

Minutes 13 DECEMBER 2011



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 13 December 2011, commencing at 5.32pm.

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

	No apologies were received.
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423	Councillor Ken Jordan Councillor Steve Tucker
	It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 22 November 2011 be confirmed.

	<p>Cr Glenys Francis declared a less than significant non-pecuniary conflict of interest in Notice of Motion 2. The nature of the interest is Cr Francis is a small shareholder in a business which is having discussions with coal seam. Cr Francis declared that she is a small shareholder and no dividend is received.</p> <p>Jeff Smith – Commercial Services Group Manager declared a pecuniary conflict of interest in confidential item 1. The nature of the interest is Corporate Clean, a business unit of the Commercial Services Group submitted a tender for the airport cleaning contract.</p>
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MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: A2004-0573

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)(g) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Item 3 on the Ordinary agenda namely **Legal Case Settlement**.
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information concerning the legal settlement negotiations 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 – 13 DECEMBER 2011

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

GENERAL MANAGER'S REPORT

PETER GESLING
GENERAL MANAGER

ITEM NO. 1

FILE NO: PSC2011-00718

**DIVISION OF LOCAL GOVERNMENT – PROMOTING BETTER PRACTICE
REVIEW FINAL REPORT 2011**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and adopt the Division of Local Government – Promoting Better Practice Report and Action Plan.

ORDINARY COUNCIL MEETING – 13 DECEMBER 2011

425	<p>Councillor John Nell Councillor Ken Jordan</p>
	<p>It was resolved that the recommendation be adopted.</p>

BACKGROUND

The purpose of this report is to table the Promoting Better Practice Review Report (PBP) conducted by the Division of Local Government (DLG).

The DLG conducted a PBP Review from 21-25 February 2011. The review was designed to assess the efficiency and effectiveness of Council's operations. It was designed as a follow up to the previous Promoting Better Practice review conducted in 2005. The review examined Council's implementation of recommendations from the 2005 review, its planning and development processes and decision making, the application of the code of conduct, assets and financial management, the implementation of integrated planning and reporting framework, the relationship between Councillors, the relationship between Councillors and Council staff. **Attachment 1** provides a summary of the program.

Council staff were requested to provide a number of Council documents by mid January 2011 for assessment by the DLG prior to the visit.

During the visit a number of Council staff were interviewed by the DLG representatives including the General Manager. The Mayor and Councillors were invited to speak with the DLG as part of the Review. The DLG conducted an exit interview with the General Manager at the conclusion of the visit.

A draft confidential report with 36 recommendations was provided to Council in mid June for comment. Senior staff developed a response in consultation with Councillors for consideration and incorporation into the final report.

The General Manager received the final report mid November 2011 and is required to table the Report at a Council meeting. Senior staff of the Division will address the Report with Councillors prior to the Council Meeting on 13 December 2011.

An Action Plan has been developed as part of the report and Council will provide progress reports to the DLG on the Plan. The main changes to the Draft Report are the inclusion of a Comment from the CEO of the Division of Local Government, additional finance comments, Reviewer comments and a comment on the Councils use of Ward Funds.

A copy of the Report is tabled at the Council meeting of 13 December 2011. Once the final Report is tabled at Council it will be available on Council's website.

FINANCIAL/RESOURCE IMPLICATIONS

The recommendations in the DLG's report in the most part are works that are in progress or are planned to be undertaken by existing Council staff.

LEGAL, POLICY AND RISK IMPLICATIONS

The Review is part of the program developed by the DLG to ensure Council's are operating in an efficient and effective manner. The statutory and regulatory obligations under the Local Government Act 1993 also form part of the PBP Review.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council will create and deliver value to all stakeholders through our commitment to sustainability.

CONSULTATION

- 1) Division of Local Government;
- 2) Mayor;
- 3) Councillors;
- 4) Council staff.

OPTIONS

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

ATTACHMENTS

- 1) DLG Promoting Better Practice Review

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Division of Local Government - Promoting Better Practice Review 2011.

ATTACHMENT 1

The Promoting Better Practice Program

Promoting Better Practice in local government is a review process. The program aims to improve the viability and sustainability of councils.

Objectives

Promoting Better Practice is designed to:

- ensure good governance of councils
- encourage improvement in the way councils conduct their activities
- monitor the overall performance of councils.

Reviews also have a wider role in the development of local government practices across the state. For example, reviews have and will continue to identify the need for the Division of Local Government, Department of Premier and Cabinet (the Division) to respond with appropriate policies or legislative change.

A review aims to give the council confidence about what is being done well and help to focus attention on key priorities requiring improvement.

Review program process

The review process closely evaluates the effectiveness and efficiency of key aspects of council operations.

Specifically, it involves:

- examining the council's overall strategic direction
- checking compliance and relevant practices
- ensuring that the council has frameworks in place to monitor its performance
- providing council with feedback.

The process is collaborative. Councils are asked to complete a self-assessment of their strategic management and operating practices.

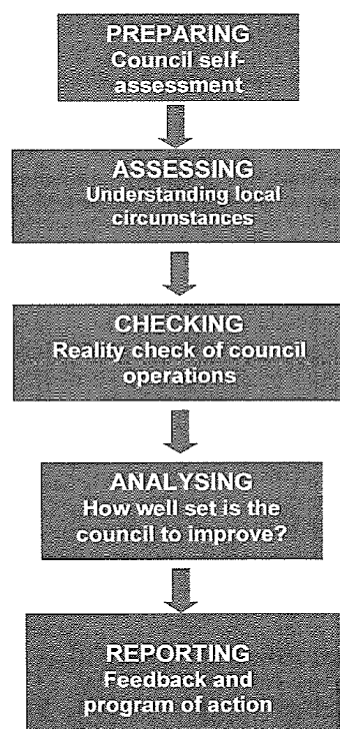
This assessment assists to appropriately target the review. A review may focus on specific areas of council activities that have been identified as a result of an analysis of council's information and data.

A reviewer or review team visit the council to gather further information and gain a practical view of a range of council operations.

The council will receive a report on the key issues identified during the review. The report

will include what is working well at council as well as recommendations for improvement.

There are five stages in the review process:



For further information contact:

Investigations and Review Branch
 Division of Local Government
 Department of Premier and Cabinet
 Phone: 02 4428 4100
 Email: dlg@dlg.nsw.gov.au

PREPARING: Council is asked to undertake a self-assessment of its strategic management and operating practices by completing a checklist provided by the Division.

The first section of the checklist is designed to explore the council's strategic intent and how it has involved its communities and other stakeholders in developing long term strategic plans. It also seeks to explore Council's progress toward putting in place the new planning and reporting framework for NSW local government

The remaining five (5) sections assist the council to assess its ability to meet minimum practice standards in its efforts to deliver services to the community. These are Governance; Regulatory Functions; Asset and Financial Management; Community and Consultation; and Workforce Relations.

ASSESSING: The review involves analysis of performance data and local circumstances. The types of information considered by reviewers before going on site include:

- the demographics of the council area
- community and social issues
- development constraints or pressures
- the types of activities council is involved in – strategic and management plans
- the results of council's self-assessment
- council's organisational structure and staffing
- comparative information
- council's financial position
- seriousness and number of complaints.

The information collected and analysed before going on site will help decide where the reviewers spend their time while on site. The focus of the review may vary according to the nature of the council's work and local circumstances. A good understanding of local circumstances may help to explain why a council manages its work in a particular way.

CHECKING: Fieldwork provides the opportunity to gather valuable documentary evidence to support the Division's analysis of council's performance. Discussing these aspects with staff gives the reviewers an opportunity to "test" what they are seeing or finding.

During the review a range of activities will be undertaken such as: meeting with senior officers, talking with individual staff and councillors, observing council or committee

meetings, following a council process and reviewing policies and procedures.

ANALYSING: As the review progresses, hypotheses or preliminary conclusions will be tested.

Conclusions are based on evidence – either what the reviewers have seen, discussed or concluded from data or documents. They are based on more than someone telling the reviewer this is so – they are supported by data, documents or other reports.

Conclusions are based on an assessment of the scale of the problem (or better practice). For example, how prevalent is the problem? How great is the risk to the organisation? Is the issue one that occurs across the organisation or is it isolated to one department or section?

Reviewers will aim to base conclusions on themes that cut across individual functions in the organisation. While there may be issues that are specific to individual areas of council and these may need to be commented upon, the reviewers will be looking for themes that are common to a number of areas of council.

REPORTING: The on site component of the review ends with an exit interview with council's General Manager and Mayor. This should inform the council of the emerging trends and areas likely to be the subject of comment in the report.

A draft report is prepared following the on site review and this is sent to the council as a confidential draft for comment. Council's comments are incorporated into the final report, which is issued to council, the Minister and the Director General. Council is then to table the report so that it becomes a public document.

Recommendations made in the report will be assessed by the Division according to risk and be given a priority ranking.

Council may be required to draw up an action plan in response to the recommendations in the final report. The Division monitors the implementation of the action plan.

Updated October 2010



ITEM NO. 2

FILE NO: PSC2011-01233

CODE OF CONDUCT INVESTIGATION – CR KEN JORDAN

REPORT OF: PETER GESLING – GENERAL MANAGER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Consider the recommendation of the Sole Reviewer's report.

ORDINARY COUNCIL MEETING – 13 DECEMBER 2011

426	<p>Councillor Bruce MacKenzie Councillor Shirley O'Brien</p>
	<p>It was resolved that the report be received and noted, with no further action required.</p>

BACKGROUND

The purpose of this report is to provide Council with the findings of the investigation following a matter brought to the General Manager's attention under the Code of Conduct with respect to Cr Ken Jordan.

The matter involved an allegation surrounding a potential conflict of interest by Cr Jordan in connection with his relationship with Buldev when considering planning matters at the Council meeting held on 25 March 2011.

The Sole Reviewer's report is shown at ATTACHMENT 1 for consideration by Council.

FINANCIAL/RESOURCE IMPLICATIONS

The 2011/12 budget does not provide for investigations under the Code of Conduct, however additional funds will only be sought from general revenue if the costs associated with the investigation cannot be provided for within the existing budget.

The estimate for this investigation is \$3,150.00. Final costs have not been received to date.

LEGAL, POLICY AND RISK IMPLICATIONS

The investigation has been conducted in accordance with the Local Government Act 1993 and the Code of Conduct.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

- 1) General Manager;
- 2) Bernard Smith – Vestion Consulting (Sole Reviewer);
- 3) Councillor Ken Jordan.

OPTIONS

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

ATTACHMENTS

- 1) Sole Reviewer's report.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

PORT STEPHENS COUNCIL

Code of Conduct Complaint – Councillor Ken Jordan

Report by Sole Reviewer: Bernard Smith-Vestion Consulting

INTRODUCTION

This report has been prepared in accordance with Part 3 of the Port Stephens's Council Code of Conduct 2008.

BACKGROUND

On the 24th May 2011, Port Stephens Council forwarded correspondence and documentation to the Sole Reviewer relating to complaints against Councillor Ken Jordan and requesting that the matter be reviewed in accordance with Council's Code of Conduct.

THE COMPLAINT

The alleged breach of the Code of Conduct relates to Cr Jordan's declaration at the Council meeting held on the 25th March where the matter of the Development Application for a supermarket at 39, 41, 43, 45 and 47 Ferodale Rd, Medowie was discussed. In particular the alleged breach by Cr Jordan relates to an assertion by the complainant that the nature of the relationship between Cr Jordan and Mr Darren Williams of Buildev builds a very strong case that he should have declared a significant non-pecuniary interest as distinct from the less than significant non-pecuniary interest declaration made by Cr Jordan at the Council meeting.

INITIAL REVIEW BY SOLE REVIEWER

On the 29th May 2011, the Sole Reviewer, in accordance with Clause 12.19 (c) of the Port Stephens Council Code of Conduct, advised the Port Stephens Council Executive Officer that he had made a determination to proceed with making enquiries into the complaints following consideration of the documentation which had been forwarded, against the following grounds outlined in Clause 13.1 of the Code of Conduct.

(a) whether there is any prima facie evidence of a breach of the Code of Conduct;

The initial information provided to the reviewer including Council records provided prima facie evidence of a breach of the Code of Conduct.

(b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as General Manager;

The subject matter does relate to conduct that is associated with the functions of civic office.

(c) whether the complaint is trivial, frivolous, vexatious or not made in good faith;

It is not considered that the complaint is trivial, frivolous or vexatious.

(d) whether the conduct the subject of the complaint could reasonably constitute a breach of the Code of Conduct;

The conduct the subject of the complaint, if substantiated, would comprise a breach of Clauses 6.1(a) and 6.2 of the Code of Conduct.

(e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police;

It is not considered that the matter needs to be referred to another person or body.

(f) whether there is an alternative and satisfactory means of redress;

It is considered that the Code of Conduct process is the most appropriate mechanism to deal with the matter.

(g) how much time has elapsed since the events the subject of the complaint took place;

The complaint has been lodged in a timely manner.

(h) how serious the complaint is and the significance it has for Council,

The matter of Councillor conduct has a direct bearing on the respect the community has for its elected officials and the regard it has for the Council as a whole.

(i) whether the complaint is one of a series indicating a pattern of conduct.

There is no evidence of a pattern of conduct

Following this assessment a determination to proceed with enquiries was made as provided for in Clause 12.19(c) of the Code of Conduct. Councillor Jordan was formally advised of the matter on the 16th June 2011.

PROCESS USED

The information contained in this report and the conclusions made have been drawn from:

- Interviews with a number of parties.
- documentation provided by Council.

BACKGROUND INFORMATION

1. Over a period of time Port Stephens Council had considered a number of reports relating to the Development Application for a supermarket at 39, 41, 43, 45 and 47 Ferodale Rd, Medowie.
2. Council considered the matter at its meeting of the 22nd March 2011. The recommendation to Council at that meeting was that the DA be refused. The Council resolved to indicate support for the DA for the supermarket and requested the Sustainable Planning Group Manager to bring forward draft conditions in the event that the Council resolved to give consent.
3. The resolution adopted by Council at its meeting on the 22nd March 2011 was the subject of a rescission motion which was considered at an Extra Ordinary meeting on the 25th March 2011. The rescission motion was defeated.
4. At the meeting of the 25th March, Cr Jordan declared a less than significant non pecuniary interest in the matter.
5. If a Councillor declares a less than significant non pecuniary conflict of interest and intends to remain in the meeting, the councillor needs to provide an explanation as to why the conflict requires no further action to manage the conflict. In meeting this requirement, Cr Jordan stated as part of his declaration of interest, "*1 Legal advice sought, 2 Community best interest may conflict with my public duty, 3 Do not know Mr William's involvement.*"
6. Council at its meeting on the 12th April 2011 considered a report which provided draft conditions for the approval of the supermarket development application in accordance with the original resolution of the 22nd March.
7. On the 19th April 2011, the matter of the development application came back to Council for consideration.

8. Currently Darren Williams is currently listed as Buildev's NSW Development Director on its website.

OBSERVATIONS AND CONCLUSIONS

Clause 7.16 of Council's Code of Conduct states;

7.16 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:

a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household

b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship

c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.

The complaint makes a number of assertions which will be addressed in turn.

The complainant suggests that Cr Jordan has referred a number of times to being flown to Melbourne on Mr Williams's corporate jet. Cr Jordan has stated that he has never flown to Melbourne on Mr Williams jet and does not know if he has a jet or not.

Further, it is suggested that Cr Jordan has declared both publically and through formal declarations at Council meetings that he has a close and personal relationship with Darren Williams.

Cr Jordan advised that he had obtained legal advice as to whether his knowledge of Mr Williams was sufficient to cause him to declare a conflict of interest. He stated the effect of the legal advice he received was that his knowledge of Mr Williams was not sufficient to cause a significant non pecuniary interest.

Following his consideration of the advice he decided he was being over cautious and that his knowledge of Mr Williams was something that caused a less than significant non pecuniary interest for the purpose of the council's code.

The complaint stated that "we have a number of declarations from members of the public who were witnesses to Cr Jordan's statement that he is a close and personal friend of Darren Williams" however no evidence to support this was provided.

Cr Jordan has confirmed that he was Best Man for Darren Williams at his wedding.

Cr Jordan provided the following comments,

I do not recall declaring I have a close and personal relationship with Darren Williams.

I consider Mr Darren Williams a friend as we mix with a circle of friends living in the Port Stephens area. Normally when I see Mr Williams it is at social events where other friends are present. It is a rare occasion when I may catch up with or see Darren Williams when just he and I are present.

When we do catch up, we do not talk about his business.

I am aware he has some business association with an organisation generally known as "Buildev". I have no knowledge as to Mr Williams' specific positions or duties within that organisation.

Noting the provisions of Cl 7.16 of the Code of Conduct stated above, it can be difficult to make a determination on the nature of a friendship and hence make a ruling in accordance with Cl 7.16 as to whether a non-pecuniary conflict of interest will be significant.

Notwithstanding the belief of the Councillor with regard to the nature of the relationship, an important consideration is how the general public interprets the relationship and as a consequence how this is seen to impact on the integrity of the decision making process.

The fact that Cr Jordan was Darren Williams Best Man can reasonably be interpreted as a formal acknowledgement of a close relationship between them and presents a situation where a reasonable and informed person would perceive that Cr Jordan could be influenced by a private interest when carrying out his public duty.

Noting Cl 7.16 of the Code of Conduct, it is considered that Cr Jordan should have declared a significant non pecuniary conflict of interest. It is noted that Cr Jordan states he has received legal advice however a copy of the advice has not been provided.

PROCEDURAL FAIRNESS

The Port Stephens Council Code of Conduct states:

14.7 Procedural Fairness

In conducting enquiries, the conduct review committee/reviewer or the person engaged to do so should follow the rules of procedural fairness and must:

- (a) provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation;*
- (b) provide the person the subject of the complaint with an opportunity to place before the conduct review committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry;*
- (c) provide the person the subject of the complaint with an opportunity to address the conduct review committee/reviewer in person;*
- (d) hear all parties to a matter and consider submissions before deciding the substance of any complaint;*
- (e) make reasonable enquiries before making any recommendations;*
- (f) act fairly and without prejudice or bias;*
- (g) ensure that no person decides a case in which they have a conflict of interests, and*
- (h) conduct the enquiries without undue delay.*

Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the conduct review committee/reviewer should proceed to finalise the matter.

Cr Jordan was forwarded the details regarding the nature and particulars of the complaint on the 16th June 2011. In that correspondence Cr Jordan was invited to respond to the allegations and meet with the reviewer. Cr Jordan declined the invitation but did take the opportunity to respond to the allegations in writing and a draft of this report was forwarded to Cr Jordan for his comment prior to it being finalised and forwarded to Council for inclusion in its Council Agenda. There was communication between the Sole Reviewer

and Cr Jordan as well as his representative over a significant period of time resulting in the report only being able to be finalised recently.

FINDINGS OF THE SOLE REVIEWER

Given the nature of the relationship between Cr Jordan and Mr Darren Williams highlighted by Cr Jordan undertaking the role of Best Man for Mr Williams wedding, Cr Jordan at the meeting of the 25th March 2011, should have declared a significant non-pecuniary conflict of interest in Item 1 – Rescission Motion, as opposed to his declaration of a less than significant non-pecuniary conflict of interest, and, in the view of the Sole Reviewer breached Clauses 6.1(a) and 6.2 of the Code of Conduct.

RECOMENDATION OF THE SOLE REVIEWER

Clause 12.24 and 12.25 of Council's Code of Conduct provides for the imposition of sanctions if Council determines that the councillor has breached the Code of Conduct. Clause 12.25 states,

12.25 Where the council finds that a councillor or General Manager has breached the code, it may decide by resolution to:

- a) Censure the councillor for misbehaviour in accordance with section 440G of the Act;*
- b) Require the councillor or General Manager to apologise to any person adversely affected by the breach;*
- c) Counsel the councillor or General Manager;*
- d) Make public findings of inappropriate conduct; and/or*
- e) Prosecute for any breach of law.*

Should Council determine that Cr Jordan has breached the Code of Conduct it is recommended that:

1. Cr Jordan be counselled with the objective of ensuring he understands the reason for the finding and the importance of managing conflicts of interest.

2. The Sole Reviewer provide a list of 3 suitably experienced practitioners from which Cr Jordan can choose the counsellor.
3. The counselling occurs within 30 days of the council meeting.

ITEM NO. 3

FILE NO: PSC2011-01581

CODE OF CONDUCT INVESTIGATION – CR BRUCE MACKENZIE

REPORT OF: PETER GESLING –GENERAL MANAGER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Consider the recommendation of the Sole Reviewer's report.

ORDINARY COUNCIL MEETING – 13 DECEMBER 2011

427	Councillor Bruce MacKenzie Councillor Shirley O'Brien
	It was resolved that the report be received and noted, with no further action required.

BACKGROUND

The purpose of this report is to provide Council with the findings of the investigation following a matter brought to the General Manager's attention under the Code of Conduct with respect to Cr Bruce MacKenzie.

The matter involved an allegation surrounding Cr MacKenzie's involvement with Council staff concerning the Medowie Supermarket and his attendance at a meeting on 15 April 2011.

The Sole Reviewer's report is shown at ATTACHMENT 1 for consideration by Council.

FINANCIAL/RESOURCE IMPLICATIONS

The 2011/12 budget does not provide for investigations under the Code of Conduct, however additional funds will only be sought from general revenue if the costs associated with the investigation cannot be provided for within the existing budget.

The estimate for this investigation is \$2,100.00. Final costs have not been received to date.

LEGAL, POLICY AND RISK IMPLICATIONS

The investigation has been conducted in accordance with the Local Government Act 1993 and the Code of Conduct.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

- 1) General Manager;
- 2) Bernard Smith – Vestion Consulting (Sole Reviewer);
- 3) Councillor Bruce MacKenzie.

OPTIONS

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

ATTACHMENTS

- 1) Sole Reviewer's report.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

PORT STEPHENS COUNCIL

Code of Conduct Complaint – Councillor Bruce Mackenzie

Report by Sole Reviewer: Bernard Smith-Vestion Consulting

INTRODUCTION

This report has been prepared in accordance with Part 3 of the Port Stephen's Council Code of Conduct 2008.

BACKGROUND

On the 24th May 2011, Port Stephens Council forwarded correspondence and documentation to the Sole Reviewer relating to a complaint against Councillor Mackenzie and requesting that the matter be reviewed in accordance with Council's Code of Conduct.

THE COMPLAINTS

The alleged breaches of the Code of Conduct relates to an application for a supermarket at 39, 41, 43, 45, and 47 Ferodale Rd, Medowie. In particular the alleged breach by Cr Mackenzie relates to a meeting held on the 15th April and attended by Cr Tucker, Cr Mackenzie, Council officers and representatives of the developer. The complainant asserts that it was inappropriate for Cr Mackenzie to be involved in discussions with the developer and planning staff regarding the modification of conditions which could be financially advantageous to the developer.

INITIAL REVIEW BY SOLE REVIEWER

On the 29th May 2011, the Sole Reviewer, in accordance with Clause 12.19 (c) of the Port Stephens Council Code of Conduct, advised the Port Stephens Council Executive Officer that he had made a determination to proceed with making enquiries into the complaints following consideration of the documentation which had been forwarded, against the following grounds outlined in Clause 13.1 of the Code of Conduct.

(a) whether there is any prima facie evidence of a breach of the Code of Conduct;

The initial information provided to the reviewer including provided prima facie evidence of a breach of the Code of Conduct.

(b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as General Manager;

The subject matter does relate to conduct that is associated with the functions of civic office.

(c) whether the complaint is trivial, frivolous, vexatious or not made in good faith;

It is not considered that the complaint is trivial, frivolous or vexatious.

(d) whether the conduct the subject of the complaint could reasonably constitute a breach of the Code of Conduct;

The conduct the subject of the complaint, if substantiated, would comprise a breach of Clauses 6.1(a), 6.2 and 6.10 of the Code of Conduct.

(e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police;

It is not considered that the matter needs to be referred to another person or body.

(f) whether there is an alternative and satisfactory means of redress;

It is considered that the Code of Conduct process is the most appropriate mechanism to deal with the matter.

(g) how much time has elapsed since the events the subject of the complaint took place;

The complaint has been lodged in a timely manner.

(h) how serious the complaint is and the significance it has for Council,

The matter of Councillor conduct has a direct bearing on the respect the community has for its elected officials and the regard it has for the Council as a whole.

(i) whether the complaint is one of a series indicating a pattern of conduct.

There is no evidence of a pattern of conduct.

Following this assessment a determination to proceed with enquiries was made as provided for in Clause 12.19(c) of the Code of Conduct. Councillor Mackenzie was formally advised of the matter on the 16th June 2011.

PROCESS USED

The information contained in this report and the conclusions made have been drawn from:

- Interviews with a number of parties.
- documentation provided by Council.

BACKGROUND INFORMATION

1. Over a period of time Port Stephens Council had considered a number of reports relating to the Development Application for a supermarket at 39, 41, 43, 45 and 47 Ferodale Rd, Medowie.
2. A Council committee considered the matter on the 15th March 2011.
3. Council considered the matter at its meeting of the 22nd March 2011. The recommendation to Council at that meeting was that the DA be refused. The Council resolved to indicate support for the DA for the supermarket and requested the Sustainable Planning Group Manager to bring forward draft conditions in the event that the Council resolved to give consent.
4. The resolution adopted by Council at its meeting on the 22nd March 2011 was the subject of a rescission motion which was considered at an Extra Ordinary meeting on the 25th March 2011.
5. Council at its meeting on the 12th April 2011 considered a report which provided draft conditions for the approval of the supermarket development application in accordance with the original resolution of the 22nd March. At the meeting Cr Tucker tabled a number of amendments relating to traffic and drainage matters and Council deferred the matter to allow staff to consider those amendments.
6. On the 15th April, a meeting was held which was attended by Cr Tucker, Cr Mackenzie, David Broyd, Sustainable Planning Group Manager, Matt Brown, Manager Development Assessment, Environmental Health Officer Amy Spadaro, Scott Page, S94 Officer and 3 representatives of the developer. At that meeting the supermarket development was discussed. Council officers convened the meeting.
7. On the 19th April 2011, the matter of the development application came back to Council for consideration. At this meeting Cr Tucker put

forward 3 further amendments of which 2 were adopted as part of the Council resolution granting the Development Application.

OBSERVATIONS AND CONCLUSIONS

Regarding the meeting held on the 15th April which was attended by Cr Tucker, Cr Mackenzie, David Broyd, Sustainable Planning Group Manager, Matt Brown, Manager Development Assessment, Environmental Health Officer Amy Spadaro, Scott Page, S94 Officer and 3 representatives of the developer, both Cr Tucker and Cr Mackenzie attended the meeting at the request of council officers.

Given the matter was before Council it was inappropriate for the 2 Councillors to attend. The negotiation of conditions should have been the responsibility of staff and if an informal meeting with Councillors was deemed beneficial to the process, all Councillors should have been invited. Given the circumstances it is considered that Councillor Mackenzie cannot be deemed to have acted inappropriately.

Council may wish to review its policy of the interaction between Councillors and staff with regard to development applications.

Conclusions

Cr Mackenzie's attendance at meeting on the 15th April was inappropriate but he was not at fault and cannot be considered to have breached Council's Code of Conduct.

PROCEDURAL FAIRNESS

The Port Stephens Council Code of Conduct states:

14.7 Procedural Fairness

In conducting enquiries, the conduct review committee/reviewer or the person engaged to do so should follow the rules of procedural fairness and must:

(a) provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation;

(b) provide the person the subject of the complaint with an opportunity to place before the conduct review committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry;

(c) provide the person the subject of the complaint with an opportunity to address the conduct review committee/reviewer in person;

(d) hear all parties to a matter and consider submissions before deciding the substance of any complaint;

(e) make reasonable enquiries before making any recommendations;

(f) act fairly and without prejudice or bias;

(g) ensure that no person decides a case in which they have a conflict of interests, and

(h) conduct the enquiries without undue delay.

Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the conduct review committee/reviewer should proceed to finalise the matter.

Cr Mackenzie was forwarded the details regarding the nature and particulars of the complaint on the 16th June 2011. In that correspondence Cr Mackenzie was invited to respond to the allegations and met with the reviewer on the 24th June 2011 to discuss the matter further. Following this, a draft of this report was forwarded to Cr Mackenzie for his comment prior to it being finalised and forwarded to Council for inclusion in its Council Agenda.

This report was one of three reports prepared relating to alleged breaches of the Code of Conduct associated with the supermarket proposal. One of the reports took a significant time to conclude and given it was deemed appropriate to have Council consider the three reports concurrently, it in turn delayed the finalisation of this report.

FINDINGS OF THE SOLE REVIEWER

In the view of the Sole Reviewer, Councillor Mackenzie did not breach Council's Code of Conduct.

ITEM NO. 4

FILE NO: PSC2011-01582, PSC2011-01401 & PSC2011-01233 & PSC2011-01581

CODE OF CONDUCT INVESTIGATION – CR STEVE TUCKER

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Consider the recommendation of the Sole Reviewer's report.

ORDINARY COUNCIL MEETING – 13 DECEMBER 2011

428	Councillor Bruce MacKenzie Councillor Shirley O'Brien
	It was resolved that the report be received and noted, with no further action required.

BACKGROUND

The purpose of this report is to provide Council with the findings of the investigation following a matter brought to the General Manager's attention under the Code of Conduct with respect to Cr Steve Tucker.

The matter involved an allegation surrounding Cr Tucker's involvement with Council staff concerning the Medowie Supermarket and his attendance at a meeting on 15 April 2011, potential conflict of interest with involving Buildev.

The Sole Reviewer's report is shown at ATTACHMENT 1 for consideration by Council.

FINANCIAL/RESOURCE IMPLICATIONS

The 2011/12 budget does not provide for investigations under the Code of Conduct, however additional funds will only be sought from general revenue if the costs associated with the investigation cannot be provided for within the existing budget.

The estimate for this investigation is \$2,100.00. Final costs have not been received to date.

LEGAL, POLICY AND RISK IMPLICATIONS

The investigation has been conducted in accordance with the Local Government Act 1993 and the Code of Conduct.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

- 1) General Manager;
- 2) Bernard Smith – Vestion Consulting (Sole Reviewer);
- 3) Councillor Steve Tucker.

OPTIONS

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

ATTACHMENTS

- 1) Sole Reviewer's report.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

PORT STEPHENS COUNCIL

Code of Conduct Complaint – Councillor Steve Tucker

Report by Sole Reviewer: Bernard Smith-Vestion Consulting

INTRODUCTION

This report has been prepared in accordance with Part 3 of the Port Stephen's Council Code of Conduct 2008.

BACKGROUND

On the 24th May 2011, Port Stephens Council forwarded correspondence and documentation to the Sole Reviewer relating to complaints against Councillor Steve Tucker and requesting that the matter be reviewed in accordance with Council's Code of Conduct.

THE COMPLAINTS

The alleged breaches of the Code of Conduct relates to Cr Tucker's declarations at Council meetings where the matter of the Development Application for a supermarket at 39, 41,43,45 and 47 Ferodale Rd, Medowie. In particular the alleged breaches by Cr Tucker relate to:

1. An assertion by the complainant that the nature of the relationship between Cr Tucker and Mr Darren Williams of Buildev builds a very strong case that he should have declared a significant non-pecuniary interest as distinct from the less than significant non-pecuniary interest declarations prior to the Council meetings where the Medowie supermarket development application was considered.

The complainant also states that Cr Tucker declared a direct personal friendship with Mr Darren Williams of Buildev and also makes reference to Buildev supporting the Medowie Sports Club of which Cr Tucker is patron.

2. The Council meeting held on the 12th April 2011 at which Cr Tucker tabled a number of possible amendments to the conditions of consent for the Medowie supermarket. The complainant asserts that the modified conditions will lead to a reduced level of investment required by the developer and will result in cost and potential problems being transferred to Council, in particular drainage and road traffic issues.

The complainant believes that Cr Tucker's actions place him under suspicion of involvement and interference in the process of determination in the case of the development application.

3. The meeting held on the 15th April and attended by Cr Tucker, Cr Mackenzie, Council officers and representatives of the developer. The complainant asserts that given Cr Tucker's declarations of interest in the matter, it was inappropriate for him to be involved in discussions with the developer regarding the modification of conditions which could be financially advantageous to the developer, and places Cr Tucker under suspicion of involvement and interference in the process of determination of the development application.

The complainant also notes that at the Council meeting of the 19th April, Cr Tucker moved a set of conditions that had been discussed at the meeting of the 15th April, and then requested 3 further amendments to conditions which staff had previously strongly opposed.

INITIAL REVIEW BY SOLE REVIEWER

On the 29th May 2011, the Sole Reviewer, in accordance with Clause 12.19 (c) of the Port Stephens Council Code of Conduct, advised the Port Stephens Council Executive Officer that he had made a determination to proceed with making enquiries into the complaints following consideration of the documentation which had been forwarded, against the following grounds outlined in Clause 13.1 of the Code of Conduct.

(a) whether there is any prima facie evidence of a breach of the Code of Conduct;

The initial information provided to the reviewer including Council records provided prima facie evidence of a breach of the Code of Conduct.

(b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as General Manager;

The subject matter does relate to conduct that is associated with the functions of civic office.

(c) whether the complaint is trivial, frivolous, vexatious or not made in good faith;

It is not considered that the complaint is trivial, frivolous or vexatious.

(d) whether the conduct the subject of the complaint could reasonably constitute a breach of the Code of Conduct;

The conduct the subject of the complaint, if substantiated, would comprise a breach of Clauses 6.1 (a), 6.2 and 6.10 of the Code of Conduct.

(e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police;

It is not considered that the matter needs to be referred to another person or body.

(f) whether there is an alternative and satisfactory means of redress;

It is considered that the Code of Conduct process is the most appropriate mechanism to deal with the matter.

(g) how much time has elapsed since the events the subject of the complaint took place;

The complaint has been lodged in a timely manner.

(h) how serious the complaint is and the significance it has for Council,

The matter of Councillor conduct has a direct bearing on the respect the community has for its elected officials and the regard it has for the Council as a whole.

(i) whether the complaint is one of a series indicating a pattern of conduct.

There is no evidence of a pattern of conduct

Following this assessment a determination to proceed with enquiries was made as provided for in Clause 12.19(c) of the Code of Conduct. Councillor Tucker was formally advised of the matter on the 17th June 2011.

PROCESS USED

The information contained in this report and the conclusions made have been drawn from:

- Interviews with a number of parties.
- documentation provided by Council.

BACKGROUND INFORMATION

1. Over a period of time Port Stephens Council had considered a number of reports relating to the Development Application for a supermarket at 39, 41, 43, 45 and 47 Ferodale Rd, Medowie.
2. A Council committee considered the matter on the 15th March 2011. At that meeting Cr Tucker declared a less than significant non-pecuniary conflict of interest. He stated the nature of the interest as *"friendship with Darren Williams (Buildev). Buildev has shown support for the Medowie Sport and Recreation Club of which I am patron"*
3. If a Councillor declares a less than significant non pecuniary conflict of interest and intends to remain in the meeting, the Councillor needs to provide an explanation as to why the conflict requires no further action to manage the conflict. In meeting this requirement, Cr Tucker stated as part of his declaration of interest, *"I believe this development is in the public interest and will provide a strong economic and social stimulus to Medowie. This far outweighs any personal conflicts I may experience"*
4. Council considered the matter at its meeting of the 22nd March 2011. The recommendation to Council at that meeting was that the DA be refused. The Council resolved to indicate support for the DA for the supermarket and requested the Sustainable Planning Group Manager to bring forward draft conditions in the event that the Council resolved to give consent.
5. At the meeting of the 22nd March 2011, Cr Tucker declared a less than significant non-pecuniary conflict of interest. He stated the nature of the interest as *"friendship with developer (Darren Williams) and Buildev team, and support of developer for Medowie Sports and Community Club of which I am Patron"*
6. Cr Tucker stated as part of his declaration of interest, *"I believe that the public interest is served by my discussion and support of this item. This commercial development is essential to the future of Medowie."*
7. The resolution adopted by Council at its meeting on the 22nd March 2011 was the subject of a rescission motion which was considered at an Extra Ordinary meeting on the 25th March 2011. The rescission motion was defeated. Cr Tucker declared a similar less than significant, non-pecuniary declaration of interest in the matter.

7.16 As a general rule, a non-pecuniary conflict of interest will be significant where a matter does not raise a pecuniary interest but it involves:

a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household

b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship

c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.

With regard to the nature of the relationship between Cr Tucker and Darren Williams, Cr Tucker stated that he has known Darren Williams for approximately 6 years, noting that Mr Williams has been active in the area. Cr Tucker considered that he would not regard him as a personal friend or particularly close. With regard to Cr Tucker's role as a patron of the Medowie Sports Club, it is generally accepted that being a patron of an organisation does not in itself warrant a Councillor declaring an interest in matters regarding that particular organisation. Whilst Buildev has made a contribution to the club, it is difficult to build a case that Cr Tucker has a conflict of interest based on these particular circumstances.

If a Councillor declares a less than significant non pecuniary conflict of interest and intends to remain in the meeting, the councillor needs to provide an explanation as to why the conflict requires no further action to manage the conflict (clause 7.18). In attempting to meet this requirement, Cr Tucker's declarations tended to focus on the importance of project, rather than why his declared interests were non significant.

"I believe this development is in the public interest and will provide a strong economic and social stimulus to Medowie. This far outweighs any personal conflicts I may experience"

I believe that the public interest is served by my discussion and support of this item. This commercial development is essential to the future of Medowie."

"I believe it is my duty to the residents of Medowie (and the overriding public interest) that I support this commercial enterprise which will provide jobs and prosperity for the people of Medowie"

"I believe these issues have not influenced my duty as a Councillor when dealing with this matter I believe that this development will provide many jobs and much prosperity for the people of Medowie and is in the public interest."

These comments focus on the nature of the project and its importance to the community rather than explaining why the conflict is less than significant, e.g. why the criteria of clause 7.16 regarding friendships have not been met and an explanation why.

Of concern is Cr Tucker's comment that *"this far outweighs any personal conflicts I may experience"*. The nature of a matter before Council in terms of its size or scale or significance, has no bearing on how a Councillor treats their conflict of interest obligations. A raw interpretation of Cr Tucker's comment could be that the nature and significance of his conflict is diminished because it is considered to be an important project. The comment was extremely unwise and careless.

Cr Tucker played an active role in Council's consideration of the matter. Whilst such participation is an accepted part of being a Councillor, coupled with his declaration's of interest, it draws attention to the nature of his relationship with Buildev, and the accuracy of his declarations. It should be noted that a number of the matters discussed by Council were engineering in nature and Cr Tucker is an engineer by profession.

Regarding the meeting held on the 15th April which was attended by Cr Tucker, Cr Mackenzie, David Broyd, Sustainable Planning Group Manager, Matt Brown, Manager Development Assessment and Environmental Health Officer Amy Spadaro, Scott Page, S94 Officer and 3 representatives of the developer, both Cr Tucker and Cr Mackenzie attended the meeting at the request of council officers.

Given the matter was before Council it was inappropriate for the 2 Councillors to attend. The negotiation of conditions should have been the responsibility of staff and if an informal meeting with Councillors was deemed beneficial to the process, all Councillors should have been invited. Given the circumstances it is considered that the Councillors who attended cannot be deemed to have acted inappropriately.

Council may wish to review its policy of the interaction between Councillors and staff with regard to development applications.

The complainant believes that Cr Tucker's actions place him under suspicion of involvement and interference in the process of determination in the case of the development application. Whilst Cr Tucker took an active involvement

in the matter, there is no evidence that he interfered inappropriately in the process.

PROCEDURAL FAIRNESS

The Port Stephens Council Code of Conduct states:

14.7 Procedural Fairness

In conducting enquiries, the conduct review committee/reviewer or the person engaged to do so should follow the rules of procedural fairness and must:

(a) provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation;

(b) provide the person the subject of the complaint with an opportunity to place before the conduct review committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry;

(c) provide the person the subject of the complaint with an opportunity to address the conduct review committee/reviewer in person;

(d) hear all parties to a matter and consider submissions before deciding the substance of any complaint;

(e) make reasonable enquiries before making any recommendations;

(f) act fairly and without prejudice or bias;

(g) ensure that no person decides a case in which they have a conflict of interests, and

(h) conduct the enquiries without undue delay.

Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the conduct review committee/reviewer should proceed to finalise the matter.

Cr Tucker was forwarded the details regarding the nature and particulars of the complaint on the 17th June 2011. In that correspondence Cr Tucker was invited to respond to the allegations and met with the reviewer on the 24th

June 2011 to discuss the matter further. Following this, a draft of this report was forwarded to Cr Tucker for his comment prior to it being finalised and forwarded to Council for inclusion in its Council Agenda.

This report was one of three reports prepared relating to alleged breaches of the Code of Conduct associated with the supermarket proposal. One of the reports took a significant time to conclude and given it was deemed appropriate to have Council consider the three reports concurrently, it in turn delayed the finalisation of this report.

FINDINGS OF THE SOLE REVIEWER

1. Based on the information provided, in the view of the Sole Reviewer, Cr Tucker's declaration of a non significant non pecuniary conflict of interest was correct.
2. In the view of the Sole Reviewer, Cr Tucker's explanation regarding why no further action was needed was inadequate and his comment that *"this far outweighs any personal conflicts I may experience"* was inappropriate and careless.
3. In the view of the Sole Reviewer, Cr Tucker's attendance at the meeting on the 15th April was inappropriate but he was not at fault.

RECOMENDATION OF THE SOLE REVIEWER

Clause 12.24 and 12.25 of Council's Code of Conduct provides for the imposition of sanctions if Council determines that the councillor has breached the Code of Conduct. Clause 12.25 states,

12.25 Where the council finds that a councillor or General Manager has breached the code, it may decide by resolution to:

- a) Censure the councillor for misbehaviour in accordance with section 440G of the Act;*
- b) Require the councillor or General Manager to apologise to any person adversely affected by the breach;*
- c) Counsel the councillor or General Manager;*
- d) Make public findings of inappropriate conduct; and/or*

e) Prosecute for any breach of law.

It could be argued that Cr Tucker did not meet the requirement of Clause 7.18 of the Code to provide an explanation as to why no further action is required to manage the conflict, and therefore breached the Code of Conduct. In the view of the Sole Reviewer, whilst inadequate, Cr Tucker did provide an explanation.

RECOMENDATION

That Council request Cr Tucker to receive further training with regard to the conflict of interest provisions of the Code of Conduct.

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217

BOLKM PTY LTD – MEDOWIE SUPERMARKET COMPLEX

COUNCILLOR: MACKENZIE, TUCKER, O'BRIEN

THAT:

- 1) The General Manager outline the full details and involvement of Councillors and staff in the matter of the alleged infringement and subsequent fine imposed on BOLKM Pty Limited as a result of its preliminary work on the Medowie Supermarket Complex.

ORDINARY COUNCIL MEETING – 13 DECEMBER 2011

Cr Ken Jordan left the meeting at 6.06pm prior to voting.

429	<p>Councillor Bruce MacKenzie Councillor Steve Tucker</p>
	<p>It was resolved that the General Manager outline the full details and involvement of Councillors and staff in the matter of the alleged infringement and subsequent fine imposed on BOLKM Pty Limited as a result of its preliminary work on the Medowie Supermarket Complex be adopted.</p>

AMENDMENT

	<p>Councillor John Nell Councillor</p>
	<p>That the General Manager provide Council with an information paper on the Bolkm Pty Ltd matter.</p>

The amendment lapsed without a seconder.

BACKGROUND REPORT OF: TONY WICKHAM, EXECUTIVE OFFICER

BACKGROUND

The General Manager is proposing to provide an Information Paper report to Council on matters that have been referred to the Administrative Review Panel. The recent matters considered by the Panel are:

- Motor bike noise matter – Mrs Bennett at Anna Bay.
- Olive Farm clearing matter.
- Bolkm Pty Ltd matter.

The report will be dealt with in confidential due to current legal action on some of the matters listed above.

Cr Ken Jordan returned to the meeting at 6.20pm following Notice of Motion 1.

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217

COAL SEAM GAS – FULLERTON COVE

COUNCILLOR: DINGLE

THAT COUNCIL:

- 1) Write to the Premier of New South Wales, the Hon. Barry O'Farrell MP - Minister for Resources and Energy - the Hon. Chris Harcher MP and Minister for the Environment - the Hon. Robyn Parker, on behalf of the residents of Port Stephens and the Hunter, expressing concern over the proposal to carry out further test drilling for coal seam gas in Fullerton Cove. This planned test drilling and potential coal seam gas extraction is within the Hunter Valley-Tomago-Stockton coastal aquifer basin and places the Hunter Region's drinking water supply at risk of irreversible contamination. This critical resource provides twenty five percent of the Region's drinking water extraction, a highly valuable resource which must be protected for our current and future generations health and welfare;
- 2) Forward a copy of the letter detailed in 1) above to the State Member for Port Stephens – the Hon. Craig Baumann MP and the State Member for Newcastle – the Hon. Tim Owens MP.

ORDINARY COUNCIL MEETING – 13 DECEMBER 2011

430	Councillor Geoff Dingle Councillor Peter Kafer
	<p>It was resolved that Council:</p> <ol style="list-style-type: none">1. Write to the Premier of New South Wales, the Hon. Barry O'Farrell MP - Minister for Resources and Energy - the Hon. Chris Harcher MP and Minister for the Environment - the Hon. Robyn Parker, on behalf of the residents of Port Stephens and the Hunter, expressing outrage over the proposal to carry out further test drilling for coal seam gas in Fullerton Cove. This planned test drilling and potential coal seam gas extraction is within the Hunter Valley-Tomago-Stockton coastal aquifer basin and places the Hunter Region's drinking water supply at risk of irreversible contamination. This critical resource provides twenty five percent of the Region's drinking water extraction, a highly valuable resource which must be protected for our current and future generations health and welfare;

MINUTES FOR ORDINARY MEETING – 13 DECEMBER 2011

- | | |
|--|--|
| | <ol style="list-style-type: none">2. Forward a copy of the letter detailed in 1) above to the State Member for Port Stephens – the Hon. Craig Baumann MP and the State Member for Newcastle – the Hon. Tim Owens MP.3. That no further exploration be permitted until such time as the impact of coal gas exploration is known. |
|--|--|

BACKGROUND REPORT OF: DAVID BROYD - GROUP MANAGER SUSTAINABLE PLANNING

Coal Seam Gas exploration is controlled by The Petroleum (Onshore) Act 1991 and covers onshore exploration and production of petroleum (ie oil and gas). It creates exploration and production titles and also addresses environmental protection, royalties and compensation.

Dart Energy has been undertaking exploration under an exploration license and has submitted a further application to continue more exploration in the area following on from the outcomes of the previous license.

The Port Stephens LGA has a number of natural assets that could be put at risk from Coal Seam Gas exploration and extraction. These include:

- internationally significant Ramsar wetlands and ecological communities with state and federal threatened flora, fauna and migratory species;
- catchments for both the Stockton and Tomago sandbed aquifers which are significant underground water storage aquifers and are an important part of the Lower Hunters drinking water supply;
- a nationally listed 'high priority groundwater dependant ecosystem' as defined by the National Water Commission May 2011.

Dart Energy, who has the current exploration license, has conducted some information sessions with Councillors and the community however there have been limited opportunities for both Council and the community to give feedback on the proposal and express concerns. As the current proposal by Dart Energy was not a State Significant Development there is no requirement to exhibit the proposal or consult with Council.

Following on from the presentation at Public Access on 22 November 2011 the General Manager has sent a letter (**Attachment 1**) expressing Council's concerns regarding Coal Seam Gas in the Port Stephens Council Area. This letter has gone to the relevant heads of Departments and Ministers including; Minister for Planning and Infrastructure, Director General, Planning and Infrastructure, Minister for Resources and Energy, Director General, Dept Trade and Investment, Regional Infrastructure and Services, Minister for Sustainability, Environment, Water, Population and Communities, Secretary, Sustainability, Environment, Water, Population and Communities.

ATTACHMENTS

- 1) Copy of General Manager's letter dated 2 December 2011.

ATTACHMENT 1

COPY OF GENERAL MANAGERS LETTER DATED 2 DECEMBER 2011



116 Adelaide Street, Raymond Terrace NSW 2324
PO Box 42, Raymond Terrace NSW 2324

DX 21406 | ABN 16 744 377 876

Telephone inquiries
Sally Whitelaw
0249 800351
Please quote file no:
PSC2011-04468

X
X
X
x

Dear Minister

Coal Seam Gas Exploration in the Port Stephens Council LGA

Council is aware of current and proposed future Coal Seam Gas exploration with the Port Stephens Local Government Area.

The Port Stephens LGA has a number of natural assets that could be put at risk from Coal Seam Gas exploration and extraction. These include:

- internationally significant Ramsar wetlands and ecological communities with state and federal threatened flora, fauna and migratory species;
- catchments for both the Stockton and Tomago sandbed aquifers which are significant underground water storage aquifers and are an important part of the Lower Hunters drinking water supply;
- a nationally listed 'high priority groundwater dependant ecosystem' as defined by the National Water Commission May 2011.

Dart Energy, who has the current exploration license, has conducted some information sessions with Councillors and the community, however there have been limited opportunities for both Council and the community to give feedback on the proposal and express concerns.

As the current proposal by Dart Energy was not a State Significant Development there was no requirement to exhibit the proposal and the community and Council was largely unaware of the project.

When staff became aware of the proposal they rang the Department of Mineral Resources and were advised to express their concerns direct to Dart Energy. Port Stephens Council do not consider this an appropriate response as it lacks transparency and independence.

| Page 1

Port Stephens Council wishes to express its concern with Coal Seam Gas in the Port Stephens LGA and with the lack of transparency in the assessment and approval of exploration licenses. Council believes that the technical reports submitted with the most recent application are deficient and additional work by the proponent is required.

Yours faithfully

Peter Gesling
GENERAL MANAGER

2 December 2011

RESCISSION MOTIONS

RESCISSION MOTION

ITEM NO. 1

FILE NO: A2004-0523

GM'S PERFORMANCE REVIEW

COUNCILLORS: FRANCIS, DINGLE, DE LYALL, KAfer

THAT COUNCIL:

- 1) Rescind Information Item 2 namely GM's Performance Review Jan 2011 – June 2011.

ORDINARY COUNCIL MEETING – 13 DECEMBER 2011

Cr Caroline De Lyall left the meeting at 6.32pm prior to voting.

Cr Caroline De Lyall returned to the meeting at 6.34pm prior to voting.

431	<p>Councillor Glenys Francis Councillor Caroline De Lyall</p>
	<p>It was resolved that Council rescind Information Item 2 namely GM's Performance Review Jan 2011 – June 2011.</p>

	<p>Councillor Glenys Francis Councillor Peter Kafer</p>
	<p>That Council move into confidential session to allow for a discussion on the General Manager's Performance Review.</p>

AMENDMENT

432	<p>Councillor John Nell Councillor Bruce MacKenzie</p>
	<p>It was resolved that the Mayor be requested to facilitate a meeting to discuss the General Manager's Performance Review at a suitable time to ensure all Councillors can attend.</p>

The amendment on being put became the motion which was carried.

ITEM NO. 4

FILE NO: PSC2011-02007

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 22 November, 2011.

No:	Report Title Page:	
1	BUSINESS IMPROVEMENT	46
2	GM PERFORMANCE REVIEW – JANUARY 2011- JUNE 2011	52

ORDINARY COUNCIL MEETING 22 NOVEMBER 2011

Cr Peter Kafer left the meeting at 7.56pm prior to voting.
Cr Peter Kafer returned to the meeting at 7.57pm prior to voting.

Councillor Peter Kafer
Councillor Geoff Dingle

That Council move into Committee of the Whole to discuss Item 2.

Crs Peter Kafer and John Nell called for a division.

Those against the motion: Crs Ken Jordan, Bruce MacKenzie, Shirley O'Brien, John Nell, Bob Westbury and Sally Dover.

Crs Peter Kafer and John Nell called for a division.

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

Those against the motion: Crs Ken Jordan, Bruce MacKenzie, Shirley O'Brien, John Nell, Bob Westbury and Sally Dover.

The motion was lost on the casting vote of the Mayor.

417 Councillor John Nell
Councillor Ken Jordan

That the recommendation be adopted.

Cr Geoff Dingle left the meeting at 8.02pm.

INFORMATION ITEM NO. 2

GM PERFORMANCE REVIEW – JANUARY 2011- JUNE 2011

REPORT OF: PETER GESLING
GROUP: GENERAL MANAGER

FILE: PSC2005-1318

BACKGROUND

The purpose of this report is for Council to receive and accept the outcome of the Performance Process.

Council's performance process for the General Manager aligns with Department of Local Government Guidelines and was amended to include a written questionnaire for Councillors' individual input. The process used included:

Circulation of questionnaire

Meeting of Councillors and Facilitator, Rob Noble 25 Aug

Meeting of Performance Feedback Panel with
Facilitator and the General Manager

8 Sept

Production of two documents

25 Sept

Final Report

Matters for attention prepared by Facilitator
to the General Manager

General Manager's Response to Performance
Committee 27 Sept

Preparation of the Report to Council.

Additional documents available to the Review Committee included material addressed by all Council. Further information of documentary evidence to support the General Manager's personal assessments was provided to the Performance Panel.

I have forwarded copies of Item 4&5 for Councillors' information. Copies will be attached to the General Manager's Personnel File.

FINANCIAL/RESOURCE IMPLICATIONS

Included in operating budget.

LEGAL, POLICY AND RISK IMPLICATIONS

Council's Charter requires it:

- To have regard to the long term and cumulative effects of its decisions; and
- To be a responsible employer.

Participation in this formal process allows Council to demonstrate these elements of the Charter and models behaviour for the organisation that performance management is important to ensure Council objectives are achieved. Council's workforce policies are met in this process.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Participation in the Performance Feedback Process enhances the overall sustainability of the organisation by modelling behaviours expected of other supervisors within the organisation and building more effective working relationships.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- | | | |
|----|--|-----------|
| 1) | GM Performance Review Final Report (Noble Works) | - 25 Sept |
| 2) | GM Matters for Attention During Next Review Period (Noble Works) | - 25 Sept |
| 3) | GM's Comment to Panel (Mayor, Cr Dingle, Cr Jordon, Cr Nell) | - 27 Oct. |

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 – 13 DECEMBER 2011

433	Councillor Bruce MacKenzie Councillor Geoff Dingle
	It was resolved that the Ordinary meeting of Council be adjourned until after the Council Committee meeting. The meeting was adjourned at 6.41pm. The meeting reconvened at 9.18pm.

ITEM NO. 1

FILE NO: A2008-0028

**CCL 29/11/2011 NEWCASTLE AIRPORT - SUPPLY AND DELIVERY OF
COMMERCIAL CLEANING SERVICES TENDER**

REPORT OF: DAMIEN JENKINS – FINANCIAL SERVICES MANAGER
GROUP: COMMERCIAL SERVICES

ORDINARY COUNCIL MEETING – 13 DECEMBER 2011

434	Councillor John Nell Councillor Sally Dover
	It was resolved that Council accept the tender offered by ISS Facility Services Pty Ltd for the provision of commercial cleaning services.

CONFIDENTIAL

ITEM NO. 2

FILE NO: T10-2011

T10-2011 SUPPLY OF BITUMINOUS ROAD SURFACING

REPORT OF: PETER MURRAY – OPERATIONS MANAGER

GROUP: FACILITIES AND SERVICES

ORDINARY COUNCIL MEETING – 13 DECEMBER 2011

435	Councillor John Nell Councillor Sally Dover
	It was resolved that Council accept the tender of Boral Asphalt for the supply of bituminous road surfacing.

436	Councillor Ken Jordan Councillor John Nell
	It was resolved that Council move into confidential session.

CONFIDENTIAL

ITEM NO. 3

FILE NO: A2004-0573

LEGAL CASE SETTLEMENT

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

ORDINARY COUNCIL MEETING – 13 DECEMBER 2011

437	Councillor John Nell Councillor Geoff Dingle
	It was resolved that Council endorse the proposed settlement of this matter as outlined in Option 1 to this report.

Cr Peter Kafer recorded his voting against the matter.

438	Councillor John Nell Councillor Shirley O'Brien
	It was resolved that Council move out of confidential session.

There being no further business the meeting closed at 9.23pm.

I certify that pages 1 to 55 of the Open Ordinary Minutes of Council 13 December 2011 and the pages 58 to 69 of the Confidential Ordinary Minutes of Council 13 December 2011 were confirmed by Council at its meeting held on 20 December 2011.

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Cr Bob Westbury
MAYOR