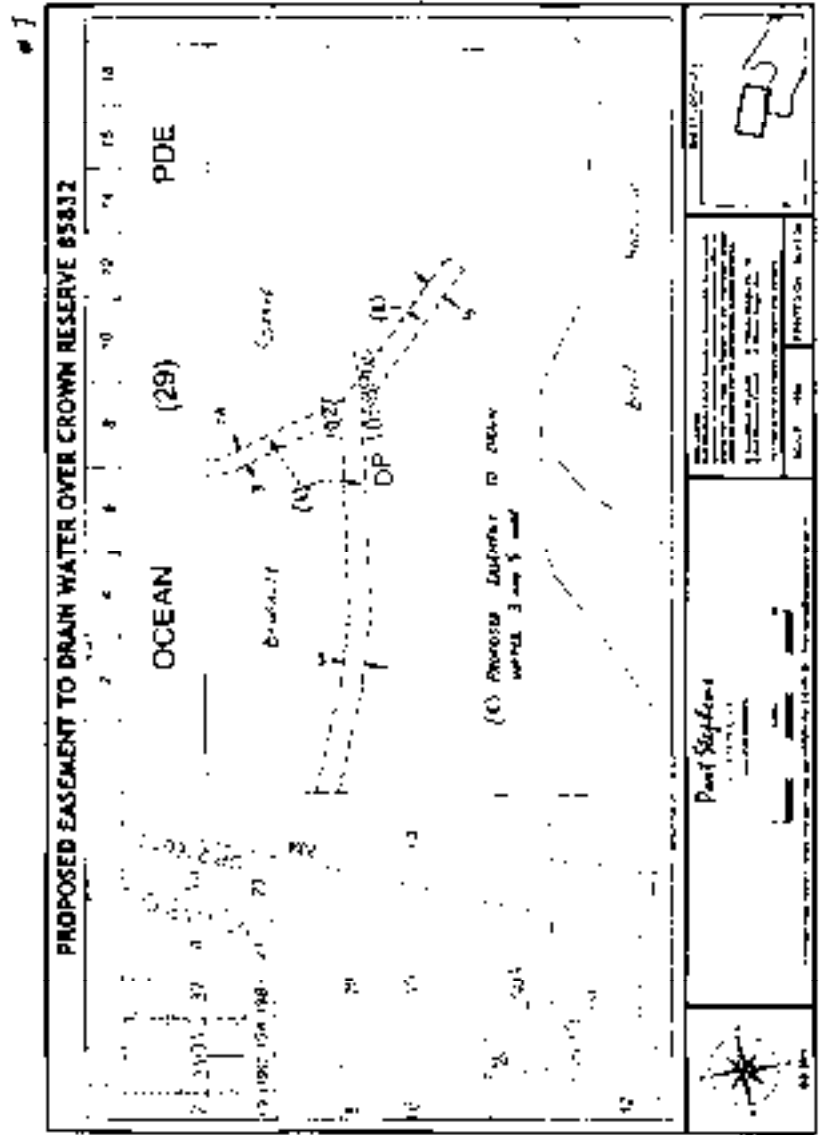
TABLED DOCUMENTS

Nil

ATTACHMENT 1

OPERATIONS COMMITTEE – 14<sup>th</sup> APRIL 2009

ATTACHMENT 1



ATTACHMENT 2

2

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A PRENDRE INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B CONVEYANCING ACT 1919**

(Sheet 1 of 3 sheets)

**Plan:** Easement to Drain Water & Right of Carriageway over Lot 7027 DP1053966 prepared by surveyor Andrew Edward Daly of Daly Smith Pty Ltd dated 5/3/2010 Surveyor's Reference 29915

**Full name and address of owners of the land:** The State of NSW,  
PO Box 6  
EAST WAITLAND NSW 2323

**PART 1 (Creation)**

Number of item shown in the intention panel on the plan.	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1	Easement for Drainage of Water. 3 & 5 wide	7027/1053966	Port Stephens Council

ATTACHMENT 2

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A PRENDRE  
INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF  
LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION  
88B CONVEYANCING ACT 1919**

(Sheet 2 of 3 sheets)

**Plan** Easement to Drain Water & Right of  
Carrageway over Lot 7027 DP1053966  
prepared by surveyor Andrew Edward Daly  
of Daly Smith Pty Ltd dated 5/3/2010  
Surveyor's Reference 29915

**PART 2 (Terms)**

1. **Terms of easement, profit a prendre, restriction, or positive covenant numbered one (1) in the plan:**

Terms of "Easement for Drainage of Water" as setout on Schedule 8 of the  
Conveyancing Act 1919, as amended

ATTACHMENT 2

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A PRENDRE  
INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF  
LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION  
89B CONVEYANCING ACT 1919**

(Sheet 3 of 3 sheets)

**Plan** Easement to Drain Water & Right of  
Carriageway over Lot 7027 DP1063966  
prepared by surveyor Andrew Edward Daly  
of Daly Smith Pty Ltd dated 5/3/2010  
Surveyor's Reference 29815

The Common Seal of Port Stephens |  
Council was hereunto affixed pursuant |  
to Council Resolution |  
dated | } General Manager – Peter Gasing

Mayor – Bob Westbury

Land and Property Management Authority |  
PO Box 6 |  
East Maitland NSW 2323 |  
Team Leader, Land Administration  
Hunter/Central Coast  
Land and Property Management Authority  
PO Box 6  
East Maitland NSW 2323

**Address of Witness** |  
By delegation pursuant to section 160 |  
of the Crown Lands Act 1989 and with |  
Authority under section 131 of the Real |  
Property Act 1900 from the Minister |  
administering the Crown Lands Act 1989 |  
on behalf of the State of New South Wales

ITEM NO. 10

FILE NO: PSC2007-3076

**REVIEW OF POLICY - RATES DONATIONS FOR COMMUNITY GROUPS**

REPORT OF: DAMIEN JENKINS – FINANCIAL SERVICES, MANAGER

GROUP: COMMERCIAL SERVICES

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Draft Rates Donations for Community Groups Policy as shown in **ATTACHMENT 1** be placed on public exhibition for 28 day.
- 2) At the completion of the exhibition period if no submissions have been received Council's Rates Donations for Community Groups is adopted.
- 3) That Council Revoke the Rates Donations for Community Groups policy dated 27 November 2007 Minute No: 330.

**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010****RECOMMENDATION:**

	<b>Councillor John Nell Councillor Shirley O'Brien</b>	That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>402</b>	<b>Councillor John Nell Councillor Caroline De Lyall</b>	It was resolved that the recommendation be adopted.
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**BACKGROUND**

The purpose of this report is to review the policy Rates Donations for Community Groups which was originally adopted by Council in November 2007.

The policy provides for Council to make a donation to specified organisations equivalent to their annual rates and catchment contributions.

Council has only received one request from an organisation to be included on the list of specified organisations and that was from Masonic Holdings Limited in relation to Nelson Bay Masonic Centre. The policy is effective and no amendment is proposed.



**FINANCIAL/RESOURCE IMPLICATIONS**

The annual cost of funding this policy is in the order of \$2,600 per annum.

**LEGAL, POLICY AND RISK IMPLICATIONS**

The policy provides for consistency in applying rate donations to community organisations that are not exempt from rates.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The policy empowers Council to financially support community organisations faced with paying annual rates that are ineligible for a rate exemption.

**CONSULTATION**

Financial Services staff

**OPTIONS**

- 1) Accept recommendation.
- 2) Amend recommendation.

**ATTACHMENTS**

- 1) Current Rates Donations for Community Groups Policy

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ATTACHMENT 1



Adopted:27/11/2007  
Minute No:330  
Amended:  
Minute No:

**FILE NO: PSC2007-3076**

**TITLE: RATE DONATIONS FOR COMMUNITY GROUPS**

**REPORT OF JEFF SMITH, FINANCIAL SERVICES MANAGER**

**BACKGROUND**

This policy identifies those community groups in Port Stephens that are subject to rates and charges to which Council will annually make a donation. Council may donate funds in accordance with section 356 of the Local Government Act, 1993 for the purpose of exercising its functions.

**OBJECTIVE**

To provide clear guidelines for donation of rates and charges to rateable community groups. To provide financial assistance for community groups that are unable to meet the cost of rates and charges.

**PRINCIPLES**

- 1) Council's policy towards making donations to rateable community groups for rates and charges will be documented and transparent
- 2) Council will recognise potential financial hardship in considering which community groups are to receive rates and charges donations
- 3) Groups seeking to access assistance under this policy must have a community service objective similar to Council's as their predominant aim or objective under their charter

**Delete "Jeff Smith"**  
**Add "Damien Jenkins"**

## **POLICY STATEMENT**

Organisations that are public charities or public benevolent institutions receive a rate exemption while other organisations that do good works to benefit the community do not enjoy an exemption.

Council will annually donate the rates and Hunter Central Rivers Catchment Management Authority Contribution for the organisations and properties specified in this policy. The organisations are still required to pay waste management charges, waste service charges and on-site sewage management fees if applicable.

The organisations are not required to make an annual application and this donation will be on-going, subject to normal policy reviews. Donations made under this policy will apply from the commencement of the rating year in which Council resolves to include the organisation in the list of specified organisations.

Should an organisation wish to be included on the list, contact is to be made with Council's Revenue Coordinator who will request the necessary information and make arrangements for a report to be submitted to Council for consideration.

Specified Organisations:

- 1) Masonic Holdings Limited (Nelson Bay Masonic Centre)

## **RELATED POLICIES**

Debt Recovery and Hardship Policy

## **SUSTAINABILITY IMPLICATIONS**

### **SOCIAL IMPLICATIONS**

The provision of financial assistance for rates and charges assists community groups to survive financially and direct their financial resources towards their aims and objectives. Community groups act as a social binder for communities providing social opportunities, leadership, positive role models and structure within a community.

**ECONOMIC IMPLICATIONS**

There are very few community groups that are both liable for rates and are not a public charity or public benevolent institution. The cost of providing this annual assistance is not significant and has no economic implications for Council or Port Stephens.

**ENVIRONMENTAL IMPLICATIONS**

nil

**RELEVANT LEGISLATIVE PROVISIONS**

ss.356, 556 Local Government Act, 1993

**IMPLEMENTATION RESPONSIBILITY**

Business and Support Group, Finance and Administration Section

**REVIEW DATE**

12 months from the date of adoption or due to receipt of application from community groups.

**Delete** "Business and Support"  
**Add** "Commercial Services Group"

**ITEM NO. 11**

**FILE NO: A2004-0230**

**REVIEW OF POLICY – CASH INVESTMENT**

**REPORT OF: DAMIEN JENKINS – FINANCIAL SERVICES, MANAGER**  
**GROUP: COMMERCIAL SERVICES**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Draft Cash Investment Policy as shown in **ATTACHMENT 2** be placed on public exhibition for 28 days.
- 2) At the completion of the exhibition period if no submissions have been received Council's Cash Investment policy is adopted.
- 3) That Council revoke the Cash Investment policy dated 22 September 2009 Minute No:319

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**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**  
**RECOMMENDATION:**

	<b>Councillor Bruce MacKenzie</b> <b>Councillor Caroline De Lyall</b>	That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>403</b>	<b>Councillor Steve Tucker</b> <b>Councillor Ken Jordan</b>	It was resolved that the recommendation be adopted.
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**BACKGROUND**

The purpose of this report is to review the policy Cash Investment which was originally adopted by Council in December 2005 and amended in September 2009. Since then the Director General of the Division of Local Government has published Investment Policy Guidelines that Council is required to take into consideration in exercising its investment function.

The revised policy enhances Council's current policy by stating Council's investment objectives, formalising the monitoring of cash flow, prescribing risk management considerations, clarifying staff roles and responsibilities, and setting out the requirements to be followed in appointing any investment advisor.

## **FINANCIAL/RESOURCE IMPLICATIONS**

Council is responsible for the prudent management of community assets including surplus cash not immediately required for continuous operations.

A cash investment policy assists in ensuring the security of invested funds and achieving a return on funds acceptable to the organisation.

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

Section 23A of the Local Government Act 1993 requires Council to take guidelines issued by the Director General of the Division of Local Government, into consideration before exercising its functions. The redrafted policy complies with the Investment Policy Guidelines.

Under the Banking Act 1959 (Commonwealth) the Financial Claims Scheme, administered by APRA, provides a Commonwealth Government guarantee for deposits of up to \$1M per Authorised Deposit-taking Institution (ADI), per depositor. The scheme is due to change on 12 October 2011, but will be retained with a new limit on deposits, yet to be announced by the government.

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The policy ensures Council can access monies as required to fund its operations for the provision of services that benefit the entire community.

## **CONSULTATION**

Financial Services staff.

## **OPTIONS**

- 1) Accept recommendation.
- 2) Amend recommendation.

## **ATTACHMENTS**

- 1) Current Cash Investment Policy.
- 2) Proposed Cash Investment Policy.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1



**POLICY**

Adopted: 20/12/2005  
Minute No: 382  
Amended: 22/09/2009  
Minute No: 319

**FILE NO: A2004-0230**

**TITLE: CASH INVESTMENT POLICY**

**REPORT OF DAMIEN JENKINS, FINANCIAL SERVICES MANAGER**

**BACKGROUND**

This policy introduces a set of standards that will apply to Council's cash investments.

**OBJECTIVE**

The purpose of this policy is to establish the investment risk management guidelines that Port Stephens Council adopts in investing surplus funds that are not immediately required for any other purpose. The objectives are to ensure the security of Council funds by adopting appropriate credit and duration limits and to maximise earnings subject to those limits, Council's liquidity requirements and its investment time horizon.

**PRINCIPLES**

- 1) Council has an obligation under its charter as the custodian and trustee of public assets to effectively account for and manage the assets for which it is responsible.
- 2) All investments are to be made in accordance with:
  - Local Government Act 1993 – Section 625
  - Local Government Act 1993 – Order (of the Minister) as made from time to time.
  - The Trustee Act 1925 – Section 14. Powers of Investment.
  - The Trustee Act 1925 – Regulation.
  - Local Government (General) Regulation 2005 – Clause 212
  - Review of NSW Local Government Investments Report (Cole Inquiry Report, April 2008)

## **POLICY STATEMENT**

### **1. Quotations on Investments**

Not less than three (3) quotations shall be obtained from authorised institutions whenever an investment is proposed. The best quote for the day shall be accepted after allowing for administrative costs and also allowing for the diversification limits of this policy

### **2. Authorised Investments**

All investments must be denominated in Australian Dollars (AUD). Authorised investments are limited to:

#### **2.1. Open to New Investments**

- Local/State/Commonwealth Government bonds, debentures or securities
- Interest bearing deposits / senior securities issued by a licensed bank, building society or credit union
- Investments with NSW Treasury Corp / Hourglass Investment facility; and
- Deposits with the Local Government Financial Services ("LGFS")

#### **2.2. Closed to New Investments**

The following investments were suspended by the Cole report until December 2009 and maybe reopened pending a review in 2010

- Deposits in prescribed securities that either have a minimum long term credit rating of 'A' or a short term rating of 'A1' from Standard and Poor's (S&P) or Fitch Ratings / Moody Investor Services (Moody's) equivalent (where not otherwise open – for example, where they are issued from a bank);
- Managed Funds with a minimum long term S&P credit rating of 'A' or better, or Fitch or Moody's equivalent.

All existing investments by NSW Councils that may be excluded by any changes to the Investment Order are to be grandfathered. For the avoidance of doubt, existing securities that become ultra vires under the changed Investment Order can continue to be held to maturity, redeemed or sold, but any new investments must comply with the new Investment Order.



**2.3. Prohibited Investments**

This investment policy prohibits but is not limited to any investment carried out for speculative purposes including:

- Derivative based instruments
- Principal only investments or securities that provide potentially nil or negative cash flow and
- Stand alone securities issued that have underlying futures, options forward contracts or swaps if any kind.

This policy also prohibits the use of leveraging (borrowing to invest) of an instrument. However, nothing in this previous paragraph will limit the grandfathering clause pertaining to already purchased investments

**3. Term to Maturity**

The term to maturity of any of Council's direct investments must not exceed ten (10) years. When the term to maturity exceeds one (1) year, Council must ensure that a secondary market exists for the investment to enable the disposal of the investment prior to maturity if necessary.

Council is also exposed to liquidity risk. This is defined as the risk Council is exposed to, by not being able to gain access to invested funds in a timely manner. To help manage this risk Council's investment portfolio should be limited to the following term to maturity thresholds.

TERM	MINIMUM PERCENTAGE	MAXIMUM PERCENTAGE
< 1 year	30%	100%
> 1 year	0%	70%
> 3 years	0%	40%
> 5 years	0%	30%

The maturity thresholds above are to be assessed at the time of making a new investment

**4. Diversification / Credit Risk**

Funds invested through any one broker shall be limited to the lesser of 25% of Council's total portfolio or a maximum of \$10 million

Funds invested in financial products that have an explicit government guarantee shall be limited to the lesser of 50% of Council's total portfolio or a maximum of \$20 million. All other investments in a particular class of asset shall be limited to the lesser of 25% or \$10 million.

Deposits with any one financial institution shall be limited to the lesser of 10% of Council's total portfolio or a maximum of \$3 million

The Diversification / credit risk benchmarks above shall be assessed at the time of making a new investment. If, during subsequent reporting periods the diversification limits are breached, then the Finance and Assets Coordinator, in consultation with the Financial Services Manager will assess the portfolio and decide whether an investment shall be divested. If the decision is made to divest an investment then this will be done as soon as practicable.

**5. Reporting**

In accordance with the Local Government (General) 2005 regulation, a monthly report shall be provided to Council, detailing the investment portfolio in terms of performance and counter party percentage exposure. (exposure within the total portfolio)

For audit purposes certificates must be obtained from the banks/ investment brokers confirming the amounts of investments held on Council's behalf and their current market value as at the 30<sup>th</sup> June each year.

**6. Performance Benchmarks**

Council seeks to gain a return on investment at least equal to the following measures.

<b>Investment</b>	<b>Performance Benchmark</b>
Cash	11am Cash Rate
Term Deposits	Australian Term Deposit index as published daily
Enhanced Investments	90 day BBSW

**RELATED POLICIES**

Restricted Funds Policy  
Property Investment and Development Policy  
Business Development Funding Policy

**SUSTAINABILITY IMPLICATIONS**

**SOCIAL IMPLICATIONS**

Nil

**ECONOMIC IMPLICATIONS**

Nil

**ENVIRONMENTAL IMPLICATIONS**

Nil

**RELEVANT LEGISLATIVE PROVISIONS**

- Local Government Act 1993 – Section 625
- Local Government Act 1993 – Order (of the Minister) as made from time to time.
- The Trustee Act 1925 – Section 14. Powers of Investment.
- The Trustee Act 1925 – Regulation.
- Local Government (General) Regulation 2005 – Clause 212

**IMPLEMENTATION RESPONSIBILITY**

Finance and Assets Coordinator

**REVIEW DATE**

12 months after adoption

ATTACHMENT 2



**POLICY**

Adopted: 22/09/2009  
Minute No: 319  
Amended:  
Minute No:

**FILE NO: A2004-0230**

**TITLE: CASH INVESTMENT POLICY**

**REPORT OF DAMIEN JENKINS, FINANCIAL SERVICES MANAGER**

**BACKGROUND**

This policy has been revised following the issue of Investment Policy Guidelines by the Director General of the Division of Local Government.

**OBJECTIVE**

The purpose of this policy is to guide Council's cash investment process and specifically:

- establish Council's investment philosophy,
- establish investment risk management guidelines,
- prescribe requirements to be followed in investing surplus funds that are not immediately required for any other purpose,
- identify the duties of those involved in the investment process,
- prescribe internal control procedures, investment monitoring and reporting procedures.

**PRINCIPLES**

1. Council has an obligation under its charter as the custodian and trustee of public assets to effectively account for and manage the assets for which it is responsible.
2. All investments are to be made in accordance with:
  - Local Government Act 1993 – s 625 How may Councils invest?
  - Local Government Act 1993 – Ministerial Investment Order under s 625(2) as made from time to time

- The Trustee Act 1925 – s 14 including powers of investment, duties of trustee in respect of power of investment and matters to which trustee is to have regard when exercising power of investment
- Local Government (General) Regulation 2005 – cl 212 Reports on Council investments
- Review of NSW Local Government Investments Report (Cole Inquiry Report, April 2008)
- Investment Policy Guidelines – Issued by the Director General of the Division of Local Government under s 23A Local Government Act 1993
- Local Government Code of Accounting Practice and Financial Reporting

## **POLICY STATEMENT**

### **1. Investment Philosophy and Objectives**

- 1.1. Investments are to be allocated to ensure there is sufficient liquidity to meet reasonably anticipated cash flow requirements, as and when they fall due, without incurring the risk of significant costs due to the unanticipated sale of an investment.
- 1.2. Preservation of capital and the real value of surplus funds is the principal objective of the investment portfolio.
- 1.3. Investments are expected to achieve a market average rate of return consistent with Council's risk tolerance. One dollar invested today is expected to earn interest so that it will increase in value to more than one dollar in the future, "the time value of money".

### **2. Cash Flow**

- 2.1. Council is to plan for future cash flow requirements in its long term financial plan and annual budget.
- 2.2. Cash flow is to be monitored daily.
- 2.3. Council is to have an overdraft facility to be used to meet unforeseen commitments, with the aim of avoiding use of this facility as the interest rate is likely to exceed the interest rate Council receives on its investments.
- 2.4. When appropriate to do so, daily surplus funds are to be automatically swept into an interest bearing bank account to maximise interest earnings.
- 2.5. Surplus funds that are forecast not to be required for in excess of 30 days are to be identified and invested.

### **3. Risk Management Criteria**

- 3.1. Placement and retention of investments are to be assessed according to the following criteria:
  - Preservation of Capital – the requirement for preventing losses in Council's investment portfolio's total value (considering the time value of money)

- Diversification – setting limits to the amounts invested with individual financial institutions or government authorities to reduce credit risk
- Credit risk – the risk that a financial institution or government authority fails to pay the interest or repay the principal invested
- Market risk – the risk that the fair value or future cash flows of an investment will fluctuate due to market prices
- Liquidity risk – the risk Council is unable to redeem the investment at a fair price within a timely period
- Maturity risk – the risk relating to the length of term to maturity. The larger the term the greater the length of exposure and risk of market volatility and interest rate changes.

3.2 Financial instruments detailing investments must clearly show they are held in Council's name.

#### **4. Authorised Investments**

- 4.1. All investments must be denominated in Australian Dollars (AUD).
- 4.2. Authorised investments are limited to those forms included in the Ministerial Investment Order, presently:
- Local, State or Commonwealth Government bonds, debentures or securities
  - Interest bearing deposits, debentures or bonds issued by an authorised deposit taking institution (ADI) regulated by Australian Prudential Regulation Authority, (ie a bank, building society or credit union granted authority by APRA to carry on a banking business in Australia – a full list of ADI's is available on the APRA website [www.apra.gov.au](http://www.apra.gov.au))
  - Investments with NSW Treasury Corporation or Hourglass Investment facility
  - Deposits with the Local Government Financial Services Pty Ltd

#### **5. Grandfathered Investments**

- 5.1. New investments must comply with the most recent Ministerial Investment Order.
- 5.2. Council holds existing investments that do not comply with the most recent Ministerial Investment Order, but complied with the Ministerial Investment Order in force at the time the investments were made. Under the provisions of the most recent Ministerial Investment Order changes to the Investment Order were grandfathered.
- 5.3. Council may hold to maturity, redeem or sell these investments which include Collateralised Debt Obligations (CDO's), derivative based instruments, and subordinated debt.

**6. Prohibited Investments**

- 6.1. This investment policy prohibits any investment carried out for speculative purposes including, but not limited to:
- Derivative based instruments
  - Principal only investments or securities that provide potentially nil or negative cash flow and
  - Stand alone securities issued that have underlying futures, options forward contracts or swaps of any kind.
- 6.2. This policy also prohibits the use of leveraging (borrowing to invest) of an instrument. However, nothing in this previous paragraph will limit the grandfathering clause pertaining to already purchased investments.

**7. Quotations on Investments**

- 7.1. Not less than three (3) quotations shall be obtained from authorised institutions whenever an investment is proposed.
- 7.2. The best quote for the day shall be accepted after allowing for administrative costs and also allowing for the diversification limits of this policy.

**8. Term to Maturity**

- 8.1. The term to maturity of any of Council's direct investments must not exceed ten (10) years.
- 8.2. When the term to maturity exceeds one (1) year, Council must ensure that a secondary market exists for the investment to enable the disposal of the investment prior to maturity if necessary.
- 8.3. To control liquidity risk Council's investment portfolio should be limited to the following term to maturity thresholds.

TERM	MINIMUM PERCENTAGE	MAXIMUM PERCENTAGE
< 1 year	30%	100%
> 1 year	0%	70%
> 3 years	0%	40%
> 5 years	0%	30%

The maturity thresholds above are to be assessed at the time of making a new investment.

**9. Diversification**

- 9.1. Funds invested through any one broker shall be limited to a maximum of 25% of Council's total portfolio.
- 9.2. Funds invested in financial products that have an explicit government guarantee shall be limited to a maximum of 50% of Council's total portfolio.
- 9.3. Funds invested in unrated ADI's shall be limited to 20% of Council's total portfolio (subject to clause 9.5).
- 9.4. Deposits with any one financial institution shall be limited to 10% of Council's total portfolio.
- 9.5. While ever the Australian Government Financial Claims Scheme continues to operate, investments shall be made with ADI's covered under the scheme and subject to the scheme limits to ensure Council funds are guaranteed.
- 9.6. The Diversification benchmarks above shall be assessed at the time of making a new investment. If, during subsequent reporting periods the diversification limits are breached, then the Revenue Coordinator, in consultation with the Financial Services Manager will assess the portfolio and decide whether an investment shall be divested. If the decision is made to divest an investment then this will be done as soon as practicable.

**10. Reporting**

- 10.1. A monthly report shall be provided to Council, detailing the investment portfolio including individual amounts invested, broker name, financial institution name, maturity date, interest rate, percentage exposure within the total portfolio and current market value. The report is to include a certificate as to whether or not the investments have been made in accordance with the Act, regulations and Council's investment policy.
- 10.2. Current market values are to be sought monthly for Council's grandfathered investments such as CDO's. Due to the timing of the provision of such valuations the most recent valuations will be presented in the monthly report to Council which might not include valuations received after the business paper cycle is closed.
- 10.3. For audit purposes certificates must be obtained from banks and investment brokers confirming the amounts of investments held on Council's behalf and their current market value as at 30 June each year.

**11. Performance Benchmarks**

- 11.1. Council seeks to gain a return on investment at least equal to the following measures.



**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

<b>Investment</b>	<b>Performance Benchmark</b>
Cash	RBA Cash Rate
Term Deposits	Australian Term Deposit index as published daily
Enhanced Investments	90 day BBSW

**12. Duties and Responsibilities of Council Officers**

- 12.1. The General Manager is responsible for ensuring that Council's decisions with respect to this investment policy are implemented. The General Manager has delegations to staff in place to make investments in accordance with this policy.
- 12.2. Cl 212 of the Local Government (General) Regulation 2005 requires the Responsible Accounting Officer to provide a monthly written report to Council on its investments. The Responsible Accounting Officer is responsible for keeping Council's accounting records, ensuring they are kept up to date and in an accessible form. The General Manager is the Responsible Accounting Officer in Port Stephens Council and delegations to staff are in place to keep accounting records and report as required.
- 12.3. Council officers involved in investing funds are required to have appropriate skills to undertake the investment function, have delegations in place and read and comply with this investment policy.
- 12.4. Council officers involved in investing funds should act with the duty of care, skill, prudence and diligence that a prudent person would exercise when investing and managing their own funds and have regard to the requirements under the Trustee Act 1925.
- 12.5. Council officers involved in investing funds must not engage in activities that would conflict with the proper implementation and management of Council's investments.
- 12.6. The Revenue Coordinator, or other delegated Council officer is required to:
- Monitor cash flow on a daily basis and estimate cash requirements
  - Ensure proposed investment products comply with this investment policy
  - Recommend investment of funds in accordance with the requirements of this policy
  - Reconcile principal invested on at least a monthly basis
  - Estimate and account for receipt of all interest due on investments
  - Ensure financial instruments, investment certificates and related documents are kept in safe custody

- Obtain monthly valuations of grandfathered securities
- Prepare a monthly report for Council to the satisfaction of the Responsible Accounting Officer
- Cause the investment register to be updated on Council's website monthly
- Store all relevant documents, interest advices, market valuations in TRIM.

12.7. To ensure adequate internal controls and separation of duties the Financial Services Manager is to authorise investment transactions. If the Financial Services Manager is absent investment transactions are to be authorised by the Acting Financial Services Manager or Group Manager Commercial Services or General Manager.

### **13. Investment Advisor**

13.1. When ensuring a proposed investment product complies with this investment policy it may be necessary to obtain independent financial advice.

13.2. Before considering independent financial advice Council must ensure the financial advisor is licensed by the Australian Securities and Investment Commission. The advisor must confirm that they do not have any conflicts of interest in relation to the investment products being considered.

13.3. When recommending or reviewing investments any independent financial adviser must provide written confirmation that they are not receiving any commissions or other benefits in relation to the investments being recommended or reviewed.

13.4. Council is to undertake separate reference checks before relying on information provided by an advisor.

### **RELATED POLICIES**

Restricted Funds Policy  
Property Investment and Development Policy  
Business Development Funding Policy

### **SUSTAINABILITY IMPLICATIONS**

#### **SOCIAL IMPLICATIONS**

Nil

#### **ECONOMIC IMPLICATIONS**

Nil

**ENVIRONMENTAL IMPLICATIONS**

Nil

**RELEVANT LEGISLATIVE PROVISIONS**

- Local Government Act 1993 – s 625
- Local Government Act 1993 – s 625 Investment Order (of the Minister) as made from time to time
- The Trustee Act 1925 – s 14 - Powers of Investment.
- Local Government (General) Regulation 2005 – cl 212
- Local Government Act 1993 s 23A Investment Policy Guidelines issued by the Director General of the Division of Local Government
- Banking Act 1959 – Division 2AA Financial Claims Scheme

**IMPLEMENTATION RESPONSIBILITY**

Revenue Coordinator

**REVIEW DATE**

12 months after adoption

**ITEM NO. 12**

**FILE NO: PSC2005-0828**

**REVIEW OF POLICY – DEBT RECOVERY AND HARDSHIP**

**REPORT OF: DAMIEN JENKINS – FINANCIAL SERVICES, MANAGER**  
**GROUP: COMMERCIAL SERVICES**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Draft Debt Recovery and Hardship Policy as show in **ATTACHMENT 1** be placed on public exhibition for 28 days.
- 2) At the completion of the exhibition period if no submissions have been received Council's Debt Recovery and Hardship policy is adopted.
- 3) That Council Revoke the Debt Recovery Policy dated 28 August 2007 - Minute No: 235.

-----  
**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**  
**RECOMMENDATION:**

	<b>Councillor Steve Tucker</b> <b>Councillor Bob Westbury</b>	That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>404</b>	<b>Councillor Steve Tucker</b> <b>Councillor Shirley O'Brien</b>	It was resolved that the recommendation be adopted.
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**BACKGROUND**

The purpose of this report is to review the Debt Recovery and Hardship Policy which was originally adopted by Council in July 2005 and amended in August 2007.

The policy prescribes Council's processes for recovering rates, charges, fees and other amounts once they become overdue as well as it's programs to respond to ratepayer and customer hardship in paying amounts due to Council.

The recovery processes contained in the policy have proven to be effective and the hardship and pensioner concession provisions have been utilised and are cost effective and equitable.

No significant amendment to the policy is proposed.

## **FINANCIAL/RESOURCE IMPLICATIONS**

Debt collection costs are minimised through the utilisation of a debt collection agency under contract terms, and their costs are fully recovered from debtors where matters proceed to legal enforcement. Seven (7) aged pensioner ratepayer have taken up the option of deferring payment of their rates against their estate. Write off of interest and legal charges due to hardship over the last two years has amounted to approximately \$3,000.

The policy provides for \$20,000 aggregate financial assistance to ratepayers suffering hardship for rate increases in the year following a revaluation and 2011/2012 rates will be based on new land values.

Backdating pensioner rate concessions for up to two years where pensioners satisfy eligibility requirements costs Council approximately \$20,500 per annum.

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

The policy provides for consistency in debt collection processes and hardship assistance.

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The policy ensures Council can collect monies owing to it to fund its operations for the provision of services that benefit the entire community. The policy further provides a process for Council to respond to requests for hardship assistance.

## **CONSULTATION**

Financial Services staff

## **OPTIONS**

- 1) Accept recommendation
- 2) Amend recommendation

## **ATTACHMENTS**

- 1) Current Debt Recovery and Hardship Policy

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1

**Port Stephens**  
C.O.U.N.C.I.L  
**POLICY**

Adopted: 28/08/2007  
Minute No: 235  
Amended:  
Minute No:

**FILE NO:** PSC2005-0828

**TITLE:** Debt Recovery and Hardship Policy

**BACKGROUND**

This document prescribes the procedures Council follows to recover monies that are overdue for rates, charges, fees and other debts.

This document also prescribes the procedures Council follows in providing financial assistance to ratepayers and debtors suffering financial hardship.

**OBJECTIVE**

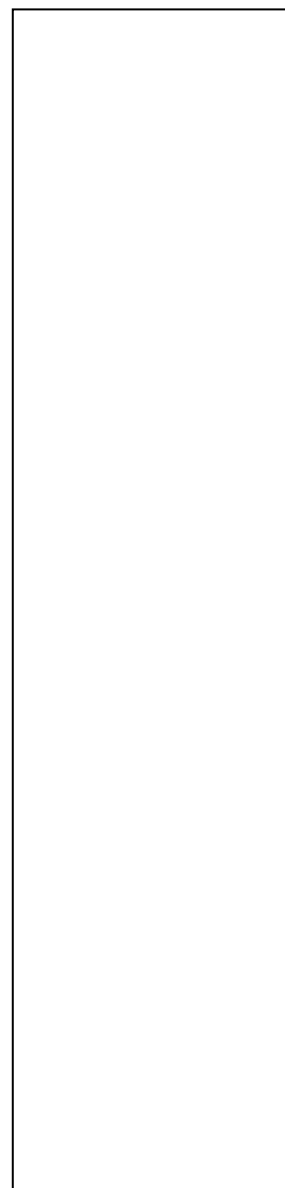
The objectives of this policy are:

- To outline the process for efficient and effective collection of outstanding debts;
- To provide a decision making framework for the appropriate assessment of all financial hardship applications;
- To fulfil statutory requirements of the Local Government Act, 1993 and other relevant legislation in relation to the recovery of rates, charges, fees and other debts; and
- To ensure debts are recognised in Council's accounting system.

**PRINCIPLES**

This policy has been formulated under the following principles:

- Council recognises it has a responsibility to recover monies owing to it in a timely, efficient and effective manner to finance its operations and ensure effective cash flow management;
- Council will treat all people fairly and consistently under this policy;



- Council will consider all matters under this policy confidentially; and
- Council will recognise genuine financial hardship and treat people with respect and compassion in considering their circumstances.

## **POLICY STATEMENT**

### Part 1 – Recovery of Rates and Charges

#### **1. Rates and Charges Notice**

Rates and charges notices are issued in July each year and are payable in four instalments on 31 August, 30 November, 28 February and 31 May. A rate notice, or rate instalment notice is issued 30 days before each instalment is due.

#### **2. Reminder Notices**

If the whole or part of an instalment, exceeding \$25, is not paid within twenty one (21) days of the instalment due date, then a reminder notice will be issued. Reminder notices will be issued to all ratepayers and will request payment within fourteen (14) days. Where the amount overdue is greater than \$500 the reminder notice will advise that the recovery of the rates and charges may be referred to Council's debt collection agency if the overdue amount is not paid in full within fourteen (14) days. The notice will also advise that arrangements may be made with Council to repay the overdue amount. The notice will also advise that ratepayers complying with an existing repayment arrangement may disregard the notice.

#### **3. Recovery Action – Referral to Debt Collection Agency**

Following the expiration of the fourteen (14) days specified in the reminder notice Council will refer overdue assessments to its debt collection agency.

#### **4. Recovery Action – Debt Collection Agency Procedures**

The debt collection agency will as soon as practicable after receipt of a referral from Council issue a letter in relation to each overdue amount advising that Council has referred the debt to the agency for collection and that payment is required within seven (7) days of the date of the letter, otherwise legal action will be commenced. The letter is to specify the minimum amount in legal costs that will be added to the ratepayer's rate assessment if legal action is commenced. Following the expiration of the seven (7) days as requested in the letter plus an additional two (2) days to allow for agency receipts to be received, the debt collection agency is then to issue a statement of liquidated claim. Following the statutory period after service of the statement of liquidated claim the debt collection agency is to obtain

judgment and then take the necessary proceedings to recover the debt including issuing writs of execution and garnishee orders.

### **5. Arrangements to Repay Rates and Charges**

A ratepayer may enter into a weekly, fortnightly or monthly arrangement to repay rates and charges with Council or Council's debt collection agency provided the arrangement will have rates and charges paid in full within twelve months. Normal interest charges apply to arrangements unless interest is to be written off under Section 564 (see hardship provisions of this policy at part 4). Council's may enter into a longer term repayment arrangement if in that Officer's opinion a ratepayer's financial circumstances warrant this. A ratepayer dissatisfied with a decision of the Debtors Clerk may have that decision reviewed by the Hardship Panel established under this policy. Ratepayers are to be advised at the time of making a repayment arrangement that if an arrangement is dishonoured recovery action will recommence without further notice. Where an arrangement has been dishonoured, a new arrangement cannot be accepted until a payment is received to show good faith. Where legal action has commenced, arrangements are to be in the form of a court instalment order. Extensions of time beyond three months without any payment are not acceptable. Where a supplementary rates and charges notice is issued in the latter part of the year and where an arrangement is made for payment of the rates within six (6) months of the due date, interest will be written off provided payment of one half of the amount due is made within three (3) months and the balance is paid within six (6) months.

## **Part 2 –Recovery of Sundry Debtor Accounts**

### **1. Sundry Debtor Invoices and Statements**

Invoices are raised as debtor information comes to hand eg. Construction of kerbing and guttering, footpaths, waste, private works, property information, etc. and invoices are to be issued weekly. Within 7 days of the close of a month a statement is to be issued. The due date for payment is 30 days after the invoice date.

### **2. Overdue Sundry Debtors**

If an account is not paid by the due date a second and then a third monthly statement will be forwarded as a reminder. If payment is not received after issue of the second statement then a recovery notice requesting payment or the making of a satisfactory arrangement to pay is to be forwarded to the debtor as an attachment to the third monthly statement. The recovery notice will advise that the recovery of the overdue account will be referred to Council's debt collection agency if the account is not paid within fourteen (14) days. Section 355(b) committees, sporting

Replace all references to "Debtors Clerk" with "Collections Officer"



clubs and government agencies will not be referred to the debt collection agency.

**3. Overdue Sundry Debtors – Aged Pensioners**

If a sundry debtor account is a charge on the land i.e. kerb and gutter or foot paving, and it is due by an aged pensioner, the aged pensioner may apply to Council to have the account deferred against their estate subject to the hardship provisions of this policy.

**4. Recovery Action – Suspension of Credit Facilities**

If the account is an ongoing account, e.g. waste tipping fees, property information etc., further credit to that debtor will be withdrawn until the account is paid.

**5. Recovery Action – Referral to Debt Collection Agency**

Following the expiration of the fourteen (14) days specified in the recovery notice Council will refer accounts overdue as described above to its debt collection agency.

**6. Recovery Action – Debt Collection Agency Procedures**

The debt collection agency will as soon as practicable after receipt of a referral from Council issue a letter in relation to each overdue account advising that Council has referred the debt to the agency for collection and that payment is required within seven (7) days of the date of the letter, otherwise legal action will be commenced. The letter is to specify the minimum amount in legal costs that will be added to the account if legal action is commenced. Following the expiration of the seven (7) days as requested in the letter plus an additional two (2) days to allow for agency receipts to be received, the debt collection agency is then to issue a statement of liquidated claim. Following the statutory period after service of the statement of liquidated claim the debt collection agency is to obtain judgment and then take the necessary proceedings to recover the debt including issuing writs of execution and garnishee orders.

**7. Arrangements to Repay Sundry Debtor Accounts**

A debtor may enter into a weekly, fortnightly or monthly arrangement to repay accounts with Council or Council's debt collection agency provided the arrangement will have the account paid in full within twelve months. Council's Debtors Clerk may enter into a longer term repayment arrangement if a debtor's financial circumstances warrant this. A debtor dissatisfied with a decision of the Debtors Clerk may have that decision reviewed by the Hardship Panel established under this policy. Debtors are to be advised at the time of making a repayment arrangement that if an arrangement is dishonoured, recovery action will recommence without further notice. Where an arrangement

has been dishonoured, a new arrangement cannot be accepted until a payment is received to show good faith. Where legal action has occurred, arrangements are to be in the form of a court instalment order. Extensions of time beyond three months without any payment are not acceptable.

### **Part 3 – Credit Control**

#### **1. Terms of Payment – 30 Day Accounts**

All accounts with Council are to be strictly 30 days trading terms, without exceptions. Council will open credit accounts in accordance with this policy.

#### **2. Terms of Payment – Credit Accounts**

No credit account is to be opened unless a 30-day trading application form has been completed and returned to the Debtors Clerk. The Debtors Clerk is to conduct a credit check on the applicant, verifying references provided by the applicant, before a credit account is offered.

#### **3. Terms of Payment – One Off Usage**

No company or individual is to be offered a credit account for one-off use of Council facilities such as hall hire, community centre bookings, caravan park bookings, council stores, sporting field use and the like. All one off usage must be paid for in advance or at the time of usage. Council will however extend credit and allow payment plans for animal impounding fees and sustenance fees at the discretion of the Co-ordinator Environmental Health and Regulation to avoid hardship.

#### **4. Terms of Payment – Deposits and Progress Payments**

For private works Council will provide a written quote for the proposed work to cover all costs for the work in accordance with the specified rates set out in the Council's Management Plan. For work to proceed, Council requires written authorisation from the client and proof of identity. For work valued at more than \$1,000 a 10% deposit is required before work commences. For work valued at more than \$10,000 Council will require agreed progress payments at various stages.

### **Part 4 – Hardship Provisions**

#### **1. Defer Payment of Rates and Charges – Aged Pensioners**

Aged pensioners who satisfy the eligibility criteria may make application to defer the payment of rates and charges and property related sundry debtor accounts, allowing them to accrue as a charge on the land to be paid upon the death of the ratepayer or the sale of the property, or if the pensioner

ceases to occupy the property as his/her principal place of living and rents the property out whichever occurs first.

The criteria used to determine eligibility are:

- That the ratepayer is in receipt of a pensioner rate concession in relation to the property; and
- That the property is the pensioner's principal place of living, and
- That the property is used for residential or farming purposes only, and
- That the property has no more than a single dwelling house or residential unit erected upon it, and
- That the total amount of rates and charges (nett of pensioner concession) and property related sundry debtor accounts payable is more than 8% of the age pension of an individual (if the ratepayer is an individual) or 8% of the age pension of a couple (if the ratepayer is a couple) at the date of the initial application.

The aged pensioner is to complete an initial prescribed application form. Council is to post out a letter each year to the aged pensioner with a copy to sign and return to continue the deferral. The purpose of the annual letter is to confirm that the aged pensioner continues to own and occupy the property, is still alive and is aware of and agrees to the deferral. Deferral will continue once granted without the need to satisfy the 8% criteria again, provided that the pensioner continues to own and occupy the property. Where the pensioner ceases to occupy the rateable property and the property is rented the repayment timeframe of the deferred rates and charges are to be negotiated by the Debtors Clerk. A person dissatisfied with a decision of the Debtors Clerk may have that decision reviewed by the Hardship Panel established under this policy.

Applications will be considered by the Revenue Co-ordinator. A ratepayer dissatisfied with a decision of the Revenue Co-ordinator may have that decision reviewed by the Hardship Panel established under this policy. The Hardship Panel may approve an application for deferral if it believes the circumstances of the ratepayer warrant this even if the eligibility criteria have not been met. If an application is refused, the applicant will be provided with reasons for such refusal.

Interest charges accrue in respect of deferred rates and charges at the rate determined under the Local Government Act. No deferred rates, charges or interest are to be written off under this policy.

## 2. Writing Off of Accrued Interest

The Debtors Clerk and Rates Clerks have delegated authority to write off interest that has accrued on rates and charges up to \$10 where the person was unable to pay the rates and charges when they became due and payable for reasons beyond their control. The Revenue Co-ordinator has delegated authority to write off an unspecified amount of interest.

Ratepayers seeking to have interest written off under hardship provisions are to submit a written application in the form of a letter to be considered by the Hardship Panel. Accrued interest on rates and charges may be written off where payment of the accrued interest would cause the person hardship. The Hardship Panel may request the ratepayer to come to an interview if it is necessary to understand the issues causing hardship.

## 3. Hardship Resulting from a General Revaluation of the Port Stephens Local Government Area

In accordance with section 601 of the Local Government Act a ratepayer that suffers substantial hardship as the consequence of the making and levying of a rate on the most recent valuation, may apply to Council for relief. Assistance is only available in the first year new valuations are used to calculate rates.

The criteria used to determine eligibility:

- The rates payable must be more than 3% of the gross household income; and
- The applicant must be an owner and an occupier of the property to which the rates relate and the dwelling must be the applicant's sole or principal place of living; and
- The ordinary rate increase must be more in percentage terms than the amount determined by Council at each revaluation. The ordinary rate increase is calculated as the ordinary rates payable for the new rating year (being the first year in which new valuations are used) minus the ordinary rates payable in the previous rating year increased by the allowed ratepegging increase for the year.  
(eg. rates 2005/2006 \$600 minus rates 2004/2005 \$400 plus 3% ratepegging increase (\$412) = \$188)

Applications must be submitted on the prescribed application form. Assistance is calculated as follows:

- One half of the ordinary rate increase up to a maximum of \$200  
(eg. \$188 increase x 0.5 = \$94. \$500 increase x 0.5 = \$200 max)

- No assistance is to be given for domestic waste management charges, HCRCMA levy, or special rates.
- The maximum amount of assistance in aggregate for all ratepayers is \$20,000.

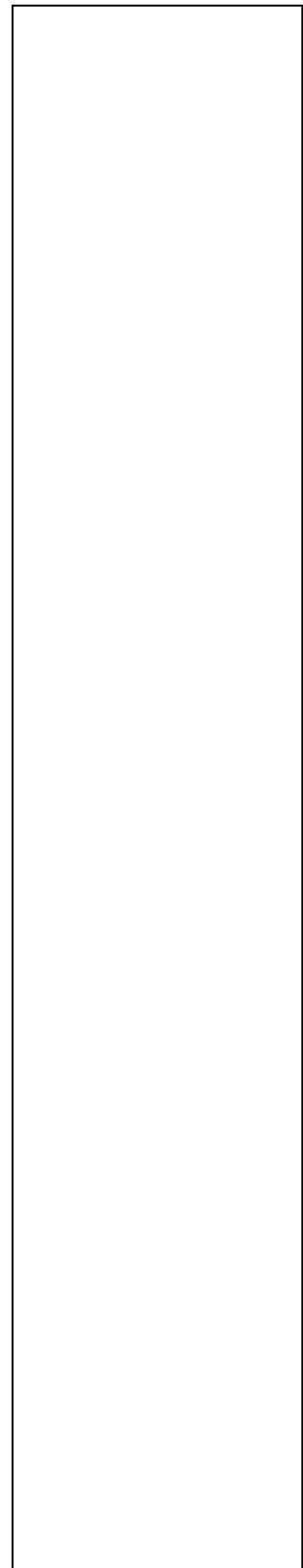
Applications will be considered in the order in which they are received by Council. No further applications will be considered once the aggregate amount of assistance has been granted. Applications will be considered by the Revenue Co-ordinator. A ratepayer dissatisfied with a decision of the Revenue Co-ordinator may have that decision reviewed by the Hardship Panel established under this policy. If an application is refused, the applicant will be provided with reasons for such refusal.

#### 4. Fees and Charges

The Coordinator Environmental Health and Regulation may consider hardship matters relating to animal impounding and sustenance fees. Assistance may be provided in the form of allowing additional time to pay or waiving the fees in cases of hardship. A customer dissatisfied with a decision of the Coordinator Environmental Health and Regulation may have that decision reviewed by the Hardship Panel established under this policy. Applicants under this section are to be made aware that fees and charges in relation to animal impounding increase on a daily basis and will accrue during the review period. Council will not consider hardship applications in relation to animal registration fees, or the costs of microchipping or veterinarian fees and charges.

#### 5. Hardship Panel

A Panel comprising the Revenue Co-ordinator, Social Planner and a representative from Corporate Management will determine applications for assistance referred to it and review decisions as necessary.



**6. Referral of Matters to Hardship Panel**

The General Manager or Mayor may refer any Council matter involving financial hardship of a ratepayer or resident to the Hardship Panel for consideration and advice.

**7. Privacy**

In accordance with the Privacy Code of Practice and Council's Privacy Management Plan, personal information collected as a consequence of this policy will only be used for the purpose of assessing eligibility under the Policy and will not be used for any other purpose or disclosed to any other person unless we are required by law to do so or authorised to do so by the person to whom that personal information relates.

**Part 5 – Sale of Property for Overdue Rates**

The sale of land, for overdue rates, is in accordance with Chapter 17 division 5, Section 713 to 726 of the Local Government Act 1993. The process is as follows:

- 1) In September of each year, outstanding debts are to be reviewed to identify all properties where any rates or charges are overdue and have remained unpaid for more than five (5) years, or in the case of vacant land (1) years rates, from the date from which they became payable.
- 2) Council staff will establish all owners and interested parties through a title search.
- 3) Vacant land – a comparison of the rates owing and the last valuation shall be undertaken and land identified where the rates owing exceed the valuation. In these cases a valuation shall be obtained in accordance with the Act and the sale process be handled in accordance with the Act.
- 4) A report shall be put to Council recommending the sale to proceed and appointing an agent to conduct the auction from a list of local agents listed on Council's appointed panel.
- 5) Completed Section 149 Certificates, and Drainage Diagrams shall be forwarded to the solicitors for preparation of contracts.
- 6) A date for the auction shall be set being not more than six (6) months and not less than three (3) Months from publishing of the proposed notice of sale.
- 7) All owners and interested parties will be notified of Council's intention to sell the property using the last known address or information available.

- 8) The venue for the auction shall be selected and booked (eg: the Council Chambers).
- 9) Council shall publish the proposed sale in the local newspaper and the Government Gazette.
- 10) Assessments must be checked daily as the sale will not take place if full payment is received. A “Warning Memo” is to be attached to the assessment to notify staff of the impending sale and advising that arrangements are only to be authorised by the General Manager.
- 11) On the day of sale, a deposit of 10% shall be payable by cash or bank cheque.
- 12) If the land is not sold at auction, Council may organise another public auction or the property may be sold by private treaty upon a resolution of Council. All costs associated with the sale are to be met by the purchaser.

Upon settlement of the sale:

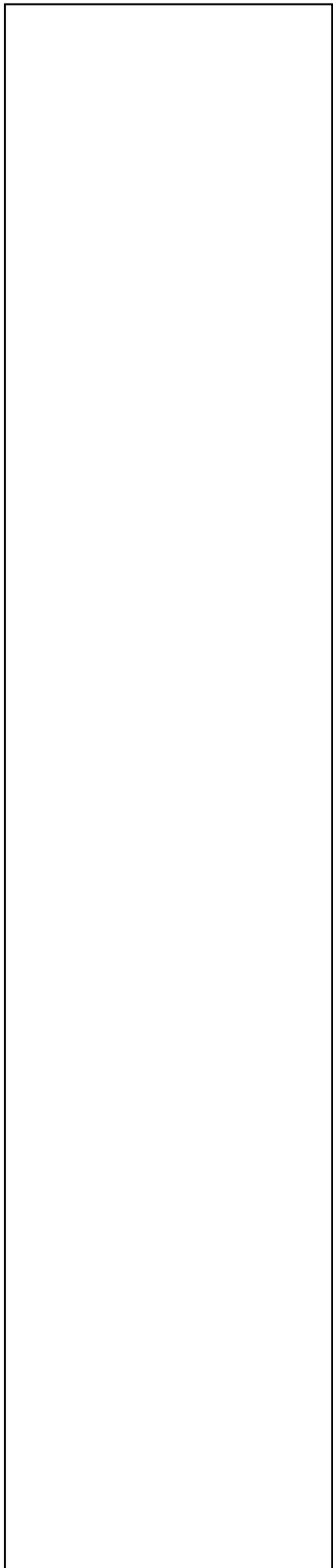
- 13) If the sale amount is less than the outstanding balance, Council will consider the debt to be paid in full in accordance with section 719 of the Act.
- 14) If the amount received is more than the amount outstanding Council will hold the money for persons having estates or interests in the land immediately before the sale according to their respective estates and interests. Section 720 of the Act provides for Council to pay the balance of the purchase money or any part of the balance to or among the persons who are, in its opinion, clearly entitled to it. The receipt by the person of any payment so made is an effectual discharge of Council’s liability.
- 15) Upon finalisation, the sale results shall be reported to Council.

**Part 6 – Pensioner Rate Concessions**

The following prescribes how Council will grant concessions to pensioners:

**1. Eligibility for Pensioner Concessions**

In all situations where an eligible pensioner finds himself/herself in a situation where he/she assumes full and sole responsibility for the paying of rates, notwithstanding the nature of the ownership of the property, Council agrees to grant the full pensioner concession under Section 577 of the Act. The presentation of a Pensioner Concession Card is accepted by Council as a sufficient test to meet the



hardship requirements of Section 577 of the Act under these circumstances.

## **2. Backdating of Pensioner Concessions**

Where an eligible pensioner applies for a concession Council will backdate that concession for up to two (2) years prior to the current year (i.e. a maximum total of three (3) years including the current year) provided that:

- The pensioner was at all times eligible for the concession; and
- The pensioner provides a statutory declaration that the rateable property was their sole or principal place of living for all of the period that the concession is claimed for.

## **RELATED POLICIES**

The following policies have been incorporated into this policy:

- Debt Recovery Policy;
- Pensioner Rate Rebates;
- Pensioner Interest Charges;
- Waiving of Interest Charges;
- Interest on Overdue Rates; and
- Interest Charges on Supplementary Rate Levies.

## **REVIEW DATE**

12 months after adoption.

## **RELEVANT LEGISLATIVE PROVISIONS**

Local Government Act 1993 and specifically sections 564, 567, 577, 601, 712 & 713-726.

## **IMPLEMENTATION RESPONSIBILITY**

Business and Support - Finance & Administration

Delete "Business and Support"  
Add "Commercial Services"



**ITEM NO. 13**

**FILE NO: PSC2007-1999**

**NATIONAL BROADBAND NETWORK – RECOGNITION OF THE POTENTIAL OF HIGH CAPACITY BROADBAND TO REGIONAL GROWTH AND SUSTAINABILITY**

**REPORT OF: BRENDAN BROOKS – ECONOMIC DEVELOPMENT, ACTING MANAGER**  
**GROUP: COMMERCIAL SERVICES**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Joins with other Council's in the Hunter Region and the Central Coast Region to advocate to the Commonwealth Government that high priority be given to the rollout of the National Broadband Network in the Hunter Valley and Central Coast.
  
- 2) Acknowledges that there will be challenges in terms of civil works to enable the rollout, but council is committed to working with NBN Co to facilitate the minimisation of inconvenience to the community.

**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**  
**RECOMMENDATION:**

	<b>Councillor Bob Westbury</b> <b>Councillor Caroline De Lyall</b>	That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>405</b>	<b>Councillor Glenys Francis</b> <b>Councillor Peter Kafer</b>	It was resolved that the recommendation be adopted.
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**BACKGROUND**

The purpose of this report is recognise and endorse Regional Development Australia (RDA) - Hunter to lobby for the Hunter and Central Coast to be a priority case in the National Broadband Network 8 year roll out. This report is to recognise that Port Stephens Council being earlier in the roll means that our region can be connected sooner and can access the competitive advantages that will be delivered via high-capacity broadband like that provided by the NBN.

The NBN is an infrastructure project that will connect up to 93% of homes to fibre-optic broadband delivering speeds of up to 100 megabits per second which is 100 times faster than the speeds commonly accessible. Other more regional areas will receive a relatively slower wireless or satellite options. The fibre will be connected to the premises via available infrastructure where it exists or in low impact underground conduit. 8,000 premises per day will be needed to be connected to meet the delivery schedule and a level of short-term civic works will be required.

According to the most recent maps released as a guide by the Federal Government, the only area of the Port Stephens LGA that is not likely to be connected by fibre-to-the-premises will be Wallalong, Seaham, Hinton and other rural areas to the Nth West of the LGA.

The implementation phase of the project being the civil works required will be disruptive to the community in that shallow sliced trenches will need to be dug where existing infrastructure does not currently exist. Where infrastructure does exist and can be used, access will be required. Any future implications to Council planning controls can be referenced from the NSW Department of Planning document - NSW Telecommunications Facilities guideline Including Broadband (July 2010).

This aligns with the Council Plan 9.1 – *Provide information technology infrastructure in Port Stephens via high speed broadband and via excellent wireless coverage for business, recreational and residential use.*

## **FINANCIAL/RESOURCE IMPLICATIONS**

Resource implications in the provision of the Economic Development function of Council to act as an advocate of Port Stephens to be a high priority case for the best possible technologies provided by NBNCo.

No financial implications in the current advocacy phase.

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

Nil in the current advocacy phase.

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

For our region to be sustainable and to prosper we need to have a competitive economy, a robust community, and a healthy environment.

For the economy, the high capacity broadband will facilitate a technological shift in the way business is conducted. It will enable the creation of new business delivering products that do not exist currently. There will be methods of transactions that will shorten supply chains, increase market reach, digitalise products, and allow greater communication with customers.

High capacity broadband will contribute to the elimination of geography as a barrier for businesses to access and retain the highest quality staff. It will enable businesses

to move out of the heavily populated and transport constrained areas of Western Sydney to consider relocating to Port Stephens where they can perform their work remotely and enjoy the lifestyle we have to offer.

Enhanced opportunities for innovation, increased productivity, new product development, increased research capabilities, accelerated learning and diffusion of discovery throughout industry and the wider economy increases the total economic benefit to the region increasing employment opportunities and contributing to the prevention of our young people having to move away to work.

The above benefits will greatly apply to all businesses, but in regard to tourism and marketing the effects will be more immediately felt with the ability to process bookings and reach markets significantly improved and level the competitive playing field in regard to broadband access across the LGA assisting tourism development in Karuah, and the Tilligerry.

For the community, the NBN will enable the more efficient delivery of vital services, and more importantly, increase access and reduce inequity of access to vital services and entertainment. The improvement in broadband capacity can allow the remote delivery of health care and more advanced eHealth information systems. This will increase the efficiency in accessing health services thereby reducing their costs for our ageing population.

Barriers to education, both geographic and financial, could be reduced as more learning delivery can be done online, using video and other innovative applications into the education experience to increase participation. In Port Stephens where there is no substantial tertiary education, the potential for online delivery of a robust education experience will prevent our young people having to move away for study.

Government service delivery will also provide benefits to the community in access, reduction of wasted time in processing queues, increased provision of information and customer service.

When this can occur, the community benefits from a reduction in the time taken up by service transactions and as a result can expect a reduction in the cost of accessing vital services increasing social well being.

For the environment, the ability to work from home reduces the need to drive polluting vehicles, the ability to make business transactions via eCommerce also reduces the carbon footprint of that business, increased digitalisation of products and services will reduce the amount of traditional transport logistics required. Increased broadband capacity translated into technological advancement and innovation applied to research and development in clean energy can lead to reduced emissions and to a cleaner planet.

**CONSULTATION**

No consultation is required as yet.

**OPTIONS**

- 1) Accept the recommendation.
- 2) Modify the recommendation.

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 14**

**FILE NO: PSC2009-00382**

**STONEY RIDGE – LOT 51 DP 803471, 1 DIEMARS ROAD, SALAMANDER BAY**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Rescind the Mayoral Minute of 8 June 2010 Item No. 2 (Resolution No. 154) Attachment 1 as the information relating to the property address is incorrect and should have read Lot 51, DP803471 1 Diemars Road, Salamander Bay.
- 2) Re-classify a 20M wide strip of land from community to operational at Lot 51, DP 803471, 1 Diemars Road, Salamander Bay in its capacity as the landowner.
- 3) Reclassify the land from community to operational pursuant to Section 54 of the Environmental Planning and Assessment Act in its capacity as a planning authority.

**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**

**RECOMMENDATION:**

	<b>Councillor Bruce MacKenzie</b> <b>Councillor Sally Dover</b>	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 Ken Jordan, Frank Ward, Shirley O'Brien, Bob Westbury, Glenys Francis, Peter Kafer, John Nell, Steve Tucker, Geoff Dingle, Bruce MacKenzie and Sally Dover.

Those against the motion: Nil.

**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>406</b>	<b>Councillor Frank Ward</b> <b>Councillor Sally Dover</b>	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.

## **MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

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

Those against the Motion: Nil.

### **BACKGROUND**

The purpose of this report is to correct the property address that was given in the Mayoral Minute presented to Council at its meeting on 8 June 2010 (Resolution 154). The property address should have read Lot 51 DP 803471, 1 Diemars Road, Salamander Bay.

On the March 9 2010 a letter requesting a 15 metre wide Asset Protection Zone was submitted to Council for the Salamander Haven aged care facility by Development and Building Consultant Mr Keith Lindsay.

Stoney Ridge Reserve and in particular the area to the rear of the proposed development is Community Land and is zoned Public Recreation 6(A) pursuant to Port Stephens Local Environmental Plan 2000. As per the Local Government Act (1993) and in accordance with a Plan of Management, Community Land must not be sold, exchanged or otherwise disposed of except in the instance of enabling the land to be added to Crown land in accordance with the Crown Lands Act 1989, or a protected area under the National Parks and Wildlife Act 1974. In addition, Council is unable to offer a licence, lease, estate or private benefit on Community Land.

Council's Recreation Services Section is currently developing a Draft Open Space Strategy and has identified Stoney Ridge as a natural area bushland reserve which includes areas of cultural heritage significance. Further, in 2005 an Environmental and Cultural Heritage Study was carried out by Ecological Australia which identified a range of threatened flora and fauna across the site, as well as Aboriginal scar trees which do not appear to be in the area of the requested Asset Protection Zone.

In respect to new development the requirements of the Rural Fire Service's Planning for Bushfire Protection 2006 (Section 3.3 Part (b)) states that easements should not be considered where the adjoining land is used for a public purpose, where vegetation management cannot be legally granted (eg. Council Reserve, National Park, SEPP 14 Wetlands and SEPP 26 Critical Habitat).

The process to reclassify the land is a lengthy and will need to be clarified once appropriate investigations have been undertaken on how Council acquired the site

### **FINANCIAL/RESOURCE IMPLICATIONS**

Nil.

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

Nil.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**CONSULTATION**

Nil.

**OPTIONS**

**ATTACHMENTS**

- 1) Mayoral Minute as submitted on 8 June 2010.

**ATTACHMENT 1**

**ORDINARY COUNCIL – 8 JUNE 2010**

**MAYORAL MINUTE**

ITEM NO. 2

FILE NO: PSC2009-00382

**STONEY RIDGE – LOT 1, DP1074566, 60 DIEMARS ROAD,  
SALAMANDER**

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**THAT COUNCIL:**

- 1) Re-classify a 20M wide strip of land from community to operational at Lot 1, DP1074566, 60 Diemars Road, Salamander Bay.

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**ORDINARY COUNCIL MEETING - 8 JUNE 2010**

**RESOLUTION:**

154	Councillor Bruce MacKenzie Councillor Frank Ward	It was resolved that the recommendation be adopted.
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**BACKGROUND**

On the 9<sup>th</sup> March 2010 a letter requesting a 15 metre wide Asset Protection Zone was submitted to Council for the Salamander Haven aged care facility by Development and Building Consultant Mr Keith Lindsay.

Stoney Ridge Reserve and in particular the area to the rear of the proposed development is Community Land and is zoned Public Recreation 6(A) pursuant to Port Stephens Local Environmental Plan 2000. As per the Local Government Act (1993) and in accordance with a Plan of Management, Community Land must not be sold, exchanged or otherwise disposed of except in the instance of enabling the land to be added to Crown land in accordance with the Crown Lands Act 1989, or a protected area under the National Parks and Wildlife Act 1974. In addition, Council is unable to offer a licence, lease, estate or private benefit on Community Land.

Council's Recreation Services Section is currently developing a Draft Open Space Strategy and has identified Stoney Ridge as a natural area bushland reserve which includes areas of cultural heritage significance. Further, in 2005 an Environmental and Cultural Heritage Study was carried out by Ecological Australia which identified a range of threatened flora and fauna across the site, as well as Aboriginal scar trees which do not appear to be in the area of the requested Asset Protection Zone.

In respect to new development the requirements of the Rural Fire Service's Planning for Bushfire Protection 2006 (Section 3.3 Part (b)) states that easements should not be considered where the adjoining land is used for a public purpose, where vegetation



**ATTACHMENT 1**

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Telephone Inquiries:  
Amanda Gale  
Parcel No: 40611

3 June 2010

Mr Keith Lindsay  
2 Alton Close  
RAYMOND TERRACE NSW 2324

Dear Sir,

Re: **LOT: 1 DP: 1074566, 60 Diemars Road SALAMANDER BAY 2317**

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I refer to your previous meeting with the Mayor, Ken Solman, Len Allen and Reg Longworth and subsequent correspondence dated 9 March 2010 in relation to a proposal to extend the facility on the above mentioned site by the addition of an 80 bed aged care facility on the eastern end of the site adjacent to Soldiers Point Road and an additional 40 self care units on the western end of the site.

Council's advice was sought on two particular points, specifically relating to the additional 40 self care units on the western end of the site, which will require the removal of trees within the koala habitat area and buffer zone south of the area containing endangered flora – 'callistemon linearifolius' as was shown on the prepared Vegetation Communities and Threatened Flora plan provided.

As outlined, to facilitate the development would require Council agreeing to dedicate a portion of Stoney Ridge Reserve adjacent to the western boundary of the site, such area being approximately 15 metres wide as an Asset Protection Zone (APZ).

Advice from Council was sort prior to any further preparation of plans for lodgement under a development application given the costs associated with preparation of a development application for such a proposal. Two specific questions were asked of Council and below is an outline of Council's response to the proposal.

Further, it should be noted that since the meeting with the Mayor and others and subsequent correspondence, the Mayor has called the matter to Council for consideration. A report will be forwarded to full Council from Facilities and Services Group in relation to the use of Council land for a future Asset Protection Zone.

Council's concurrence to the Asset Protection Zone being located on Council land

The following comment is provided in relation to the request for Council to provide a 15 metre wide Asset Protection Zone (APZ) across Council's land for the purposes of protecting a private development.

Stoney Ridge Reserve and in particular the area to the rear of the proposed development is 'community land' and is zoned Public Recreation 6(A) Zone pursuant to Port Stephens Local Environmental Plan 2000.

As taken from the Local Government Act 1993 and in accordance with a plan of management, 'community land' must not be sold, exchanged or otherwise disposed of except in the instance of enabling the land to be added to Crown land in accordance with the Crown Lands Act 1989, or a protected area under the National Parks and Wildlife Act 1974. In addition, Council is unable to offer

a licence, lease, estate or private benefit on 'community land' which also includes land categorised as a natural area – inclusive of bushland, wetland, water course, cultural significance and general community use land.

Council's Recreation Services Section is currently developing a Draft Open Space Strategy and has identified Stoney Ridge as a natural area bushland reserve which includes areas of cultural heritage significance. Further, in 2005 an Environmental and Cultural Heritage Study was carried out by Ecological Australia which identified a range of threatened flora and fauna across the site, as well as Aboriginal scar trees which do not appear to be in the area of the requested Asset Protection Zone.

That said, the only way a lease, licence or estate could be considered would be for the purpose of providing public utilities, public recreation or to provide a public road.

Further, in respect to new development the requirements of the Rural Fire Service's Planning for Bushfire Protection 2006 (Section 3.3 Part (b)) states that, easements should not be considered where the adjoining land is used for a public purpose, where vegetation management cannot be legally granted (eg. Council Reserve, National Park, SEPP 14 Wetlands and SEPP 26 Critical Habitat).

Council's thoughts on the feasibility of the proposal

For the purpose of providing background information, the original Development Consent 16-2004-1681-1 was granted for the original urban housing development (97 units and recreation facility) on 4 August 2005. This original consent was subsequently modified on seven (7) occasions with the last modified consent granted on 23 November 2007.

A separate Development Consent 16-2007-1117-1 was granted on 8 May 2008 for an additional eight (8) dwellings and a community building to form a part of the existing Salamander Retirement Village. This application also involved the relocation of drainage basins to facilitate the siting of the eight dwellings and to accommodate the community facility on-site. A subsequent application 16-2007-1117-2 was lodged in order to modify the proposed size of the underground detention structure and consent was granted on 14 August 2008.

Furthermore, a subsequent Section 96 application 16-2007-1117-3 was lodged in order to modify the development consent by removal of Condition No.11 which stated:-

*'The remaining vegetated western portion of the site shall not be the site of further development. The title of these properties shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition. Council shall be nominated as the sole authority permitted to alter/remove the endorsement prior to issue of the Occupation Certificate.'*

This Section 96 modification application was reported to full Council for determination and Council's resolution did not support the recommendation to refuse contained in the report and resolved to support the request to remove Condition 11 from the consent. The modified development consent was granted on 20 October 2009.

The proposal now the subject of enquiry for additional development at both the eastern and western ends of the site is permissible within the zone subject to development consent from Council. However, major concern exists in relation to further development on the western end of the site where it is proposed to seek approval for an additional forty (40) self care units, given ecology and bushfire constraints that exist over the site.

It is advised that further development of the site (within the western end) is considered inconsistent with the original development consent and the mitigation measures that were put in place with that consent to offset the impacts of existing development on the site.

The first development application lodged at the site was DA 16-2000-425-1 proposing 124 dwellings, supported by a Species Impact Statement. This application was refused by Council on 18 December 2001.

The second DA 16-2004-1681- 1 (proposing 97 dwellings and recreation facility/community building and clearing approximately two-thirds of the site) was to be mitigated by the protection of the remainder of the site vegetation through a Vegetation Management Plan determined by Port Stephens Council. Council supported this DA after 26 dwellings were removed to overcome the prior objections from the National Park and Wildlife Service in consideration of the requirements of the Squirrel Glider under the Threatened Species Conservation Act 1995.

Subsequently DA 16-2007-1117-1 was lodged which sought to develop a further eight dwellings and relocation of the community building. Additional clearing was proposed for the relocated community building within the land affected by the Vegetation Management Plan imposed by the Council. Development staff recommended approval of the Development Application only subject to the imposition of the 88B instrument as a condition to offset the impacts of the development through conservation of the remainder of the vegetation and to uphold the intentions of the previous determination in mitigating the impact of the original development. This was accepted and has been acted upon by the applicant.

Throughout Council's assessment of the application Council's Environmental Services Section has consistently sought to respect and acknowledge the decision to protect this part of the site, as a mitigation measure of the development, to protect the local squirrel glider population.

Whilst, a modified consent was granted through Council resolution to remove Condition 11 and the 88B instrument, the major issues in relation to further development on this remaining land do not change. Therefore, on the basis of the above, it is not considered feasible to propose any further development on this remaining portion of the site and impose added impact on the adjoining Council land (due to the need to provide an asset protection zone on this adjoining land).

I hope this advice has been of assistance in responding to your enquiries for future expansion of this development on site and in relation to the use of the adjoining Council land. Please do not hesitate to contact the undersigned for any further enquiries in relation to this matter or report to Council.

Yours faithfully

**Amanda Gale**  
Development Co-ordinator

DA TRACKER

Development & Building has been listening to your suggestions for improvement. Council has now launched its On-line Application Tracking System and a revised Website so you can access key information, forms and application updates anytime, 24 hours, 7 days a week. Council welcomes your feedback on these new initiatives. Email [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au) or write to The Manager Development & Building, Port Stephens Council, PO Box 42, Raymond Terrace NSW 2324

**ATTACHMENT 2**

**ITEM NO. 2**

**FILE NO: 16-2007-1117-3**

**SECTION 96 APPLICATION TO MODIFY DEVELOPMENT CONSENT FOR URBAN HOUSING AT NO. 60 DIEMARS ROAD, SALAMANDER BAY.**

**REPORT OF: ANTHONY RANDALL - ACTING MANAGER, DEVELOPMENT AND BUILDING**

**GROUP: SUSTAINABLE PLANNING**

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**RECOMMENDATION IS THAT COUNCIL:**

Refuse Development Application 16-2007-1117-3 for the reasons below:

1. Condition 11 was imposed to ensure that the remaining vegetated portion of the subject site remains undeveloped in perpetuity – reflecting the environmental values of that portion of the site
2. No adequate or substantive justification has been provided to warrant deletion of Condition 11
3. Condition 11 should remain to sustain the integrity of the original rationale for that condition
4. The portion of the subject site which would be adversely impacted upon by deletion of Condition 11 has well substantiated environmental values including the presence of endangered ecological communities.

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**BACKGROUND**

**The purpose of this report is to present a Section 96 development application to Council for determination.**

Development Application 16-2007-1117-1 related to the development of eight (8) dwellings and a community development to form a part of the existing Salamander Haven Retirement Village. This application involved the relocation of drainage basins to facilitate the siting of the eight units and to accommodate the community facility. This application was approved on 08/05/2008.

A subsequent application 16-2007-1117-2 was lodged in order to modify the proposed size of the underground detention structure. Consent for the modification was granted on 14/08/2008.

**PROPOSAL**

The current Section 96 application for modification of consent, the subject of this report, seeks to remove development consent condition 11 which states:

## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

*“The remaining vegetated western portion of the site shall not be the site of further development. The title of these properties shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition. Council shall be nominated as the sole authority permitted to alter/remove the endorsement prior to issue of the Occupation Certificate”.*

In support of the application, the applicant states:

*“It is considered that Condition 11 is onerous and unjustified in that it is unnecessary to require the placement of an encumbrance on to the title of the land to achieve the aim of Condition 9 of the consent.*

*The Vegetation Management Plan which was required under Condition 9 and was subsequently submitted to and approved by Council adequately achieves the intent of the approval.*

*My client does not wish to seek any amendment to the vegetation management plan at this stage.*

*It is also considered that the use of the Conveyancing Act as a tool to prohibit any further development is unwarranted as the Environmental Planning and Assessment Act, which the application was made under, contains adequate and appropriate powers to consider any future application relating to the site and by-passing that act is not justified.”*

In assessing the original application, a major issue was the assessment of the significant impacts upon Flora and Fauna, and in particular relevant to:

- Callistemon linearis;
- Squirrel Glider;
- Koala Habitat (Preferred and supporting area); and
- Endangered Ecological Communities for:
  - a) Swamp Sclerophyll; and
  - b) Nerong Smooth Barked Apple Forest.

The following is an excerpt from the development assessment of 16-2007-1117-1.

*“The development site also contains habitat for the Squirrel Glider. The DECC had previously raised concerns with respect to the impact of the development on the habitat available for the squirrel Glider. It is considered that the higher quality habitat is contained on the development site and the habitat on the adjoining reserve is not of as high a quality.*

*Under Section 79B of the Environmental Planning and Assessment Act, the guidelines for development requiring the concurrence of the DECC is set out.*

*Section 79B states:*

**(3) Consultation and concurrence—threatened species**

*Development consent cannot be granted for:*

- (a) development on land that is, or is a part of, critical habitat, or*
- (b) development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat,*

*without the concurrence of the Director-General of National Parks and Wildlife or, if a Minister is the consent authority, unless the Minister has consulted with the Minister administering the [Threatened Species Conservation Act 1995](#).*

**Note.** *If a biobanking statement has been issued in respect of the development under Part 7A of the [Threatened Species Conservation Act 1995](#), the development is taken not to significantly affect threatened species, populations or ecological communities, or their habitats.*

*It is noted from previous applications that the DECC has had concerns over the continued developments impacts on the viability of the Squirrel Glider population.*

It is considered that this development will provide the vehicle to lock up the remaining vegetated spaces to prevent further development of the site. This will be done through a combination of 88B instruments and Vegetation Management Plan.

Given the additional clearing is limited and the opportunity exists to improve the existing habitat through the Vegetation Management Plan and 88B instruments, it is considered that long term there will be a net benefit to the local population so long as no further development occurs.

In light of this, it is not considered that the concurrence of the Director General is required in this instance".

The site was also found to contain areas of preferred Koala habitat and two Endangered Ecological Communities, *Swamp Mahogany and Paperbark Forest* and *Nerong Smooth Barked Apple Forest*. The development as proposed and its associated Asset Protection Zones' did not impact upon these communities.

The applicant is not disputing the need for a Vegetation Management Plan, but rather the mechanism for preventing further development of the site, and in particular the remaining vegetated western portion of the site.

It is accepted that in most cases, the comments of the applicant that the provisions of the Environmental Planning & Assessment Act (EP&A Act) contain adequate powers for Council to regulate development is correct. However, it is submitted that the subject site has a range of unusual, if not unique, characteristics, particularly in respect of protection of the viability of the Squirrel Glider population, and accordingly there is a need to reinforce the provisions of the EP&A Act so as to make

it abundantly clear to the present owner and to successors in title that no further development of the vegetated area is possible. Council has the power to alter or remove the Section 88B Instrument, if there is a change in circumstance in the future. Accordingly, there is no creditability to the line of thought that the vegetated area will be sterilised from future development.

Further, the submitted information indicates that the site contains two Endangered Ecological Communities (Nerong Smooth Barked Apple Forest and Swamp Sclerophyll Forest), one Threatened Flora Species (*Callistemon linearis*) and preferred and supplementary koala habitat as defined within Port Stephens Council – Comprehensive Koala Plan of Management. In addition, this area is important foraging and breeding habitat for the endangered fauna species the Squirrel Glider – *Petaurus norfolcensis*.

There are compelling reasons for the retention of a condition of consent that will ensure protection of the environmentally significant portion of the site. Condition 11 as previously imposed, was a reasonable response to the abovementioned flora and fauna situation. There has been no departure from the previously detailed situation and accordingly it is considered fair and reasonable that Condition 11 remains in its current form, which was accepted by the applicant at the time consent was granted in return for development of the site under Consent No. 16-2007-1117.

It is significant to note that the Vegetation Management Plan that applied to the original application was not sufficiently robust to withstand a reduction in the area of retained vegetation, and subsequently a reduction in the vegetation area occurred with a modification to the consent on 14 August 2008. Preservation of the now reduced area of vegetation, is considered to be essential to the well being of the:

- *Callistemon linearis*;
- Squirrel Glider;
- Koala Habitat (Preferred and supporting area); and
- Endangered Ecological Communities for:
  - c) Swamp Sclerophyll; and
  - d) Nerong Smooth Barked Apple Forest.

## **FINANCIAL/RESOURCE IMPLICATIONS**

Nil

## **LEGAL AND POLICY IMPLICATIONS**

The application seeks to remove protections that were put in place as mitigation measures to offset the impacts of existing developments on the site. The land was also considered important as an ecological buffer to the Stony Ridge Reserve to the west.

The original DA 16-2004-1681- 1 (clearing approximately half the site) was to be mitigated by the protection of the remainder of the site vegetation through a Vegetation Management Plan determined by the Land and Environment Court in

support of advice from the National Park and Wildlife Service in consideration of the requirements of the Threatened Species Conservation Act 1995..

Subsequently DA 1117/2007 was lodged which sought to develop eight dwellings and relocation of the community building. Additional clearing was proposed for the relocated community building within the land affected by the Vegetation Management Plan imposed by the Court. Development staff recommended approval of the Development Application only subject to the imposition of the 88B instrument as a condition to offset the impacts of the development through conservation of the remainder of the vegetation and to uphold the intentions of the Land and Environment Court in mitigating the impact of the original development. This was accepted and has been acted upon by the applicant.

Throughout Council's assessment of the application Council's Environmental Services Section has consistently sought to respect and acknowledge the courts decision to protect this part of the site, as a mitigation measure of the development. Alternative offset sites should be provided by the developer to offset the impacts if it is intended to remove the remaining vegetation at the site for future development expansion.

This site history, and decision of the Land and Environment would service as a strong basis of defence of the recommendation for refusal if it were supported by council and then challenged by the applicant in the court.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed modification of the development consent by deletion of Condition 11 is considered to have no identifiable social or economic implications. However, significant adverse natural environment implications are relevant to the proposal. The degree of likely environmental impacts have previously been detailed and it is considered that deletion of Condition 11 would have significant adverse environmental impacts upon the flora and fauna population in the locality. It has been concluded that deletion of Condition 11 would not be in the public interest, and should only be considered after further development of the site area to which the 88B Instrument relates has been assessed and determined by Council, thereby demonstrating that there is no, or limited, work for the 88B instrument in protecting vegetation at the site.

### **CONSULTATION**

In accordance with Council policy, the amendment was not required to be exhibited.

### **OPTIONS**

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



**ATTACHMENTS**

- 1) Locality Plan
- 2) Assessment

ATTACHMENT 1  
LOCALITY PLAN



**ATTACHMENT 2  
ASSESSMENT**

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

**THE PROPOSAL**

Deletion of Condition 11 as contained in the Development Consent issued for the subject site on 8 May 2008.

Condition 11 states:

*"The remaining vegetated western portion of the site shall not be the site of further development. The title of these properties shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition. Council shall be nominated as the sole authority permitted to alter/remove the endorsement prior to issue of the Occupation Certificate".*

**THE APPLICATION**

Owner	Port Stephens Veterans and Citizens Aged Care Ltd
Applicant	Port Stephens Veterans and Citizens Aged Care Ltd
Detail Submitted	17 June 2009

**THE LAND**

Property Description	Lot 1, DP 10741566
Address	60 Diemars Road, Salamander Bay
Area	
Dimensions	Irregular with an area of 7.492ha and frontages to Diemars Road and Soldiers Point Road.
Characteristics	Two thirds developed and one third bushland.

**THE ASSESSMENT**

**1. Planning Provisions**

LEP 2000 – Zoning Relevant Clauses	2(a) Residential Nil in respect of proposal.
Development Control Plan 2007	No relevant provisions.

**Discussion**

Condition 11 as contained in the original consent stated:

*“The remaining vegetated western portion of the site shall not be the site of further development. The title of these properties shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition. Council shall be nominated as the sole authority permitted to alter/remove the endorsement prior to issue of the Occupation Certificate”.*

The remaining vegetation on the subject site abuts the Stoney Ridge Reserve which is a significant public reserve to the west of the subject site. From a natural environment point of view, the reserve and the remaining vegetation on the subject site function as one and play a significant role in local flora and fauna.

From a natural environment point of view it is vital that the existing vegetation be protected and remains unaltered. To this end Condition 11 was imposed.

The required creation of a Section 88B instrument as detailed in Condition 11 was not imposed lightly, and it is acknowledged that the condition creates an additional impost upon the applicant. Nevertheless, the circumstances of the site are unique in this locality and Condition 11 is a reasonable way of ensuring, in perpetuity, that the remaining vegetation is not removed.

The EP&A Act has provisions relevant to preserving bushland, but the provisions are mostly reactive and permits Council to take action against person(s) who may remove vegetation. In this case if the remaining vegetation was to be removed it would have significant natural environmental impacts. The Section 88B restriction is imposed upon the title of the land and as such becomes more effective and enforceable and reinforces the importance of this vegetation on the site.

In conclusion, as previously detailed, there are compelling reasons for the retention of a condition of consent that will ensure protection of the environmentally significant portion of the site. Condition 11 as previously imposed, was a reasonable response to the abovementioned flora and fauna situation. There has been no departure from the previously detailed situation and accordingly it is considered fair and reasonable that Condition 11 remains in its current form.

It is significant to note that the Vegetation Management Plan that applied to the original application was not sufficiently robust to withstand a reduction in the area of retained vegetation, and subsequently a reduction in the vegetation area occurred with a modification to the consent on 14 August 2008. Preservation of the now reduced area of vegetation, is considered to be essential to the well being of the:

- Callistemon linearis;
- Squirrel Glider;
- Koala Habitat (Preferred and supporting area); and
- Endangered Ecological Communities for:
  - e) Swamp Sclerophyll; and
  - f) Nerong Smooth Barked Apple Forest.

## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

Retention of Condition 11 is not going to adversely affect development of the site in accordance with the current development consent. It will however protect as far as legally possible the existing substantial amount of vegetation. Accordingly, it is fair and reasonable for Condition 11 to remain in its present form. On this basis it is recommended that the application to delete Condition 11 be refused.

### **2. Submissions**

The proposed modification of consent has not been notified. No submissions were received during assessment of the original application or subsequent modifications to the consent.

ATTACHMENT 3

MINUTES COUNCIL COMMITTEE – 13 OCTOBER 2009

ITEM NO. 2

FILE NO: 16-2007-1117-3

**SECTION 96 APPLICATION TO MODIFY DEVELOPMENT CONSENT FOR URBAN HOUSING AT NO. 60 DIEMARS ROAD, SALAMANDER BAY.**

REPORT OF: ANTHONY RANDALL - ACTING MANAGER, DEVELOPMENT AND BUILDING GROUP;  
 GROUP: SUSTAINABLE PLANNING

**RECOMMENDATION IS THAT COUNCIL:**

Refuse Development Application 16-2007-1117-3 for the reasons below:

1. Condition 11 was imposed to ensure that the remaining vegetated portion of the subject site remains undeveloped in perpetuity – reflecting the environmental values of that portion of the site
2. No adequate or substantive justification has been provided to warrant deletion of Condition 11
3. Condition 11 should remain to sustain the integrity of the original rationale for that condition
4. The portion of the subject site which would be adversely impacted upon by deletion of Condition 11 has well substantiated environmental values including the presence of endangered ecological communities.

**COUNCIL COMMITTEE MEETING – 13 OCTOBER 2009**

	<p><b>Councillor Sally Dover</b>  <b>Councillor Bruce MacKenzie</b></p>	<p>That Development Application 16-2007-1117-3 be approved.</p>
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In accordance with the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil

*The Group Manager Sustainable Planning advised Council of changes to the "Legal & Policy Implications Section" of the report. The changes are shown in bold below:*

**LEGAL AND POLICY IMPLICATIONS**

**MINUTES COUNCIL COMMITTEE – 13 OCTOBER 2009**

The application seeks to remove protections that were put in place as mitigation measures to offset the impacts of existing developments on the site. The land was also considered important as an ecological buffer to the Stony Ridge Reserve to the west.

The original DA 16-2004-1681- 1 (clearing approximately half the site) was to be mitigated by the protection of the remainder of the site vegetation through a Vegetation Management Plan determined by the Land and Environment Court in support of advice from the National Park and Wildlife Service in consideration of the requirements of the Threatened Species Conservation Act 1995.

Subsequently DA 1117/2007 was lodged which sought to develop eight dwellings and relocation of the community building. Additional clearing was proposed for the relocated community building within the land affected by the Vegetation Management Plan imposed by the Court. Development staff recommended approval of the Development Application only subject to the imposition of the 888 instrument as a condition to offset the impacts of the development through conservation of the remainder of the vegetation and to uphold the intentions of the Land and Environment Court in mitigating the impact of the original development. This was accepted and has been acted upon by the applicant.

Throughout Council's assessment of the application Council's Environmental Services Section has consistently sought to respect and acknowledge the courts decision to protect this part of the site, as a mitigation measure of the development. Alternative offset sites should be provided by the developer to offset the impacts if it is intended to remove the remaining vegetation at the site for future development expansion.

This site history, and decision of the Land and Environment would service as a strong basis of defence of the recommendation for refusal if it were supported by council and then challenged by the applicant in the court.

**BACKGROUND**

**The purpose of this report is to present a Section 96 development application to Council for determination.**

Development Application 16-2007-1117-1 related to the development of eight (8) dwellings and a community development to form a part of the existing Salamander Haven Retirement Village. This application involved the relocation of drainage basins to facilitate the siting of the eight units and to accommodate the community facility. This application was approved on 08/05/2008.

A subsequent application 16-2007-1117-2 was lodged in order to modify the proposed size of the underground detention structure. Consent for the modification was granted on 14/08/2008.

Cr Peter Kafer left the meeting at 6.23pm prior to voting on Item 15 and returned at 6.25pm prior to voting on Item 15.

**ITEM NO. 15**

**FILE NO: PSC2005-2561 & 2570**

## **IMPROVEMENTS TO TILLIGERRY FIRE STATION FACILITIES**

**REPORT OF: PETER MURRAY – FACILITIES AND SERVICES, OPERATIONS MANAGER**

**GROUP: FACILITIES AND SERVICES**

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### **RECOMMENDATION IS THAT COUNCIL:**

- 1) Locate the new Tanilba Bay Fire Station at RAF Park, Tanilba Bay.
- 2) Seek funding for this project through a building grant from the NSW Rural Fire Fighting Fund with the required Council co-contribution funded from Section 94 Developer Contributions.
- 3) On commissioning of the new facility, authorise the General Manager to negotiate with "Land & Property Management Authority" to permit other uses for the existing Tanilba Bay Fire Station facility to occur, such as a Men's Shed, consulting rooms or other uses of community benefit.

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### **COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**

#### **RECOMMENDATION:**

	<b>Councillor Steve Tucker Councillor Bruce MacKenzie</b>	That the recommendation be adopted.
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### **ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>407</b>	<b>Councillor Steve Tucker Councillor Glenys Francis</b>	It was resolved that the recommendation be adopted.
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## **BACKGROUND**

The purpose of this report is to consider information gained from the public consultation process and confirm the location of the improved fire station facility for Tanilba Bay.

At Council's 13 July 2010 Ordinary Meeting, Council resolved to adopt the following recommendations to:



- "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 proposal to establish a new four bay Tilligerry Brigade facility, including landscaping improvements at RAF Park, Tanilba Bay.
- 4) Consider the issues identified from the public consultation in a subsequent report back to Council prior to determining the location of the improved Tanilba Bay Brigade facility."

Resolutions 3 and 4 are the result of only effectively two viable options being available to improve fire station facilities at Tanilba Bay, viz:

Option 1 – Construct a new four (4) bay facility on RAF Park, Tanilba Bay, adjacent to the existing Ambulance Station. Estimated total cost \$850,000.

**ATTACHMENT 1 & 2.**

Option 2 – Construct a new three (3) bay vehicle shed adjoining the existing Tanilba Bay Fire Station and renovate the existing building to provide suitable office and training space for the Brigade. Estimated cost \$420,000. While this option is substantially cheaper than Option 1, on the criteria of providing the best facility for fire fighting purposes alone, this option is not as ranked highly as Option 1. This is primarily due to the implementation of this Option would result in a smaller facility, separation of the office/training space from the garage area and less direct road access involved at this site. **ATTACHMENT 3 & 4.**

The public consultation process involved advising interested parties of the proposal to construct a new fire station on RAF Park and requesting written comments be submitted by 1 October 2010. This advice was completed by the following means:

- Letter box delivery of information "packs" to all residents located within 500m of RAF Park in July 2010.
- Advertisement on the Council website for the period.
- Follow up letter box delivery of a "reminder" letter on 14 September 2010 containing further information regarding floor plans and cost estimates to all residents located within 500m of RAF Park in July 2010.
- Advertisements in the Examiner newspaper on the 16 September 2010.

On compiling the 25 written submissions received, it is evident that the loss of open space and residential amenity are the key concerns for local residents in the vicinity of RAF Park. (**ATTACHMENT 5**) The loss of residential amenity related primarily to concerns with increased traffic volumes on adjoining streets and increased noise

and light nuisance that would result from the fire station being transferred to that location.

The other issues raised in the consultation period were requests for further information or clarifications of a generally operational or minor nature.

No matters of such significance were raised that would render the proposal to construct a fire station on RAF Park unviable.

Consequently the selection of the preferred option is largely a matter of determining if the improved facility access, size and visibility offered by the RAF Park option justify the loss of residential amenity both real and perceived and open space for nearby residents and the additional project co-contribution cost of approximately \$50,000 to Council. Since the project selection criteria (**ATTACHMENT 6**) detailed in the earlier Council report adopted at 13 July 2010 Ordinary Meeting, emphasised the preference for the best long term solution for the operations of the Tanilba Bay Brigade of the NSW Rural Fire Service, the report recommendation has been made on this basis.

### **FINANCIAL/RESOURCE IMPLICATIONS**

For this project to be viable, Council would need to be successful in gaining a building grant under the NSW Rural Fire Fighting Fund and to fund the required 11.7% Council co-contribution from Section 94 Developer Contributions. The co-contribution could be fully funded under the provisions of the Emergency Services Section 94 Developer Contribution Plan and would be \$99,450 for the RAF Park proposal or \$49,140 for the lower cost extension of the existing facility option.

<b>Project Funding Summary</b>			
<b>Option</b>	<b>Council Contribution</b>	<b>NSW Rural Fire Fighting Fund Contribution</b>	<b>Total Funds</b>
<i>Option 1: Construct New Station on RAF Park</i>	\$99,450	\$750,550	\$850,000
<i>Option 2: Extend Existing Tanilba Bay Station</i>	\$49,140	\$370,860	\$420,000

### **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.

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.

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Whilst the Tilligerry Peninsula has significantly greater than the minimum open space available, the further loss of approximately 20% of the current recreational open space area of RAF Park and some loss of residential amenity to those adjoining residents is inherent in the preferred option.

## **CONSULTATION**

Tanilba Bay Parks, Reserves & Halls Committee  
Residents in the vicinity of RAF Park.

## **OPTIONS**

The only feasible options available are:

- 1) Build a new facility on RAF Park, Tanilba Bay.
- 2) Extend the existing Tanilba Bay station.

The option to "do nothing" is not practical as the size limitation of the current building has prevented the deployment of modern and larger tankers to this Brigade. This has resulted in the Tanilba Bay having the oldest tankers in the Port Stephens fleet and will eventually result in these tankers having to be replaced by modern lower "Category" tankers of smaller water carrying capacity than is desirable unless enlarged facilities are provided.

## **ATTACHMENTS**

- 1) New Facility for RAF Park - Site Plan.
- 2) New Facility for RAF Park – Floor Plan.
- 3) Extensions to Existing Facility at Pershing Place – Site Plan.
- 4) Extensions to Existing Facility at Pershing Place – Floor Plan.
- 5) Summary of Public Submissions Received.
- 6) Facility Improvement Criteria

## **COUNCILLORS ROOM**

Nil.

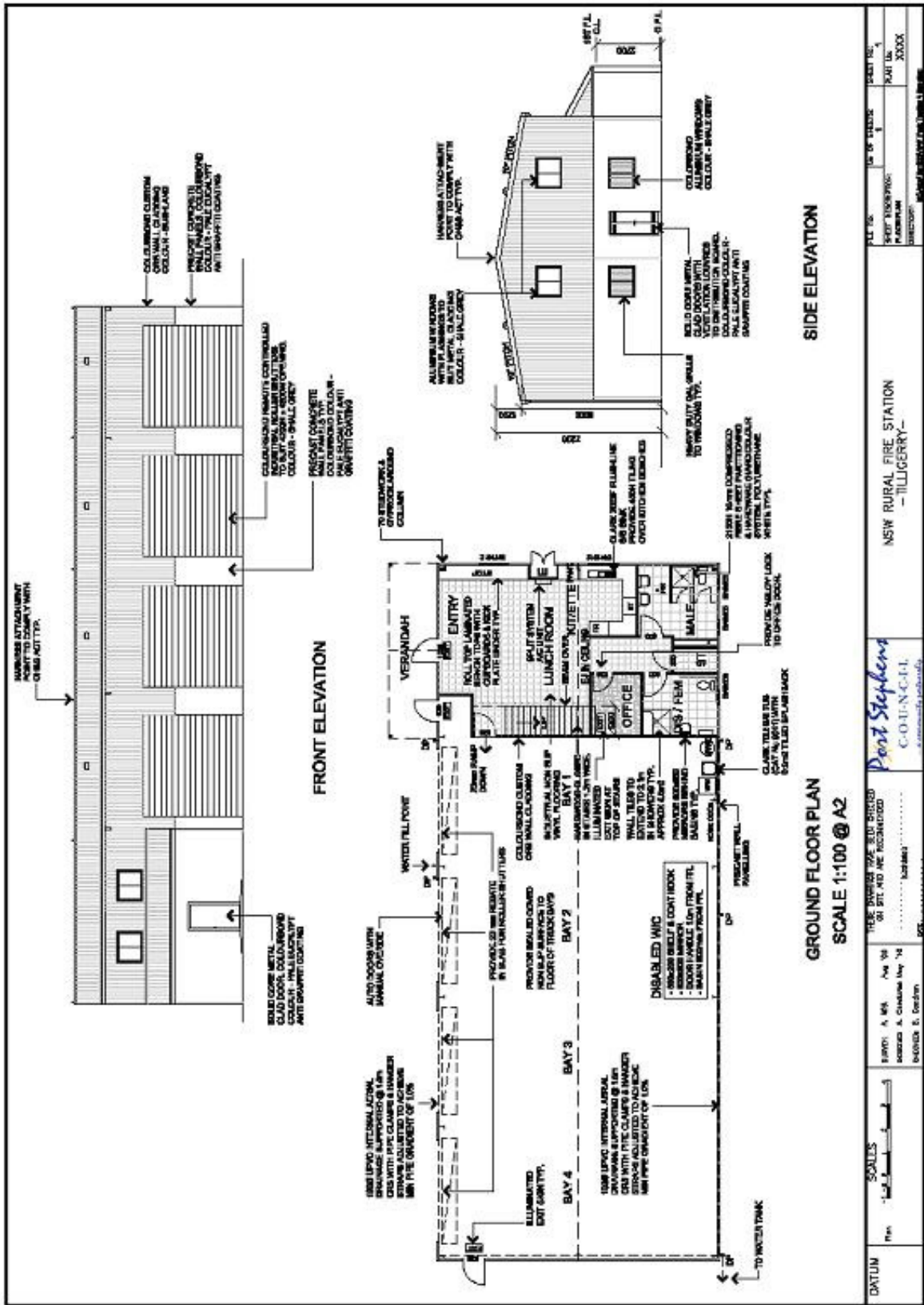
## **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1



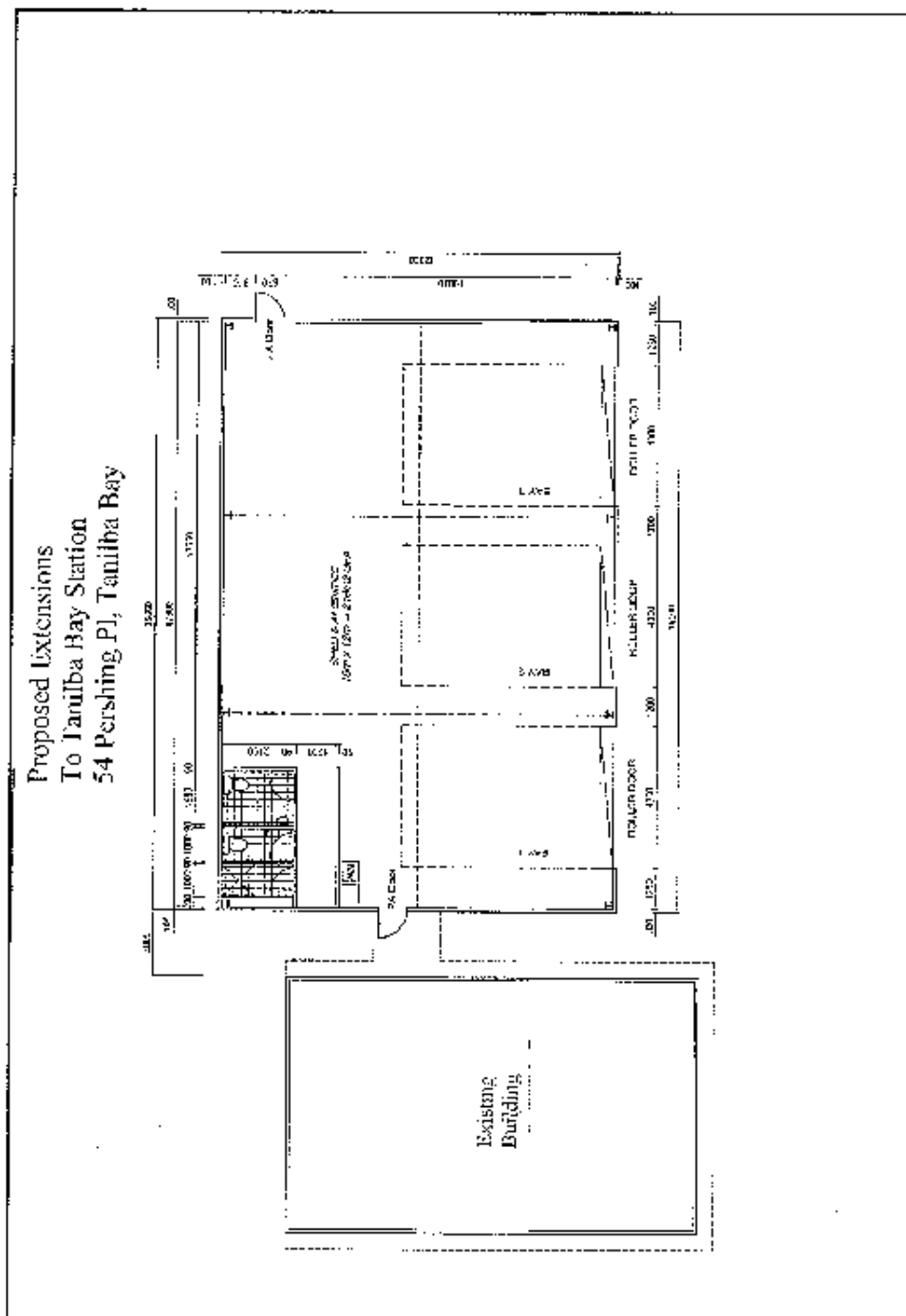
ATTACHMENT 2



ATTACHMENT 3



ATTACHMENT 4



**ATTACHMENT 5**

Summary of Public Submissions Received – Proposed New Four Bay Fire Station on RAF Park, Tanilba Bay.

<b>Issue</b>	<b>Comment</b>
1) Objection of the additional cost of new relocated station to RAF Park as compared to extending the existing building and making use of the readily available adjoining vacant land.	The size of the existing site limits the extension to 3 vehicle bays. Relocation of the Brigade to RAF Park permits the construction of a new facility that has four vehicle bays station that will provide capacity for growth and future consolidation of faculties on Tilligerry Peninsula.
2) Impact on Koala "corridor".	RAF Park does not form a recognised Koala corridor.
3) Concern road access to RAF Park location is not better than current location in Pershing Place.	Two alternate direct accesses to Lemon Tree Passage Road is available via Success Street and/or President Wilson Walk from the proposed location on RAF Park. Access to RAF Park is superior to current site access arrangements to Pershing Place that features speed humps, higher pedestrian and traffic movements.
4) Improvements being delayed & impacting on the deployment of a new fire tanker to Tilligerry Peninsula.	The current fire station prevents the deployment of modern and larger fire tankers to Tanilba Bay resulting in the current tankers being the oldest in the Port Stephens LGA.
5) Objecting due to loss of residential amenity.	Residential amenity would be reduced due to increased traffic, noise and light emissions from the fire station if it were to be constructed on RAF Park.
6) Objection due to loss of open space/safe place for children	The construction of new fire station on RAF Park would reduce the useable open space by 20%.
7) Encourage the relocation of Tanilba Bay Fire Station to RAF Park due to central proximity.	Future development of Tilligerry Peninsula is likely in the Tanilba Bay locality. The RAF Park location is centrally located.
8) Objection to two separate facilities continuing i.e. separate stations for LTP Brigade and Tanilba Bay Brigade	While the consolidation of the Lemon Tree Passage and Tanilba Bay Brigades is likely in the medium term, the cost to Council of maintaining two fire stations has been low due to the low value of the buildings, limitations on alternative permissible land uses and significant contribution Brigade volunteers make to the maintenance of these facilities themselves.
9) The proposed fire station layout for RAF Park will result in fire trucks reversing onto street.	The proposed station, like other recently constructed stations like Anna Bay and Salt Ash would have sufficient driveway hard stand area to prevent the need to have fire tankers reverse onto roadway.
10) Objection that the construction of fire station on RAF Park this would "open the door" for further developments on the park.	Council has no proposal other proposals to further develop RAF Park.
11) Objection due to perceived loss of private property value.	The proposed fire station facility is only occupied part time thereby limiting traffic, noise and light impacts on adjoining residents.



**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

12) Preference to extend existing Tanilba Bay Station at current site.	Extending the current Tanilba Bay station would provide a 3 bay facility that is suitable for modern larger tankers and much improved office and training space. While this is a viable and cheaper option, the relocation would permit the provision of a larger facility with better road access arrangements and response time.
13) Objection to the reasoning behind the proposed relocation of fire facilities to RAF Park	The relocation of the Tanilba Brigade to RAF Park is the preferred option based on the facility improvement assessment criteria that agreed at the commencement of option investigation and was employed to assess each of the available options. These assessments were detailed in the report to Ordinary Council meeting on 13 July 2010.
14) Concerned proposed relocation is being driven by endeavour to improve "Councils image".	Council is obliged to provide facilities suitable to permit effective fire suppression by the NSW Rural Fire Service.
15) Concerned existing Tanilba Bay station being left vacated	Council has The current site is controlled by the Land & Property Management Authority
16) Support for new facility but unable to suggest suitable location.	Whilst 25 potential areas were investigated on the Tilligerry Peninsula, only two options for improving the facilities for Tanilba Bay Brigade were found to be viable.
17) Concerned that the current "value" of RAF Park is being overstated.	The relocation of the Tanilba Brigade to RAF Park is the preferred option based on the facility improvement assessment criteria that agreed at the commencement of option investigation and was employed to assess each of the available options. These assessments were detailed in the report to Ordinary Council meeting on 13 July 2010.
18) The provision of "community space" should be a required trade off in "allowing" fire station on RAF Park.	Some comments asserted the need for improved community facilities on Tilligerry Peninsula and suggested that the existing Tanilba Bay fire station be converted to a community centre or some other use of community benefit.
19) Light pollution - Front yard unsuitable for hobby of astronomy.	When unoccupied, the proposed facility would is unlikely to pose a greater light nuisance than the existing street lighting.
20) Only 4 car parks are shown on site plan.	Parking as the result of this development is not foreseen to be an issue at RAF Park
21) At current fire station location, members can use the kindergarten parking bays.	Brigade volunteers cannot use the kindergarten parking bays during normal business days or when the Scout/Girl Guides facility is operational. The close proximity of large numbers of children to the current facility is undesirable.
22) The raising of 4 roller doors, lights and running truck engines after 1100pm is not acceptable.	The potential issue of noise and light nuisance is also a potential issue at the current location as development of Koala Bay continues unless appropriate practices are implemented. Brigade volunteers are aware of the potential impact their activities may have on residents and have generally adopted practices to minimise impacts and maintain good relationships neighbouring residents.
23) There are 6 school aged children who live within 75m of RAF Park, this is not acceptable.	The close proximity of larger numbers of children at the current facility is also undesirable.
24) The Ambulance station leave a vehicle out, why can't the fire brigade?	The Ambulance station is manned 24 hours per day while Rural Fire Service stations are only generally occupied a few hours per week as Brigade volunteers are "paged" when required.
25) The extra traffic generated by the fire station has been understated and will block the single lane roads.	The increased traffic is expected to be that equivalent to that generated by between 3 to 7 additional houses in that area or approximately 26 additional vehicle movements per week based on the Brigade continuing to respond to 1.6 jobs per week.

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

26) Single lane road of Success Street would be blocked by parked vehicles attending the Fire Station.	While it is acknowledged that Success Street and President Wilson Walk have narrow sealed pavements, the road reserve is sufficiently wide enough to allow vehicles to park on the road shoulders.
27) Alleged 70% of calls are after 11:00pm	NSW Rural Fire Service provided statistics for the last year show 28% of Brigade responses occur between 11:00pm and 08:00am.
28) Asserted other Councils have advised that NSW Rural Fire Stations should be placed in Commercial area and kept away from Residential areas	Fire stations are best located close to residential areas for the purposes of facilitating volunteer membership and to minimise response delays to potentially life threatening structure fires. 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.

ATTACHMENT 6

**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.

Visible – Assists with the recruitment of new members and the control of vandalism.

**ITEM NO. 16**

**FILE NO: PSC2010-00010**

**STATEMENT OF BUSINESS ETHICS**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the Statement of Business Ethics shown at **ATTACHMENT 1**.

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**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**  
**RECOMMENDATION:**

	<b>Councillor Bob Westbury</b> <b>Councillor Shirley O'Brien</b>	That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>408</b>	<b>Councillor Ken Jordan</b> <b>Councillor Steve Tucker</b>	It was resolved that the recommendation be adopted.
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**BACKGROUND**

The purpose of this report is to provide Council with a draft Statement of Business Ethics.

The Statement of Business Ethics (Statement) has been developed as a requirement of the Division of Local Government. Council will use the Statement as part of the contract documentation when engaging contractors and any other commercial business transaction where Council is a party.

The Statement provides guidance to all areas of the community including businesses of the ethical standards that are expected when they are proposing to do business with Council.

The Model Code of Conduct also requires that a Statement of Business Ethics be developed.

### **FINANCIAL/RESOURCE IMPLICATIONS**

All costs associated with development of the Statement of Business Ethics are covered in the 2010-11 budget.

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

Council is required by the Division of Local Government to develop a Statement of Business Ethics.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Through compliance with the Code of Conduct and this Statement of Business Ethics the community can be assured of the integrity in the local government system and in Port Stephens Council.

### **CONSULTATION**

Executive Team  
Section Managers  
Legal Services Manager  
Corporate Strategy & Planning Coordinator

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Draft Statement of Business Ethics

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1



POLICY

Adopted:  
Minute No:  
Amended:  
Minute No:

**FILE NO: PSC2010-00010**

**TITLE: STATEMENT OF BUSINESS ETHICS**

**REPORT OF: EXECUTIVE OFFICER**

**BACKGROUND**

Port Stephens Council is required to comply with the Model Code of Conduct developed by the NSW Division of Local Government. Council needs to meet its obligations under the Model Code of Conduct, by developing this Statement of Business Ethics.

**OBJECTIVE**

The objective of this Statement of Business Ethics is to provide guidance to all sections of the community, including commercial businesses, when conducting business with or on behalf of Council.

**PRINCIPLES**

- 1) To encourage openness, transparency and accountability in all dealings relating to procurement, contracting, supply of goods and services and general business relationships.
- 2) To build and maintain ethical relationships with the community and in particular the private sector.
- 3) To ensure all parties organisation understand Council's public duty obligations.
- 4) To maintain corruption resistant, ethical work practices.
- 5) To manage any potential conflicts of interest, risk and perceptions that can occur in business transactions between public and private sectors.

## **POLICY STATEMENT**

Port Stephens Council is committed to high ethical standards and this Statement of Business Ethics sets out the standards the Council requires of its contractors and business associates. It is essential that all Council officials (councillors and employees), contractors and their employees and other business associates work together to maintain our reputation.

These standards are based upon the standards within Council's Code of Conduct, which applies to all Council officials.

In dealing with Council there is a strong expectation that you are responsible for maintaining our high ethical standards in all contract work. Port Stephens Council expects all parties to perform their duties with integrity, honesty and fairness.

Reference should be made to Council's Code of Conduct for definitions for matters such as "token gifts".

## **CONTRACTORS AND BUSINESS ASSOCIATES RESPONSIBILITIES**

All contractors, their employees and business associates are responsible for ensuring that they act ethically when dealing with Port Stephens Council and its officials. All parties working with Port Stephens Council are expected to know and understand the principles and standards in this Statement of Business Ethics.

When working for Council you shall at all times be courteous towards the public and Council officials and not bring the Council into disrepute. You must obey all relevant laws and meet all contractual obligations.

The Council is committed to providing a work environment free of harassment or discrimination.

Port Stephens Council has community and environmental responsibilities and you are expected to honour them when doing business with or on behalf of Council.

Safety is paramount and therefore all persons doing work with or for Council should protect their safety and that of others in the work environment and the public arena. Council is responsible for providing a safe work environment and for putting first, the health, safety and welfare of Council officials, contractors, their staff and business associates.

## **CONFLICTS OF INTEREST**

If a conflict of interest in your work with Council exists or arises, you must disclose it to Council. A conflict of interest arises if your own interests (that may be business, contractual or social interests), or those of other people close to you, conflict with your obligations to the Council.

A conflict would exist where you have a personal interest, or your relative, company/organisation, employer or other person known to you has an interest, that could lead you to be influenced in the way you carry out your duties for the Council.

### **GIFTS OR BENEFITS**

Gifts or benefits must not be offered to any Council official, which are or could be construed to be designed to gain any advantage for yourself or your organisation, or which the public could reasonably see as likely to cause that Council official to depart from his or her proper course of duty.

You should not accept any gift in relation to your work at Council, which could influence, or be seen to influence, your impartiality in relation to the work or services you are providing to council.

In no circumstances should cash offered to a council official.

Note: If a gift or benefit is offered to a council official to influence the way they do their work, they must report it immediately under the Council's policies and procedures.

### **CONFIDENTIAL AND PERSONAL INFORMATION**

You must take care to maintain the security of any confidential or personal information you become aware of in your work with the council.

You must abide by the privacy legislation governing the collection, holding, use, correction, disclosure or transfer of personal information obtained through your dealings with the council.

Personal information is any information about a person where you know who the person is or you can guess who the person is.

No one should access, use or remove from council premises any Council information or personal information, unless they need it for their work with the Council and have authorisation to use or disclose the information.

Any breach of the security, or misuse, of the council's confidential or personal information must be reported to the council's Privacy Contact Officer on 49800255.

Council officials also are required to only release information in accordance with the Government Information (Public Access) Act 2009. For further information please contact Council's Right to Information Officer on 49800255.



## **COUNCIL RESOURCES**

Council resources may only be used to do work for the Council with Council's approval.

Council resources include material, equipment, vehicles, documents, records, data and information.

## **PUBLIC COMMENT**

You must not make any public comment or statement that would lead anyone to believe that you are representing council, or expressing its views or policies.

This includes comments or statements made at public and community meetings, via the media, or when it is reasonably foreseeable that the comments, or statements, will become known to the public at large.

## **ALCOHOL AND DRUGS**

No one should come to work for the Council, or return to work, under the influence of alcohol or other drugs that could impair their ability to carry out their job or cause danger to their safety or the safety of others.

## **OFFERS ON SECONDARY EMPLOYMENT TO COUNCIL STAFF**

If you offer a Port Stephens Council staff member a second job, whilst they are still employed with the council, the Council staff member will need to seek approval from the Council's General Manager.

Approval will not be given if the second job could conflict with their official duties with the Council.

## **REPORTING CORRUPTION MALADMINISTRATION AND WASTAGE**

When contracted to Port Stephens Council you are considered to be a public official for the purposes of the Independent Commission Against Corruption (ICAC) Act and subject to the ICAC's jurisdiction.

When doing work for the Council you have a responsibility to report any suspected instances of corruption, maladministration or serious and substantial waste to the Council to Council's Disclosures Officer or the General Manager on 49800255.

Alternatively you can report any suspected instances of corruption to the ICAC or maladministration to the Ombudsman.

## **BREACHES OF THE CODE**

Failure to comply with this Statement of Business Ethics may cause contract penalty clauses to be invoked and/or civil or criminal proceedings to be brought or other action considered to be appropriate by Port Stephens Council.

## **PORT STEPHENS COUNCIL'S COMMITMENT**

Port Stephens Council is committed to the standards in this Statement of Business Ethics. They reflect the high standards expected by our community and as such you are expected to maintain these standards and principles when undertaking work for, or on behalf of our Council.

If you have any questions, or are unsure about any matter relating to this Statement of Business Ethics, you can contact the Council's Public Officer on 49800255.

## **RELATED POLICIES**

Port Stephens Council Code of Conduct.

## **SUSTAINABILITY IMPLICATIONS**

### **SOCIAL IMPLICATIONS**

Compliance with the Code of Conduct and this Statement of Business Ethics assures the community of the integrity in the local government system and of Port Stephens Council.

### **ECONOMIC IMPLICATIONS**

Meeting the provisions of the Code of Conduct and this Statement of Business Ethics, will provide Council with a firm basis to deliver value for money to its community.

### **ENVIRONMENTAL IMPLICATIONS**

The Statement of Business Ethics provides a platform for ensuring that Council only deals with ethical businesses, including those that consider the environmental effects of their operations, so providing a higher standard of protection of our environment.

## **RELEVANT LEGISLATIVE PROVISIONS**

*Local Government Act 1993*

## **IMPLEMENTATION RESPONSIBILITY**

Executive Officer

**ITEM NO. 17**

**FILE NO: PSC2010-00009**

**INTERNAL REPORTING POLICY – PROTECTED DISCLOSURES ACT 1994**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Draft Internal Reporting Policy shown at **ATTACHMENT 2** be placed on public exhibition for 28 days.
- 2) At the completion of the exhibition period if no submissions have been received Council's Rates Donations for Community Groups is adopted.
- 3) Revoke the Internal Reporting Policy – Protected Disclosures Act 1994 dated 23 December 1997, Minute No. 1466.

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**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**  
**RECOMMENDATION:**

	<b>Councillor Bruce MacKenzie</b> <b>Councillor Steve Tucker</b>	That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>409</b>	<b>Councillor Glenys Francis</b> <b>Councillor Caroline De Lyall</b>	It was resolved that the recommendation be adopted.
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**BACKGROUND**

The purpose of this report is to provide Council with the reviewed Internal Reporting Policy.

Council is required to develop and implement an Internal Reporting Policy under the Protected Disclosures Act 1994 (the Act). Recently the Protected Disclosures Amendment (Public Interest Disclosures) Act 2010 was released. Subsequently the Policy has been reviewed.

Given there were a number of changes the reviewed Policy has been provided to Council separately. Most of the changes were for administrative purposes such as

the addition of a "Nominated Disclosure Officer" removal of the terms frivolously or vexatiously.

It is planned that in house training will be provided on the Internal Reporting Policy and relevant information from the Division of Local Government will be distributed to increase the awareness and education on this subject to gain a higher level of accountability.

The current policy is shown at ATTACHMENT 1.

### **FINANCIAL/RESOURCE IMPLICATIONS**

All costs associated with the development and implementation of the policy are covered in the 2010-11 budget.

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

Council is required by various pieces of legislation to develop such a policy.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The policy provides a mechanism for reporting of corrupt conduct, maladministration and serious or substantial waste of Council resources or money. Through the reporting of such matters should they occur Council would be provided with a potential economic benefit in the reduction of waste.

### **CONSULTATION**

General Manager

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Current Internal Reporting Policy
- 2) Draft Internal Reporting Policy

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1

PROTECTED DISCLOSURES INTERNAL REPORTING SYSTEM

PORT STEPHENS COUNCIL

POLICY



Adopted: 23/12/97

Minute No. 1486

Amended: #

Minute No. #

(Amendments Shown in Bold)

FILE NO: M3460-07

TITLE: **INTERNAL REPORTING POLICY - PROTECTED DISCLOSURES ACT  
1994**

**1. SUPPORT FOR PERSONS WHO MAKE DISCLOSURES**

The Port Stephens Council does not tolerate corrupt conduct, maladministration or serious and substantial waste of public money.

The Port Stephens Council is committed to the aims and objectives of the Protected Disclosures Act. It recognises the value and importance of contributions of staff to enhance administrative management practices and strongly supports disclosures being made by staff or councillors which disclose corrupt conduct, maladministration, or serious and substantial waste of public money.

The Port Stephens Council will take all reasonable steps to provide protection to staff who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

**2. PURPOSE OF THE POLICY**

To be protected by the Act, a disclosure must be made by a member of staff or councillor to:

- an investigating authority;
- the General Manager; or
- to the Public Officer of Port Stephens Council in accordance with the Internal Reporting System established under this policy for the purposes of the Protected Disclosures Act.

This policy establishes an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money by Port Stephens Council its staff, and councillors. The system enables such internal disclosures to be made to the Disclosure Co-ordinator, [the Public Officer], a Nominated Disclosure Officer [Corporate Development Officer] or the Mayor, as an alternative to the General Manager.

This policy is designed to complement normal communication channels between supervisors and staff. Staff are encouraged to raise appropriate matters at any time with their supervisors, but as an alternative have the option of making a protected disclosure in accordance with this policy.

**3. OBJECT OF THE ACT**

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The Protected Disclosures Act 1994 commenced operation on 1 March 1995. The purpose of the Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that the matters raised in the disclosures are properly investigated.

The Act aims to encourage and facilitate the disclosure - in the public interest - of corrupt conduct, maladministration and serious and substantial waste in the public sector. This is achieved by:

- enhancing and augmenting established procedures for making disclosures concerning such matters;
- protecting persons from reprisals that might otherwise be inflicted on them because of these disclosures; and
- providing for those disclosures to be properly investigated and dealt with.

#### **4. DEFINITIONS**

Three key concepts in the internal reporting system are corrupt conduct, maladministration and serious and substantial waste of public money. Definitions of these concepts are outlined below.

##### **4.1 CORRUPT CONDUCT**

Corrupt conduct is defined in the Independent Commission Against Corruption Act 1988 (sections 8 and 9). The definition used in the Act is intentionally quite broad - corrupt conduct is defined to include the dishonest or partial exercise of official functions by a public official. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition.

Corrupt conduct can take many forms, ie. Taking or offering bribes, public officials dishonestly using influence, blackmail, fraud, election bribery and illegal gambling are some examples.

##### **4.2 MALADMINISTRATION**

Maladministration is defined in the Protected Disclosures Act as conduct that involves action or inaction of a serious nature that is:

- contrary to the law; or
- unreasonable, unjust, oppressive or improperly discriminatory; or
- based wholly or partly on improper motives (section 11).

#### 4.3 SERIOUS AND SUBSTANTIAL WASTE

The term serious and substantial waste is not defined in the Protected Disclosures Act. The Auditor-General provides the following working definition.

- Serious and substantial waste refers to the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources.
- In addressing any complaint of serious and substantial waste regard will be had, to the nature and materiality of the waste.
- The following delineation of the definition of serious and substantial waste may be of assistance to public officials and/or public authorities.

##### TYPES:

- Absolute:** serious and substantial waste might be regarded in absolute terms where the waste is regarded as significant, for example \$500,00.
- Systemic:** the waste indicates a pattern which results from a system weakness within the public authority.
- Material:** the serious and substantial waste is/was material in terms of the public authority's expenditure or a particular item of expenditure or is/was material to such to such an extent so as to effect a public authority's capacity to perform its primary functions.
- Material by nature not amount:** the serious and substantial waste may not be material in financial terms but may be significant by nature. That is it may be improper or inappropriate [alternatively, this type of waste may constitute "maladministration" as defined in the Protected Disclosures Act.

Waste can take many forms, for example:

- misappropriation or misuse of public property;
- the purchase of unnecessary or inadequate goods and services;
- too many personnel being employed in a particular area, incurring costs which might otherwise have been avoided;
- personnel being remunerated for skills that they do not have, but are required to have under the terms and conditions of their employment;
- programs not achieving their objectives and therefore the costs being clearly ineffective and inefficient.

Waste can result from such things as:

- the absence of appropriate safeguards to prevent the theft or misuse of public property;
- purchasing procedures and practices which fail to ensure that goods and services are necessary and adequate for their intended purpose; and
- purchasing practices where the lowest prices is not obtained for comparable goods or services without adequate and appropriate justification.

## 5. WHAT DISCLOSURES ARE PROTECTED UNDER THE ACT

### 5.1 WHAT DISCLOSURES ARE PROTECTED?

Disclosures are protected under the Act if they:

- a) are made
  - ⇒ in accordance with this Internal Reporting Policy; or
  - ⇒ to the General Manager; or
  - ⇒ to one of the investigating authorities nominated in the Act; AND
- b) show or tend to show corrupt conduct, maladministration, or serious and substantial waste of public money by the Port Stephens Council or any of its staff or councillors; AND
- c) are made voluntarily.

### 5.2 WHAT DISCLOSURES ARE NOT PROTECTED?

A disclosure is not protected under the Act if it is made by a public official in the exercise of a duty imposed by or under an Act.

Protection is also not available for disclosures which:

- are made frivolously or vexatiously;
- primarily question the merits of government policy; or
- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

It is an offence to wilfully make a false or misleading statement when making a disclosure.

## 6. REPORTING UNDER THE INTERNAL REPORTING SYSTEM

The persons or positions to whom internal disclosures can be made in accordance with the Internal Reporting System (as shown on the attached diagram) are:

- the Disclosure Co-Ordinator [Wes Phillips, Public Officer, Special Projects, Ph: 49800258 (internal ext 258)]
- the Nominated Disclosure Officer [Michelle Clarke, Corporate Development Officer, Special Projects, Ph: 49800377 (internal ext 377)]
- the General Manager [Ted Campbell, Ph: 49800108 (internal ext 108)]
- the Mayor [Ph: 49800107 (internal ext 107)]

Where persons contemplating making a disclosure are concerned about publicly approaching the Disclosure Co-ordinator, the Nominated Disclosure Officer or Mayor (or the General Manager), they can ring the relevant official and request a meeting in a discreet location away from the workplace.

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Notes:

- a) A council officer who wishes to make a protected disclosure which involves a councillor may do so to the Mayor, the General Manager, or an investigating authority (eg. The ICAC or the Ombudsman)
- b) A councillor who wishes to make a protected disclosure which involves another councillor may do so to the Mayor, the General Manager or an investigating authority (eg. The ICAC or the Ombudsman)
- c) If the Mayor wishes to make a protected disclosure he or she may do so to the General Manager or an investigating authority (eg. The ICAC or Ombudsman)
- d) The Department of Local Government is not an investigating authority under the Act, however, the ICAC, the Ombudsman or a council may refer to protected disclosure to the Department for investigation, and in such a circumstance any protection conferred under the Act is maintained.

## 7. ROLES AND RESPONSIBILITIES

This Internal Reporting Policy places responsibilities upon people at all levels within the Port Stephens Council.

### 7.1 EMPLOYEES

Employees are encouraged to report known or suspected incidences of corrupt conduct, maladministration or serious and substantial waste in accordance with this Policy.

All employees of the Port Stephens Council have an important role to play in supporting those who have made legitimate disclosures. They must abstain from any activity that is or could be perceived to be victimisation or harassment of persons who make protected disclosures. Further, they should protect/maintain the confidentiality of persons they know or suspect to have made disclosures.

### 7.2 NOMINATED DISCLOSURE OFFICERS

The Nominated Disclosure Officers are responsible for receiving, forwarding and/or acting upon disclosures in accordance with the Policy. Nominated Disclosure Officers will:

- a) clearly explain to persons making disclosures what will happen in relation to the information received;
- b) when requested, make arrangements to ensure that disclosures can be made privately and discreetly (if necessary away from the workplace);
- c) reduce to writing and date any disclosure received orally (and have the person making the disclosure sign the document);
- d) deal with disclosures impartially;
- e) forward disclosures to the Disclosure Co-Ordinator for assessment;
- f) take all necessary and reasonable steps to ensure that the identity of persons who make disclosures, and the persons the subject of disclosures, are kept confidential; and
- g) support persons who make protected disclosures and protect them from victimisation, harassment or any other form of reprisal.

### 7.3 DISCLOSURE CO-ORDINATOR

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The Disclosure Co-Ordinator has a pivotal position in the internal reporting system and acts as a clearing house for disclosures. The Disclosure Co-ordinator will:

- a) provide an alternative internal reporting channel to Nominated Disclosure Officers and to the General Manager;
- b) impartially assess each disclosure to determine:-
  - i) whether the disclosure appears to be a protected disclosure within the meaning of the Act; and
  - ii) the appropriate action to be taken in relation to the disclosure, for example:-
    - ⇒ no action/decline;
    - ⇒ the appropriate person to take responsibility for dealing with the disclosure;
    - ⇒ preliminary or informal investigations;
    - ⇒ formal investigation;
    - ⇒ prosecution or disciplinary action;
    - ⇒ referral to an investigating authority for investigation or other appropriate action; or
    - ⇒ referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct)
- c) consult with the General Manager;
- d) be responsible for carrying out or co-ordinating any internal investigation arising out of a disclosure, subject to the direction of the General Manager in carrying out his/her functions;
- e) report to the General Manager on the findings of any investigation and recommended remedial action;
- f) take all necessary and reasonable steps to ensure that the identity of the persons who make disclosures, and persons the subject of the disclosures are kept confidential;
- g) support persons who make protected disclosures and actively protect them from victimisation, harassment or any other form of reprisal; and
- h) report actual or suspected corrupt conduct to the General Manager in a timely manner to enable that officer to comply with the ICAC Act.

#### **7.4 GENERAL MANAGER**

Disclosures may be made direct to the General Manager rather than by way of the Internal Reporting System established under this Policy. This would include any disclosure regarding the Mayor.

The General Manager will:

- a) impartially assess each disclosure to determine:
  - i) whether the disclosure appears to be a protected disclosure within the meaning of the Act;
  - ii) the appropriate action to be taken in relation to the disclosure, for example:-
  - iii) no action/decline;
- ⇒ the appropriate person to take responsibility for dealing with the disclosure;
- ⇒ preliminary or informal investigation;
- ⇒ formal investigation;
- ⇒ prosecution or disciplinary action;
- ⇒ referral to an investigating authority for investigation or other appropriate action; or
- ⇒ referral to the policy (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct);

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- c) receive reports from the Disclosure Co-ordinator on the findings of any investigation and any recommendations for remedial action, and determine what action should be taken;
- d) take all necessary and reasonable steps to ensure that the identity of the persons who make disclosures, and persons the subject of the disclosures are kept confidential;
- e) have primary responsibility for protecting staff who make disclosures, or provide information to any internal or external investigation of a disclosure, from victimisation, harassment or any other form of reprisal;
- f) be responsible for implementing organisational reform identified as necessary following investigation of a disclosure; and
- g) report criminal offences to the Police and actual or suspected corrupt conduct to ICAC [S11 ICAC Act]

## 7.5 THE MAYOR

The Mayor may receive internal disclosures from any member of staff of the Council or any Councillor concerning the General Manager or a Councillor. The Mayor will:

- a) impartially assess each disclosure made to him/her about the General Manager or a councillor to determine:
  - i) whether the disclosure appears to be a protected disclosure within the meaning of the Act;

Note: in making this assessment the Mayor may seek guidance from the Disclosure Co-ordinator or General Manager (if appropriate); and investigating authority (ie. The ICAC or the Ombudsman); or the Department of Local Government).

- ii) The appropriate course of action to be taken in relation to the disclosure (in consultation with the General Manager, if appropriate), for example:-
      - ⇒ no action/decline;
      - ⇒ the appropriate person to take responsibility for dealing with the disclosure;
      - ⇒ preliminary or informal investigation;
      - ⇒ formal investigation;
      - ⇒ prosecution or disciplinary action;
      - ⇒ referral to an investigating authority for investigation or other appropriate action; or
      - ⇒ referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct);
  - b) refer disclosures to the General Manager for appropriate action if they concern the Council's administration, within the day to day responsibilities of the General Manager;
  - c) protect/maintain confidentiality of:
    - i) the identity of the persons who make disclosures (unless any of the criteria in S22 of the Protected Disclosure Act apply); and
    - ii) the identity of persons the subject of the disclosure (unless disclosure is required to enable allegations to be investigated or otherwise appropriately dealt with).

## 8. ALTERNATIVE AVENUES FOR DISCLOSURES

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Alternative avenues available to staff and councillors for making a protected disclosure under the Act (other than by means of the internal reporting system created under this Policy) are as follows:

- to the General Manager; or
- to one of the investigating authorities under the Act (eg. The ICAC and Ombudsman).

Notes:

- While the Act includes the Auditor General as an external investigating authority, the Auditor General's jurisdiction relates to State Government authorities and not local councils.
- The Department of Local Government is not an investigative authority under the Act, however, the ICAC, the Ombudsman or a council may refer a protected disclosure to the Department for investigation, and in such a circumstance any protection conferred under the Act is maintained.

Disclosures made to a journalist or a member of Parliament will only be protected if certain conditions are met:

- a) The person making the disclosure to a journalist or member of parliament must have already made substantially the same disclosure through the internal reporting system, or to the General Manager or an investigating authority in accordance with the Act;
- b) the information provided in the disclosure is substantially true; and
- c) the investigating authority, public authority or office to whom the matter was originally referred has:
  - i) decided not to investigate the matter; or
  - ii) decided to investigate the matter but not completed the investigation within 6 months of the original disclosure; or
  - iii) investigated the matter but not recommended any action in respect of the matter; or
  - iv) failed to notify the person making the disclosure, within 6 months of the disclosure of whether the matter is to be investigated.

## 9. RIGHTS OF PERSONS THE SUBJECT OF DISCLOSURES

The rights of persons the subject of disclosures will be protected. In this regard:

1. the confidentiality of the identity of persons the subject of disclosures will be protected/maintained (where this is possible and reasonable);
2. disclosures will be assessed and acted on impartially, fairly and reasonably;
3. responsible officials who receive disclosures in accordance with this policy are obliged to:
  - protect/maintain the confidentiality of the identity of persons the subject of disclosures;
  - assess disclosures impartially; and
  - act fairly to persons the subject of disclosures;
4. disclosures will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality both as to the identity of persons making protected disclosures and the persons the subject of disclosures;
5. where investigations or other enquiries do not substantiate disclosures, the fact the investigation/enquiry has been carried out, the results of the investigation/enquiry, and the identity of persons the subject of the disclosures will be kept confidential, unless the persons the subject of the disclosures requests otherwise;

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6. the persons the subject of the disclosures (whether protected disclosures under the Act or otherwise) which are investigated by or on behalf of a council, have the right to:
  - a) be informed of the substance of the allegations;
  - b) be informed as to the substance of any adverse comments that may be included in a report/memorandum/letter or the like arising out of any such investigation; and
  - c) be given a reasonable opportunity to put their case (either orally or in writing) to the persons carrying out the investigation for or on behalf of the council;before any decision/ determination/ report/ memorandum/ letter or the like is made or finalised;
7. where the allegations in a disclosure have been investigated by or on behalf of a council; and the person the subject of the allegations is aware of the substance of the allegations, the substance of any adverse comment, or the fact of the investigation, he or she should be formally advised as to the outcome of the investigation, regardless of the outcome; and
8. where the allegations contained in a disclosure are clearly wrong or unsubstantiated, the person the subject of the disclosure is entitled to the support of the council and its senior management (the nature of the support that would be reasonable and appropriate would depend on the circumstances of the case, but could include a public statement of support or a letter setting out the council's views that the allegations were either clearly wrong or unsubstantiated).

## 10. PROTECTION AVAILABLE UNDER THE ACT

### 10.1 PROTECTION AGAINST REPRISALS

The Act provides protection by imposing penalties on a person who takes "detrimental action" against another person substantially in reprisal for a protected disclosure. Penalties can be imposed by means of fines and imprisonment. "Detrimental action" means action causing, comprising or involving any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment; or
- disciplinary proceeding

Any member of staff or councillor who believes that "detrimental action" is being taken against them substantially in reprisal for the making of an internal disclosure to the General Manager or in accordance with this Policy should immediately bring the allegations to the attention of the General Manager or Mayor (as appropriate).

If a member of staff or councillor who made an internal disclosure feels that such reprisals are not being effectively dealt with, they should contact the ICAC, or the Investigations and Review Branch of the Department of Local Government.

If an external disclosure was made to an investigating authority, that body will either deal with the allegation or provide advice and guidance to the person concerned.

### 10.2 PROTECTION AGAINST ACTIONS, ETC.

The Act provides that a person is not subject to any liability for making a protected disclosure and no action, claim or demand may be taken or made of or against the person for making the

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disclosure. This provision has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure by a public official.

A person who has made a protected disclosure has a defence of absolute privilege in proceedings for defamation.

A person who has made a protected disclosure is taken not to have committed any offence against an Act which imposes a duty to maintain confidentiality with respect to any information disclosed.

### **10.3 CONFIDENTIALITY**

The Act requires investigating authorities, public authorities and public officials to whom protected disclosures are made or referred, not to disclose information that might identify or tend to identify the person who made the disclosures. The exceptions to the confidential requirement are where:

- the person consents in writing to the disclosure of that information; or
- it is essential having regard to the principles of natural justice that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or
- the investigating authority, public authority, officer, or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively; or
- disclosure is otherwise in the public interest.

Decisions about natural justice, effective investigation and public interest will be made by the Corporate Development Officer. In all cases the person who made the disclosure will be consulted before such a decision is made.

Note: If guidance is needed in relation to the requirements of natural justice, effective investigation and public interest, this may be sought from an investigating authority or the Department of Local Government.

### **10.4 FREEDOM OF INFORMATION EXEMPTION**

Under the Freedom of Information Act 1989, a document is exempt from release if it contains matter the disclosure of which would disclose matters relating to a protected disclosure within the meaning of the Act.

## **11. NOTIFICATION OF ACTION TAKEN OR PROPOSED**

A person who makes a protected disclosure must be notified within 6 months of the disclosure being made of the action taken or proposed to be taken in respect of the disclosure.

If a disclosure is made in accordance with this Policy, the Disclosure Co-ordinator is responsible for the 6 month notification to the person who made the disclosure unless this responsibility has been retained by or allocated to another officer by the General Manager.

If a disclosure is made to the Mayor under this Policy, the Mayor is responsible for such notification to the person who made the disclosure, unless he or she directs the General Manager, Disclosure Co-ordinator or another nominated officer to assume this responsibility.

The notification provided to the person who made the disclosure should contain sufficient information to demonstrate that adequate and appropriate action was taken, or is proposed to be taken, in respect of the disclosure. This should include a statement of the reasons for the decisions made or action taken in response to the disclosure.

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The notification should include sufficient information to enable the person who made the disclosure to make an assessment as to whether the circumstances listed in Section 19(3)(a)-(c) of the Act (relating to disclosures to members of Parliament and journalists) apply ie. Whether:

- a) a decision was made not to investigate the matter; or
- b) a decision was made to investigate the matter, but the investigation was not completed within 6 months of the original decision being made; or
- c) a decision was made to investigate the matter, but the investigation has not been completed within 6 months of the original decision being made; or
- d) the matter was investigated but no recommendation was made for the taking of any action in respect of the matter.

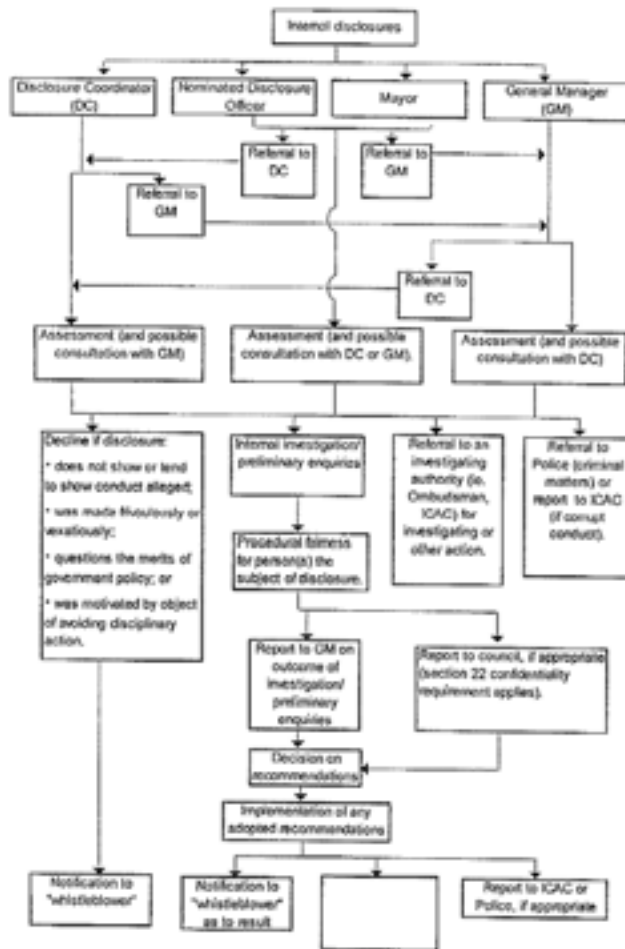
Without such information it would be difficult for the person to be able to properly assess whether it is appropriate or warranted to make a disclosure to an MP or a journalist.

## 12. REVIEW

This policy shall be reviewed annually to ensure that it meets the object of the legislation, and facilitates the making of disclosures under the Act.

ATTACHMENT 3.1

MODEL INTERNAL REPORTING SYSTEM - COUNCILS





ATTACHMENT 2



POLICY

Adopted:  
Minute No:  
Amended:  
Minute No:

**FILE NO: PSC2010-00009**

**TITLE: INTERNAL REPORTING POLICY – PUBLIC INTEREST DISCLOSURES ACT 1994**

**REPORT OF EXECUTIVE OFFICER**

**BACKGROUND**

The *Protected Disclosure Act 1994* requires Council to establish an internal reporting system. This system allows for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money. The Act commenced operation on 1 March 1995.

A review of the *Protected Disclosures Act 1994*, in 2010 has changed the name of the Act to the *Public Interest Disclosures Act 1994 (the Act)*.

**OBJECTIVE**

The purpose of the Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that the matters raised in the disclosures are properly investigated.

The Act aims to encourage and facilitate the disclosure - in the public interest of corrupt conduct, maladministration and serious and substantial waste in the public sector. This is achieved by:

- enhancing and augmenting established procedures for making disclosures concerning such matters;
- protecting persons from reprisals that might otherwise be inflicted on them because of these disclosures; and
- providing for those disclosures to be properly investigated and dealt with.

## **PRINCIPLES**

- 1) To provide an internal reporting system for public officials to disclose corrupt conduct, maladministration, or serious and substantial waste of public money.
- 2) To encourage public officials to make disclosures when they become aware of them.

## **POLICY STATEMENT**

### **1) SUPPORT FOR PERSONS WHO MAKE DISCLOSURES**

Port Stephens Council does not tolerate corrupt conduct, maladministration or serious and substantial waste of public money.

Port Stephens Council is committed to the aims and objectives of the Act. It recognises the value and importance of contributions of staff to enhance administrative management practices and strongly supports disclosures being made by staff, councillors or an independent contractor (public officials) who is engaged by Council who disclose corrupt conduct, maladministration, or serious and substantial waste of public money.

Port Stephens Council will take all reasonable steps to provide protection to staff who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

### **2) DISCLOSURES**

To be protected by the Act, a disclosure must be made by a member of staff, councillor or an independent contractor to:

- an investigating authority;
- the General Manager; or
- to the Public Officer of Port Stephens Council in accordance with the Internal Reporting System established under this policy for the purposes of the Protected Disclosures Act.

This policy establishes an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money and government information contravention by Port Stephens Council its staff, councillors and/or independent contractors. The system enables such internal disclosures to be made to the Disclosure Co-ordinator, (the Public Officer), a Nominated Disclosure Officer (Human Resources Manager) or the Mayor, as an alternative to the General Manager.

This policy is designed to complement normal communication channels between supervisors and staff. Staff are encouraged to raise appropriate matters at any time with their supervisors, but as an alternative have the option of making a protected disclosure in accordance with this policy.

### **3) DEFINITIONS**

Three key concepts in the internal reporting system are corrupt conduct, maladministration and serious and substantial waste of public money. Definitions of these concepts are outlined below.

#### **3.1 CORRUPT CONDUCT**

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Corrupt conduct can take many forms, ie. taking or offering bribes, public officials dishonestly using influence, blackmail, fraud, election bribery and illegal gambling are some examples.

#### **3.2 MALADMINISTRATION**

Maladministration is defined in the Act as conduct that involves action or inaction of a serious nature that is:

- contrary to the law; or
- unreasonable, unjust, oppressive or improperly discriminatory; or
- based wholly or partly on improper motives (section 11).

#### **3.3 SERIOUS AND SUBSTANTIAL WASTE**

The term serious and substantial waste is not defined in the Act. The Auditor-General provides the following working definition.

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In addressing any complaint of serious and substantial waste regard will be had, to the nature and materiality of the waste.

The following delineation of the definition of serious and substantial waste may be of assistance to public officials and/or public authorities.

**TYPES:**

**Absolute:** serious and substantial waste might be regarded in absolute terms where the waste is regarded as significant, for example \$200,000.

**Systemic:** the waste indicates a pattern which results from a system weakness within the public authority.

**Material:** the serious and substantial waste is/was material in terms of the public authority's expenditure or a particular item of expenditure or is/was material to such an extent so as to effect a public authority's capacity to perform its primary functions.

**Material by nature not amount:** the serious and substantial waste may not be material in financial terms but may be significant by nature. That is it may be improper or inappropriate

(alternatively, this type of waste may constitute "maladministration" as defined in the Protected Disclosures Act).

Waste can take many forms, for example:

- misappropriation or misuse of public property;
- the purchase of unnecessary or inadequate goods and services;
- too many personnel being employed in a particular area, incurring costs which might otherwise have been avoided;
- personnel being remunerated for skills that they do not have, but are required to have under the terms and conditions of their employment;
- programs not achieving their objectives and therefore the costs being clearly ineffective and inefficient.

Waste can result from such things as:

- the absence of appropriate safeguards to prevent the theft or misuse of public property;
- purchasing procedures and practices which fail to ensure that goods and services are necessary and adequate for their intended purpose; and
- purchasing practices where the lowest prices is not obtained for comparable goods or services without adequate and appropriate justification.

#### **4. WHAT DISCLOSURES ARE PROTECTED UNDER THE ACT**

##### **4.1 WHAT DISCLOSURES ARE PROTECTED?**

Disclosures are protected under the Act if they:

- a) are made  
⇒ in accordance with this Internal Reporting Policy; or

- ⇒ to the General Manager; or
  - ⇒ to one of the investigating authorities nominated in the Act; AND
- b) show or tend to show corrupt conduct, maladministration, or serious and substantial waste of public money by the Port Stephens Council or any of its staff, councillors or independent contractors; AND
- c) are made voluntarily.

#### **4.2 WHAT DISCLOSURES ARE NOT PROTECTED?**

A disclosure is not protected under the Act if it is made by a public official in the exercise of a duty imposed by or under an Act.

Protection is also not available for disclosures which:

- primarily question the merits of government policy; or
- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

It is an offence to wilfully make a false or misleading statement when making a disclosure.

#### **5. REPORTING UNDER THE INTERNAL REPORTING SYSTEM**

The persons or positions to whom internal disclosures can be made in accordance with the Internal Reporting System (as shown on the attached diagram) are:

- the Council's Disclosure Co-Ordinator [Executive Officer/Public Officer, General Manager's Office: 49800187 (internal ext 187)]
- the Nominated Disclosure Officer [Human Resources Manager, Corporate Services Group, Ph: 49800126 (internal ext 126)]
- the General Manager [Ph: 49800246 (internal ext 246)]
- the Mayor [Ph: 49800245 (internal ext 245)]

Where persons contemplating making a disclosure are concerned about publicly approaching the Disclosure Co-ordinator, the Nominated Disclosure Officer or the General Manager, they can ring the relevant official and request a meeting in a discreet location away from the workplace.

**Notes:**

- a) A public official who wishes to make a protected disclosure which involves a councillor may do so to the General Manager, or an investigating authority (eg. The ICAC or the Ombudsman)
- b) A councillor who wishes to make a protected disclosure which involves another councillor may do so to the General Manager or an investigating authority (eg. The ICAC or the Ombudsman)

- c) If the Mayor wishes to make a protected disclosure he or she may do so to the General Manager or an investigating authority (eg. The ICAC or Ombudsman)
- d) The Department of Local Government is not an investigating authority under the Act, however, the ICAC, the Ombudsman or council may refer to protected disclosure to the Division for investigation, and in such a circumstance any protection conferred under the Act is maintained.

## **6. ROLES AND RESPONSIBILITIES**

This Internal Reporting Policy places responsibilities upon people at all levels within the Port Stephens Council.

### **6.1 EMPLOYEES AND INDEPENDENT CONTRACTORS (PUBLIC OFFICIALS)**

Public Officials are encouraged to report known or suspected incidences of corrupt conduct, maladministration or serious and substantial waste in accordance with this Policy.

All Public Officials of the Port Stephens Council have an important role to play in supporting those who have made legitimate disclosures. They must abstain from any activity that is or could be perceived to be victimisation or harassment of persons who make protected disclosures. Further, they should protect/maintain the confidentiality of persons they know or suspect to have made disclosures.

### **6.2 NOMINATED DISCLOSURE OFFICERS**

The Nominated Disclosure Officers are responsible for receiving, forwarding and/or acting upon disclosures in accordance with the Policy. Nominated Disclosure Officers will:

- a) clearly explain to persons making disclosures what will happen in relation to the information received;
- b) when requested, make arrangements to ensure that disclosures can be made privately and discreetly (if necessary away from the workplace);
- c) reduce to writing and date any disclosure received orally (and have the person making the disclosure sign the document);
- d) deal with disclosures impartially;
- e) forward disclosures to the Disclosure Co-Ordinator for assessment;
- f) take all necessary and reasonable steps to ensure that the identity of persons who make disclosures, and the persons the subject of disclosures, are kept confidential; and
- g) support persons who make protected disclosures and protect them from victimisation, harassment or any other form of reprisal.

### **6.3 DISCLOSURE CO-ORDINATOR**

The Disclosure Co-Ordinator has a pivotal position in the internal reporting system and acts as a clearing house for disclosures. The Disclosure Co-ordinator will:

- a) provide an alternative internal reporting channel to Nominated Disclosure Officers and to the General Manager;
- b) impartially assess each disclosure to determine:-

- i) whether the disclosure appears to be a protected disclosure within the meaning of the Act; and
- ii) the appropriate action to be taken in relation to the disclosure, for example:-

- ⇒ no action/decline;
- ⇒ the appropriate person to take responsibility for dealing with the disclosure;
- ⇒ preliminary or informal investigations;
- ⇒ formal investigation;
- ⇒ prosecution or disciplinary action;
- ⇒ referral to an investigating authority for investigation or other appropriate action; or
- ⇒ referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct)

c) consult with the General Manager;

d) be responsible for carrying out or co-ordinating any internal investigation arising out of a disclosure, subject to the direction of the General Manager in carrying out his/her functions;

e) report to the General Manager on the findings of any investigation and recommended remedial action;

f) take all necessary and reasonable steps to ensure that the identity of the persons who make disclosures, and persons the subject of the disclosures are kept confidential;

g) support persons who make protected disclosures and actively protect them from victimisation, harassment or any other form of reprisal; and

h) report actual or suspected corrupt conduct to the General Manager in a timely manner to enable that officer to comply with the ICAC Act.

### **6.4 GENERAL MANAGER**

Disclosures may be made direct to the General Manager rather than by way of the Internal Reporting System established under this Policy. This would include any disclosure regarding the Mayor.

The General Manager will:

- a) impartially assess each disclosure to determine:

- i) whether the disclosure appears to be a protected disclosure within the meaning of the Act;
- ii) the appropriate action to be taken in relation to the disclosure, for example:-
- iii) no action/decline;
  - ⇒ the appropriate person to take responsibility for dealing with the disclosure;
  - ⇒ preliminary or informal investigation;
  - ⇒ formal investigation;
  - ⇒ prosecution or disciplinary action;
  - ⇒ referral to an investigating authority for investigation or other appropriate action; or
  - ⇒ referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct);
- c) receive reports from the Disclosure Co-ordinator on the findings of any investigation and any recommendations for remedial action, and determine what action should be taken;
- d) take all necessary and reasonable steps to ensure that the identity of the persons who make disclosures, and persons the subject of the disclosures are kept confidential;
- e) have primary responsibility for protecting staff who make disclosures, or provide information to any internal or external investigation of a disclosure, from victimisation, harassment or any other form of reprisal;
- f) be responsible for implementing organisational reform identified as necessary following investigation of a disclosure; and
- g) report criminal offences to the Police and actual or suspected corrupt conduct to ICAC [S11 ICAC Act]

## **6.5 THE MAYOR**

The Mayor may receive internal disclosures from any member of staff of the Council or any Councillor concerning the General Manager or a Councillor.

The Mayor will:

- a) impartially assess each disclosure made to him/her about the General Manager or a councillor to determine:
  - i) whether the disclosure appears to be a protected disclosure within the meaning of the Act;

Note: in making this assessment the Mayor may seek guidance from the Disclosure Co-ordinator or General Manager (if appropriate); and investigating authority (ie. The ICAC or the Ombudsman); or the Department of Local Government).

- ii) The appropriate course of action to be taken in relation to the disclosure (in consultation with the General Manager, if appropriate), for example:-



- ⇒ no action/decline;
- ⇒ the appropriate person to take responsibility for dealing with the disclosure;
- ⇒ preliminary or informal investigation;
- ⇒ formal investigation;
- ⇒ prosecution or disciplinary action;
- ⇒ referral to an investigating authority for investigation or other appropriate action; or
- ⇒ referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct);

b) refer disclosures to the General Manager for appropriate action if they concern the Council's administration, within the day to day responsibilities of the General Manager;

c) protect/maintain confidentiality of:

- i) the identity of the persons who make disclosures (unless any of the criteria in S22 of the Act apply); and
- ii) the identity of persons the subject of the disclosure (unless disclosure is required to enable allegations to be investigated or otherwise appropriately dealt with).

## **7. ALTERNATIVE AVENUES FOR DISCLOSURES**

Alternative avenues available to public officials for making a protected disclosure under the Act (other than by means of the internal reporting system created under this Policy) are as follows:

- to the General Manager; or
- to one of the investigating authorities under the Act (eg. The ICAC and Ombudsman).

Notes:

- While the Act includes the Auditor General as an external investigating authority, the Auditor General's jurisdiction relates to State Government authorities and not local councils.
- The Division of Local Government is not an investigative authority under the Act, however, the ICAC, the Ombudsman or a council may refer a protected disclosure to the Division for investigation, and in such a circumstance any protection conferred under the Act is maintained.

Disclosures made to a journalist or a member of Parliament will only be protected if certain conditions are met:

- a) The person making the disclosure to a journalist or member of parliament must have already made substantially the same disclosure through the internal reporting system, or to the General Manager or an investigating authority in accordance with the Act;
- b) the information provided in the disclosure is substantially true; and
- c) the investigating authority, public authority or office to whom the matter was originally referred has:
  - i) decided not to investigate the matter; or
  - ii) decided to investigate the matter but not completed the investigation within 6 months of the original disclosure; or
  - iii) investigated the matter but not recommended any action in respect of the matter; or
  - iv) failed to notify the person making the disclosure, within 6 months of the disclosure of whether the matter is to be investigated.

## **8. RIGHTS OF PERSONS THE SUBJECT OF DISCLOSURES**

The rights of persons the subject of disclosures will be protected. In this regard:

1. the confidentiality of the identity of persons the subject of disclosures will be protected/maintained (where this is possible and reasonable);
2. disclosures will be assessed and acted on impartially, fairly and reasonably;
3. responsible officials who receive disclosures in accordance with this policy are obliged to:
  - protect/maintain the confidentiality of the identity of persons the subject of disclosures;
  - assess disclosures impartially; and
  - act fairly to persons the subject of disclosures;
4. disclosures will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality both as to the identity of persons making protected disclosures and the persons the subject of disclosures;
5. where investigations or other enquiries do not substantiate disclosures, the fact the investigation/enquiry has been carried out, the results of the investigation/enquiry, and the identity of persons the subject of the disclosures will be kept confidential, unless the persons the subject of the disclosures requests otherwise;
6. the persons the subject of the disclosures (whether protected disclosures under the Act or otherwise) which are investigated by or on behalf of a council, have the right to:
  - a) be informed of the substance of the allegations;

- b) be informed as to the substance of any adverse comments that may be included in a report/memorandum/letter or the like arising out of any such investigation; and
- c) be given a reasonable opportunity to put their case (either orally or in writing) to the persons carrying out the investigation for or on behalf of the council;

before any decision/ determination/ report/ memorandum/ letter or the like is made or finalised;

- 7. where the allegations in a disclosure have been investigated by or on behalf of a council; and the person the subject of the allegations is aware of the substance of the allegations, the substance of any adverse comment, or the fact of the investigation, he or she should be formally advised as to the outcome of the investigation, regardless of the outcome; and
- 8. where the allegations contained in a disclosure are clearly wrong or unsubstantiated, the person the subject of the disclosure is entitled to the support of the council and its senior management (the nature of the support that would be reasonable and appropriate would depend on the circumstances of the case, but could include a public statement of support or a letter setting out the council's views that the allegations were either clearly wrong or unsubstantiated).

## **9. PROTECTION AVAILABLE UNDER THE ACT**

### **9.1 PROTECTION AGAINST REPRISALS**

The Act provides protection by imposing penalties on a person who takes "detrimental action" against another person substantially in reprisal for a protected disclosure. Penalties can be imposed by means of fines and imprisonment. "Detrimental action" means action causing, comprising or involving any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment; or
- disciplinary proceeding

Any member of staff or councillor who believes that "detrimental action" is being taken against them substantially in reprisal for the making of an internal disclosure to the General Manager or in accordance with this Policy should immediately bring the allegations to the attention of the General Manager or Mayor (as appropriate).

If a public official who made an internal disclosure feels that such reprisals are not being effectively dealt with, they should contact the ICAC, or the Investigations and Review Branch of the Division of Local Government.

If an external disclosure was made to an investigating authority, that body will either deal with the allegation or provide advice and guidance to the person concerned.

## **9.2 PROTECTION AGAINST ACTIONS, ETC.**

The Act provides that a person is not subject to any liability for making a protected disclosure and no action, claim or demand may be taken or made of or against the person for making the disclosure. This provision has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure by a public official.

A person who has made a protected disclosure has a defence of absolute privilege in proceedings for defamation.

A person who has made a protected disclosure is taken not to have committed any offence against an Act which imposes a duty to maintain confidentiality with respect to any information disclosed.

## **9.3 CONFIDENTIALITY**

The Act requires investigating authorities, public authorities and public officials to whom protected disclosures are made or referred, not to disclose information that might identify or tend to identify the person who made the disclosures. The exceptions to the confidential requirement are where:

- the person consents in writing to the disclosure of that information; or
- it is essential having regard to the principles of natural justice that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or
- the investigating authority, public authority, officer, or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively; or
- disclosure is otherwise in the public interest.

Decisions about natural justice, effective investigation and public interest will be made by the Public Officer. In all cases the person who made the disclosure will be consulted before such a decision is made.

Note: if guidance is needed in relation to the requirements of natural justice, effective investigation and public interest, this may be sought from an investigating authority or the Division of Local Government.

## **9.4 GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT EXEMPTION**

Under the *Government Information (Public Access) Act 2009*, a document is exempt from release if it contains matter the disclosure of which would disclose matters relating to a protected disclosure within the meaning of the Act.

## **10. NOTIFICATION OF ACTION TAKEN OR PROPOSED**

A person who makes a protected disclosure must be notified within 6 months of the disclosure being made of the action taken or proposed to be taken in respect of the disclosure.

If a disclosure is made in accordance with this Policy, the Disclosure Co-ordinator is responsible for the 6 month notification to the person who made the disclosure unless this responsibility has been retained by or allocated to another officer by the General Manager.

If a disclosure is made to the Mayor under this Policy, the Mayor is responsible for such notification to the person who made the disclosure, unless he or she directs the General Manager, Disclosure Co-ordinator or another nominated officer to assume this responsibility.

The notification provided to the person who made the disclosure should contain sufficient information to demonstrate that adequate and appropriate action was taken, or is proposed to be taken, in respect of the disclosure. This should include a statement of the reasons for the decisions made or action taken in response to the disclosure.

The notification should include sufficient information to enable the person who made the disclosure to make an assessment as to whether the circumstances listed in Section 19(3)(a)-(c) of the Act (relating to disclosures to members of Parliament and journalists) apply ie. Whether:

- a) a decision was made not to investigate the matter; or
- b) a decision was made to investigate the matter, but the investigation was not completed within 6 months of the original decision being made; or
- c) a decision was made to investigate the matter, but the investigation has not been completed within 6 months of the original decision being made; or
- d) the matter was investigated but no recommendation was made for the taking of any action in respect of the matter.

Without such information it would be difficult for the person to be able to properly assess whether it is appropriate or warranted to make a disclosure to an MP or a journalist.

### **RELATED POLICIES**

Code of Conduct

**SUSTAINABILITY IMPLICATIONS**

The policy provides a mechanism for reporting of corrupt conduct, maladministration and serious or substantial waste of Council resources or money. Through the reporting of such matters should they occur Council would be provided with a potential economic benefit in the reduction of waste.

**RELEVANT LEGISLATIVE PROVISIONS**

*Public Interest Disclosures Act 1994*  
*Local Government Act 1993*

**IMPLEMENTATION RESPONSIBILITY**

Executive Officer

**REVIEW DATE**

Biennial from adoption

**ITEM NO. 18**

**FILE NO: PSC2010-00008**

**COMPLAINTS HANDLING POLICY**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Draft Complaints Handling Policy shown at **ATTACHMENT 2** be placed on public exhibition for 28 days.
- 2) At the completion of the exhibition period if no submissions have been received Council's Rates Donations for Community Groups is adopted.
- 3) Revoke the Complaints Handling Policy dated 16 February 1999, Minute No. 69.

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**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**  
**RECOMMENDATION:**

	<b>Councillor Bruce MacKenzie</b> <b>Councillor John Nell</b>	That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>410</b>	<b>Councillor John Nell</b> <b>Councillor Steve Tucker</b>	It was resolved that the recommendation be adopted.
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**BACKGROUND**

The purpose of this report is to provide Council with the reviewed Complaints Handling Policy.

Council will note that the current policy has a 4 tier complaints framework and the revised policy has 3 tiers. The changes have occurred to ensure that Council's policy is in line with the NSW Ombudsman's Office guidelines.

In 2009 the Ombudsman Office released the "Managing Unreasonable Complainant Conduct Practice Manual". A number of Council staff attended training facilitated by the Ombudsman Office at the time. Since then approximately a further 35 staff

have attended the training in-house. The training was provided in house at half the cost of attending training off site.

The current policy is shown at ATTACHMENT 1.

### **FINANCIAL/RESOURCE IMPLICATIONS**

All costs associated with the development and implementation of the policy is covered in the 2010-11 budget.

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

Council is required by various pieces of legislation to develop such a policy.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Through openness, transparency and accountability, Council will be able to reduce the impact of complaints on Council resources and focus on provision of Council services.

Management of complaints can require a high level of Council resources. By reducing the number of complaints and by following the structured complaints system, Council will be able to focus resources into delivery of Council services.

### **CONSULTATION**

General Manager

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Current Complaints Handling Policy
- 2) Draft Complaints Handling Policy

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.



ATTACHMENT 1



**This policy was last updated in March 1999 following Council resolution on 16/2/99 (Min No: 69)**

This policy was prepared using:

- the Ombudsman's effective complaint handling guidelines;
- Department of Local Government Practice Note No. 9 - Complaints Management in Councils and the Ombudsman's FOI policies and guidelines (2<sup>nd</sup> ed) - Access to complaints by third parties; and
- ICAC's Internal Investigations Handbook and *the Ombudsman's Dealing with Difficult Complainants Guidelines. (1998)*

POLICY NO: CM009

TITLE: **COMPLAINT/REQUEST HANDLING**

**POLICY STATEMENT:** Port Stephens Council welcomes all requests, complaints and compliments as a way of improving services to the community.

All requests/complaints will be received courteously, investigated and acted on promptly and appropriately.

**OBJECTIVES:**

1. To provide Council with the opportunity to improve its services;
2. To encourage the supply of information from the community to remedy alleged breaches of regulations administered by Council;
3. To help improve customer satisfaction about council services;
4. To increase satisfaction and reduce the number of complaints in the future

## **DEFINITIONS**

### **COMPLAINTS**

- An expression of dissatisfaction with Council's policies, procedures, charges, employees, agents, quality of service; or
- An allegation of a breach of regulations administered by Council.

An example of a complaint is an allegation that staff did not provide quality service or an allegation that a neighbour has breached the Tree Preservation Order by cutting down trees without Council approval.

Difficult Complainants will be assessed on each particular occasion and will generally include aggressive, rude or abusive persons; those who make unreasonable demands; cannot let go or are not satisfied. (For further information see the Ombudsman's Dealing with Difficult Complainants Guidelines September 1998)

### **REQUESTS**

- Requests for information or explanation of policies or procedures;
- Requests for services;

An example of a request is asking for Council to repair playground equipment at a local reserve.

## **EXEMPTIONS**

1. Allegations of corrupt conduct are to be dealt with under Council's Code of Conduct and the Independent Commission Against Corruption Act, 1983.
2. Disclosures by a Council employee or Councillor of corrupt conduct, maladministration or serious and substantial waste of public funds/resources will be dealt with under the Internal Reporting System and the Protected Disclosures Act, 1994.
3. Staff grievances are to be reported to Personnel in accordance with Council's Grievance Policy.
4. Complaints concerning the National Competition Policy and Council's business activities shall be dealt with under the Competitive Neutrality Complaints Policy.

## **POLICY**

### **TIER 1 - FRONT LINE COMPLAINT/REQUEST HANDLING**

- Staff deal with a request whenever possible at first contact
- Staff log complaint/request details for investigation

1. All Staff are prepared to receive requests/complaints whether presented in person, in writing or by telephone. They will listen courteously, record faithfully, and initiate appropriate action immediately.

2. Complainants will receive feedback in accordance with Council's Actioning Correspondence Policy in the case of written complaints. In addition all complainants will receive feedback where possible on the outcome of their complaint.
3. All verbal complaints/requests will be recorded in the request system.
4. Any complaints regarding a member of staff must be in writing.
5. If the complainant uses:
  - abusive or offensive language or behaviour
  - *discriminating remarks*
  - *inappropriate interest in an officers personal life or*
  - *becomes violent or aggressive*

***Staff will inform the person that their behaviour is unacceptable and must cease. The complainant may put their concerns in writing. If necessary staff will call their supervisor who may decide to request the person to leave the premises or call the police to escort the person from the premises.***

6. Requests for information regarding complaints are to be assessed using Council's Policy on Accessing Information and the Freedom of Information Act, 1989.
7. **Anonymous complaints** will be recorded and referred to Tier 2 to determine whether action will be taken. Tier 2 staff will consider whether the matter is an offence, that endangers public safety and whether there is sufficient information in the complaint to enable an investigation to be conducted. If no action is to be taken reasons for the decision will be recorded in the request system.
8. ***Callers who insist on speaking to the General Manager or Mayor should be informed that the General Manager and Mayor do not take general enquiries and that staff are willing to assist and attempt to deal with the enquiry. If necessary inform the complainant of Council's Complaints/Request Handling Policy and the right to request a review.***

#### **TIER 2 - DESIGNATED OFFICERS REVIEW**

- Complaints/requests forwarded to appropriate officer for investigation, action and response
- Staff empowered with clear delegations

1. All complaints/requests (whether verbal or written) will be investigated by the appropriate department/officer.
2. To ensure procedural fairness, a person or staff member will be informed of any allegations of wrong doing or adverse comment made about them where this is the basis of any action by Council. The person will be able to provide an explanation of his or her actions and have access to the substance of the complaint (in accordance with Council's accessing information policy).
3. Upon examination of all the facts appropriate action will be taken to resolve the matter. If no action is to be taken reasons will be given for the decision.

4. The complainant and the person complained about will be informed of the outcome.
5. If a Designated Officer believes a complaint is categorised as difficult the matter will be referred to Tier 3 for internal review by the Assistant General Manager.

It is Council's policy that complainants names and addresses will remain confidential (see the Accessing Information Policy). A complainant categorised as difficult may not be afforded confidentiality.

#### 6. Neighbourhood Disputes

In the case of neighbourhood disputes if the matter does not relate to Council's services or functions. **Staff may advise the complainant of the Community Justice Centre mediation services. The CJC may then be informed of the dispute to arrange mediation where possible.** Council will not be a party to complaints that fall outside its services or functions.

#### TIER 3 - INTERNAL REVIEW

- Supervisor and/or Department Manager will try to resolve matter
  - Council's Assistant General Manager will conduct an internal review if a complainant is dissatisfied
1. If a member of staff is unable to resolve the complaint or **believes the complaint is categorised as difficult**, the complaint will be referred to:-
    - The staff member's supervisor and/or Department Manager;
    - Council's Assistant General Manager to conduct an internal review on behalf of the General Manager.
  2. **When assessing a complaint the Assistant General Manager will consider:-**
    - a) **Whether the complaint should be categorised as difficult (see The Guidelines of the NSW Ombudsman's Dealing with Difficult Complainants?)**
    - b) How much specific evidence is there to support the information provided?
      - For example a suspicion that something has or will occur.
    - c) How serious is the matter and what significance does it have for the community and/or Council?
    - d) Is the matter one which Council should be investigating or should the matter be referred elsewhere.
    - e) What are the motives for making the complaint?
      - For example are there personal animosities involved or pay back for a complaint received about them.
  3. If the internal review does not reveal any evidence to support the complaint the Assistant General Manager may decide not to investigate the matter any further. Advice will be given to the complainant that Council will not pursue the matter further and that if they are not happy with the response they may refer the matter to an external body as identified in Tier 4.

Refer to the ICAC's Internal Investigations Handbook for further guidance.
  4. **Should the Assistant General Manager consider the complainant to be difficult a course of action may be recommended using the NSW Ombudsman's Guidelines for Dealing with Difficult Complainants.**

**TIER 4 - INDEPENDENT REVIEW**

- Complainants will be advise of their option to refer their complaint to:-
  - \* alternative dispute resolution;
  - \* the Ombudsman or other external agency
- Complainants will be informed of any appeal procedure available to them.

1. Persons dissatisfied with Council's response may refer the matter to the NSW Ombudsman, Department of Local Government or the Independent Commission against Corruption.
2. The services of the Community Justice Centre are available to mediate where all parties are agreeable and Council is unable to satisfy the complainant's request. Staff will inform a complainant of any appeal procedure available to resolve their grievance.

ATTACHMENT 2



**POLICY**

Adopted:  
Minute No:  
Amended:  
Minute No:

**FILE NO: PSC2010-00008**

**TITLE: COMPLAINTS HANDLING POLICY**

**REPORT OF EXECUTIVE OFFICER**

**BACKGROUND**

Council adopted its previous Complaint/Request Handling policy in 1999 following the development of a number of NSW Ombudsman's guidelines and policies.

It is acknowledged that there is a difference between a complaint and a request for service. This policy specifically deals with complaints that are received concerning matters that are under Council's control and management.

**OBJECTIVE**

The objective of the Policy is to provide the community with a structured process to follow when lodging a complaint with Council. This will allow openness, transparency and accountability of both Council and the complainant.

**PRINCIPLES**

- 1) Council is committed to resolving complaints to achieve the best outcome for all parties concerned.
- 2) Council will respond to all complaints lodged under the policy and provide a written response.
- 3) All complainants will be required to fully cooperate in an appropriate manner when interacting with Council officials.

**POLICY STATEMENT**

This policy has been developed in line with the NSW Ombudsman Guidelines – "Effective Complaint Handling 2004" and "Managing Unreasonable Complainant Conduct Practice Manual 2009".

The Policy strives to provide a structured and timely manner in dealing with complaints.

A complaint is defined as **“An expression of dissatisfaction with Councils’ policies, procedures, fees and charges, Council officials, quality of service or goods provided”**.

Those matters exempt from this policy are:-

- 1) Staff personnel matters – refer to Council's Grievance procedure
- 2) Protected Disclosure declaration – refer to the Code of Conduct
- 3) Allegations of corruption – refer to the Code of Conduct
- 4) Complaints concerning National Competition Policy – refer to Competitive Neutrality Complaints Policy.

The complaints handling framework is developed on a 3 Tier approach.

**Tier 1** – Staff empowered with clear delegations to resolved complaints wherever possible at first contact. Staff log complaint details for later analysis of data.

**Tier 2** – More senior staff or designated person reviews/investigates unresolved complaints.

**Tier 3** – Still unresolved complaints referred externally.

**Tier 1 – Front line complaints handling**

1. All staff will receive complaints in **person**, writing, by telephone, email or fax. They will listen courteously, record all the facts and initiate appropriate action.
2. Written complaints will be acknowledged in accordance with Council's Customer Service Charter.
3. All verbal complaints will be recorded in Council's Customer Request System and/or within the Electronic Records System (TRIM).
4. If the complainant uses abusive or offensive language or behaviour; discriminating remarks; inappropriate interest in an officers personal life or becomes violent or aggressive - staff will inform the person that their behaviour is unacceptable and must cease. The complainant may put their concerns in writing. If necessary staff will call their supervisor who may decide to request the person to leave the premises or call the police to escort the person from the premises.
5. All requests for information regarding complaints are to be assessed under Council's Assessing Information Policy and the Freedom of Information Act 1989.
6. Anonymous complaints will be recorded and refer to Tier 2 to determine if action is required. Tier 2 staff will consider the nature of the complaint and if it is an offence and where there is sufficient information to warrant investigation. If not action is taken then reasons for the decision will be recorded.
7. Complainants wishing to speak to the Mayor or General Manager at Tier 1 will be referred to the relevant officer to deal with the enquiry.

### Tier 2 – Internal Review or Investigation

1. All complaints will be determined and/or investigated by the appropriate officer.
2. To ensure procedural fairness, the person will be informed of any allegation of wrong doing or adverse comment made about them where this is the basis of any action by Council. A copy of the complaint will be available in accordance with various legislation requirements.
3. The person will be able to provide an explanation of his or her actions.
4. Upon examination of all the facts appropriate action will be taken to resolve the matter. If no action is to be taken reasons will be given for the decision.
5. The complainant and the person complained about will be informed of the outcome.
6. It is Council's policy that complainants names and addresses will remain confidential (see the Accessing Information Policy). A complainant categorised as difficult may not be afforded confidentiality.
7. If a member of staff is unable to resolve the complaint or **believes the complaint is categorised as difficult**, the complaint will be referred to:-
  - The staff member's supervisor and/or Section or Group Manager;
  - Council's Public Officer or other officer as determined by the General Manager, to conduct an internal review on behalf of the General Manager.
8. When assessing a complaint the Public Officer or other officers will consider:-
  - a) Whether the complaint should be categorised as difficult (see The Guidelines of the NSW Ombudsman's Managing Unreasonable Complainants Conduct Practice Manual)
  - b) How much specific evidence is there to support the **complaint and related** information provided?
    - For example a suspicion that something has or will occur.
  - c) How serious is the matter and what significance does it have for the community and/or Council?
  - d) Is the matter one which Council should be investigating or should the matter be referred elsewhere.
  - e) What are the motives for making the complaint?
    - For example are there personal animosities involved or pay back for a complaint received about them.
9. If the internal review does not reveal any evidence to support the complaint the Public Officer or other officers may decide not to investigate the matter any further. Advice will be given to the complainant that Council will not pursue the matter further and that if they are not happy with the response they may refer the matter to an external body as identified in Tier 3.
10. Neighbourhood Disputes - In the case of neighbourhood disputes if the matter does not relate to Council's services or functions. Staff may advise the complainant of the Community Justice Centre mediation services. The CJC may then be informed of the dispute to arrange mediation where possible. Council will not be a party to complaints that fall outside its services or functions.



**Tier 3 – External Review**

1. Persons dissatisfied with Council's response may refer the matter to the NSW Ombudsman, Division of Local Government or the Independent Commission Against Corruption.
2. The services of the Community Justice Centre are available to mediate where all parties are agreeable and Council is unable to satisfy the complainant's request. Staff will inform a complainant of any appeal procedure available to resolve their grievance.

**RELATED POLICIES**

Code of Conduct  
Assessing Information Policy  
Competitive Neutrality Complaints Policy  
Compliance Policy  
Alternative Dispute Resolution Policy

**SUSTAINABILITY IMPLICATIONS**

**SOCIAL IMPLICATIONS**

Through openness, transparency and accountability, Council will be able to reduce the impact of complaints on Council resources and focus on provision of Council services.

**ECONOMIC IMPLICATIONS**

Management of complaints can require a high level of Council resources. By reducing the number of complaints and by following the structured complaints system, Council will be able to focus resources into delivery of Council services.

**ENVIRONMENTAL IMPLICATIONS**

Nil

**RELEVANT LEGISLATIVE PROVISIONS**

*Local Government Act 1993*  
*Protected Disclosure Act 1994*  
*Ombudsman Act 1974*  
*Independent Commission Against Corruption 1988*

**IMPLEMENTATION RESPONSIBILITY**

Executive Officer

**REVIEW DATE**

Biennial

**ITEM NO. 19**

**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) Medowie Public School – Funds for Presentation Ceremony – Rapid Response – Central Ward Funds – Cr Dingle - \$200.00
  - b) Port Stephens RAAF Williamtown Support Group Citizen of the Year Award – Requisition for Funds – Mayor Funds - \$500.00
  - c) Tomaree Sports Council – Contribute to the cost of removing the cricket wicket from Dick Burwell Improving conditions of the ground for AFL – Requisition for Funds – East Ward - \$3000.00
  - d) Council Works Program, Port Stephens Council - Extension of field at Bill Strong to match potential grant funding. – Requisition for Funds – East Ward - \$15,000.00
  - e) Nelson Bay Pistol Club – Donation to assist with Electrical Supply works to the Club – Requisition for Funds – East Ward - \$5,000.00
  - f) PSC Facilities & Services – Install park seat at Tanilba Bay Foreshore Reserve – Rapid Response – Central Ward - \$500.00
  - g) Medowie Assembly of God – Donation to support soup kitchen run from Medowie Community Centre – Rapid Response - Central Ward - \$500.00

**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**  
**RECOMMENDATION:**

	<b>Councillor Steve Tucker</b> <b>Councillor Geoff Dingle</b>	That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>411</b>	<b>Councillor Steve Tucker</b> <b>Councillor Geoff Dingle</b>	It was resolved that the recommendation be adopted.
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## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

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:

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:-

### CENTRAL WARD – Councillors Dingle, MacKenzie, O'Brien & Tucker

Medowie Public School	Funds for Presentation Ceremony	\$200.00
PSC Facilities & Services	Install park seat at Tanilba Bay Foreshore Reserve	\$500.00
Medowie Assembly of God	Donation to support soup kitchen run from Medowie Community Centre	\$500.00

### EAST WARD – Councillors Westbury, Dover, Nell, Ward

Tomaree Sports Council	Contribute to the cost of removing the cricket wicket from Dick Burwell Improving conditions of the ground for AFL.	\$3,000.00
Council Works Program	Extension of field at Bill Strong to match potential grant funding.	\$15,000.00
Nelson Bay Pistol Club	Donation to assist with Electrical Supply works to the Club	\$5,000.00

### MAYORAL FUNDS

Port Stephens RAAF Williamtown Support Group	Funds for Citizen of the Year Award	\$500.00
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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. 20**

**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 7 December 2010.

<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	25 WEATHERLY CLOSE, NELSON BAY	
2	ABORIGINAL STRATEGIC COMMITTEE	
3	SALE OF 431 MASONITE ROAD HEATHERBRAE	
4	CASH AND INVESTMENTS HELD AT 31 OCTOBER 2010	
5	RESOLUTION OF AIRCRAFT NOISE MATTER	
6	PETITION FOR EXEMPTION FROM PAID PARKING – TERAMBY ROAD	
7	PETITION FOR CONSTRUCTION OF CYCLEWAY BETWEEN HINTON AND WALLALONG	
8	REPORTS TO COUNCIL	
9	NSW OMBUDSMAN REPORT	

**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010**  
**RECOMMENDATION:**

	<b>Councillor Steve Tucker</b> <b>Councillor Bob Westbury</b>	That the recommendation be adopted.
--	--	-------------------------------------

**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>412</b>	<b>Councillor John Nell</b> <b>Councillor Geoff Dingle</b>	It was resolved that the recommendation be adopted.
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# COUNCIL COMMITTEE INFORMATION PAPERS



**INFORMATION ITEM NO. 1**

**25 WEATHERLY CLOSE, NELSON BAY**

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

**FILE: PSC2010-00217**

**BACKGROUND**

The purpose of this report is to address the resolution of Council in response to the Notice of Motion by Councillor Nell at Council's ordinary meeting on 25 May 2010 and to advise Council of the current situation regarding the development compliance matter.

The Notice of Motion considered on 25 May 2010 by Council provided a resolution requiring Development and Building staff to:

- undertake a site safety audit at 25 Weatherly Close, Nelson Bay; and
- investigate whether physical commencement of DA 1988-61637-1 for Three Units has occurred; and
- investigate with the developer their response to and Order No. 16 issued to complete the building site at 25 Weatherly Close, Nelson Bay; and
- provide an Information Report to Council regarding the outcomes of the audit and investigation.

Prior to this the matter was previously considered by Council at its ordinary meeting on 26 November 2002 where Council resolved to:

Continue to ensure the preservation of public safety of the partially completed building at 25 Weatherly Close, Nelson Bay; and

That the owner be contacted and Councillors be informed of the circumstances and future plans of the owner.

In a memorandum to Councillors and the Executive Group dated 4 December 2002, the Group Manager, Sustainable Planning provided advice addressing Council's resolution.

Another Notice of Motion which provided a progress report on the clean up of the derelict building site at 25 Weatherly Close was considered by Council in February 2007. Council's resolution of 27 February 2007 was that Council:-

Request the owner to remove the site shed and any building material from the public road at 25 Weatherly Close, Nelson Bay.

Investigate demolition of the partially completed three unit development at 25 Weatherly Close, Nelson Bay.

Subsequent to the above and discussions with the owner, on 28 June 2007 a Development Application 16-2007-565-1 was lodged by Mr C & Mrs M Poulakas seeking consent to Demolish the existing partially constructed building and erect an Urban Housing development – 3 Dwellings (over 4 Storeys) on the property. Development Consent was granted subject to conditions on 15 January 2009.

In accordance with the resolution of 25 May 2010 Council staff have investigated the matter further and can provide the following:

#### Site Safety Audit

Council's Senior Health and Building Surveyor provided advice to address the safety issues at the site. The following is an extract of the report provided which outlines the main concern identified.

*"In general, the immediate site building area should be surrounded by construction fencing to Workcover requirements. The position of the fencing should not be in a location whereby building demolition materials are able to collapse outside the confinements of the public restricted area as required by condition 15 of the development consent."*

Following negotiations with the owner regarding the site safety issues identified during the safety audit, a fence was constructed around the entire site.

#### **Physical Commencement of DA 1988-61637-1**

Evidence available does show that physical commencement of application 1988-61637-1 has occurred due to the construction of the footings, slab and some masonry walls for the unit development.

#### **Compliance with Order No. 16 to Complete Development**

There is no evidence that an order to complete the development (Section 121B, Order No. 16 Environmental Planning and Assessment Act 1979) was issued by Council.

At Council's ordinary meeting on 26 November 2002 a motion to adopt the Operations Committee recommendation (to issue an order to complete the development) was put and lost.



### **Current Compliance Action**

On 15 January 2009 Council granted consent for further development on the site (Urban Housing DA 565/ 2007) which included the demolition of the existing unfinished structure. The conditions of development consent required the structure to be demolished within a 12 month period from the date of consent. Other conditions relating to the use of a site office were also imposed.

On 21 January 2010, as the unfinished structure remained on the site, a notice was issued to the owner of the land advising that Council was intending to issue an order requiring the conditions of development consent, relating to the demolition of the unfinished structure and the use of the site shed, to be complied with.

On 16 March 2010, as no representations were made by the land owner, an order was issued requiring compliance with the conditions of development consent. The order required that the unfinished structure on site be demolished and the site office be removed within two months.

In June 2010 it was found that the terms of the order had not been complied with and the land owner was contacted and advised of the pending enforcement action likely to be initiated for failing to comply with the terms of the order.

In July 2010 evidence that works had commenced on the demolition were visible. Further negotiations were conducted where the land owner advised that it was their intention to complete the demolition works by mid October 2010.

On 8 October 2010 an inspection of the site was undertaken and the building had been completely demolished (Photograph at Attachment 1). The bricks are being cleaned and stacked on site for reuse on the building approved by DA 565/ 2007. The site office remains in position and considered to be in breach of the order.

### **Conclusion**

As the demolition of the unfinished structure has been completed in accordance with the terms of the order (other than in breach of the time period specified), no further enforcement action is considered necessary for this part.

The site office has not been removed and requires follow up action which will continue until that part of the order, and a condition of consent, has been satisfied.

By demolishing the unfinished structure the land owner has acted on the latest consent (DA 565/ 2007) by physically commencing works on the development as demolition was approved, and required, by a condition of development consent. The development is thereby protected from lapsing due to physical commencement taking place. With this in mind the land owner is encouraged not to commence construction until he is prepared or able to complete the building (letter at Attachment 1). This should assist in avoiding a repeat of the previous situation of a partly finished building standing for long periods of time.

**ATTACHMENTS**

- 1) Photograph of Site (8/10/10)
- 2) Letter to Owner dated 4 November 2010

ATTACHMENT 1



ATTACHMENT 2

*Port Stephens* C.O.U.N.C.I.L

*... a community partnership*

116 Adelaide Street, Raymond Terrace NSW 2324  
PO Box 42, Raymond Terrace NSW 2324  
DX21406 ABN 16 744 377 876

Telephone Inquiries:  
Greg Rodwell  
Parcel No: 6891

4 November 2010

**Re: Demolition of Building - LOT: 146 DP: 244049, 25 Weatherly Close NELSON BAY 2315**

Reference is made to an order issued by Council in March 2010 where an unfinished building was required to be demolished and a site office/ demountable building was required to be removed from the abovementioned land. Recent inspections reveal that the building has been demolished generally in accordance with the terms of the order (even though it did not occur within the stated timeframe).

When last at the site in October 2010 I managed to speak to a person called John who advised he was cleaning bricks. I asked John some general questions regarding the works being undertaken and took some photographs of the site to provide a report to council on the compliance with the order.

During my last inspection it was apparent that the site office/ demountable building had not been removed in accordance with the terms of the order, however as works were progressing at the site to demolish the building it seemed unnecessary to push this issue.

As the demolition works have been completed it is requested that the site shed/ demountable building be removed from the site and not returned unless it is in accordance with the conditions of development consent set out in DA 565/ 2007 (Urban Housing).

By completing the demolition works set out in the order (which was also a condition of development consent) it is agreed that physical commencement of DA 565/ 2007 has taken place which effectively protects this consent from lapsing after the statutory five year period. In this case Council would prefer to avoid a repeat of the recently resolved issue where an unfinished building was left for a lengthy period of time. Council therefore request that works do not commence on the approved building unless it is intended to be finished in the time generally required for construction.

To finalise this compliance matter Council requests that you provide a timeframe in which the site office/ demountable building will be removed from the site and an indication on your intention with the construction of the new building. This information will assist in avoiding confusion and understanding your expectations. It would be appreciated if you could provide this information in writing prior to Friday 19 November 2010. Your cooperation in acting on this matter to date is appreciated.

Yours faithfully

 **FILE COPY**

Greg Rodwell  
Development Compliance Officer



Telephone: 02 4980 0255 Fax: 02 4987 3612  
Email: council@portstephens.nsw.gov.au Web: www.portstephens.nsw.gov.au

**INFORMATION ITEM NO. 2**

**ABORIGINAL STRATEGIC COMMITTEE**

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**REPORT OF: BRUCE PETERSEN - ENVIRONMENTAL AND DEVELOPMENT**

**PLANNING, MANAGER**

**GROUP: SUSTAINABLE PLANNING**

**FILE: PSC2005-0629**

**BACKGROUND**

**The purpose of this report is to present to Council the minutes of the Aboriginal Strategic Committee meetings held with Worimi and Karuah Local Aboriginal Land Councils on 26 October 2010 and 9 November 2010 respectively.**

The role of Council's Aboriginal Strategic Committee is:

- 1) To advise Council in relation to issues of concern between Council and the Aboriginal community,
- 2) To promote a positive public image with respect to issues for Aboriginal people in Port Stephens,
- 3) To provide a consultative mechanism with respect to development issues,
- 4) To improve relations between the Aboriginal and non Aboriginal community of Port Stephens,
- 5) To exchange information between the Aboriginal community and Council on issues affecting Aboriginal people,
- 6) To promote mutual awareness and respect for the cultures of both Aboriginal and non Aboriginal communities, and
- 7) To promote an increased awareness of the needs of Aboriginal communities and to assist with the development of programs to address those needs where possible and appropriate.

**ATTACHMENTS**

- 1) Minutes of Aboriginal Strategic Committee meetings held 26 October 2010 and 9 November 2010.



**Aboriginal Strategic Committee  
Meeting with Worimi Local  
Aboriginal Land Council**



**MINUTES**

**Minutes of meeting held on 26 October 2010 at Murrook Cultural & Leisure Centre**

Acting Chair: Cr Sally Dover

Minute taker: Paul Procter

**Present:**

Cr Sally Dover  
Cr Shirley O'Brien  
Andrew Smith  
Elaine Larkins  
Val Merrick  
Paul Procter

Port Stephens Council  
Port Stephens Council  
Worimi Local Aboriginal Land Council  
Worimi Local Aboriginal Land Council  
Worimi Local Aboriginal Land Council  
Port Stephens Council

**Guest Attendees required for specific agenda items:**

Eran Avery  
Kristy Murphy

Port Stephens Council  
Port Stephens Council

**Observer:**

Alara Dunn

University Student Field Placement

**Apologies:**

Cr Bob Westbury  
Cr Bruce MacKenzie  
Cr Peter Kafer  
Peter Gesling  
Cliff Johnson  
Jason Linnane  
Jamie Tarrant  
Grace Kinsella

Port Stephens Council  
Port Stephens Council  
Port Stephens Council  
Port Stephens Council  
Port Stephens Council  
Port Stephens Council  
Worimi Local Aboriginal Land Council  
Worimi Local Aboriginal Land Council

**1. WELCOME TO COUNTRY**

Val Merrick behalf of Elders past and present welcomed everyone to the land of the Worimi Nation.

**2. DECLARATION OF CONFLICTS OF INTEREST**

Nil

**3. MINUTES OF PREVIOUS MEETING**

The minutes of previous meeting held 3 Aug 2010 were adopted.

**4. BUSINESS ARISING FROM PREVIOUS MINUTES**

The following items of business arising from the meeting held on 3 Aug 2010 were discussed:

## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

### Item 1: Birbui Point Surf Club Update:

No further news to report at present.

Action:	1. Council's Social Planning Co-ordinator will liaise with Council's Acting Group Manager Facilities & Services on current status and will email WLALC CEO an update.
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### Item 2: Murrook Centre Future Plans:

Onsite meeting and provision of advice yet to occur due to pressing priorities of all parties.

Actions:	<ol style="list-style-type: none"><li>1. Council's Social Planning Co-ordinator will follow up the request for Council's Recreation Services to liaise with WLALC CEO concerning playground designs and specifications.</li><li>2. Council's Social Planning Co-ordinator will organise for a Council Officer from Development &amp; Building and himself to meet onsite with WLALC CEO to discuss ideas for onsite development.</li></ol>
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### Item 3: Murrook Markets:

Markets held at Murrook during recent Air Show went well with strong interest from market holders. Plan to hold again in 2011.

## 5. ABORIGINAL PROJECT FUND

### **COUNCIL'S COMMUNITY DEVELOPMENT OFFICER WILL NOW BE RESPONSIBLE FOR CO-ORDINATING COUNCIL'S ABORIGINAL PROJECT FUND.**

The following timetable was agreed to for the 2010/2011 funding round:

Nov 2010	Call for Stage 1 funding proposals
Dec 2010	Culling and short listing of funding proposals (by the Aboriginal Strategic Committee)
	Invite shortlisted applicants to prepare and lodge Stage 2 lodge application
Feb 2011	Review Stage 2 applications, project budgets and project plans and;
	Make recommendations to Council on the allocation of available Aboriginal Project Funds

#### **Note:**

*All applicants to be informed that applications are for proposed projects / programs planned to commence at start of the 2011 School Term 2.*

#### Use of Smarty Grants Software:

Council's Social Planning Co-ordinator gave an overview of the new grant management software program Council is currently piloting and indicated the option of it being used as part of the funding round of the Aboriginal Project Fund which is about to commence.

## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

After consideration of this option the Aboriginal Strategic Committee decided not to participate in the piloting of the software.

### Council's Cultural Project Fund:

Council's Social Planning Co-ordinator gave an overview of Council's Cultural Project Fund and sought feedback on the potential option of integrating the Aboriginal Project Fund in the future as a stream of the Cultural Project Fund and the potential benefit.

After considering this option the Aboriginal Strategic Committee clearly indicated that they do not support the merging of the two grant programs. It was suggested that the wording used in the guidelines of the two grant programs be reviewed to ensure there is greater clarity and differentiation between the two programs as there is some confusion in interpretation of some of the wording and terminology currently used such as the differing interpretations of the term 'culture'.

The Aboriginal Strategic Committee indicated that they like the Aboriginal Project Fund as it is and they are proud of it. They want it to remain as a stand-alone program. They do not want it to be absorbed into something else. They indicated that there is a strong awareness of the Aboriginal Project Fund amongst Aboriginal service providers in Port Stephens.

<b>Action:</b>	1. Council's Social Planning Co-ordinator to organise a meeting with the CEOs of KLALC, WLALC and Council's Community Development Officer, and Community Planner Cultural Development to review and amend guidelines of Cultural Project Fund and the Aboriginal Project Fund to ensure clear differentiation between the programs.
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## **6. ABORIGINAL ARTS & CULTURAL STRATEGY**

Deferred until next meeting.

## **7. GENERAL BUSINESS**

### **Boomerang Park Raymond Terrace**

Council's Engineering Trainee gave an overview of recent drainage works undertaken at Boomerang Park and the associated erection of a wall to assist in management of drainage on the site. They sought feedback from the Aboriginal Strategic Committee on the proposed plans to affix a boomerang to the wall fascia as a special feature. This was supported by the Aboriginal Strategic Committee with the suggestion that the Kattang word for boomerang be featured on the boomerang along with an interpretative plaque.

## **8 DETAILS OF NEXT MEETING**

7 December 2010 at 1pm at Murrook.





116 Adelaide Street, Raymond Terrace NSW 2324  
PO Box 42, Raymond Terrace NSW 2324

DX 21406 | ABN 16 744 377 876



**ABORIGINAL STRATEGIC COMMITTEE MEETING  
WITH KARUAH LOCAL ABORIGINAL LAND COUNCIL  
HELD ON TUESDAY 9 NOVEMBER 2010  
AT KARUAH RESERVE**

**Present:**

David Feeney	Karuah LALC
Sharon Feeney	Karuah LALC
Fiona Manton	Karuah LALC
Cr Dover	PSC
Cr O'Brien	PSC
Cliff Johnson	PSC
Paul Procter	PSC

**Guests:**

Kristy Murphy	PSC
Rick McKenzie	PSC

**Observers:**

Alara Dunn	University Student Field Placement with PCS
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**Apologies:**

Kevin Manton	Karuah LALC
Carl Simms	Karuah LALC
Cr MacKenzie	PSC
Cr Westbury	PSC
Cr Kafer	PSC

Acting Chairperson: Cr Dover

**1. WELCOME**

KLALC CEO acknowledged elders past/present and welcomed everyone to the traditional lands of the Worimi Nation.

**2. DECLARATION OF CONFLICTS OF INTEREST**

Nil

**3. MINUTES OF PREVIOUS MEETING**

The minutes of previous meeting held 7 September 2010 were adopted.

**4. BUSINESS ARISING FROM PREVIOUS MINUTES**

The following items of business arising from the meeting held on 7 September 2010 were discussed:

## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

### ITEM 1: Mustons Rd:

Council's Design & Project Development Co-ordinator gave a presentation of the current plans for providing a footpath/cycleway along Mustons Rd. The original concept plans have been revised. The new plans propose to locate the footpath/cycleway on the eastern side of Mustons Rd with a guard rail to be installed to delineate between the roadway and pedestrian / cycleway. Other improvements include increased straightening of the road alignment and a reduction in existing undulations.

Council has sought RTA funding for this project. To date efforts have been unsuccessful, Council will however resubmit a funding application to the RTA in April 2011 seeking funding in the 2011/2012 RTA budget for this project.

KLALC asked if consideration could also be given to including street lighting and kerb and guttering in specified works.

Action:	1. Council's Design & Project Development Co-ordinator to note and consider items raised by KLALC as part of project documentation.
---------	---

### ITEM 2: Aboriginal Project Fund

Council's Community Development Officer will be co-ordinating funding round which has just opened and closes 3 Dec 2010. For further information contact them on 4980 0288.

### ITEM 3: Draft Local Environmental Plan

KLALC CEO has requested a further meeting with Council's Senior Strategic Planner on the LEP.

Action:	1. Council's Social Planning Co-ordinator to seek meeting between Council's Senior Planner and KLALC.
---------	---

### ITEM 4: Street Gutter Cleaning

Request has been placed for gutters to be swept.

## 3. GENERAL BUSINESS

### Alleged Speeding on Mustons Rd

KLALC raised concerns over excessive vehicle speeds and unsafe driver behaviour on Mustons Rd. Police have been notified.

Action:	1. Council's Social Planning Co-ordinator will refer to attention of Council's Traffic Committee.
---------	---

## 4. NEXT MEETING

1 Feb 2011 at Council Administration Building, Raymond Terrace. Ordinary meeting of Aboriginal Strategic Committee with KLALC will be held at 12pm followed by a special meeting of the whole Committee to assess and determine applications lodged under the Aboriginal Project Fund.

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

**ABORIGINAL STRATEGIC COMMITTEE – SUMMARY OF ONGOING ACTIONS/INITIATIVES WITH KARUAH LOCAL ABORIGINAL LAND COUNCIL (UPDATED 9 NOV 2010)**

ISSUE	DETAILS	STATUS
Former Karuah School House	KLALC wish to re-locate the former mission school house from Franklin St back to the Aboriginal Reserve where it can be re-established as a cultural facility.	KLALC developing an alternate proposal for funding the re-location of the building based on doing the job themselves. They will seek approval from Council to vary the expenditure of a grant they received of \$10,000 under the Aboriginal Project Fund to be redirected to this project or another purpose.  A development application will need to be lodged and approved prior to re-locating the building.
Replacement Bus Shelter	KLALC wishes to replace their existing bus shelter on Mustons Rd, located adjacent their offices. Shelter is ageing and experiences problems with drainage during periods of rainfall.  This is not a Council asset but a private bus shelter. It is ineligible for inclusion in Council's forward works program as it is not a declared public bus stop; it is for school use only.	Council's Design and project Development Co-ordinator advised that Council has applied for funding under the regional local infrastructure program for the bus shelter. Awaiting outcome.
Old Wharf/Jetty	KLALC seeking to have old jetty rebuilt.	KLALC CEO has sent information to Dept of Lands seeking approval to reinstate the wharf. Awaiting response.
Tarean Rd Speed Limit Reduction	KLALC have asked if current speed limit of 60km/h on Tarean Rd through the Town Centre can be lowered to 50km/h. This will ensure ongoing pedestrian safety taking into account the changes to driver sight lines as a result of tree planting along the median strip.  KLALC also questioned the suitability of the species of trees planted in the median and associated impacts on visibility.	Council's Traffic Committee have conducted a site inspection and indicated that the main st area appears to meet the criteria for a 50km/h speed limit would make improve consistency with other similar urban areas.  Traffic Committee have referred request onto the RTA for consideration.  Awaiting response.  Council's Social Planning Co-ordinator will consult with Council's Engineering Services Section on the issues raised with regard to the trees.

**INFORMATION ITEM NO. 3**

**SALE OF 431 MASONITE ROAD HEATHERBRAE**

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

**FILE:** PSC2005-1536

**BACKGROUND**

The purpose of this report is advise Council that simultaneous exchange and settlement of 431 Masonite Road has occurred on Wednesday 3 November 2010.

The return to Council is \$7,450,000 (Seven Million, Four Hundred & Fifty Thousand Dollars) exclusive of GST. This shows a dollar rate of \$46.56 per square meter which is at the top of the range for englobo industrial land sales in the Hunter Valley.

The profit of the sale after development expenses (purchase price, legal fees and holding costs) is \$5,649,391. In accordance with Councils Property Investment and Development Policy \$1,694,817 will be deposited into Ward Funds.

The balance of the funds will be deposited into the Commercial Property Restricted Fund and will be utilised to pay the residual loan amount on 528 Hunter Street, Newcastle.

**ATTACHMENTS**

Nil.

INFORMATION ITEM NO. 4

**CASH AND INVESTMENTS HELD AT 31 OCTOBER 2010**

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**REPORT OF:** DAMIEN JENKINS – FINANCIAL SERVICES, MANAGER  
**GROUP:** COMMERCIAL SERVICES

**FILE:** PSC2006-6531

**BACKGROUND**

The purpose of this report is to present Council's schedule of cash and investments held at 31 October 2010.

**ATTACHMENTS**

- 1) Cash and investments held at 31 October 2010
- 2) Monthly cash and investments balance October 2009 – October 2010
- 3) Monthly Australian term deposit index October 2009 – October 2010

ATTACHMENT 1

CASH & INVESTMENTS HELD - AS AT 31 OCTOBER 2010										
INVESTED WITH	INV. TYPE	CURRENT RATING	MATURITY DATE	AMOUNT INVESTED	% of Total Portfolio	Current Int Rate	Market Value August	Market Value September	Market Value October	Current Mark to Market Exposure
<b>GRANGE SECURITIES</b>										
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	NR	20-Mar-12	1,000,000.00	4.57%	6.24%	\$840,400.00	\$835,000.00	\$835,000.00	-\$165,000.00
NEXUS BONDS LTD "TOPAZ AA-"	Floating Rate CDO		23-Jun-15	412,500.00	1.88%	0.00%	\$264,825.00	\$264,825.00	\$273,281.25	-\$139,218.75
HERALD LTD "QUARTZ AA"	Floating Rate CDO	CCC-	20-Dec-10	450,000.00	2.06%	6.24%	\$430,785.00	\$436,095.00	\$442,575.00	-\$7,425.00
START'S CAYMAN LTD "BLUE GUM AA-"	Floating Rate CDO	NR	22-Jun-13	1,000,000.00	4.57%	3.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
HELIUM CAPITAL LTD "ESPERANCE AA+" *	Floating Rate CDO	NR	20-Mar-13	1,000,000.00	4.57%	0.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
HOME BUILDING SOCIETY NOTE	Floating Rate Sub Debt	NR	25-Jul-11	500,000.00	2.28%	5.79%	\$463,585.00	\$466,445.00	\$469,355.00	-\$30,645.00
GRANGE SECURITIES "KAKADU AA"	Yield Curve Note				0.00%		\$506,650.00	\$506,650.00		\$0.00
GRANGE SECURITIES "COOLANGAT TA AA" *	Floating Rate CDO	CCC	20-Mar-14	1,000,000.00	4.57%	6.14%	\$332,500.00	\$288,500.00	\$315,500.00	-\$684,500.00
	Floating Rate CDO	NR	20-Sep-14	1,000,000.00	4.57%	0.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
<b>TOTAL GRANGE SECURITIES</b>				<b>\$6,362,500.00</b>	<b>29.06%</b>		<b>\$2,838,745.00</b>	<b>\$2,797,515.00</b>	<b>\$2,335,711.25</b>	<b>(\$4,026,788.75)</b>
<b>ABN AMRO MORGANS</b>										
GLOBAL PROTECTED PROPERTY NOTES VII	Property Linked Note	A+	20-Sep-11	\$1,000,000.00	4.57%	0.00%	\$924,000.00	\$924,000.00	\$929,400.00	-\$70,600.00
<b>TOTAL ABN AMRO MORGANS</b>				<b>\$1,000,000.00</b>	<b>4.57%</b>		<b>\$924,000.00</b>	<b>\$924,000.00</b>	<b>\$929,400.00</b>	<b>(\$70,600.00)</b>
<b>ANZ INVESTMENTS</b>										
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	B	30-Dec-11	\$1,000,000.00	4.57%	0.00%	\$804,600.00	\$800,600.00	\$831,000.00	-\$169,000.00
ANZ ZERO COUPON BOND	Zero Coupon Bond	AA	1-Jun-17	\$1,017,876.98	4.65%	0.00%	\$646,942.24	\$664,836.52	\$650,494.64	-\$367,382.34
<b>TOTAL ANZ INVESTMENTS</b>				<b>\$2,017,876.98</b>	<b>9.22%</b>		<b>\$1,451,542.24</b>	<b>\$1,465,436.52</b>	<b>\$1,481,494.64</b>	<b>(\$536,382.34)</b>
<b>RIM SECURITIES</b>										
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO		8-Oct-11	\$2,000,000.00	9.14%	0.00%	\$1,610,000.00	\$1,601,000.00	\$1,721,000.00	-\$279,000.00
ELDERS RURAL BANK (2011)	Floating Rate Sub Debt		5-Apr-11	\$1,000,000.00	4.57%	5.62%	\$959,570.00	\$967,040.00	\$971,452.00	-\$28,548.00
COMMUNITY CPS CREDIT UNION	Term Deposit				0.00%			100,000.00		\$0.00
<b>TOTAL RIM SECURITIES</b>				<b>\$3,000,000.00</b>	<b>13.70%</b>		<b>\$2,569,570.00</b>	<b>\$3,568,040.00</b>	<b>\$2,692,452.00</b>	<b>(\$307,548.00)</b>
<b>WESTPAC INVESTMENT BANK</b>										
MACKAY PERMANENT BUILDING SOCIETY	Floating Rate Sub Debt		21-Nov-11	\$500,000.00	2.28%	5.82%	\$485,345.00	\$487,220.00	\$487,965.00	-\$12,035.00
<b>TOTAL WESTPAC INV. BANK</b>				<b>\$500,000.00</b>	<b>2.28%</b>		<b>\$485,345.00</b>	<b>\$487,220.00</b>	<b>\$487,965.00</b>	<b>(\$12,035.00)</b>
<b>LONGREACH CAPITAL MARKETS</b>										
LONGREACH SERIES 16 PROPERTY LINKED NOTE	Property Linked Note	A+	7-Mar-12	\$500,000.00	2.28%	0.00%	\$461,485.00	\$461,485.00	\$460,755.00	-\$39,245.00
LONGREACH SERIES 19 GLOBAL PROPERTY LINKED NOTE	Property Linked Note	A+	7-Sep-12	\$500,000.00	2.28%	0.00%	\$443,700.00	\$443,700.00	\$442,100.00	-\$57,900.00
<b>TOTAL LONGREACH CAPITAL</b>				<b>\$1,000,000.00</b>	<b>4.57%</b>		<b>\$905,185.00</b>	<b>\$905,185.00</b>	<b>\$902,855.00</b>	<b>(\$97,145.00)</b>
<b>COMMONWEALTH BANK</b>										
EQUITY LINKED DEPOSIT	Equity Linked Note	AA	20-Sep-11	\$500,000.00	2.28%	3.00%	\$486,150.00	\$487,250.00	\$487,600.00	-\$12,400.00
EQUITY LINKED DEPOSIT ELN SERIES 2	Equity Linked Note	AA	05-Nov-12	\$500,000.00	2.28%	3.00%	\$474,350.00	\$479,250.00	\$474,050.00	-\$25,950.00
BENDIGO BANK SUBORDINATED DEBT	Floating Rate Sub Debt	BBB	09-Nov-12	\$500,000.00	2.28%	5.96%	\$483,455.00	\$484,520.00	\$487,440.00	-\$12,560.00
BANK OF QUEENSLAND BOND	Bond	BBB+	16-Mar-12	\$1,000,000.00	4.57%	5.35%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
<b>TOTAL COMMONWEALTH BANK</b>				<b>\$2,500,000.00</b>	<b>11.42%</b>		<b>\$2,443,955.00</b>	<b>\$2,451,020.00</b>	<b>\$2,449,090.00</b>	<b>(\$50,910.00)</b>

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

**ATTACHMENT 1**

<b>FIG SECURITIES</b>										
TELSTRA LINKED DEPOSIT NOTE	Principal Protected Note		30-Nov-14	\$500,000.00	2.28%	5.75%	\$455,240.00	\$461,955.00	\$463,635.00	-\$36,365.00
<b>TOTAL FIG SECURITIES</b>				<b>\$500,000.00</b>	<b>2.28%</b>		<b>\$455,240.00</b>	<b>\$461,955.00</b>	<b>\$463,635.00</b>	<b>(\$36,365.00)</b>
<b>MAITLAND MUTUAL</b>										
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt	N/R	30-Jun-13	500,000.00	2.28%	6.51%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt	N/R	31-Dec-14	500,000.00	2.28%	6.51%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
MAITLAND MUTUAL	Term Deposit				0.00%		\$1,000,000.00			\$0.00
<b>TOTAL MLAND MUTUAL</b>				<b>\$1,000,000.00</b>	<b>4.57%</b>		<b>\$2,000,000.00</b>	<b>\$1,000,000.00</b>	<b>\$1,000,000.00</b>	<b>\$0.00</b>
<b>FARQUHARSON SECURITIES</b>										
QUEENSLAND POLICE CREDIT UNION	Term Deposit	N/R	15-Nov-10	\$500,000.00	2.28%	5.70%		\$500,000.00	\$500,000.00	\$0.00
SGE CREDIT UNION	Term Deposit	N/R	25-Nov-10	\$1,000,000.00	4.57%	5.55%			\$1,000,000.00	\$0.00
<b>TOTAL FARQUHARSON SECURITIES</b>				<b>\$1,500,000.00</b>	<b>6.85%</b>		<b>\$485,345.00</b>	<b>\$500,000.00</b>	<b>\$500,000.00</b>	<b>\$0.00</b>
<b>TOTAL INVESTMENTS</b>				<b>\$19,380,376.98</b>	<b>88.53%</b>		<b>\$14,073,582.24</b>	<b>\$14,560,371.52</b>	<b>\$13,242,602.89</b>	<b>(\$5,137,774.09)</b>
<b>AVERAGE RATE OF RETURN ON INVESTMENTS</b>										3.03%
<b>CASH AT BANK</b>				<b>\$2,511,760.42</b>	<b>11.47%</b>	<b>4.45%</b>	<b>\$284,870.56</b>	<b>\$1,879,264.41</b>	<b>\$2,511,760.42</b>	<b>\$0.00</b>
<b>AVERAGE RATE OF RETURN ON INVESTMENTS + CASH</b>										3.19%
<b>TOTAL CASH &amp; INVESTMENTS</b>				<b>\$21,892,137.40</b>	<b>100.00%</b>		<b>\$14,358,452.80</b>	<b>\$16,439,635.93</b>	<b>\$15,754,363.31</b>	<b>(\$5,137,774.09)</b>
<b>BBSW FOR PREVIOUS 3 MONTHS</b>										4.84%

\* Lehman Brothers is the swap counterparty to these transactions and as such the deals are in the process of being unwound. No valuation information is available.

**CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER**

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

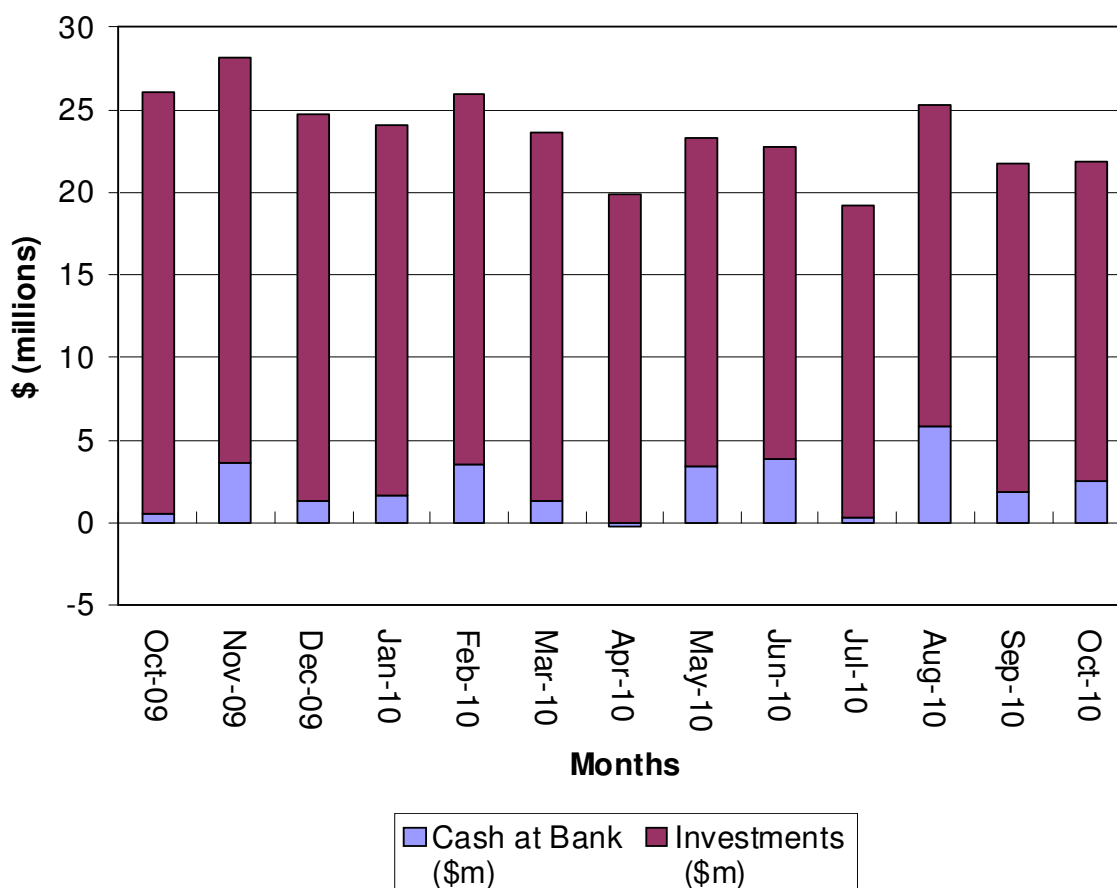
**P GESLING**

ATTACHMENT 2

Cash and Investments Held

Date	Cash at Bank (\$m)	Investments (\$m)	Total Funds (\$m)
Oct-09	0.579	25.448	26.028
Nov-09	3.691	24.448	28.140
Dec-09	1.277	23.448	24.726
Jan-10	1.670	22.455	24.125
Feb-10	3.489	22.455	25.944
Mar-10	1.311	22.380	23.691
Apr-10	0.206	19.880	19.675
May-10	3.425	19.880	23.305
Jun-10	3.847	18.880	22.728
Jul-10	0.285	18.880	19.165
Aug-10	5.888	19.380	25.268
Sep-10	1.879	19.880	21.759
Oct-10	2.512	19.380	21.892

Cash and Invested Funds for the Period ended 31/10/2010



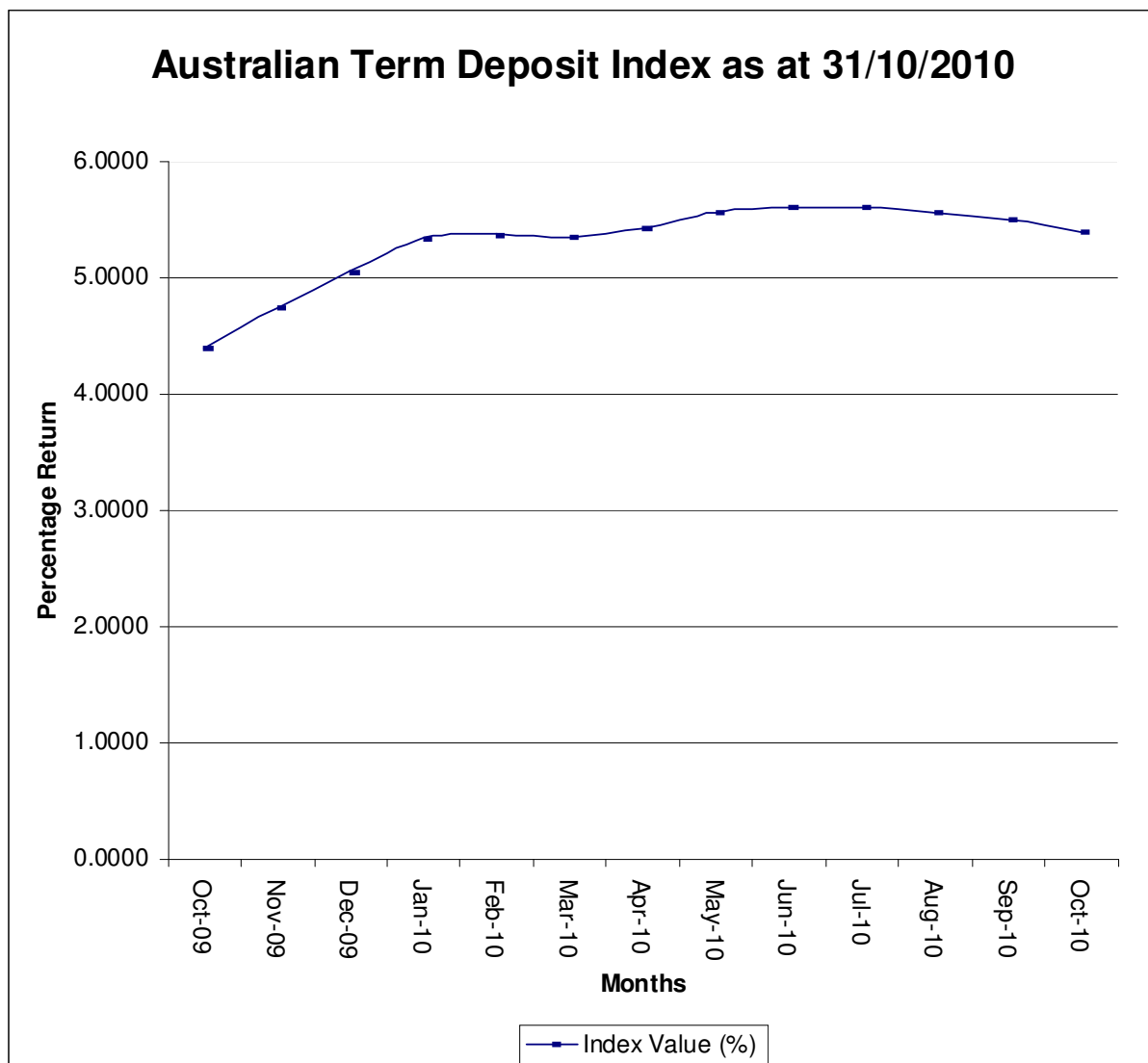


ATTACHMENT 3

Australian Term Deposit Accumulation Index

Date	Index Value (%)
Oct-09	4.3946
Nov-09	4.7356
Dec-09	5.0488
Jan-10	5.3373
Feb-10	5.3685
Mar-10	5.3452
Apr-10	5.4259
May-10	5.5615
Jun-10	5.5974
Jul-10	5.5992
Aug-10	5.5587
Sep-10	5.4991
Oct-10	5.3935

Australian Term Deposit Index as at 31/10/2010



**INFORMATION ITEM NO. 5**

**RESOLUTION OF AIRCRAFT NOISE MATTER**

---

**REPORT OF:** WAYNE WALLIS - CORPORATE SERVICES, GROUP MANAGER  
**GROUP:** CORPORATE SERVICES

**FILE:** A2004-0094

**BACKGROUND**

The purpose of this report is to advise Council of the recovery of funds amounting to \$3.91m outlaid in 2006 in settlement of the aircraft noise matter.

In 1999 claims against Port Stephens Council in negligence were lodged in the District Court in relation to losses allegedly resulting from aircraft noise. Judgement on preliminary issues was handed down in 2002. The main findings were that:

- Council had breached its duty of care in relation to s149 certificates provided to property owners and could not rely on the good faith defence
- Council had breached its duty of care in relation to determination of the Development Application for the Fisherman's Village Resort.

The decisions in four (4) property owners' claims were handed down in 2004 with a finding in favour of the plaintiffs. Council's appeal to the Court of Appeal was heard in 2005, the Court finding in favour of the Respondents. In October 2005, Council sought special leave to appeal to the High Court. The High Court dismissed that application in March 2006. Mediation took place in October 2006 and the matters were settled at a total cost of \$3.91 million.

Port Stephens Council was insured with Statewide Mutual for these claims. Statewide Mutual retained the first \$2 million and took out a policy of reinsurance with FAI Ltd from \$2 million to \$20 million and then further reinsurance with HIH Ltd from \$20 million up. Due to the collapse of the HIH Group of companies, there was no insurance cover on the balance of these claims leaving Council responsible for payment of the settlement cheques amounting to \$3.91 million.

Statewide Mutual expended \$1,915,061.01 of the first \$2m of the claim. The balance of the self insured retention was forwarded to Council in May 2007, leaving Council to fund the balance of the settlement at a total cost of \$3,915,061.01.

Council initially sought assistance under the Australian Government's Local Government Assistance Scheme for HIH claims. When the "Absorbed Loss" component of the Assistance Scheme's formula was applied to Council's application, it reduced the amount of assistance available to Council to \$1,013,681.31. To obtain this assistance, Council was required to assign its rights under the HIH Liquidation scheme to the Government. Council exhausted all avenues in its

## **MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

attempts to have the “Absorbed Loss” component waived and was ultimately unsuccessful.

In December 2008 the Board of Statewide Mutual resolved to reimburse Council the full amount of its liability in this matter by way of payment of four (4) equal instalments of \$600,000 over a four (4) year period and then to negotiate with Council on a final instalment once the amount recovered from the HIH Group Liquidators in respect of this matter was known.

By August this year, Council had received \$1.8m from Statewide Mutual and a further \$1.62m from the liquidators of the HIH Group of Companies. On 5 November 2010 Council received a further cheque from Statewide Mutual for \$494,505.51 comprising \$198,415.66 from the liquidator of the HIH Group of Companies and a further payment of \$296,089.85 from Statewide Mutual.

The payment from Statewide Mutual represents the balance payable in accordance with the Board’s resolution of 5 December 2008. This payment was due to be paid in July 2011, however, the Board resolved to make the payment now in conjunction with the liquidator’s payment.

This brings the total reimbursements to Council from Statewide Mutual and the HIH liquidator to \$3,915,061.01 and effectively finalises this matter.

A letter thanking Statewide Mutual for their assistance in this matter has been forwarded to the Board for consideration at their meeting on 3 December 2010.

### **ATTACHMENTS**

Nil.

INFORMATION ITEM NO. 6

**PETITION FOR EXEMPTION FROM PAID PARKING – TERAMBY ROAD**

---

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

**FILE:** PSC2010-05605

**BACKGROUND**

The purpose of this report is advise Council of a petition received with approximately eighteen (18) signatures and reads as follows:

We the undersigned, are all local rate-paying pensioners who have been fishing on the Teramby St breakwall every winter. Some of us have been fishing there for up to 20 years. Few of us can afford paid-parking on a regular basis and we would like the council or the Co-Op to provide spaces for us so we may be able to pursue our pass-time for a few more years.

**ATTACHMENTS**

- 1) Letter
- 2) Petition

ATTACHMENT 1

Sally Dover

Port Stephens Council

PO Box 42

Raymond Terrace 2324

Dear Sally,

Please find enclosed petition from 'The Seniors Blackfish Club'. One or two of the members are out of town with family or medical problems so their names do not appear on the petition.

Ideally, we feel a windscreen sticker would be perfect but, failing that, a parking space similar to The Coastal Rescue should work for us.

If I may just give an example; Warringah Shire charges an arm and a leg for beachside parking. Shire residents get a windscreen sticker and park for no cost. I guess it is to do with quality of life rather than the bottom line in the ledger.

With respect, the parking meters at the Teramby St. Breakwall have nothing whatsoever to do with overcrowding. That could simply be remedied with 2 hour limit signs. The Co-Op has chosen not to do that.

Some of our members are getting a bit tottery and often need assistance getting their gear down to their most comfortable rock. That assistance is readily forthcoming from their club mates who realise that they might not be there next season. Once they are comfortable, the oldies grin like Cheshire cats and readily swap yarns with their mates, delighting in the company of their peers.

To see those men unable to pursue their pastime, their breakwall trolleys rusting away in the back shed along with their fishing gear is, to me, morally repugnant and politically unjustifiable. As fair minded Australians we have a moral obligation to our elder citizens not to deny them a reasonable quality of life in their sunset years.

Thank you for your time.

ATTACHMENT 2

Petition

To Port Stephens Council

We, the undersigned, are all local rate-paying pensioners who have been fishing on the Teramby St. Breakwall every winter. Some of us have been fishing there for up to 20 years. Few of us can afford paid-parking on a regular basis and we would like the council or the Co-Op to provide spaces for us so we may be able to pursue our pastime for a few more years.

(Please print)

Name

Address

Signature

INFORMATION ITEM NO. 7

**PETITION FOR CONSTRUCTION OF CYCLEWAY TWEEN HINTON AND  
WALLALONG**

---

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

**FILE:** PSC2010-05604

**BACKGROUND**

The purpose of this report is advise Council that a petition has been received with approximately one hundred and forty six signatures and reads as follows:

This petition draws your attention to the interest of members of the community in the building of a walkway/cycleway along High Street between Hinton and Wallalong. This is a link in the 'Bike Plan' as listed in the Forward Works Plan 2009. It is on the local primary school and high school bus route. It would link the two communities and provide better access to the sporting fields. It would be used frequently by cyclists and pedestrians alike. We, undersigned, call on Port Stephens Council to build this path as a matter of priority.

**ATTACHMENTS**

- 1) Letter
- 2) Petition

ATTACHMENT 1

02 NOV 2010

2 - NOV 2010
File No. ....
Action by .....
App No. ....

Port Stephens Council  
Design & Development Engineer  
PO Box 42  
Raymond Terrace, NSW

Dear Mr R Mackenzie,

Please find attached a petition with 146 signatures requesting Port Stephens Council take action on the building of the cycleway between Wallalong and Winton.

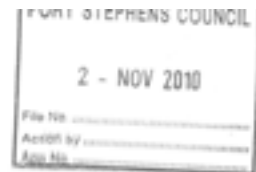
I look forward to hearing from you.

Thank you,



ATTACHMENT 2

To Port Stephens Council  
PO Box 42  
Raymond Terrace, NSW 2321



This petition draws your attention to the interest of members of the community in the building of a walkway/cycleway along High Street between Hinton and Wallalong. This is a link in the 'Bike Plan' as listed in the Forward Works Plan 2009. It is on the local primary school and high school bus route. It would link the two communities and provide better access to the sporting fields. It would be used frequently by cyclists and pedestrians alike. We, undersigned, call on Port Stephens Council to build this path as a matter of priority.

Date	Print Name(clearly)	Signature	Address
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INFORMATION ITEM NO. 8

REPORTS TO COUNCIL

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

**FILE:** PSC2009-01383

**BACKGROUND**

The purpose of this report is to confirm with Council that the following reports are no longer required.

Councillors at the recent 2 way conversation confirmed that these reports were no longer required and that Council were satisfied with the progress/advice on each matter.

Min No.	Report title	Original Resolution
388	Notice of Motion Proposed Road Closure of Stanley Street, Lemon Tree Passage.	It was resolved that Council prepare a report on the possible reclassification of the unformed section of Stanley Street, Lemon Tree Passage.
470	Notice of Motion Signage for Swimming  <b>Note:</b> To be discussed with Maritime Services and Ward Councillors	It was resolved that Council prepare a report on having some beaches or sections of beaches designated as swimming beaches
278	Open Space	It was resolved that Council be provided with a report on the potential opportunity for Open Space in the Fern Bay area.
330	Notice of Motion Extending the Nelson Bay Cyclway  <b>Note:</b> This matter is on the Forward Works Programme	It was resolved that in view, of the growing number of cyclists and the unfortunate increase in accidents, the Manager of Facilities & Services prepare an urgent report to council on the costs and plans for extending the Nelson Bay cycle way from the entrance to the Sports Ground to the swim centre and the High School in order to encourage residents and students to ride to the Swimming Centre and High School in safety.
331	Notice of Motion	That Council introduce a Vandalism

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

	Graffiti Management Plan adopt Incentive Initiate	Reward Scheme along the lines of Sutherland Council's Scheme (details provided under separate cover) to be incorporated in Port Stephens Graffiti Management Plan with a prompt report to Council.  It was resolved that the Notice of Motion deferred to allow a further report to come back to Council.
229	Information Paper  <b>Note:</b> Ward Councillors to be provided with information.	It was resolved that Council prepare a report on the car parking and general maintenance of Angophora Reserve in connection with Information Paper Item No. 3.

**ATTACHMENTS**

Nil.

INFORMATION ITEM NO. 9

NSW OMBUDSMAN REPORT

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

**FILE:** PSC2005-1821

**BACKGROUND**

The purpose of this report is to respond to a question raised by Cr Geoff Dingle at the Council meeting on 9 November 2010, concerning an article printed in the Daily Telegraph on 3 November 2010.

The article titled "Council staff abuse power" detailed a number of Councils that had been investigated by the NSW Ombudsman for 2009/10 after complaints were received by the Ombudsman. This information was source from the NSW Ombudsman annual report. The article listed the top 10 Councils with Port Stephens listed as equal 7<sup>th</sup>.

The NSW Ombudsman's annual report lists 18 formal complaints concerning Port Stephens Council of those 14 were declined after assessment only, 3 progressed to preliminary or informal investigation with advice/explanation provided where no or insufficient evidence of wrong conduct and 1 was resolved to the Ombudsman's satisfaction.

A copy of an extract from the NSW Ombudsman annual report is provided to fully inform Council.

**ATTACHMENTS**

- 1) Extract from the NSW Ombudsman's Annual Report.

ATTACHMENT 1

Appendix H

Local government

Figure 72: Action taken on formal complaints about local government finalised in 2009–2010  
 Figure 72 shows the action we took on each of the written complaints finalised this year about individual councils.

Council	Assessment only			Preliminary or informal investigation							Formal investigation			Total
	A	B	C	O	R	F	O	I	I	U	M			
Accredited certifier	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Albury City Council	3	0	2	0	0	0	0	0	0	0	0	0	0	5
Armidale Dumaresq Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3
Auburn Council	4	0	2	0	2	0	0	0	0	0	0	0	0	8
Ballina Shire Council	5	0	1	0	0	0	0	0	0	0	0	0	0	6
Bankstown City Council	6	0	1	0	0	1	0	0	0	0	0	0	0	8
Bathurst Regional Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Bega Valley Shire Council	6	0	3	0	1	0	0	0	0	0	0	0	0	10
Bellingen Shire Council	3	0	2	0	1	0	0	0	0	0	0	0	0	6
Berrigan Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Blacktown City Council	4	0	5	0	0	0	1	0	0	0	0	0	0	10
Blayney Shire Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Blue Mountains City Council	6	0	4	0	0	0	0	0	0	0	0	0	0	10
Bogan Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Bootha Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Botany Bay City Council	5	0	5	0	1	0	0	0	0	0	0	0	0	11
Byron Shire Council	10	0	1	0	2	0	0	0	0	0	0	0	0	13
Carbone Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Campbelltown City Council	6	0	1	0	1	0	0	0	0	0	0	0	0	8
Canterbury City Council	9	0	2	0	2	0	0	0	0	0	0	0	1	14
Castlereagh-Macquarie County Council	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Central Darling Shire Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Cessnock City Council	1	0	2	0	1	2	0	0	0	0	0	0	0	6
City of Canada Bay Council	4	0	2	0	1	0	1	0	0	0	0	0	0	8
Clarence Valley Council	9	0	1	0	0	0	0	0	0	0	0	0	0	10
Cobar Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Coffs Harbour City Council	5	0	0	0	1	0	0	0	0	0	0	0	0	6
Cooma-Monaro Shire Council	1	0	0	0	0	0	1	0	0	0	0	0	0	2
Coonamble Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Coolamunda Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Corowa Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Council not named	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Cowra Shire Council	2	0	2	0	2	0	0	0	0	0	0	0	0	6
Dubbo City Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Dungog Shire Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3
Eurobodalla Shire Council	10	0	2	0	1	0	0	1	0	0	0	0	0	14
Fairfield City Council	9	0	2	0	1	0	0	0	0	0	0	0	0	12
Forbes Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Glen Innes Severn Shire Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Gloucester Shire Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Goldenfields Water Country Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Gosford City Council	14	0	2	0	0	1	0	0	0	0	0	0	0	17
Goulburn Mulwaree Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Great Lakes Council	4	0	1	0	0	0	0	0	0	0	0	0	0	5
Greater Hume Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Greater Taree City Council	12	0	4	1	2	1	0	0	0	0	0	0	0	20
Gunnedah Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2

MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

Council	Assessment only			Preliminary or informal investigation						Formal investigation			Total	
	A	B	C	D	E	F	G	H	I	J	K	L		M
Gwydir Shire Council	2	0	1	0	0	1	0	0	0	0	0	0	0	4
Hawkesbury City Council	7	0	4	0	0	0	0	0	0	0	0	0	0	11
Hay Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Holroyd City Council	3	0	0	0	0	1	0	0	0	0	0	0	0	4
Hornsby Shire Council	9	0	6	0	0	0	0	0	0	0	0	0	0	15
Hunters Hill Municipal Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Hurstville City Council	4	0	0	0	2	0	1	0	0	0	0	0	0	7
Inverell Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Jerrilderie Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Kempsey Shire Council	8	0	2	0	2	0	0	0	0	0	0	0	0	12
Kiama Municipal Council	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Kogarah Municipal Council	5	0	1	0	0	1	0	0	0	0	0	0	0	7
Ku-ring-gai Municipal Council	10	1	3	0	0	0	0	0	0	0	0	0	0	14
Ku-ring-gai Planning Panel	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Lake Macquarie City Council	5	0	0	0	0	0	1	0	0	0	0	0	0	6
Lane Cove Municipal Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Leichhardt Municipal Council	3	0	1	0	1	0	0	0	0	0	0	0	0	5
Lismore City Council	7	0	3	0	1	1	0	0	0	0	0	0	0	12
Lithgow City Council	3	0	1	0	1	0	0	0	0	0	0	0	0	5
Liverpool City Council	11	0	4	0	0	0	0	0	0	0	0	0	0	15
Lockhart Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Maitland City Council	5	0	0	0	0	0	0	0	0	0	0	0	0	5
Manly Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Merricks Council	4	0	3	0	3	1	0	0	0	0	0	0	0	11
Mid-Western Regional Council	3	0	0	0	1	0	0	0	0	0	0	0	0	4
Mid Coast Water	4	0	0	1	1	0	0	0	0	0	0	0	0	6
Moree Plains Shire Council	2	0	1	0	1	0	0	0	0	0	0	0	0	4
Mosman Municipal Council	7	1	0	0	1	0	1	0	0	0	0	0	0	10
Murray Shire Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Muswellbrook Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Nambucca Shire Council	0	0	3	0	0	0	0	0	0	0	0	0	0	3
Narrabri Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Narrandera Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Narramine Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Newcastle City Council	13	0	3	0	2	2	0	0	0	0	0	0	0	20
North Sydney Council	3	0	1	0	0	1	0	0	0	0	0	0	0	5
Orange City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Palerang Council	4	0	2	0	0	0	0	0	0	0	0	0	0	6
Parkes Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Parramatta City Council	4	0	4	0	1	1	0	0	0	0	0	0	0	10
Penrith City Council	6	0	2	0	0	0	0	0	0	0	0	0	0	8
Pitwater Council	11	0	1	0	3	0	2	0	0	0	0	0	0	17
Port Macquarie-Hastings Council	7	0	3	0	1	0	0	0	0	0	0	0	0	11
Port Stephens Shire Council	14	0	3	0	1	0	0	0	0	0	0	0	0	18
Queanbeyan City Council	1	0	1	1	0	0	0	0	0	0	0	0	0	3
Randwick City Council	9	0	4	0	0	0	0	0	0	0	0	0	0	13
Richmond Valley Council	4	0	1	0	0	0	0	0	0	0	0	0	0	5
Riverina Water Country Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Rockdale City Council	2	1	5	0	2	0	0	0	0	0	0	0	0	10
Rous County Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Ryde City Council	6	0	1	0	0	0	1	0	0	0	0	0	0	8
Shellharbour City Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Shoalhaven City Council	8	0	6	0	0	1	0	0	0	0	0	0	0	15
Singleton Shire Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2

MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

Council	Assessment only		Preliminary or informal investigation							Formal investigation			Total	
	A	B	C	D	E	F	G	H	I	J	K	L		M
Snowy River Shire Council	2	0	1	0	1	0	0	0	0	0	0	0	0	4
Strathfield Municipal Council	12	0	6	0	0	0	0	0	0	0	0	0	0	18
Sutherland Shire Council	10	0	3	0	2	0	4	0	0	0	0	0	0	19
Sydney City Council	27	0	4	0	3	2	0	0	0	0	0	0	0	36
Tamworth City Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Tenterfield Shire Council	6	0	2	0	1	0	0	0	0	0	0	0	0	9
The Hills Shire Council	6	0	0	0	1	2	0	0	0	0	0	0	0	9
Tumut Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Tweed Shire Council	14	0	3	0	0	0	0	0	0	0	0	0	0	17
Upper Hunter Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Upper Lachlan Shire Council	5	0	0	0	3	0	0	0	0	0	0	0	0	8
Uralla Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga City Council	6	0	1	0	0	1	0	0	0	0	0	0	0	8
Wagga Wagga Interim Joint Planning Panel	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Walkeol Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Walcha Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Walgett Shire Council	4	0	2	0	0	0	0	0	0	0	0	0	0	6
Warringham Council	10	0	2	0	1	0	0	0	0	0	0	0	0	13
Warumbungle Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Waverley Council	11	0	2	0	1	1	0	0	0	0	0	0	0	15
Wellington Council	2	0	1	0	1	1	0	0	0	0	1	0	0	6
Willoughby City Council	5	0	2	0	0	1	0	0	0	0	0	0	0	8
Wingecambee Shire Council	6	0	4	0	1	1	0	0	0	1	0	0	0	13
Wollondilly Shire Council	4	0	1	0	1	0	0	0	0	0	0	0	0	6
Wollongong City Council	34	0	2	0	3	0	1	0	0	0	0	0	0	40
Woolahra Municipal Council	5	0	7	0	0	0	0	0	0	0	0	0	0	12
Wyong Shire Council	6	0	7	0	3	0	0	0	0	0	0	0	0	16
Yass Valley Council	1	0	1	0	1	0	0	0	0	0	0	0	0	3
Young Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Total	570	3	183	3	71	26	15	1	0	1	1	0	1	875

Description

- A** Decline after assessment only, including:
  - Conduct outside jurisdiction, trivial, remote, insufficient interest, commercial matter, right of appeal or redress, substantive explanation or advice provided, premature – referred to agency, concurrent representation, investigation declined on resource/priority grounds
- B** Preliminary or informal investigation:
  - Substantive advice, information provided without formal finding of wrong conduct
- C** Advice/explanation provided where no or insufficient evidence of wrong conduct
- D** Further investigation declined on grounds of resource/priority
- E** Resolved to Ombudsman's satisfaction
- F** Resolved by agency prior to our intervention
- G** Suggestions/comment made
- H** Consolidated into other complaint
- I** Conciliated/mediated
- J** Formal investigation:
  - Resolved during investigation
  - Investigation discontinued
  - L** No adverse finding
  - M** Adverse finding

# GENERAL MANAGER'S REPORT

PETER GESLING  
GENERAL MANAGER



ITEM NO. 1

FILE NO: PSC2010-05125

**PORT STEPHENS COMMUNITY SETTLEMENT STRATEGY AND THE PROPOSED WALLALONG RELEASE AREA****REPORT OF: BRUCE PETERSEN – ENVIRONMENTAL & DEVELOPMENT PLANNING,  
MANAGER****GROUP: SUSTAINABLE PLANNING****RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive the Report.

**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>413</b>	<b>Councillor Ken Jordan Councillor Shirley O'Brien</b>	It was resolved that Council:- 1) Receive the report. 2) Invite the Minister for Planning or his delegate to a site inspection of the Wallalong area in early 2011.
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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, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Bob Westbury.

Those against the Motion: Nil.

**BACKGROUND**

The purpose of this Report is to advise Council that on 5 November 2010 the Minister for Planning, Tony Kelly, wrote to Mayor Councillor Westbury about the inclusion of land at Wallalong as an Urban Release Area in Councils revised Community Settlement Strategy (Attachment 1). This correspondence was in response to a letter by the then Mayor Councillor Bruce Mackenzie which advised of Council's resolution to place a revised version of its draft Community Settlement Strategy which included Wallalong on public exhibition.

The Minister states that the identification of land at Wallalong for major urban land release is not supported due to a combination of location, access and infrastructure issues. In addition, the Lower Hunter Regional Strategy (LHRS) already identifies the major future urban release area within Port Stephens Local Government Area as Kings Hill and the draft LEP for that site is nearing completion.

Furthermore, the Minister states, a five year review of the LHRS is currently underway and it remains highly unlikely that the review will identify Wallalong as an appropriate or required location for potential urban release.

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

Nil.

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

Consistent with the Minister's advice, the Department of Planning does not support Wallalong in Council's Community Settlement Strategy. As a result Council may not receive a final endorsement of the revised Strategy which will impact on the progression of both the development of a new Principal Local Environmental Plan in the standard template format and site specific rezoning.

#### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

#### **CONSULTATION**

Correspondence is result of former Mayor's consultation with the Minister for Planning.

#### **OPTIONS**

Nil.

#### **ATTACHMENTS**

- 1) Correspondence from Minister for Planning (5 November 2010).

#### **COUNCILLORS ROOM**

Correspondence from Minister for Planning (5 November 2010).

#### **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1



Hon Tony Kelly MLC  
Minister for Planning  
Minister for Infrastructure  
Minister for Lands  
Deputy Leader of the Government in the Legislative Council  
Leader of the House in the Legislative Council

Councillor Bob Westbury  
Mayor  
Port Stephens Council  
PO Box 42  
RAYMOND TERRACE NSW 2324



10/18288

05 NOV 2010

Dear Councillor Westbury

I refer to representations from Council's previous Mayor, concerning Council's Draft Port Stephens Community Settlement Strategy and the inclusion of land at Wallalong as an Urban Release Area.

The previous Mayor's letter advised of Council's resolution to place a revised version of its draft Community Settlement Strategy on public exhibition. The letter also advised of Council's decision to include land at Wallalong in the draft Strategy, which is land that is not identified for urban release in the Lower Hunter Regional Strategy (LHRS). I am advised that Council is now working through issues raised in public submissions and a final draft Strategy will be submitted to the Department of Planning for consideration by the end of the year.

With regard to Wallalong, the Department has previously advised Council that it does not support the identification of land at Wallalong for major urban land release due to a combination of location, access and infrastructure issues. In addition, the LHRS already identifies an ample supply of suitable urban land release to support the population growth needs of the Region. Many of those sites have already been rezoned and provide adequate residential land for many years ahead.

A 5 Year Review of the LHRS is currently underway. It remains highly unlikely however that the Review (due to be completed by November 2011) will identify Wallalong as an appropriate or required location for potential urban release. Rather, the LHRS identifies the major future urban release area within Port Stephens LGA at Kings Hill and the draft LEP for that site is nearing completion.

Yours sincerely

Tony Kelly MLC  
Minister for Planning

Level 34, Governor Macquarie Tower  
1 Farrer Place, Sydney NSW 2000  
T (02) 9228 3999 F (02) 9228 2988

Room 909 Parliament House  
Macquarie Street, Sydney NSW 2000  
T (02) 9230 2538 F (02) 9230 2530

Cr Frank Ward left the meeting at 6.58pm.

**ITEM NO. 2**

**FILE NO: A2004-0284**

**REVIEW OF THE CODE OF MEETING PRACTICE**

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

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**RECOMMENDATION IS THAT:**

- 1) Revoke the previous Code of Meeting Practice dated 16 December 2008, Min No. 397 and 24 November 2010, Min No. 399.
- 2) Adopt the tabled Code of Meeting Practice.

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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>414</b>	<b>Councillor John Nell Councillor Ken Jordan</b>	It was resolved that the recommendation be adopted.
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**BACKGROUND**

**The purpose of the report is to provide Council with any response received from the community following public exhibition of the Code of Meeting Practice.**

Council at its meeting on 14 September 2010 resolved to place the Code of Meeting Practice on public exhibition for a period of 28 days. Public exhibition was from 14 October 2010 to 26 November 2010. No submissions were received.

Council is now asked to consider the adoption of the Code.

**FINANCIAL/RESOURCE IMPLICATIONS**

The Code will be implemented within current financial and human resources.

Once adopted, the Code of meeting practice must be available for public inspection free of charge at the office of the Council during ordinary office hours. Copies of the Code must be available free of charge or, if the Council determines, on payment of the approved fee.

**LEGAL AND POLICY IMPLICATIONS**

Under Section 361 of the Local Government Act, the draft Code must be placed on public exhibition for not less than 28 days. The council must consider all submissions received before determining the Code.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The code allows Councillors to effectively carry out their responsibilities at meetings of the council and committees of which all the members are councillors.

**CONSULTATION**

General Manager  
Councillors  
Port Stephens Community

**OPTIONS**

- 1) Adopt the recommendation.
- 2) Retain the existing policy.

**ATTACHMENTS**

Nil.

**TABLED DOCUMENTS**

- 1) Draft Code of Meeting Practice.

**ITEM NO. 3**

**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 14 December 2010.

<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	DEVELOPMENT ASSESSMENT AND ENVIRONMENT HEALTH – PERFORMANCE MONITORING REPORT	

**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>415</b>	<b>Councillor Steve Tucker</b> <b>Councillor Sally Dover</b>	It was resolved that the recommendation be adopted.
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# GENERAL MANAGERS INFORMATION PAPERS



**INFORMATION ITEM NO. 1**

**DEVELOPMENT ASSESSMENT AND ENVIRONMENT HEALTH –  
PERFORMANCE MONITORING REPORT**

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**REPORT OF:** KEN SOLMAN – DEVELOPMENT ASSESSMENT AND  
ENVIRONMENT REGULATION, ACTING MANAGER

**GROUP:** SUSTAINABLE PLANNING GROUP

**FILE:** PSC2010-06034

**BACKGROUND**

The Purpose of this report is:

Advise on performance for Development Applications and Construction Certificates up to November 2010.

DA Performance

The key results for Development Application processing within this Council for financial year 2009/10 are as follows:

Total number of DA's approved in 2009-10 was 965;

The estimated total value of the DA's determined in 2009-10 \$150 Million;

The average time (in net terms) to make decisions on DA's in 2009/10 was also stable at 28 days;

DA's outstanding/undetermined as at November 2010 was 227

The above results reflect significant achievement by the Development and Building Section of the Sustainable Planning Group. This is due to the conscientious staff effort and the continuous improvement culture of the Council professional officers.

The key results for Development Application processing within this Council for the calendar year to 2 December 2010 are as follows:

Total number of DA's received 920;

1018 DA's were determined;

The total value of the DA's determined \$138.3 Million;

Comparative Performance with Local Government in NSW

The NSW Department of Planning publishes an annual report on "Local Government Development Monitoring". This report is based upon data provided by each NSW Council encompassing a wide range of performance measures for Development Assessment.



## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

Within this report, Port Stephens Council is a "Category 4 Council " which comprises 31 Councils in NSW which relate to Regional Centres with populations between 30,000 and 70,000 people. It therefore includes Councils such as Shoal Haven, Port Macquarie, Coffs Harbour and Maitland. Key findings within that Statewide report are:

That this Council is one of the best performers in terms of having one of the highest numbers of DA's determined for each professional employee engaged in Development Assessment;

Comparative processing times in the Financial Year 2008/2009 were;

	Mean Gross Days	Mean Net Days	Median Gross Days
Port Stephens	72	27	29
Category 4 Councils	68	41	35

That gross determination times for DA's with a Capital Value of between \$5 and \$20 million were significantly higher than the Category 4 average – and this was because of extensive time spent in seeking to achieve an outcome with a DA for a Tourist Development at Anna Bay.

### Conclusion

Hence performance of this Council in Development Assessment continues to improve significantly and constitutes a positive comparison with similar Councils in NSW.

### Building Certification Performance

The Construction Certificates issued from July 2009 to October 2010 – total issued = 853:

The Construction Certificates issued from July 2009 to June 2010 – total issued = 572;

The average determination time (in net terms) for Construction Certificates in 2009/10 was 19 days.

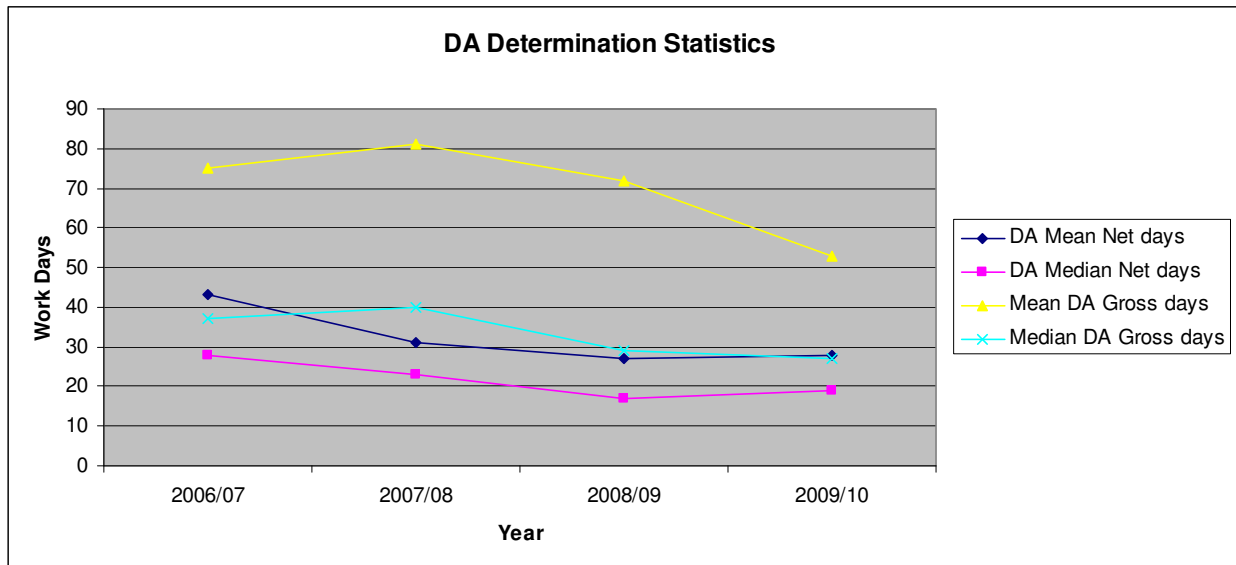
**ATTACHMENTS**

- 1) Performance Monitoring Data Table 2005 – 2010
- 2) Performance Monitoring Data Graph 2006 – 2010 – Determination Statistics
- 3) Performance Monitoring Data Graph 2006 – 2010 – DA Assessment Data 2006/7 to 2009/10
- 4) Performance Monitoring Data 2006 – 2010 – DA's received 2006/7 to 2009/10
- 5) Weekly Trend Data – Outstanding DA's & New DA's Sept 2010 to Nov 2010
- 6) Weekly Trend Undetermined AS's > 200 Days 2010
- 7) Development Applications Processed July 2009 – October 2010
- 8) Development Applications approved July 2007 – October 2010
- 9) Gross DA Processing Time from July 2008
- 10) Net DA Processing Time from July 2008 Taking Account of Stop the Clock
- 11) Construction Certificates Issued July 2009 – October 2010
- 12) Construction Certificates Issued July 2008 – October 2010
- 13) Construction Certificates – Gross Processing Time from July 2008

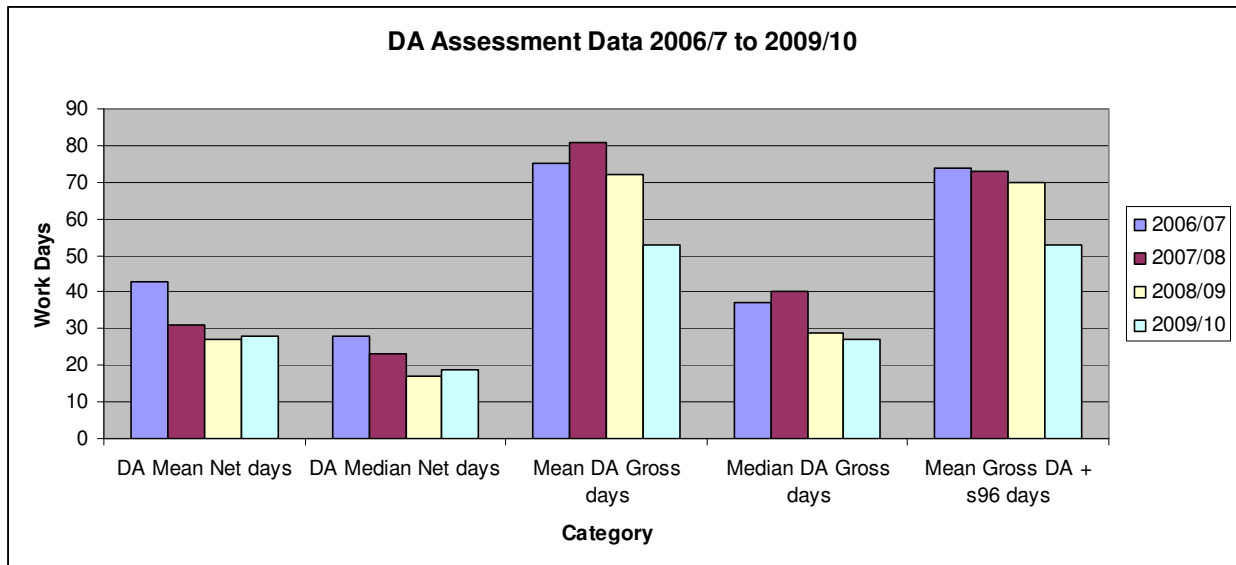
ATTACHMENT 1  
PERFORMANCE MONITORING DATA TABLE 2005 – 2010

Year	Total No. DA's	Total No. S96	Estimated Value of DA's approved	Mean DA Gross days	Median DA Gross days	Mean Gross DA + s96 days	DA Mean Net days	DA Median Net days	Total CC's Issued by PCA	Total CC's Issued by PSC	Total CDC's
2005 2006	1736		\$304.2M		57	113					
2006 2007	1322	199	\$172.3M	75	37	74	43	28	Not avail.		22
2007 2008	1096	171	\$153M	81	40	73	31	23	254	664	58
2008 2009	946	152	\$149M	72	29	70	27	17	180	659	48
2009 2010	965	124	\$150.2M	53	27	53	28	19	130	572	78

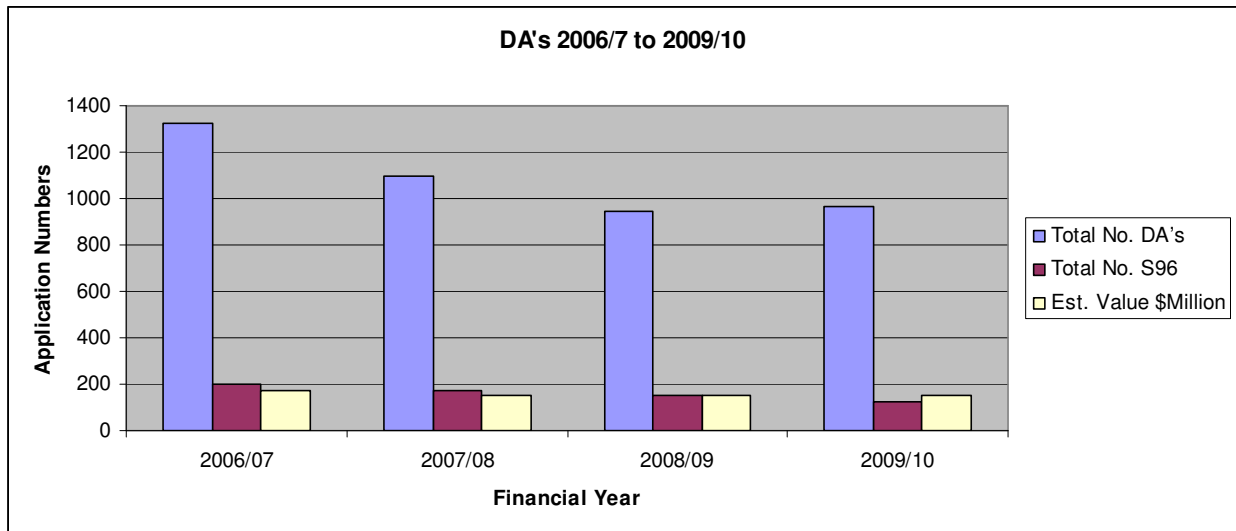
ATTACHMENT 2  
PERFORMANCE MONITORING DATA GRAPH 2005 – 2010



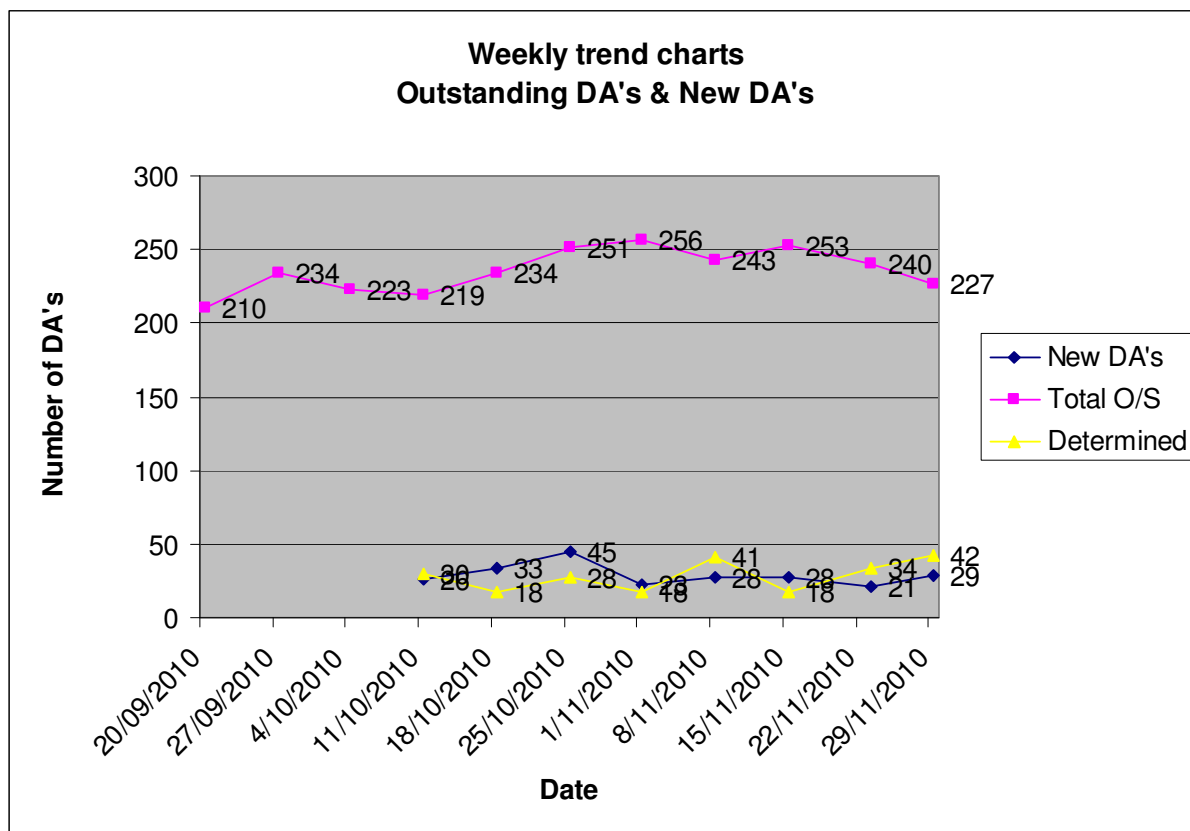
ATTACHMENT 3  
PERFORMANCE MONITORING DATA GRAPH 2005 – 2010



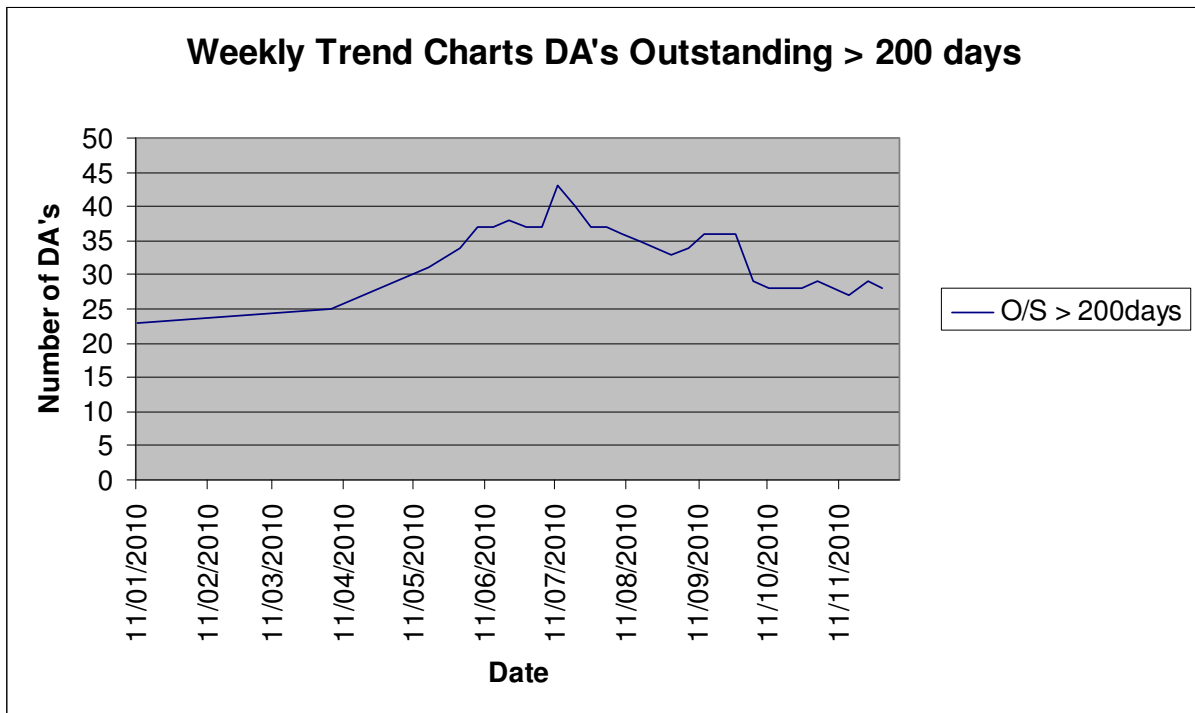
ATTACHMENT 4  
PERFORMANCE MONITORING DATA 2006 – 2010



ATTACHMENT 5  
RECENT WEEKLY TREND DATA 2010

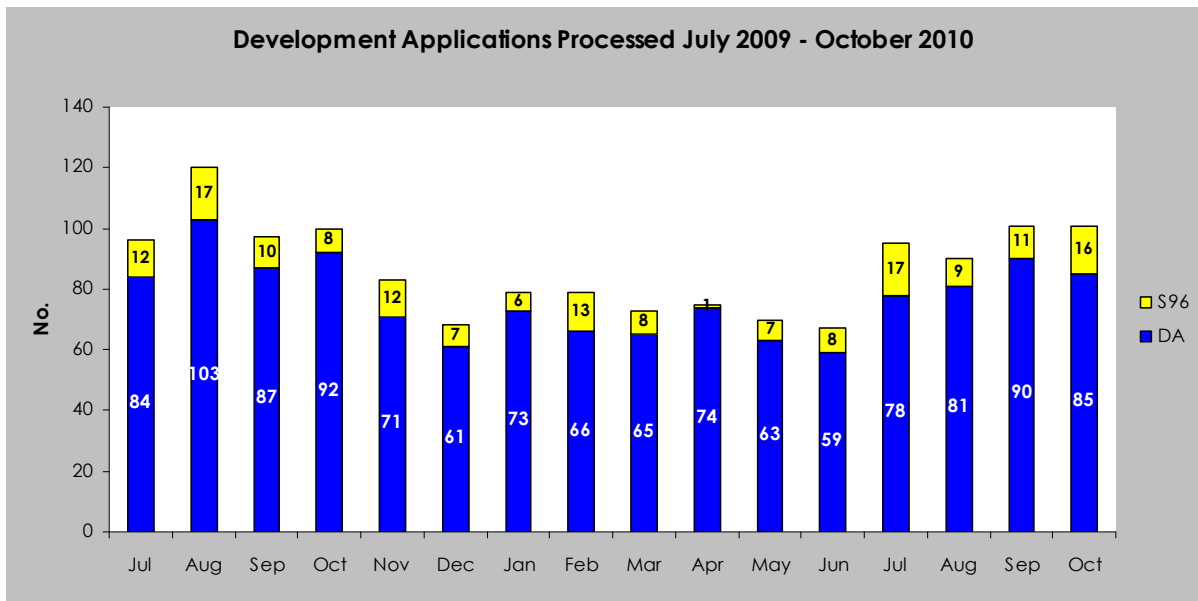


ATTACHMENT 6  
WEEKLY TREND UNDETERMINED DA'S >200 DAYS – 2010

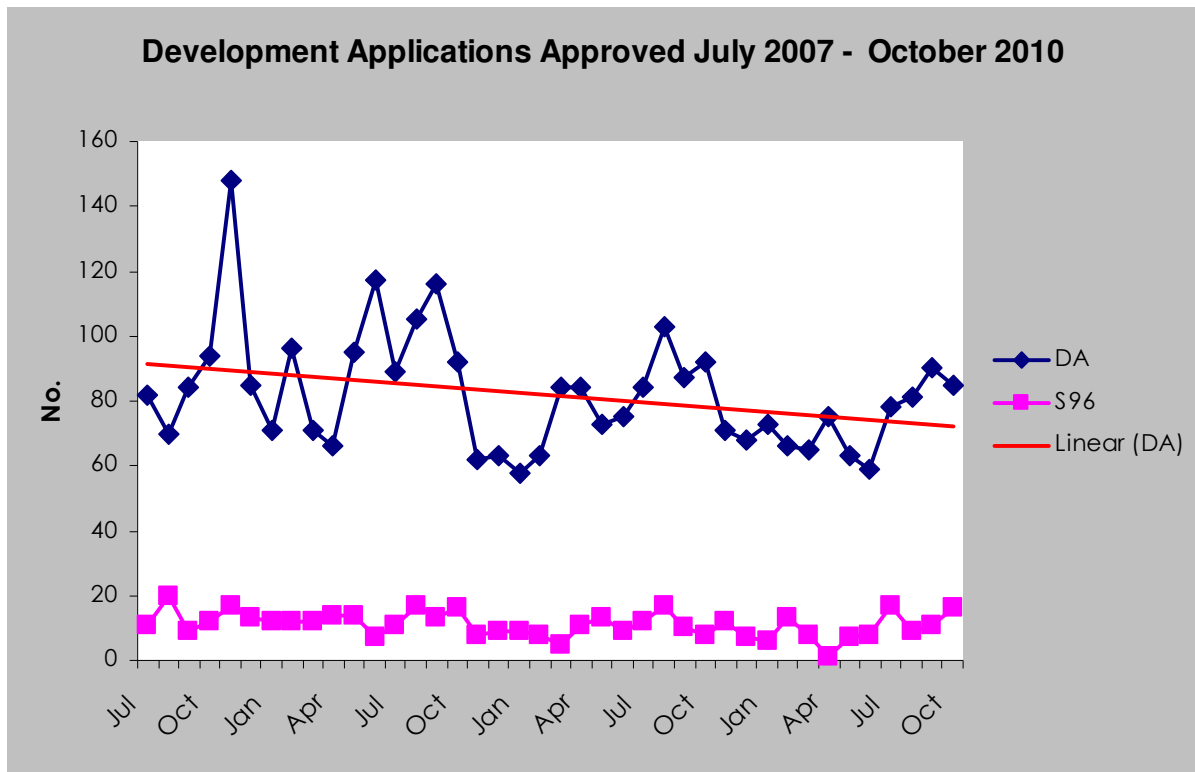




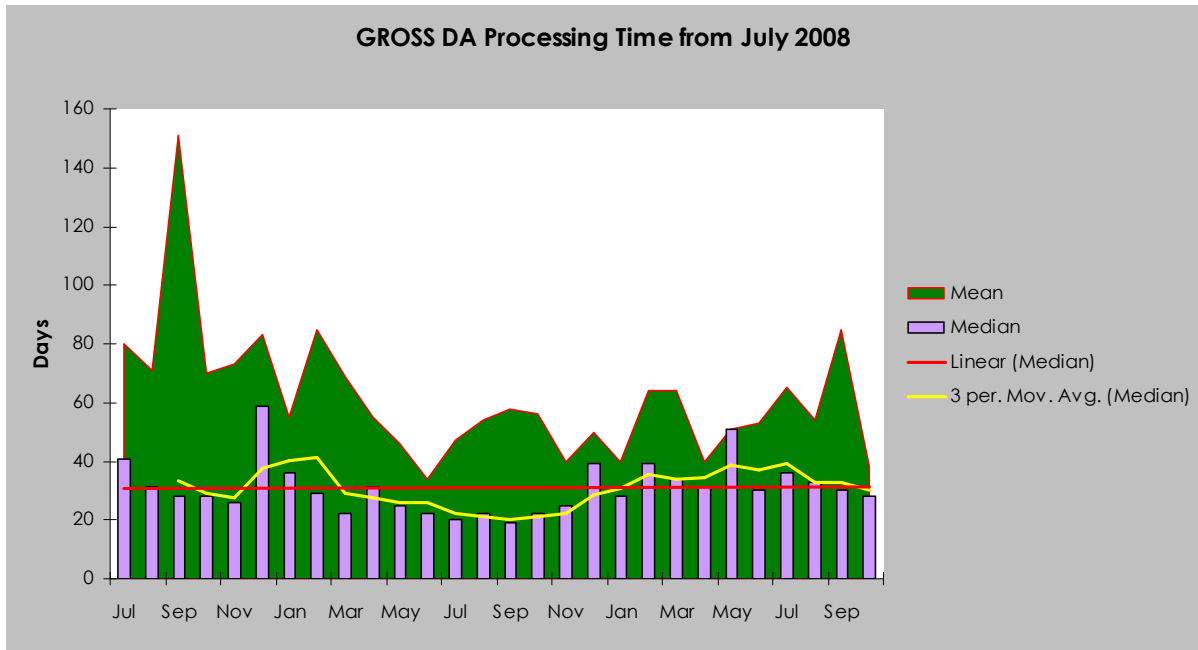
ATTACHMENT 7  
DEVELOPMENT APPLICATIONS PROCESSED JULY 2009 – OCTOBER 2010



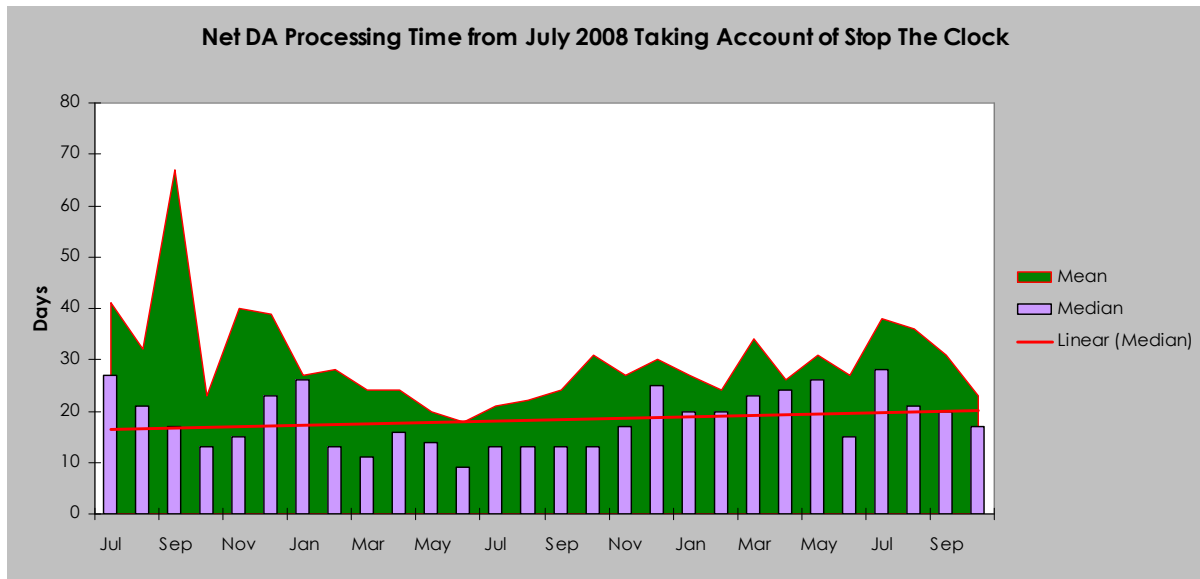
ATTACHMENT 8  
DEVELOPMENT APPLICATIONS APPROVED JULY 2007 – OCTOBER 2010



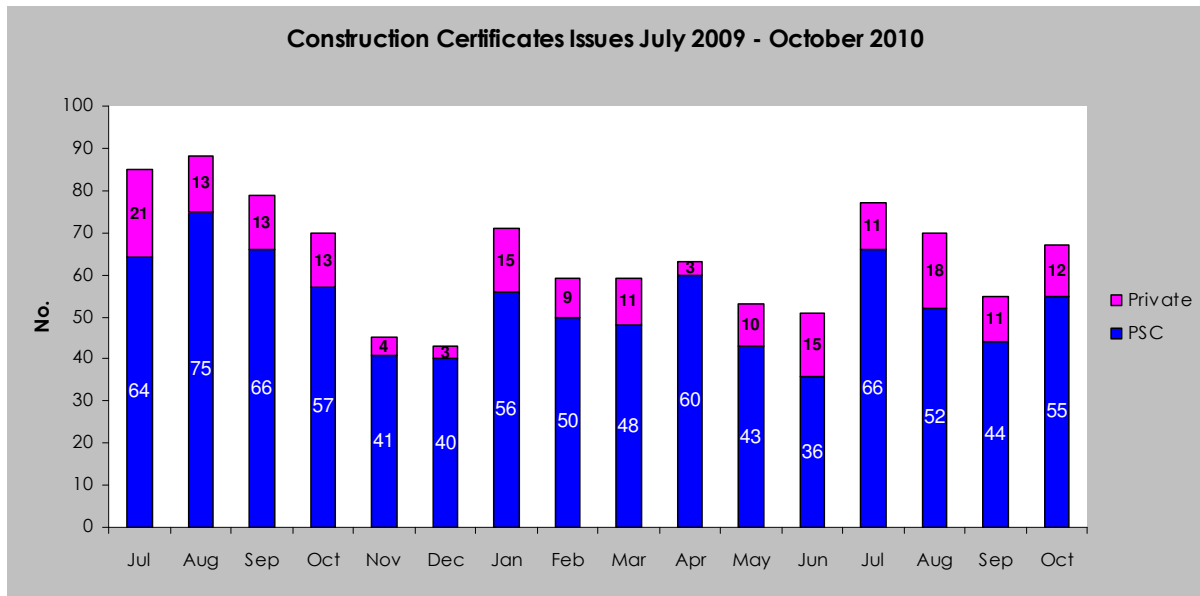
ATTACHMENT 9  
GROSS DA PROCESSING TIME FROM JULY 2008



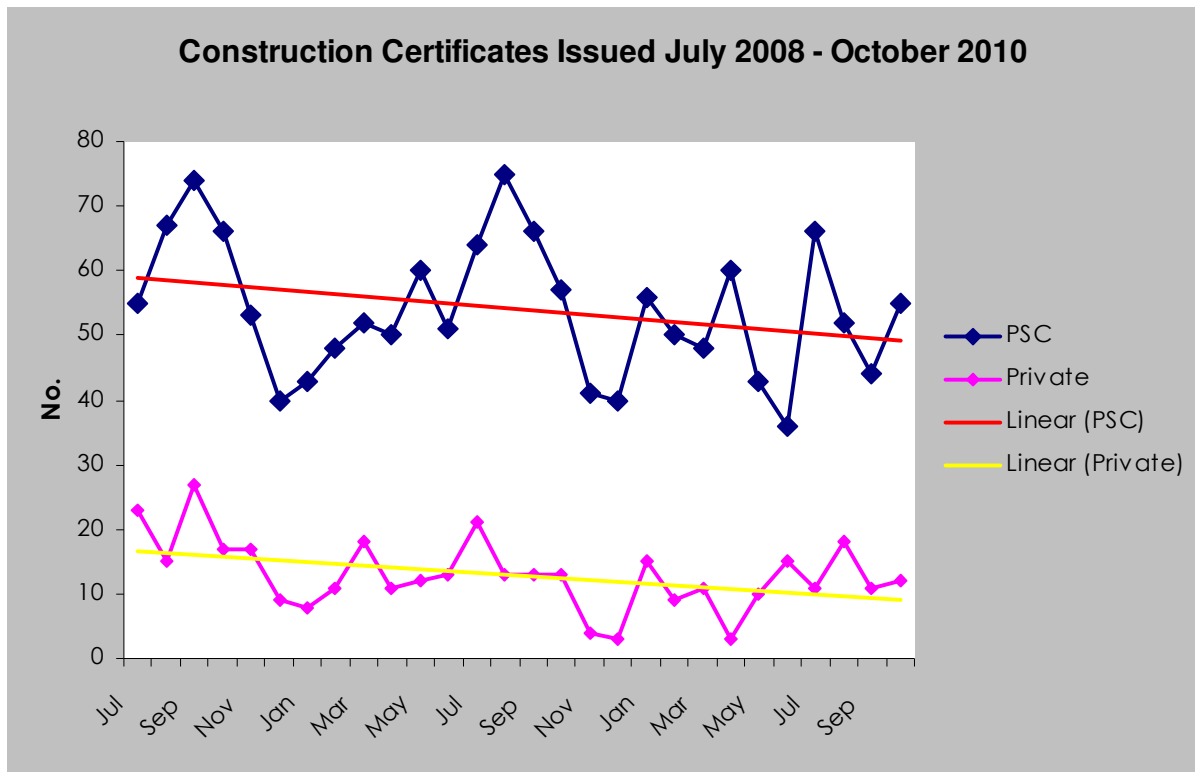
ATTACHMENT 10  
NET DA PROCESSING TIME FROM JULY 2008 TAKING ACCOUNT OF STOP THE CLOCK



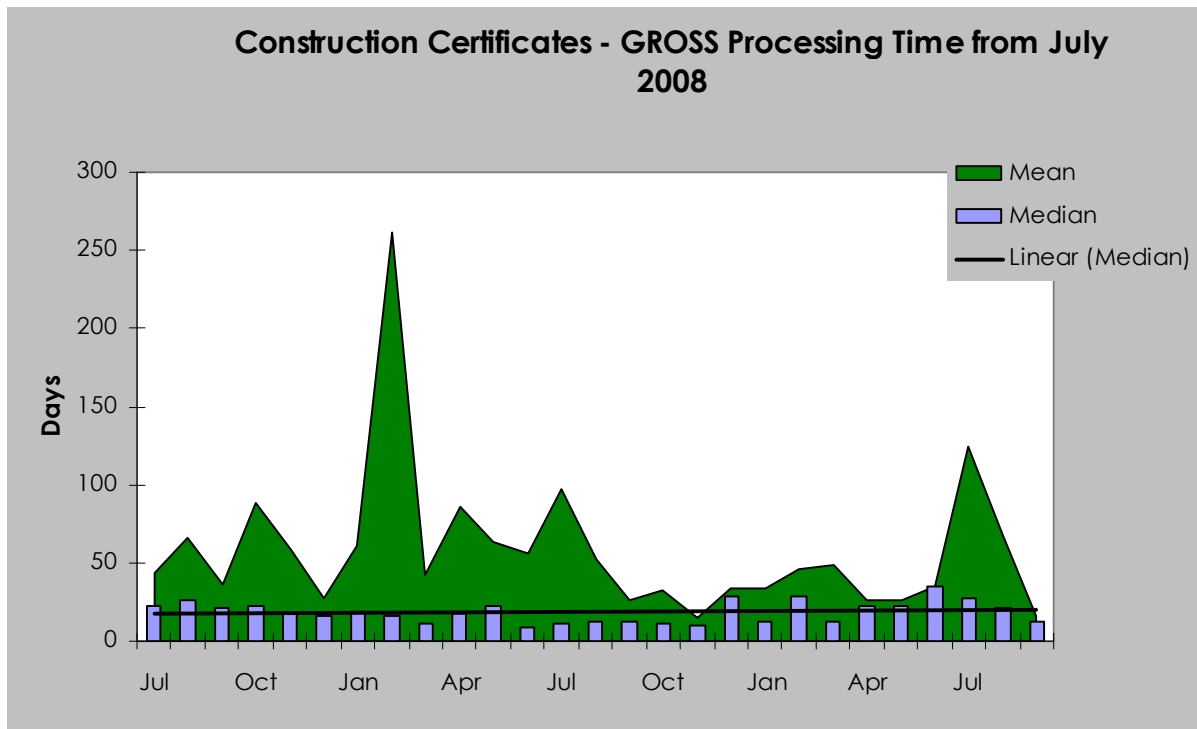
ATTACHMENT 11  
CONSTRUCTION CERTIFICATES ISSUED JULY 2009 – OCTOBER 2010



ATTACHMENT 12  
CONSTRUCTION CERTIFICATES ISSUED JULY 2008 – OCTOBER 2010



ATTACHMENT 13  
CONSTRUCTION CERTIFICATES – GROSS PROCESSING TIME FROM JULY 2008



# NOTICES OF MOTION



# NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217

## CYCLEWAY CONSTRUCTION

COUNCILLOR: SALLY DOVER

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### THAT COUNCIL:

- 1) Include "cycleway construction" as a category for Section 94 Contributions.
- 

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

#### BACKGROUND

It is fully intended that the funding of cycleways (land acquisition as necessary, and construction) will be part of the next Draft Section 94 Contributions Plan to be prepared and which is targeted for submission to Council by mid 2011.

#### ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

Cr Peter Kafer objected to the Notice of Motion to allow discuss to occur.

<b>416</b>	<b>Councillor Sally Dover Councillor Ken Jordan</b>	It was resolved that the Notice of Motion be adopted.
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# NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217 ]

## ECONOMIC DEVELOPMENT UNIT

COUNCILLOR: MACKENZIE

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### THAT COUNCIL:

- 1) The General Manager arrange a two way conversation to discuss the future of Port Stephens Economic Development Unit.
- 

### BACKGROUND REPORT OF: JEFF SMITH – COMMERCIAL SERVICES, GROUP MANAGER

#### BACKGROUND

Council has received a draft report following the review of the Economic Development Unit, while the review of the Tourism Unit is currently underway and expected to be completed prior to Christmas. The findings of both reports are necessary to prepare recommendations for the future delivery of these services given their close relationship and a 2 Way Conversation is planned for early in the new year.

#### ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

Cr Steve Tucker objected to the Notice of Motion to allow discuss to occur.

417	<b>Councillor Steve Tucker</b> <b>Councillor Shirley O'Brien</b>	It was resolved that the Notice of Motion be adopted.
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# NOTICE OF MOTION

ITEM NO. 3

FILE NO: A2004-0217 + PSC2005-0059

## MASONITE ROAD ACCESS

COUNCILLOR: MACKENZIE

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### THAT COUNCIL:

- 1) Call for tenders for road works on Masonite Road for the access to the Sandvik Development.
- 

**BACKGROUND REPORT OF: JASON LINNANE – FACILITIES AND SERVICES,  
ACTING GROUP MANAGER**

### ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

Cr Peter Kafer objected to the Notice of Motion to allow discuss to occur.

Cr Geoff Dingle left the meeting at 7.16pm prior to voting on Notice of Motion 3 and returned 7.17pm

		The Notice of Motion lapsed without a mover and seconded.
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### BACKGROUND

In 2010 a parcel of Council owned land located at 431 Masonite Road, Heatherbrae was sold to Sandvik Mining and Construction Australia (hereby known as Sandvik). Council and Sandvik negotiated a Roadworks Agreement to upgrade Masonite Road for an agreed contract price. Under the terms of the Agreement Council has certain obligations and time lines that must be adhered to. The Roadworks Option was exercised on the 2<sup>nd</sup> of November 2010 and all physical road works are to be completed by 1<sup>st</sup> July 2010.

The following is a current summary of the Project Schedule if Council was to conduct the works. It should be noted that as per the Roadworks Agreement, Council has already notified Sandvik of this Project Schedule.

Nov / Dec 2010

## MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010

Investigation works commenced with the survey and geotechnical assessment being undertaken.

Jan 2011

The design and Part 5 of EP&A Act "Review of Environmental Factors" to be undertaken concurrently and completed by January / February 2011.

Feb 2011

Traffic assessment of the design, Operations gearing up for works, Operations commence the relocation existing services, preliminary works, and liaise with Sandvik to determine the staging of the works in accordance with their works and our contractual Roadworks Agreement.

Mid March to Mid May 2011

Undertake the construction of the road works not including inclement weather.

Mid May to June 2011

Undertake ancillary works as per the Roadworks Agreement.

To tender the construction phase of the Roadworks Agreement would add another 4 to 6 weeks to this Program after the design works are complete. The additional time required for this process will push the program completion date past the 1<sup>st</sup> July 2011 and Council will be in breach of its obligations under the terms of the Agreement with Sandvik. This timeline is assuming that the contractor is able to commence works immediately. If construction is unable to commence immediately the project would be delayed further.

Council is unable to transfer its risk to a third party under the Agreement with Sandvik therefore it is Council that would be required to compensate Sandvik should a third party not complete the project on time and under the terms of the Roadworks Agreement.

# NOTICE OF MOTION

ITEM NO. 4

FILE NO: A2004-0217

## MEDOWIE SPORTS CLUB – FUNDING

COUNCILLOR: MACKENZIE

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### THAT COUNCIL:

- 1) Arrange for Thirty Thousand Dollars (\$30,000.00) from either section 94 funds or central ward funding to the Medowie Sports Club.
- 

### ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

Cr Peter Kafer objected to the Notice of Motion to allow discuss to occur.

418	<b>Councillor Steve Tucker Councillor Shirley O'Brien</b>	It was resolved that the Notice of Motion be adopted.
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### BACKGROUND REPORT OF: JASON LINNANE – FACILITIES AND SERVICES, ACTING GROUP MANAGER

#### BACKGROUND

Council resolved previously at its meeting of 24 August 2010 (*Minute No. 266*) to allocate \$30,000 to Medowie Sports Club through Repealed Section 94 funds.

Advice from Council's Sustainable Planning Groups is that such funds are not available.

The Medowie Sports Club and Council staff are preparing a lease for the site as per Council resolution of 14 September, 2010 (*Minute No. 289*).

The club has drafted concept plans for the facility and the next step is to further these basic plans into something more detailed.

# NOTICE OF MOTION

ITEM NO. 5

FILE NO: A2004-0217

## CLEANING AMENITY BUILDINGS

COUNCILLOR: MACKENZIE

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### THAT COUNCIL:

- 1) Prepare a report for the consideration of council detailing any advantages of calling for quotes for the cleaning of amenity buildings.
- 

### ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

419	Councillor John Nell Councillor Shirley O'Brien	It was resolved that there being no objection the Notice of Motion be adopted.
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### BACKGROUND REPORT OF: JASON LINNANE – FACILITIES AND SERVICES, ACTING GROUP MANAGER

#### BACKGROUND

This service is currently provided by Council staff via Corporate Clean and Nelson Bay Parks staff.

This approach has been identified as a priority for review as part of Council's Service Delivery Review project.

The service delivery project has commenced and a report on this service can be provided to Council in early 2011.

# CONFIDENTIAL ITEMS



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

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

## ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

<b>420</b>	<b>Councillor Ken Jordan Councillor John Nell</b>	It was resolved that Council move into Confidential Session.
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CONFIDENTIAL

ITEM NO. 1

FILE NO: PSC2006-1188

**TARIFFS AND CHARGES 2011 – 2012 FOR PORT STEPHENS BEACHSIDE HOLIDAYS PARKS AND SAMURAI BEACH RESORT**

REPORT OF: PHIL BUCHAN – COMMERCIAL ENTERPRISES MANAGER  
GROUP: COMMERCIAL SERVICES

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**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

421	<b>Councillor John Nell Councillor Glenys Francis</b>	<b>It was resolved that Council:-</b> 1) Endorse the policy of flexible price setting of accommodation tariff charges within the boundary of 10% outside the approved 2010/11 tariff ranges. 2) Adopt the table of Ancillary Charges as per ATTACHMENT 2
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CONFIDENTIAL

ITEM NO. 2

FILE NO: PSC2005-4316 & T19-2010

**SUPPLY, DELIVERY & INSTALLATION HOLIDAY CABINS AT SHOAL BAY  
HOLIDAY PARK - CONTRACT NO. T19-2010**

REPORT OF: PHIL BUCHAN – COMMERCIAL ENTERPRISES MANAGER  
GROUP: COMMERCIAL SERVICES

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ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

<b>422</b>	<b>Councillor John Nell Councillor Sally Dover</b>	It was resolved that Council accept the tender received from East Coast Homes & Park Cabins for the supply, delivery and installation of Holiday Cabins at Shoal Bay Holiday Park.
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CONFIDENTIAL

ITEM NO. 3

FILE NO: PSC2010-05281

**EXPRESSION OF INTEREST – COUNCIL OWNED LAND - KARUAH**

REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER

GROUP: COMMERCIAL SERVICES

ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

423	<b>Councillor John Nell</b> <b>Councillor Geoff Dingle</b>	It was resolved that Council:- <ol style="list-style-type: none"><li>1. Decline to negotiate with the respondents from the Expression of Interest for the sale of Lot 2 in DP 573068, Lot 2 in DP 552739 and Lots 55 and 85 in DP 753196 at Karuah known as 95 Holdom Road &amp; 210, 216 and 262 Tarean Road, Karuah.</li><li>2. Investigate the development potential of the land.</li><li>3. Obtain a BioBanking Assessment Report on 95 Holdom Road &amp; 210, 216 and 262 Tarean Road, Karuah.</li></ol>
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**ITEM NO. 4**

**CONFIDENTIAL INFORMATION PAPERS**

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

**GROUP: GENERAL MANAGERS OFFICE**

**RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the Confidential Information Papers listed below being presented to Council on 14 December 2010.

<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	UNAUTHORISED DEPOT : CABBAGE TREE ROAD, WILLIAMTOWN	

**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>424</b>	<b>Councillor John Nell Councillor Geoff Dingle</b>	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 Peter Kafer, Glenys Francis, Caroline De Lyall, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell and Bob Westbury.

Those against the Motion: Cr Sally Dover.

Abstained from voting: Cr Sally Dover.

**ORDINARY COUNCIL MEETING – 14 DECEMBER 2010**

<b>425</b>	<b>Councillor John Nell Councillor Ken Jordan</b>	It was resolved that Council move out of Confidential Session.
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There being no further business the meeting closed at 7.26pm.

**MINUTES FOR ORDINARY MEETING – 14 DECEMBER 2010**

*I certify that pages 1 to 356 of the Open Ordinary Minutes of Council 14 December 2010 and the pages 357 to 393 of the Confidential Ordinary Minutes of Council 14 December 2010 were confirmed by Council at its meeting held on 8 February 2011.*

.....  
**Cr Bob Westbury**  
**MAYOR**