

## Minutes 20 DECEMBER 2011



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 20 December 2011, commencing at 5.34pm.

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; General Manager; Corporate Services Group Manager; Facilities and Services Group Manager; Sustainable Planning Group Manager; Commercial Services Group Manager and Executive Officer.

<b>439</b>	<b>Councillor Ken Jordan</b> <b>Councillor Shirley O'Brien</b>
	It was resolved that the apology Cr Frank Ward from be received and noted.

<b>440</b>	<b>Councillor Ken Jordan</b> <b>Councillor John Nell</b>
	It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 13 December 2011 be confirmed.

	<p>Cr Sally Dover declared a significant non-pecuniary conflict of interest in Item 2. The nature of the interest is that Cr Dover is on the waiting listing for a villa in this retirement village.</p> <p>Cr Caroline De Lyall declared a less than significant non-pecuniary conflict of interest in Item 4. The nature of the interest is Cr De Lyall works at the some agency, in the same area. However we do not socialise outside of the workplace nor do we attend each others homes.</p>
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Cr Peter Kafer entered the meeting at 5.35pm.

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# MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: A2004-0028

## MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

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### RECOMMENDATION:

- 1) That pursuant to section 10A(2) (c) and (d) (i) 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 agenda namely **Newcastle Airport Restructure**.
- 2) That the reasons for closing the meeting to the public to consider this item be that the report and discussion will include:
  - a) 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;
  - b) details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.
- 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 – 20 DECEMBER 2011

	The Motion to Close was withdrawn with the consent of the Chair.

**COUNCIL  
COMMITTEE  
RECOMMENDATIONS**

Cr Steve Tucker entered the meeting at 5.36pm.

**ITEM NO. 2**

**FILE NO: 16-2011-471-1**

**DEVELOPMENT APPLICATION FOR SIXTEEN (16) VILLA UNITS AT NO 60  
DIEMARS ROAD SALAMANDER BAY**

**REPORT OF: MATTHEW BROWN - DEVELOPMENT ASSESSMENT AND ENVIRONMENTAL  
HEALTH**

**GROUP: SUSTAINABLE PLANNING**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application 16-2011-471-1 for sixteen (16) villa units at No. 60 Diemars Road, Salamander Bay, for the following reasons.
    - a. The development application is not accompanied by a Species Impact Statement as required by Clause 78A(8)(b) of the *Environmental Planning and Assessment Act, 1979* and Schedule 1 of the *Environmental Planning and Assessment Regulations, 2000*;
    - b. The development proposal is inconsistent with development consent 16-2007-1117-3 and the Vegetation Management Plan as required by the conditions of this consent;
    - c. The development proposal is inconsistent with the objectives and requirements contained with in State Environmental Planning Policy 71 – Coastal Protection;
    - d. The development proposal is inconsistent with the 2(a) Residential Zone objectives contained within Clause 16(2)(d) of the Port Stephens Local Environmental Plan 2000 because the proposal does not facilitate an ecologically sustainable development, protecting environmental assets.
    - e. The development proposal is inconsistent with the provisions of the Port Stephens Comprehensive Koala Plan of Management;
    - f. The development proposal does not meet Comprehensive Koala Plan of Management Performance Criteria and as such is inconsistent with State Environmental Planning Policy 44;
    - g. The cumulative impacts of the proposed development under Section 79C of the *Environmental Planning and Assessment Act, 1979* are considered to result in adverse ecological impacts;
    - h. The development proposal does not comply with section 5(a)(vii) of the *Environmental Planning and Assessment Act, 1979*, in that it does not promote ecologically sustainable development.
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**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011****COUNCIL COMMITTEE MEETING – 13 DECEMBER 2011****RECOMMENDATION:**

	<b>Councillor Bruce MacKenzie</b> <b>Councillor Shirley O'Brien</b>
	That Council:  1) Indicate its support in principle for the development application for sixteen (16) villas units at No. 60 Diemars Road, Salamander Bay; 2) An independent consultant/independent consultants be engaged to undertake an assessment of ecological significance for submission to the NSW Office of Environment and Heritage and for the drafting of conditions.

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

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

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

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

Cr Sally Dover left the meeting at 5.36pm prior to voting.

<b>441</b>	<b>Councillor Bruce MacKenzie</b> <b>Councillor Ken Jordan</b>
	It was resolved that Council:  1) Indicate its support in principle for the development application for sixteen (16) villas units at No. 60 Diemars Road, Salamander Bay; 2) An independent consultant/independent consultants be engaged to undertake an assessment of ecological significance for submission to the NSW Office of Environment and Heritage and for the drafting of conditions. 3) The Mayor and General Manager be given delegated authority to appoint the independent consultant to process the development application.

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

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



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

The Motion was carried on the casting vote of the Mayor.

## **BACKGROUND**

**The purpose of this report is to present a development application to Council for determination as requested by Councillor MacKenzie for the reason "very important DA for the housing for the aged".**

The development application proposes the construction of sixteen (16) single storey dwellings, referred to as Stage 7 of the village.

The application also includes the following works:

- Site clearing for the proposed dwellings;
- Site clearing for asset protection zones;
- Drainage and servicing works;
- Provision of biodiversity offsets off site.

The key issues associated with the proposal are:

- 1) Species Impacts Statement (SIS) required with lodgement of application;
- 2) Office of Environment and Heritage submission requesting Councils Assessment of Significance in determining no Species Impact Statement was required;
- 3) Environmental Impacts;
- 4) Bushfire.

The central issue is that while the crucial need for housing for the aged in Tomaree is fully recognised, this application cannot be supported mainly because of potential environmental impacts and the absence of a Species Impact Statement.

### DA Chronology

- 1) 12/07/2011 – Development Application Lodged
- 2) 13/07/2011 – Application called to Council by Cr MacKenzie
- 3) 13/07/2011 – Referred to Environmental Services for comment
- 4) 14/07/2011 – Integrated Fees Received
- 5) 14/07/2011 – Species Impact Statement requested from applicant
- 6) 06/09/2011 – Reported to Council Committee Meeting
- 7) 09/09/2011 – Engineering Referral Received
- 8) 13/09/2011 – Reported to Ordinary Council Meeting
- 9) 16/09/2011 – Additional Information Requested from Applicant (Species Impact Statement, Engineering and Planning Issues Raised)
- 10) 17/09/2011 – Councillor Site Inspection
- 11) 28/09/2011 – Notification Complete
- 12) 06/10/2011 – Additional information received, including request to dedicate land to Council to form part of Stony Ridge Reserve.
- 13) 03/11/2011 – Advice received from Facilities and Services in respect to consolidation of land into Stony Ridge Reserve

- 14) 10/11/2011 – Application called to December Council meeting
- 15) 25/11/2011 – Report Deadline.

It should be noted that the application has been called to the December meeting while aspects of the proposal are still under assessment, as such components of the development including traffic, the consolidation of land into Stoney Ridge Reserve and compliance with Development Control Plan 2007 have not been fully assessed.

#### Site History

In 2000 an application was lodged for a retirement village. A Species Impact Statement was lodged with this application and referred for the Director General's concurrence. During the assessment process the NPWS refused to grant concurrence in November of 2001. The justification for the refusal of concurrence was:

*"The NPWS considers that the site is of high conservation significance and the development is likely to impact on a local population of the threatened Squirrel Glider *Petaurus norfolcensis* to the extent that the local population will be threatened with extinction."*

The refusal also noted:

*"The NPWS considers that resources in the Council reserve adjacent are limited and the core Squirrel Glider habitat for this population exists only in the proposed development site. The NPWS contends that the Council reserve alone is not able to support the Squirrel Glider population."*

Following this refusal of concurrence by NPWS, amended plans and layout were submitted which reduced the development footprint and retained significant areas of vegetation in the north western corner and in the centre of the site. The areas to be retained included the majority of the hollow bearing trees and areas of important foraging habitat identified by the Species Impact Statement. This letter of concurrence dated 1 February 2002 stated:

*"The amended layout will ensure that significant areas of native vegetation are retained which include the majority of hollow bearing trees and significant areas of foraging habitat for the Squirrel Gliders and the proposed plantings of suitable species through the site. Based on that consideration the NPWS believes that the proposed development does not place the local population of Squirrel Gliders at a significantly higher risk of extinction and therefore would not refuse to concur with Council granting development consent to the proposed development as amended."*

*Should the NPWS's concurrence be sought for the revised development, the NPWS may determine that conditions additional to those required by Council are required. At this stage those additional conditions would relate to revegetation of retained areas, landscape plantings on the site and monitoring of the Squirrel Glider population."*

In 2005 a development application (16-2004-1681) was approved for a ninety-seven (97) dwelling urban housing project.

The most recent approval on the site, development application 16-2007-1117-3, sought approval for a community building and eight (8) dwellings. As a component of the proposal, the applicant submitted a Vegetation Management Plan that sought to protect the vegetated portion of the site from future development. The assessment of this application stated in relation to seeking the concurrence of the Director General (Section 79BA of Environmental Planning and Assessment Act 1979):

*"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."*

This vegetation management plan was required by Condition 9 of development consent 16-2007-1117-3. An 88B instrument was also put in place to protect the land, however this was ultimately removed by Council. Further, removal of the vegetation subject to the vegetation management plan is considered to constitute a significant impact to threatened species and as such a Species Impact Statement and concurrence is required.

Clause 78A of the *Environmental Planning and Assessment Act, 1979* specifies information that is required to accompany a Development Application on submission. Specifically, Clause 78A(8)(b) of the states;

- *if the application is in respect of development on land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats—a species impact statement prepared in accordance with Division 2 of Part 6 of the Threatened Species Conservation Act 1995.*

The development is considered likely to significantly impact upon threatened species or ecological communities and their habitats and as such an SIS is warranted to accompany the application.

Clause 51(2)(b) of the *Environmental Planning and Assessment Regulations, 2000* states,

- b) *being an application referred to in section 78A (8) (b) of the Act, the application is not accompanied by a species impact statement referred to in that paragraph.*

Given the application was submitted without an accompanying Species Impact Statement, the application could have been rejected within 14 days of lodgement. The application was called to Council for determination within this timeframe and as such it was recommended that Council refuse the application or alternatively call for the applicant to prepare a Species Impact Statement to allow proper assessment of the proposal.

At the Ordinary Council meeting of 13<sup>th</sup> September 2011, Council resolved to;

*"accept the development application sixteen villa units at No.60 Deimars Road Salamander Bay without a Species Impact Statement and requests the Manager Development Assessment and Environmental Health to proceed with a full assessment of the application and report back to Council."*

The Office of Environment and Heritage (OEH) made a submission to the proposal during the notification period. OEH have requested that Council forward a copy of the Assessment of Significance undertaken in determining that no Species Impact Statement was required to be submitted for the application. The OEH submission is discussed in detail under the heading "Submissions".

The applicant amended the Development Application so as to include the dedication of land to Council, being the land left undeveloped by this application, to ultimately be subdivided from the property and incorporated into Stony Ridge Reserve. No plans of subdivision have been provided to accompany the application, ordinarily prior to any determination or recommendation thereof, the application would be amended again and plans provided of the proposed subdivision. It is also noted that any subdivision would be considered to be Integrated Development, requiring the concurrence of the NSW Rural Fire Service.

## **FINANCIAL/RESOURCE IMPLICATIONS**

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

It should also be noted, that should Council proceed to determine the application by way of approval without the submission of a Species Impact Statement or the Concurrence of the Director General of Office of Environment and Heritage, the application could be subject to legal challenge.

## **LEGAL AND POLICY IMPLICATIONS**

The development application is inconsistent with a number of Council's Policies.

The NSW Office of Environment and Heritage (OEH) forwarded a submission dated 28/09/2011 raising concerns with the development, specifically the assessment of the application in the absence of a Species Impact Statement. The submission states;

*"OEH noted that when considering a development application, pursuant to Section 5A of the Environmental Planning and Assessment Act 1979, Council must undertake an Assessment of Significance (i.e. 'seven part test of significance') to determine if there is a significant impact on threatened species, populations, ecological communities and their habitat. If Council deems there will be a significant impact section 78A requires that the development application must be accompanied by a SIS. OEH requests a copy of the Assessment of Significance conducted by the Council to determine that a SIS was not required".*

Should the application be supported by Council, an Assessment of Significance will be required to be submitted to OEH.

OEH further state that an SIS is required for the proposal and that they "could not issue concurrence for the project in its current form".

Accepting and determining the application in the absence of this information creates a scenario of extremely high risk. In particular given the NSW Office of Environment and Heritage (OEH) (who are required to consider and endorse the SIS) are familiar with the site and proposal and have made a submission requesting Council forward a copy of the Assessment of Significance used by Council in determining no SIS is required. Having consideration to Council's standard risk Matrix and considering all factors the risk of determining the Application in the absence of an SIS calculated at possible and catastrophic.

The *Environmental Planning and Assessment Act, 1979* provide for a "Seven Part Test" to evaluate whether a Species Impact Statement is required on the basis of analysis of whether the development will, or will not, result in potential significant adverse environmental impacts.

The submitted "seven part test" report for the application uses offsetting as a mechanism to avoid a significant impact in the "seven part test". While offsetting can be used as a tool to help quantify impacts from developments it is not appropriate to use compensatory measures in the 7 part test. The proposal of significant offsets by the applicant is in effect an indication that there is a "significant impact", to the extent that a compensatory offering is required. Given the environmental values of the proposed offsetting area it is unlikely that any further development of the offset site would be supported. Therefore it is questionable if any environmental gain is achieved by the offset. The validity of the offset should be assessed by OEH. It is the inclusion of these offsets that is the basis which the applicant has applied to argue that an SIS is not required.

The applicant has proposed BioBanking as a method of offsetting the cleared Swamp Mahogany Paperbark Forest. Swamp Mahogany Paperbark forest is known to be a Red Flag community and can not be offset using BioBanking without approval of the OEH. The applicant has asserted though that approval of the OEH is not required as the Swamp Mahogany Paperbark Forest in their opinion does not fit the definition of the Endangered Ecological Community (EEC). As outlined within this report, Council's Natural Resources section rejects this rationale as the Scientific Committee also presents another means of floristic description by reference to vegetation communities identified in vegetation surveys and mapping studies such as the LHCCREMS mapping. The land proposed for the offset is approximately 24 Ha in size and is located off Trotter Road, Anna Bay. It should also be noted that until the full ecological impacts are known, e.g. via an SIS, it is arguable that the quantification and extent of offsetting remains unknown.

It is important to note also that should an amended "seven part test" be submitted that illustrates no significant adverse impacts on Flora and Fauna, without relying on offsetting, pursuant to Section 5A of the *Environmental Planning and Assessment Act 1979*, Council may be in a discretionary position to assess the application. It is still recommended that the application should be referred to OEH.

The development as proposed is considered to be inconsistent with Council's Comprehensive Koala Plan of Management and Zone objectives for the 2(a) Residential Zone in the Port Stephens Local Environmental Plan 2000.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The development as proposed is likely to have positive social and economic benefits. In particular housing for the aged is a critical issue not only for the Port Stephens Local Government Area, and more generally. It is not considered however that these benefits outweigh the potential for significant and adverse environmental impacts to the site and the legislative/legal risk implications of foregoing the need for an SIS. Applying a holistic and strategic view, it is arguable that these housing facilities could be provided in other areas/regions without the direct and significant environmental impacts this proposal is likely to have. These issues are discussed in the Environmental section of this report.

### **CONSULTATION**

The application was notified in accordance with Council's Policy. In response to the notification period, one submission was received from the NSW Office of Environment and Heritage. This submission is discussed under the heading submissions elsewhere in this report.

In addition to the submission, Council was also cc'd into correspondence from the Medowie Progress Association to OEH in which the issue of the lack of a Species Impact Statement was raised in relation to the assessment of the proposal.

### **OPTIONS**

- 1) Adopt the recommendation;
- 2) Reject Recommendations. Should the recommendation be rejected and the application be supported, Council should resolve the reasons and justification for doing so in the absence of a Species Impact Statement. An independent consultant / independent consultants should be engaged to undertake an assessment of ecological significance for submission to the NSW Office of Environment and Heritage and for the drafting of conditions;
- 3) Defer the determination of the application and request the applicant submit a Species Impact Assessment.

### **ATTACHMENTS**

- 1) Locality Plan;
- 2) Assessment;
- 3) Submission from the Office of Environment and Heritage dated 28/09/2011.

### **COUNCILLORS ROOM**

- 1) Development Plans;
- 2) Statement of Environmental Effects;
- 3) Flora and Fauna Report.

### **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. Please note however that as an SIS has not been submitted, a full and robust 79C assessment has not been carried out.

**THE PROPOSAL**

The development application proposes the construction of sixteen (16) single storey dwellings, referred to as Stage 7 of the village.

The application also includes the following works;

- Site clearing for the proposed dwellings,
- Site clearing for asset protection zones
- Drainage and servicing works
- Provision of Biodiversity Offsets off site.

**THE APPLICATION**

Owner	Port Stephens Veterans & Citizens Aged Care Pty Ltd
Applicant	Port Stephens Veterans & Citizens Aged Care Pty Ltd
Detail Submitted	Statement of Environmental Effects Development Plans Bushfire Report Flora and Fauna Assessment Biodiversity Offset Report

**THE LAND**

Property Description	Lot 1 DP 1074566
Address	60 Diemars Road Salamander Bay
Area	7.792 Ha
Dimensions	The site is generally rectangular, having a depth in the east-west direction of approximately 360m and a width in the north-south direction of approximately 230m
Characteristics	The site is generally developed with the exception of bushland to the sites western portion which adjoins Stony Ridge Reserve.

**THE ASSESSMENT**

**1. Planning Provisions**

LEP 2000 – Zoning Relevant Clauses	2(a) - Residential 16, 51
Development Control Plan	Development Control Plan 2007
State Environmental Planning Policies	SEPP 44 – Koala Protection SEPP 71 – Coastal Protection

Discussion

**Environmental Planning and Assessment Act 1979**

Clause 78A

Clause 78A of the *Environmental Planning and Assessment Act, 1979* specifies information that is required to accompany a Development Application on submission. Specifically, Clause 78A(8)(b) of the states;

- b) if the application is in respect of development on land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats—a species impact statement prepared in accordance with Division 2 of Part 6 of the Threatened Species Conservation Act 1995.*

The development was considered by staff to be likely to significantly impact upon threatened species or ecological communities and their habitats and as such an SIS was recommended to accompany the application.

At the Ordinary Council meeting of 13<sup>th</sup> September 2011, Council resolved to;

*"accept the development application sixteen villa units at No.60 Diemars Road Salamander Bay without a Species Impact Statement and requests the Manager Development Assessment and Environmental Health to proceed with a full assessment of the application and report back to Council."*

Clause 79B

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 on the site that the DECC (not the Office of Environment and Heritage) has had concerns over the continued development impacts on the viability of the Squirrel Glider population.

It is noted that in the assessment of the preceding application on the site (DA16-2007-1117-3), despite the development considered to be likely to have a significant impact on threatened species, the locking up of remaining vegetation by way of a Vegetation Management Plan was considered to be an adequate mitigating factor, thereby negating the need to seek concurrence under clause 79B of the *Environmental Planning and Assessment Act, 1979*. The development assessment for DA 16-2007-1117-1 stated;

*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.*

As the elected Council deemed that the impact was not significant and no Species Impact Statement was required, there is no requirement to seek the concurrence of the Office of Environment and Heritage. The Office of Environment and Heritage was notified of the proposal and their comments are discussed in the notification section of the report.

Clause 79BA

Clause 79BA states;

- (1) *Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land unless the consent authority:*
  - (a) *is satisfied that the development conforms to the specifications and requirements of the document entitled Planning for Bush Fire*

*Protection, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or*

(b) *has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.*

(1A) *If the consent authority is satisfied that the development does not conform to the relevant specifications and requirements, the consent authority may, despite subsection (1), grant consent to the carrying out of the development but only if it has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.*

(2) *In this section: special fire protection purpose has the same meaning as it has in section 100B of the Rural Fires Act 1997.*

It is considered that the units subject to this application will be assessed under Section 79BA of the *Environmental Planning and Assessment Act*.

A bushfire report (Salamander Haven Village Stage 7 Bush Fire Hazard Assessment, prepared by ERM, dated July 2011, Ref 0054408 Final) has been prepared for the development and demonstrates that the proposal can be constructed in accordance with the requirements of Planning for Bushfire Protection.

#### Clause 91

The development is not considered to be integrated under the provisions of clause 91.

#### **Environmental Planning and Assessment Regulations 2000**

Clause 51(2)(b) of the *Environmental Planning and Assessment Regulations, 2000* states,

(c) *being an application referred to in section 78A (8) (b) of the Act, the application is not accompanied by a species impact statement referred to in that paragraph.*

Given the application was submitted without an accompanying SIS, the application could have been rejected within 14 days of lodgement. The application was called to Council for determination within this timeframe and recommended for refusal. Council ultimately resolved on 13<sup>th</sup> September 2011 that the application be accepted without the Species Impact Assessment.

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

The development site is noted as being on land identified as being subject to the requirements of State Environmental Planning Policy 71 (SEPP71). With regards to the proposal, SEPP 71 aims to;

- (g) to protect and preserve native coastal vegetation, and*
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and*

The matters for consideration are the following:

- (a) the aims of this Policy set out in clause 2,*

**Comment:** It is considered that aims (g) and (j) are specific to this application. With respect to protecting and preserving native coastal vegetation it is considered that this application is inconsistent with SEPP71. The application has no regards to Vegetation Management Plan currently in place for the site, nor has the application been accompanied by the required Species Impact Statement.

It is considered that the development should not be supported as it is inconsistent with the aims of SEPP71.

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

**Comment:** The development will not impact on access to the coastal foreshore.

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

**Comment:** The development will not impact on any opportunities to provide access to the foreshore.

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

**Comment:** The development is not incompatible with other development in the area, however given the ecological constraints on the site, the development is considered to be inappropriate on the site.

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

**Comment:** The development will have no adverse impact on the amenity of the coastal foreshore.

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

**Comment:** The development will not adversely impact upon the scenic qualities of the coastal area.

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

**Comment:** The development is considered to be likely to adversely impact upon flora and fauna and as such is considered to be contrary to the provisions of SEPP 71. Issues pertaining to Flora and Fauna are discussed in the Environmental section of this report.

The development is considered to be inconsistent with this provision of SEPP71 in that the development is likely to adversely impact upon flora and fauna.

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

**Comment:** The development is unlikely to result in any adverse impact upon the conservation of fish.

- (i) *existing wildlife corridors and the impact of development on these corridors,*

**Comment:** The development is likely to have an adverse impact upon wildlife corridors and as such is contrary to the provisions of SEPP71.

The development is considered to be inconsistent with this requirement of SEPP71 in that the development will adversely impact upon fauna corridors. Issues pertaining to Flora and Fauna are discussed in the Environmental section of this report.

- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

**Comment:** The development will not adversely impact upon the coastal processes.

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

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

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

**Comment:** the development is unlikely to impact adversely upon aboriginal culture.

- (m) *likely impacts of development on the water quality of coastal waterbodies,*

**Comment:** The development is unlikely to impact upon the water quality of the Port.

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

**Comment:** The development is unlikely to impact upon any items of heritage, archaeological or historical significance.

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

**Comment:** This clause is not considered to be relevant to the proposal.

- (p) *only in cases in which a development application in relation to proposed development is determined:*

- (i) *the cumulative impacts of the proposed development on the environment, and*

- (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

*Note. Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires the Government Coastal Policy (as defined in that clause) to be taken into consideration by a consent authority when determining development applications in the local government areas identified in that clause or on land to which the Government Coastal Policy applies.*

**Comment:** It is considered that the cumulative impact of the development, and the non adherence to a previously implemented Vegetation Management Plan will result in adverse cumulative impacts and as such is inconsistent with SEPP71.

Issues pertaining to Flora and Fauna are discussed in the Environmental section of this report.

### **Rural Fires Act 1997**

The application has been considered under the provisions of clause 79BA of the *Environmental Planning and Assessment Act, 1979*.

The development for sixteen(16) Villa Units is not identified as a Special Fire Protection Purpose under the provisions of Section 100B and as such no integrated referral to the NSW Rural Fire Service is required.

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

#### **Clause 16**

Clause 16 of the LEP 2000 contains the zone objectives. The objectives for the 2(a) residential zone state;

*The objectives of the Residential "A" Zone are:*

- (a) to encourage a range of residential development providing for a variety of housing types and designs, densities and associated land uses, with adequate levels of privacy, solar access, open space, visual amenity and services, and*
- (b) to ensure that infill development has regard to the character of the area in which it is proposed and does not have an unacceptable effect on adjoining land by way of shading, invasion of privacy, noise and the like, and*
- (c) to provide for non-residential uses that are compatible with the area and service local residents, and*
- (d) to facilitate an ecologically sustainable approach to residential development by minimising fossil fuel use, protecting environmental assets and providing for a more efficient use of existing infrastructure and services, and*
- (e) to ensure that the design of residential areas takes into account environmental constraints including soil erosion, flooding and bushfire risk.*

**Comment:** It is considered that the development is inconsistent with objective (d) in that the proposal does not facilitate and ecologically sustainable development protecting environmental assets.

The development will result in the destruction of significant bushland protected by a Vegetation Management Plan put in place by development consent 16-2007-1117-3. The preserving of this vegetation by a Vegetation Management Plan was the rationale for the previous development consent not being considered to require the concurrence of the Director General under Clause 79B of the *Environmental Planning and Assessment Act 1979*.

#### Clause 19

Clause 19 sets the Development Standards for Floor Space Ratio, Density and Height.



## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

Development Standard	Proposed	Required	Compliance
Site Area per Dwelling	614m <sup>2</sup> (122 dwellings on site area 74920 m <sup>2</sup> )	300m <sup>2</sup> minimum	Yes
Floor Space Ratio	0.25:1 (total floor space, 15,886.59m <sup>2</sup> existing + 2,448.96m <sup>2</sup> proposed = 18,335.55m <sup>2</sup> )	0.5:1 Maximum	Yes
Height	Single storey	8m Maximum	Yes

The development is consistent with the requirements of clause 19 of the LEP2000.

### Clause 51A

The development site is subject to Class 4 Acid Sulfate Soils.

It is considered unlikely that the development will extend 2m beyond the ground surface and as such is unlikely to result in a disturbance to Acid Sulfate Soils.

### **Port Stephens Development Control Plan 2007**

#### Section B7 – Villa and Townhouse Development

The development is considered to be generally consistent with the provisions of section B7 of DCP 2007. The development is internalised to the site with dwellings not directly accessing public streets negating many of the DCP controls. Units 107, 108, 109, 110, 111 that have frontage to a public street comply with the DCP requirements for setback.

Departures from the controls of Section B7 are discussed below.

Control B7.C11 – *Garages and carports for each dwelling must be setback from the main building line of the building.*

**Comment:** Units 107, 108, 109, 110, 111 with frontage to Diemars road contain the required 6m setback, however the garage element of each of the units is set forward of the main building line by approximately 1m.

Control B7.C19 – *All garage doors must be setback:*

- *A minimum of 1.5m behind the adjacent alignment of the building frontage; or*
- *A minimum of 2.5m from the front alignment of a deck or balcony overhanging the garage.*

**Comment:** The garage of the units is set forward of the building line by approximately 1m.

Control B7.C21 – *At least one window of a habitable room must separate the garages of adjacent dwellings. Garages that abut each other are not acceptable.*

**Comment:** The development contains many examples where adjoining units have garages with no separation.

The applicant has applied for a variation to these controls, and given the context of the existing development in the surrounding area, it is considered that a variation to these controls could be supported.

### **Environmental Assessment**

Port Stephens Council Natural Resource Section has significant concerns with the proposal. These concerns are:

- The rationale that the previous development was approved on the understanding, that was also enforced via a condition of consent that the entire back section, including the area that is now proposed to be cleared, is to be maintained via a VMP. The preservation and maintenance of this back section allowed Council to satisfy its obligations under the TSC Act and any future eroding of this area erodes the outcomes of the previous determination.
- The report seems to use offsetting as a mechanism to avoid a significant impact in the 7 part test. While offsetting can be used as a tool to help quantify impacts from developments it is not appropriate to use compensatory measures in the 7 part test. Given the environmental values of the proposed offsetting area it is unlikely that any further development of the offset site would be supported. Therefore it is questionable if any environmental gain is achieved by the offset. The validity of the offset should be assessed by OEH.
- The report seeks to use offsetting as a rationale for the proposal being acceptable even though the proposal does not meet the CKPoM performance criteria. The CKPoM does not recognise offsetting unless a net gain of Koala Habitat can be realised on, or adjacent to the site.
- Assessment against CKPoM.
  - a) Minimise the removal or degradation of native vegetation within Preferred Koala Habitat or Habitat Buffers

**Comment:** Not Met

- b) Maximise retention and minimise degradation of native vegetation within Supplementary Koala Habitat and Habitat Linking Areas

**Comment:** Not Met

- c) Minimise removal of any individuals of preferred Koala food trees onsite

**Comment:** Not Met

- d) Where appropriate restore and rehabilitate areas identified as Koala Habitat/Buffers and Linking areas (mainly cleared land). On the occasion that Council approves removal of Koala Habitat, and where circumstances permit the result of rehabilitation and restoration should be a net gain of koala habitat onsite and/or adjacent land

**Comment:** Not Met

- e) Make provision for long term management and protection of koala habitat, both existing and restored

**Comment:** This could be argued to be met via the offset package

- f) Not compromise the potential for safe movement of Koalas. This includes maximum tree retention and the creation of barriers to movement of koalas. See Appendix 4 (f) of the CKPoM for fencing and dog guidelines

**Comment:** This could be met via conditions of consent for fencing and dog controls

- g) Be restricted to defined envelopes containing all building, infrastructure and fire fuel reduction zone. In the case of subdivisions, envelopes will be registered as a restriction on title pursuant to the Conveyancing Act 1919

**Comment:** This could be met via conditions of consent

- h) Minimise threat to koalas from dogs, motor vehicles, and swimming pools. See Appendix 4 (h) of the CKPoM for specific measures

**Comment:** This could be met via conditions of consent

- The proposal does not meet CKPoM performance criteria (a), (b), (c), and (d). This equates to a breach of SEPP 44 and while the waiver clause could be requested it would be unlikely to be granted as the CKPoM requires that certain standards are met for the waiver clause to be granted. Of relevance to this DA, the CKPoM requires that *'the building envelope and associated works including fire fuel reduction zones **cannot** be located in such a way that would avoid the removal of native vegetation within Preferred or Supplementary Koala Habitat, Habitat Buffers, or Habitat Linking Areas, or removal of preferred koala food trees'*. As I am not satisfied that the works could not be done in a way that would avoid koala habitat I am not preferred to grant the waiver clause.
- The Natural Resources section doesn't believe that the 7 part test for the squirrel glider is accurate, PSC is of the belief that an SIS would be required if the development is submitted with the proposed level of impacts. This is based on the loss of foraging habitat and dens in the Sand Apple Blackbutt forest and the previous advice from NPWS as to the value of the habitat on the site and NPWS eventual satisfaction with the previous development that was based the retention of onsite foraging habitat. Again, the 7 part test mentions the use of

mitigation measures (nest boxes) in order to achieve a no significant impact status, this is not acceptable.

- The Natural Resources section doesn't believe that the 7 part test for the Koala is accurate, PSC is of the belief that an SIS would be required if the development is submitted with the proposed level of impacts. This is based on the current fragmented habitat in the Soldiers Point locality and that any substantial loss of habitat, like this development, will significantly affect the population. It should be noted that the ecological report admits that the site is an area of major Koala activity. In addition the ecological report has failed to recognise the existence of Forest Red Gum, *Eucalyptus teriticornis*, in the area proposed to be developed. This is a significant failing of the ecological assessment as this tree is a preferred Koala feed tree.
- It is noted that Council has resolved to not require an SIS and the concurrence of OEH. However this has left Natural Resources without the necessary information required to assess the DA and satisfy my obligations under the EP&A ACT and the TSC Act.
- NPWS's previous documentation also raises concerns with impacts on the Glossy Black Cockatoo and the common Bentwing Bat in addition to orchids. It is noted that the ecological report states that the 44 flowering *Corybas dowlingii* found on site was considered to be an underestimate of the population.
- Natural Resources also have concerns with the currency of the majority of the data. It appears as though the report is relying on surveys undertaken in roughly 2001 with some more recent additions. It should be noted that the report is considered deficient in providing data on when the surveys were undertaken.
- The report maintains the vegetation community found on site, described as Swamp Mahogany Paperbark Forest, is not the EEC Swamp Sclerophyll Forest on Coastal Floodplains, as it does not occur on alluvial soils as described in the scientific determination.
  - o Port Stephens Council Natural Resources rejects this rationale as the Scientific Committee also presents another means of floristic description by reference to vegetation communities identified in vegetation surveys and mapping studies such as the LHCCREMS mapping. In fact the Swamp Sclerophyll Forest community is identified by the Scientific Committee in the description in the Final Determination as including, in the lower Hunter district, "Swamp Mahogany-Paperbark Swamp Forest (Map Unit 37), Riparian Melaleuca Swamp Woodland (Map Unit 42) and Melaleuca Scrub (Map Unit 42a)" in LHCCREMS (paragraph) 8 of the description of the Swamp Sclerophyll Forest community).
  - o The ecological report identifies the community as being equivalent to LHCCREMS Swamp Mahogany Paperbark Forest and as such is considered as being the Swamp Sclerophyll EEC.
  - o This approach has been supported in the past and in consultation with OEH. Internal reviews of previous such identification problems with this particular EEC (refer to Land and Environment Court matter *Motorplex (Australia) Pty Ltd v Port Stephens Council [No 2] [2007] NSWLEC 770 (26*

November 2007)) are of the view that this EEC occurs on the subject site.

- In relation to the absence of the *Callistemon linearifolius* in the area to be developed Natural Resources believes this to be accurate however the area does present appropriate habitat for the species and the systematic under scrubbing of the area would have removed individuals of this species. Natural Resources has photographic evidence of the *Callistemon* on the proposed development site prior to the construction of the inappropriate colourbond fence that removed several threatened species.

### **Conclusion**

- The development seeks to impact an area of bushland that was set aside as rationale for previous development not having a 'significant impact' under the TSC Act.
- The DA does not meet the CKPoM, this equates to not meeting SEPP 44.
- The ecological report is suggesting mitigative measures to decrease the impacts on threatened species
- Some of the data does not appear to be current have not satisfied the 7 part test for several species, especially in light of the previous correspondence from NPWS.
- The loss of the EEC has not been recognised.

For the above reasons Natural Resources believe that a Species Impact Statement and the concurrence of OEH is required however it is noted that Council, by way of resolution, has resolved not to ask the applicant to prepare an SIS.

The lack of quality data and the inadequacies in the ERM Flora and Fauna report, which now can not be resolved via an SIS, means that Natural Resources are unable to support the application.

Natural Resources believe the expansion is an over development of the site, will have unacceptable ecological impacts and should not be supported.

### **Engineering Assessment**

At the time of writing this report, the Engineering assessment of the proposal had not been finalised. Additional information has been submitted at the request of Council Engineers, but assessment has not been completed.

Notwithstanding this, as the application had been called up to Council, the report is tabled in the absence of this information.

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

It is considered that the removal of vegetation proposed to be retained under a Vegetation Management Plan, by virtue of Development Consent 16-2007-1117-3, is likely to have a significant adverse impact on threatened Flora and Fauna.

A Species Impact Statement is required to be submitted to resolve concerns around the impact of the development.

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

Given the ecological constraints of the site and lack of legitimate and informed assessment enabled by consideration of a Species Impact Statement, it is considered that the site is not suitable for further development.

## **4. Submissions**

The application was notified in accordance with Councils Policy. In response to the notification period, one submission was received from the NSW Office of Environment and Heritage. Issues raised in the submissions include;

- Lack of a Species Impact Statement to accompany the application. The submission notes the requirement for an SIS to be provided where there is a significant impact to threatened ecological communities, with the OEH submission requesting that Council forward a copy of the Assessment of Significance used to determine there was no significant impact to their offices for consideration.
- The history of the site and the gradual erosion of the ecological value of the site. The OEH submission further noted the history of development on the site and stated that in a previous development where an SIS had been provided, the department had refused to grant concurrence leading to a redesign and lessening of the scale and impacts of the development.

In addition to the submission, Council was also cc'd into correspondence from the Medowie Progress Association to OEH in which the issue of the lack of a Species Impact Statement was raised in relation to the assessment of the proposal.

## **5. Public Interest**

It is not considered to be in the public interest to support the development given the lack of a Species Impact Statement and potential impact upon threatened flora and fauna.

In considering the public interest, a methodical and tangible process is followed. This includes identifying the relevant public, considering any objections or policies that apply (legislation, policy, guidelines) and finally assign a "weighting" to each of those interests. On balance, in considering the various competing interests, it is the professional staff view that determining the application in the absence of a species impact statement is not in the wider public interest

**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

The application does not comply with State Legislation (ie the requirement for an SIS), the development provides demand for only on segment of the community being aged housing. The environmental values trying to be preserved by refusing this application however are intergenerational and irreplaceable.

For these reasons it is considered to be in the public interest to not support the application.

ATTACHMENT 3

Submission from the Office of Environment and Heritage dated 28/09/2011



Office of  
Environment  
& Heritage

SUBMISSION  
29/9/11

E-MAILED  
28/9/11

Your reference:  
Our reference: DOC11/43457; File: FIL06/925.10; Part 4 TS  
Contact: Steve Lewer 02 4908 6814

General Manager  
Port Stephens Council  
PO Box 42,  
RAYMOND TERRACE NSW 2324

PORT STEPHENS COUNCIL	
29 SEP 2011	
File No.	_____
Action by	_____
Parcel	_____

Dear Sir

**SENIORS LIVING DEVELOPMENT APPLICATION FOR 16 UNITS - 60 DIEMARS ROAD,  
SALAMANDER BAY – DA16-2011-471-1**

Reference is made to the proposed 'seniors living development' (DA16-2011-471-1) located at 60 Diemars Road, Salamander Bay. The application is currently advertised on the Port Stephens Council ('Council') website.

The Office of Environment and Heritage (OEH) understands that the proposal is for the extension of Salamander Haven Retirement Village and primarily comprises the construction of an additional 16 dwellings (referred to as Stage 7 of the village). OEH acknowledges the importance and social need for such a facility to the local community. Equally important is the preservation of local threatened species and their habitats. The proposal will result in the destruction of important threatened species habitat that was previously set aside for conservation.

By way of background OEH advises Council that in 2000, when a development application and accompanying Species Impact Statement (SIS) were lodged for a retirement village on the site the National Parks and Wildlife Service (NPWS), which is now part of OEH, considered the application. After careful consideration NPWS refused to grant concurrence for the proposal due to the high conservation significance of the site and in particular because the proposed development would likely adversely impact a local population of the threatened Squirrel Glider (*Petaurus norfolcensis*) to the extent that the local population would be threatened with extinction. NPWS considered that resources in the adjacent Council reserve were limited and that the core Squirrel Glider habitat for this population exists only in the proposed development site. NPWS concluded that the Council reserve alone would not be able to support the Squirrel Glider population if the development proceeded. NPWS also noted the proposed development would adversely impact on the habitat of other threatened species such as Glossy Black Cockatoo, Koala and Common Bentwing Bat.

The proposal was subsequently amended to retain important habitat for the squirrel glider population. NPWS responded to the proponent in correspondence dated 1 February 2002 specifically noting 'the amended layout will ensure that significant areas of native vegetation are retained which include the majority of hollow bearing trees and significant areas of foraging habitat for the Squirrel Gliders and the

The Department of Environment, Climate Change and Water is now known as the  
Office of Environment and Heritage, Department of Premier and Cabinet

PO Box 4880, Newcastle NSW 2300  
Ground Floor 117 Bull Street,  
Newcastle West NSW 2302  
Tel: (02) 4908 6800 Fax: (02) 4908 6810  
ABN 30 641 387 271  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)



proposed removal of vegetation through the site. Based on that consultation the NPWS agrees that the proposed development does not pose the local population of Spotted Girders or a significant higher risk of extinction, and therefore would not refuse to consent with Council granting development consent to the proposed development as amended.

Subsequent to Council approval, have protected the retained habitat vegetation through a Vegetation Management Plan and Section 88B covenant under the Conservation Act 1918.

In accordance to CEH that in 2011 Council removed the 88B instrument that protected the vegetation that had been set aside to help retain the local population of Spotted Girders and other threatened species.

Regarding appropriate vegetation habitat in previous consents allowed Council to fulfil its obligations regarding Environmental Planning and Assessment Act 1979 and the threatened Species Conservation Act 1995. Any approval of a proposal on land not made for conservation at that of a previous consent would undermine any achievement with previous consent conditions.

CEH is concerned that Council has resolved to approve the new development application which is located on the vegetated land previously set aside to help retain the local Spotted Girders population and other threatened species, without a SIB. CEH informs that when considering a development application pursuant to Section 54 of the Environmental Planning and Assessment Act 1979, Council must undertake an Assessment of Significance (in terms part 1 of significance) to determine if there is a significant impact on threatened species, populations, ecological communities and their habitat. If Council deems there will be a significant impact section 88B requires that the development application must be accompanied by a SIB. CEH requests a copy of the Assessment of Significance conducted by the Council to determine if that SIB was not required.

Removal of important habitat vegetation previously identified as being essential in maintaining the long-term viability of a number of threatened species will result in a significant impact on threatened species and therefore a SIB is required. This proposal potentially impacts a number of threatened species, including Spotted Girders, Glossy Ibis, Cockatoo, Kooka, Common Brimbird (tail and Red-necked) Quail, and the Endangered Ecological Community Swamp Anthrophy Forest on Coastal Floodplains. Where there are significant impacts on threatened species the consultation of CEH is required. It would be noted that CEH could not issue consent for the proposal in its current form. The SIB provides the mechanism to review the significance of the proposed work and the any options that may be available for mitigation areas affecting the impacts.

For the above reasons CEH objects to the proposal in its current form. CEH recommends Council either ensure that funds of Balmaindarroonget Retirement Village that were previously set aside for conservation are retained, or an SIB is prepared and CEH concurrence is sought prior to any decision being made on the development application.

If Council would like assistance in assessing the environmental impacts of the proposal please contact Steve Lovell on 02 4298 5814 at our Newcastle office.

Yours sincerely

**IN THE PRESENCE**  
 Head Regional Operations Unit – Hunter Region  
 Office of Environment and Heritage  
 Department of Premier and Cabinet

cc: Department of Planning and Infrastructure, Sydney

ITEM NO. 1

FILE NO: PSC 2006-0046

**PORT STEPHENS PLANNING STRATEGY**

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

**GROUP: SUSTAINABLE PLANNING**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the draft Port Stephens Planning Strategy 2011 at **Attachment 1** (provided under separate cover) which includes the following changes to the exhibited version:
  - Deletion of the Eastern Growth Corridor;
  - Deletion at Appendix 3 of land identified at Heatherbrae (Radiata plantation);
  - Deletion at Appendix 3 – Former Gan Gan Army Camp;
  - Minor editing for readability or clarification purposes;
- 2) Reaffirm support for Heatherbrae as an Enterprise Corridor;
- 3) Review the potential for additional growth in the medium to long term in the exhibited Eastern Growth Corridor area following review of the Lower Hunter Regional Strategy, and completion of the Raymond Terrace/Heatherbrae Growth strategy;
- 4) Forward the draft Port Stephens Planning Strategy at **Attachment 1** (provided under separate cover) to the Director-General Department of Planning and Infrastructure requesting endorsement;
- 5) Advise proponents who have requested their land to be included in the draft Port Stephens Planning Strategy of the review of the Lower Hunter Regional Strategy by the Department of Planning and Infrastructure and the opportunity to substantiate their case in a submission to the Department.

**COUNCIL COMMITTEE MEETING – 13 DECEMBER 2011**

**RECOMMENDATION:**

	<p><b>Councillor Bruce MacKenzie</b> <b>Councillor Steve Tucker</b></p>
	<p>That Council:</p> <ol style="list-style-type: none"> <li>1) Adopt the draft Port Stephens Planning Strategy 2011 at <b>Attachment 1</b> (provided under separate cover) which includes the following changes to the exhibited version:                     <ul style="list-style-type: none"> <li>• Deletion at Appendix 3 of land identified at Heatherbrae (Radiata plantation);</li> <li>• Deletion at Appendix 3 – Former Gan Gan Army Camp;</li> </ul> </li> </ol>

**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

	<ul style="list-style-type: none"> <li>• Minor editing for readability or clarification purposes;</li> </ul> <ol style="list-style-type: none"> <li>2) Reaffirm support for Heatherbrae as an Enterprise Corridor;</li> <li>3) Review the potential for additional growth in the medium to long term in the exhibited Eastern Growth Corridor area following review of the Lower Hunter Regional Strategy, and completion of the Raymond Terrace/Heatherbrae Growth strategy;</li> <li>4) Forward the draft Port Stephens Planning Strategy at <b>Attachment 1</b> (provided under separate cover) to the Director-General Department of Planning and Infrastructure requesting endorsement;</li> <li>5) Advise proponents who have requested their land to be included in the draft Port Stephens Planning Strategy of the review of the Lower Hunter Regional Strategy by the Department of Planning and Infrastructure and the opportunity to substantiate their case in a submission to the Department.</li> </ol>
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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, Bob Westbury, Caroline De Lyall, Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Sally Dover and Glenys Francis.

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

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

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

Cr Sally Dover returned to the meeting at 5.55pm following Item 2.

	<p><b>Councillor Geoff Dingle</b> <b>Councillor Sally Dover</b></p> <p>That Council:</p> <ol style="list-style-type: none"> <li>1) Adopt the draft Port Stephens Planning Strategy 2011 at <b>Attachment 1</b> (provided under separate cover) which includes the following changes to the exhibited version: <ul style="list-style-type: none"> <li>• Deletion at Appendix 3 of land identified at Heatherbrae (Radiata plantation);</li> <li>• Deletion at Appendix 3 – Former Gan Gan Army Camp;</li> <li>• Minor editing for readability or clarification purposes;</li> </ul> </li> <li>2) Reaffirm support for Heatherbrae as an Enterprise Corridor;</li> <li>3) Review the potential for additional growth in the medium to long term in the exhibited Eastern Growth Corridor area following review of the Lower Hunter Regional Strategy, and completion of the Raymond Terrace/Heatherbrae Growth strategy;</li> <li>4) Forward the draft Port Stephens Planning Strategy at <b>Attachment 1</b> (provided under separate cover) to the Director-General</li> </ol>
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**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

	<p>Department of Planning and Infrastructure requesting endorsement;</p> <p>5) Advise proponents who have requested their land to be included in the draft Port Stephens Planning Strategy of the review of the Lower Hunter Regional Strategy by the Department of Planning and Infrastructure and the opportunity to substantiate their case in a submission to the Department.</p>
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Cr Dingle withdrew the Motion.

**MOTION**

<b>442</b>	<p><b>Councillor Sally Dover</b> <b>Councillor Shirley O'Brien</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"> <li>1) Adopt the draft Port Stephens Planning Strategy 2011 at <b>Attachment 1</b> (provided under separate cover) which includes the following changes to the exhibited version: <ul style="list-style-type: none"> <li>• Deletion at Appendix 3 of land identified at Heatherbrae (Radiata plantation);</li> <li>• Minor editing for readability or clarification purposes;</li> </ul> </li> <li>2) Reaffirm support for Heatherbrae as an Enterprise Corridor;</li> <li>3) Review the potential for additional growth in the medium to long term in the exhibited Eastern Growth Corridor area following review of the Lower Hunter Regional Strategy, and completion of the Raymond Terrace/Heatherbrae Growth strategy;</li> <li>4) Forward the draft Port Stephens Planning Strategy at <b>Attachment 1</b> (provided under separate cover) to the Director-General Department of Planning and Infrastructure requesting endorsement;</li> <li>5) Advise proponents who have requested their land to be included in the draft Port Stephens Planning Strategy of the review of the Lower Hunter Regional Strategy by the Department of Planning and Infrastructure and the opportunity to substantiate their case in a submission to the Department.</li> </ol>
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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, Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Sally Dover and Bob Westbury.

Those against the Motion: Crs Glenys Francis, Caroline De Lyall, Geoff Dingle and John Nell.

**AMENDMENT**

	<p><b>Councillor John Nell</b> <b>Councillor Geoff Dingle</b></p>
	<p>That Council:</p> <ol style="list-style-type: none"> <li>1) Adopt the draft Port Stephens Planning Strategy 2011 at <b>Attachment 1</b> (provided under separate cover) which includes the following changes to the exhibited version: <ul style="list-style-type: none"> <li>• Deletion of the Eastern Growth Corridor;</li> <li>• Deletion at Appendix 3 of land identified at Heatherbrae (Radiata plantation);</li> <li>• Deletion at Appendix 3 – Former Gan Gan Army Camp;</li> <li>• Minor editing for readability or clarification purposes;</li> </ul> </li> <li>2) Reaffirm support for Heatherbrae as an Enterprise Corridor;</li> <li>3) Review the potential for additional growth in the medium to long term in the exhibited Eastern Growth Corridor area following review of the Lower Hunter Regional Strategy, and completion of the Raymond Terrace/Heatherbrae Growth strategy;</li> <li>4) Forward the draft Port Stephens Planning Strategy at <b>Attachment 1</b> (provided under separate cover) to the Director-General Department of Planning and Infrastructure requesting endorsement;</li> <li>5) Advise proponents who have requested their land to be included in the draft Port Stephens Planning Strategy of the review of the Lower Hunter Regional Strategy by the Department of Planning and Infrastructure and the opportunity to substantiate their case in a submission to the Department.</li> </ol>

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

Those for the Motion: Crs Geoff Dingle and John Nell.

Those against the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien and Bob Westbury.

The amendment was lost.

**FORESHADOWED AMENDMENT**

	<p><b>Councillor Bruce MacKenzie</b> <b>Councillor Peter Kafer</b></p> <p>That Council:</p> <ol style="list-style-type: none"> <li>1) Adopt the draft Port Stephens Planning Strategy 2011 at <b>Attachment 1</b> (provided under separate cover) which includes the following changes to the exhibited version: <ul style="list-style-type: none"> <li>• Deletion at Appendix 3 of land identified at Heatherbrae (Radiata plantation);</li> <li>• Deletion at Appendix 3 – Former Gan Gan Army Camp;</li> <li>• Minor editing for readability or clarification purposes;</li> </ul> </li> <li>2) Reaffirm support for Heatherbrae as an Enterprise Corridor;</li> <li>3) Review the potential for additional growth in the medium to long term in the exhibited Eastern Growth Corridor area following review of the Lower Hunter Regional Strategy, and completion of the Raymond Terrace/Heatherbrae Growth strategy;</li> <li>4) Forward the draft Port Stephens Planning Strategy at <b>Attachment 1</b> (provided under separate cover) to the Director-General Department of Planning and Infrastructure requesting endorsement;</li> <li>5) Advise proponents who have requested their land to be included in the draft Port Stephens Planning Strategy of the review of the Lower Hunter Regional Strategy by the Department of Planning and Infrastructure and the opportunity to substantiate their case in a submission to the Department.</li> </ol>
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Cr MacKenzie withdrew the Foreshadowed Amendment.

**BACKGROUND**

**Report Summary**

The purpose of this Report is to consider submissions received during the re-exhibition period and present an amended draft Port Stephens Planning Strategy 2011 (PSPS) at **Attachment 1** (provided under separate cover) for adoption by Council which will then replace the existing Community Settlement and Infrastructure Strategy 2007.

The PSPS is a critical component of the land use planning framework and promotes managed growth for the local government area. The PSPS is required to be consistent with directions set by the State government's Department of Planning and Infrastructure (DoPI). Further, the PSPS will provide direction for the new Principal Local Environmental Plan currently being prepared. Without the required endorsement from DoPI and adoption this year by Council, the finalisation of a new LEP may be delayed. Planning Proposals may also be delayed by the DoPI due to a lack of local strategic planning context.

The revised PSPS recommended in this Report provides consistency with the Lower Hunter Regional Strategy except for the inclusion of Wallalong and a section of land at Boundary Road Medowie.

### **Strategy development background**

The current *Community Settlement and Infrastructure Strategy* (CSIS) was adopted by Council on the 24 April 2007. The purpose of the CSIS is to guide land use planning and decision making for development and environmental outcomes within the Port Stephens community. The PSPS provides the framework for the broad strategic base to manage growth and is supplemented by the development of sub-strategies to provide an additional level of detail for specific areas or issues.

The existing CSIS is not endorsed by the Department of Planning and Infrastructure (DoPI)). The DoPI declined to endorse the document primarily due to the inconsistencies with the Lower Hunter Regional Strategy (LHRS) having specific regard to the population projections and sustainability principles and criteria.

On the 27 July 2010 Council resolved to exhibit a revised CSIS to be known as the draft Community Settlement Strategy (CSS). The revision was in response to Council's resolution to include Wallalong as a proposed new town. The draft CSS was exhibited from 25 August to 23 September 2010. A public workshop was also conducted on 23 September 2010 for the Port Stephens Residents Panel. A total of fifteen (15) submissions were received. As stated above, the result of reviewing the submissions received and comments provided by DoPI, the draft PSPS was comprehensively reviewed.

On 26 July 2011 a revised draft PSPS was considered by Council. The document was now consistent with the Lower Hunter Regional Strategy (LHRS) and the Lower Hunter Regional Conservation Plan (LHRCP) with the exception of the inclusion of Wallalong as a "Potential Urban Release Area" and a parcel of land on Boundary Road Medowie. Council resolved to exhibit the draft PSPS and further resolved to include additional sites and an additional growth corridor. As a result the re-exhibited document no longer complied with the LHRS and LHRCP primarily as it provides for significant growth through the Watagan to Stockton Corridor (the Green Corridor). The comments received from two government agencies reflect this inconsistency and are addressed under the Legal, Policy and Risk Implications section of this Report.

The Draft PSPS was then re-exhibited from 4 August to 1 September 2011. A total of thirteen (13) submissions were received from property owners, development proponents and a community group with an additional three submissions received from government agencies. A Public Hearing was held on the 15 September 2011 which allowed those who had lodged written submissions to present their submissions verbally to Council. A total of seven speakers took up this opportunity of which six were either land developers or consultants representing land developers. One presenter was from the Tomaree Residents and Ratepayers Association focused on the Tomaree Peninsular. Further details of individual submissions received and responses are provided at **Attachment 2** (provided under separate cover).

**Content of the draft Port Stephens Planning Strategy**

The draft PSPS has seven sections including an Executive Summary and three Appendices:

Section 1 Purpose

Section 2 Background – provides details of the history of the development of the draft PSPS, the strategic planning framework and the history of development in the Port Stephens area.

Section 3 National, State and Regional Policy Context – provides an overview of policy documents which provide direction in the management and development of Port Stephens with particular reference to the LHRS.

Section 4 Local Policy Context – provides an overview and status of current plans such as the *Futures Strategy*, *Economic Development Strategy*, LEP, DCP and their role in providing direction for the development and implementation of the draft PSPS.

Section 5 Strategic Information and Key Issues – provides an analysis of the current demographics shaping the LGA. This Section also considers the specific constraints and challenges facing existing development and future growth such as aircraft noise and flooding.

Section 6 Strategic Direction – sets the overall framework to manage the growth of commercial, employment lands and residential development, ensuring there are sufficient lands to accommodate the growth while continuing to protect the natural values of the area.

Section 7 Implementation – provides detail on what suite of documents is required to ensure the draft PSPS is implemented in an efficient and appropriate manner. Implementation tools include the development of a new Principal LEP and complementary DCP. To ensure the growth is supported with the relevant infrastructure the Section 94 developer contributions plans will also be updated.

Appendix 1 Centres Hierarchy – provides additional detail on constraints and opportunities of each centre beyond the information provided at Figures 28 and 29.

Appendix 2 Sub-strategies – provides a list of sub-strategies and current status that complement the PSPS through the provision of more detailed local area planning. This Appendix will continue to be updated as new sub-strategies are developed and adopted.

Appendix 3 Future Growth Areas – provides detail on individual sites or areas identified to provide for the future growth projected in the PSPS and the LHRS. The mapping includes growth areas for infill residential, new release areas and employment generating lands.



## **FINANCIAL/RESOURCE IMPLICATIONS**

The re-exhibition of the document has been undertaken within the current budget using existing staff resources. There were additional costs for the engagement of an economic consultant to review the implications for additional lands being identified for both commercial and industrial activity beyond what had already been considered in the Commercial and Industrial Lands Study. Costs were also incurred from holding a Public Hearing. These costs were met from re-allocation of project funds in the existing budget.

The draft PSPS will continue to have significant financial and resource implications for Council, the public sector and the private sector in regard to infrastructure provision, long term asset management/maintenance and general development costs. For large developments such as the recently rezoned North Raymond Terrace (Kings Hill) development, it is likely voluntary planning agreements will be utilised to manage infrastructure provision.

Future costs will be incurred in the development of additional place based strategies such as the recently commenced Raymond Terrace/Heatherbrae Growth Strategy. These additional costs will be managed as part of the Council budget process.

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

A LGA wide strategy is required to provide broad strategic land use planning to manage growth in a sustainable manner. The strategy must be consistent with the direction set by the State government through the LHRs. Port Stephens is included in the LHRs. Council's local strategies must therefore be consistent with, and facilitate implementation of that Strategy.

The adopted CSIS 2007 was not endorsed by the DoPI because it was inconsistent with the LHRs. The DoPI have requested several times for the document to be amended and have also declined to endorse the place based strategies for Anna Bay and Medowie until the broader Strategy has been amended. The revised CSS did address some of the DoPI's concerns, however, the population projections and the inclusion of Wallalong continued to be an issue. The population projections were reviewed and amended in the version of the draft PSPS which was presented to Council on the 26 July 2011. These figures are now consistent with those in the LHRs.

### Council Resolution – Inclusion of Wallalong (Resolution Number 276)

On the 25 August 2009 Council resolved to include Wallalong as a new town in the CSIS 2007. A copy of the revised CSS was forwarded to Minister for Planning who responded on 5<sup>th</sup> November 2010. The Minister advised that the Department has previously advised Council that it does not support the identification of land at Wallalong as a major urban release area. The letter also advises that in the review of the LHRs *"It remains unlikely, however, that the review will identify Wallalong as an appropriate or required location for potential urban release."* The re-exhibited version included Wallalong as a "Potential Urban Release Area". DoPI have again advised that this inclusion is not supported due to the inconsistency with the LHRs, however, they acknowledge the ongoing discussions occurring between the

proponents and the State government. As a result, Wallalong is still included in the revised PSPS.

Council Resolution – Boundary Road Medowie (Resolution Number 227)

On 28 June 2011 Council resolved to include a section of land at Boundary Road Medowie in the Medowie Strategy which in turn was included in the re-exhibited draft PSPS. This section of land is identified in the Green Corridor and the DoPI have previously expressed opposition to the proposed rezoning. However, a reduced area was recommended and included in both strategies and the DoPI are now undertaking further review of the matter.

Excluding the inclusion of Wallalong and an area in Medowie, the revised draft PSPS which was presented to Council on 26 July 2011 was consistent with the LHRS and LHRCP. The version placed on exhibition which was amended via Council Resolution 26 July 2011 which added additional lands and an additional growth corridor has resulted in the re-exhibited document not being consistent with the direction set in the Lower Hunter Regional Strategy (LHRS) and Lower Hunter Regional Conservation Plan (LHRCP) as it provides for significant growth through the Watagan to Stockton Corridor (the Green Corridor).

Council Resolution – Changes to exhibited draft PSPS (Resolution Number 247).

On 26 July 2011 Council resolved to re-exhibit the revised draft PSPS. The resolution required the following matters to be dealt with:

- *Review the Anna Bay and Medowie Planning Strategies at the earliest convenience.* Both strategies have been added to the work program, however, no timeframes have been determined due the current workloads. It should be noted that work on the Medowie Strategy is partially underway in regard to the flood and traffic studies. Also the identification of the need to undertake a comprehensive analysis of infrastructure provision and delivery which would usually occur when a local area strategy is prepared has commenced. The outcome of this work may require a revision in the lot yield projections for the area.
- *Write to the Department of Housing requesting a presentation on the growth and management approach for the provision of housing in Port Stephens.* The Hunter Area Director provided a presentation and answered questions from Councillors on 11 October 2011.
- *Identify land on the corner of Nelson Bay Road and Gan Gan Road as a potential site for a Health Precinct (including private hospital and seniors living) and Tourism (including tourism attractions and ecotourism accommodation).* The site was identified in Appendix 3 in accordance with the Resolution. The subject site is known as the former Gan Gan Army Camp and is zoned 7(a) Environmental Protection under Local Environmental Plan 2000. The site has been reviewed previously in response to enquiries from the property owner. It is acknowledged that the site has some development potential, however, large areas of the site are heavily ecologically constrained which is a reflection of its environmental zone. Constraints include habitat for threatened species, Endangered Ecological Communities, a State Environmental Planning Policy 14 Wetland, Koala habitat and it provides an unbroken substantial corridor stretching east from Cromarty Bay to Fingal Bay and south from Anna Bay, One Mile area and up to the Nelson Bay, Shoal Bay areas. Further, the owner has

been advised that activities such as tourist facilities are permissible in the current zone and a development application for such activities can be lodged. Both the DoPI and Office of Environment and Heritage (OEH) have not supported the inclusion of the site in the draft PSPS. As a result inclusion of the site for what is viewed as a major development whose merits have not been substantiated can not be supported. Further it should be noted that the land owners have not substantiated the inclusion of the site by Council or made a submission to the exhibition of the PSPS. The landowners have also previously been advised that any development or rezoning of the site would require relevant studies to be undertaken at their cost.

- *That the radiata plantations on Masonite Road Heatherbrae be identified as future light industrial development.* A submission from the property owner was considered in the revision of the draft PSPS presented to Council on the 26 July 2011. The submission is premised on a future rezoning. This land is identified in the Lower Hunter Regional Strategy Green Corridor and as such was not recommended for inclusion in the Strategy as it would be inconsistent with the Lower Hunter Regional Strategy. Both DoPI and the OEH have raised objections to the inclusion. In regard to Heatherbrae in general terms, the repositioning and review of the area is required. Council has already commenced the Raymond Terrace/Heatherbrae Growth Strategy (RTHGS). This sub-strategy will review in more detail the future capacity and identify areas for potential rezoning. Heatherbrae has been identified in the PSPS as an Enterprise Corridor. The area is currently being investigated in more detail to understand what sites should be considered for potential future development which could be an industrial zone or a new zone allowing for both light industry and bulky goods retailing. To identify the site as industrial may fetter the open and transparent process of the development of the sub-strategy when all the land in the area needs to be investigated without being limited by the possibilities or options available. As a result the site is again not recommended for inclusion in the PSPS but is included in the area of investigation for the RTHGS. The results from the current land use capability work will be utilised to assist Council in responding to the review of the LHRS.

### **Department of Planning and Infrastructure (DoPI)**

The DoPI have provided comments to Council's exhibited draft CSS in 2010 and reiterated their concerns regarding the inconsistency with the LHRS. As part of the review of submissions from the 2010 exhibition period further discussions were held with DoPI to ensure revisions being made to the document would be both satisfactory to Council and the DoPI. Although Wallalong and the Boundary Road Medowie site remain in the PSPS, DoPI is aware that discussions are still ongoing. All other aspects of the PSPS were consistent with the LHRS in the version presented to Council on the 26 July 2011. However as there was substantial changes made by the Council in the Resolution of the 26 July 2011, DoPI have advised that endorsement can not be provided for sites inconsistent with the LHRS. Editing directions have been provided along with the following additional comments:

#### Inclusion of land outside of the Lower Hunter Regional Strategy

The DoPI advise that they do not endorse any lands inconsistent with the LHRS. However, DoPI does acknowledge that discussions are underway in regard to

Wallalong. DoPI reminds Council that the LHRs is currently under review and that Council will be provided with an opportunity to identify additional sites, however, they will need to address supply/demand requirements, environmental impacts, provision of and to services and the capacity for development to be delivered which minimises the cost to government for state and regional infrastructure.

Manager Environmental and Development Planning Comment

Council requires the endorsement of the PSPS by DoPI to facilitate rezonings on sites already identified in the LHRs. Without the DoPI endorsement there is a significant increase in the potential for much needed planning proposals to be delayed. Further, without DoPI endorsement the strategy does not provide any level of certainty, infrastructure commitment or demonstration of leadership direction for the development industry or the community. Excluding Wallalong and Boundary Road Medowie, land not consistent with LHRs is not recommended for inclusion. However, as some of the additional sites suggested may have merit if appropriate background studies are undertaken to substantiate potential future demand, proponents should be encouraged to make a submission to the review of the LHRs. Recommendation 5 of this Report encourages this approach.

Lower Hunter Regional Strategy

DoPI have advised that the LHRs is under review and a draft discussion paper will be available in 2012 with an exhibition period later in that year. Although this review is underway the DoPI have advised that the section on the LHRs is "thin" and that more emphasis should be provided in the document.

Manager Environmental and Development Planning Comment

The PSPS has a section relating to the LHRs and also includes a copy of the map. The document was prepared to be consistent and compliment the LHRs, not reproduce it. The LHRs is also referenced in relevant sections throughout the PSPS with minor editing occurring to emphasis the connection of the two strategies.

Dwelling yields

Dwelling yields have been an ongoing criticism of Council by the DoPI prior to adoption of the 2007 Strategy. The DoPI are satisfied that the figures are now consistent with the LHRs excluding the additional figures of Wallalong.

DoPI have not supported Council's approach to determining dwelling yields as Council has used figures taken from approvals data rather than from the Hunter Water Corporation (HWC) data.

Manager Environmental and Development Planning Comment

The figures were comprehensively reviewed prior to exhibition and are now consistent with the LHRs.

DoPI is requesting Council use the information from the HWC, however, due to the inaccuracy of that data (which both DoPI and HWC acknowledge) it was determined that Council's own data would be more suitable. The HWC data is more focused on new connections and lots where as Council's data has been based on types of dwellings i.e. single houses or multi-unit development. Although this method is not a perfect science it provides a better understanding than connection data.

Further, figures will be reviewed as Census data is release. As a result the method of calculation is recommended to remain unchanged until Census data is available and the document is updated.

**Office of Environment and Heritage (OEH)**

The OEH supports Council's development of draft PSPS and *"encourages Council to achieve a sustainable balance between conservation and development within the LGA given the unique biodiversity values present in the Port Stephens area."* However, does not support the draft PSPS on the following grounds:

Land use capability

The OEH advise that *"the overarching goal for environmental protection and conservation in NSW is that values of biodiversity, native vegetation, soil, water and air quality, must be "improved or maintained."* As a result they request Council undertake land use capability assessments and/or environmental studies for the proposed future development areas shown within the PSPS.

Manager Environmental and Development Planning Comment

Any rezonings submitted to Council will be required to comply with the requirements outlined in the DoPI *A guide to preparing planning proposals* as well as submit relevant studies reflective of the attributes of the individual sites.

Watagan to Stockton Corridor (Green Corridor)

Concern is raised regarding the number of potential development areas shown in the draft PSPS which are located in the Green Corridor. The LHRS provides for ongoing uses in the Green Corridor but *"does not foreshadow an intensification of the land use."* Further, proposed development outside designated development areas in the LHRS can not utilise the sustainability criteria which means it does not apply in the Green Corridor. The result is that the LHRS does not consider any arrangements for offsetting within the Green Corridor as *"it is excluded from further development."* Specific sites identified in Appendix 3 of the PSPS of concern are land identified as *"Future Light Industrial Development" at Heatherbrae* and *"Potential Future Large Lot Residential" at Medowie (Boundary Road site).*

Manager Environmental and Development Planning Comment

Council's Resolution to include additional sites and a new corridor in the PSPS for exhibition has resulted in the PSPS no longer being consistent with the LHRS or LHRCP which is the current government policy position. OEH acknowledge the LHRS is under review but maintain their objection to the inclusion of any land that is within the Green Corridor due to the high biodiversity values that exist.

Eastern Growth Corridor

OEH does not support the "Eastern Growth Corridor" as it is located in the Watagan to Stockton Green Corridor and overlaps a number of areas of national park reserves. OEH advise that intensification of development within these areas is likely to have significant negative effects on areas of high biodiversity value and would reduce the effectiveness of east-west corridor connectivity for a range of threatened species.

It should be noted that the OEH suggests that Council should consider all potential impacts on the Green Corridor and biodiversity values in all other areas identified for development potential.

Manager Environmental and Development Planning Comment

The Eastern Growth Corridor was included in the PSPS via the Council Resolution 26 July 2011 to highlight additional lands in the area and includes Medowie, Williamstown, Newcastle Airport and Fullerton Cove/Fern Bay. The Resolution also stated that it was "recognising the growth potential and retail, commercial and infrastructure needs and opportunities. Medowie is located at the northern extent of the Corridor and has been identified in the LHRS and subsequent Medowie Strategy for significant growth. However, due to issues with infrastructure provision, land fragmentation, Koala habitat and the flood environment, future development yields will likely be reduced or the roll out of development extended well beyond current estimated timeframes. Council is currently undertaking a realistic cost based analysis of infrastructure requirements which will inform the review of the Medowie Strategy required in the Council Resolution of 26 July 2011.

Wallalong

OEH is aware that large portions of the land identified for growth at Wallalong has been disturbed by previous land uses, however, as there is a number of threatened species previously recorded in the area, any rezoning proposal would need to consider this. Further, OEH encourages Council to consider the issues of accessibility and sustainable settlement structure.

Manager Environmental and Development Planning Comment

Wallalong is not located in the Green Corridor. The issues raised by the OEH have previously been raised by Council with the developers. With any rezoning proposal submitted the proponents must undertake all relevant studies to ensure an informed decision can be made. All rezoning proposals which have the potential to impact on the natural environment in any way is referred to both OEH and Councils own environmental section for comments. Should the studies submitted be considered inadequate, the proponent will be requested to resubmit the appropriate information prior to a final decision being made.

Former Gan Gan Army Camp Site

OEH notes that Gan Gan Army Camp site has a number of significant ecological and planning constraints such as threatened flora species, remnant native vegetation, threatened fauna species habitat, coastal floodplain endangered ecological communities, SEPP 14 Wetlands, proximity of National Parks and the current 7(a) zone. As a consequence of these restrictions, OEH does not support the identification of the site in the PSPS.

Manager Environmental and Development Planning Comment

As stated above, the site was included in the PSPS following the 26 July 2011 Council Resolution. The site is highly ecologically constrained and intensification beyond what is already permissible in the cleared areas is not supported. Further, the site is zoned 7(a) Environmental Protection under Local Environmental Plan (LEP) 2000. Evidence available to Council supports that zoning and no change is recommended. As also stated above, the applicant has the opportunity to

undertake development for tourist facilities which could be designed to compliment the valuable environmental features of the site.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The draft PSPS provides direction for the future growth of the Port Stephens LGA to be undertaken in an ecologically sustainable manner.

### **CONSULTATION**

The draft PSPS was re-exhibited from 4 August to 1 September 2011. A total of 13 submissions were received from the community with an additional three submissions from government agencies. An additional opportunity was provided to those who had made a written submission to present their submission verbally to Council at the Public Hearing on 15 September 2011. A total of seven speakers presented. Although no new issues were identified beyond those of the written submission at the Hearing, the additional opportunity to reaffirm written submissions was considered worthwhile. Five 2-Way Conversations have been held with the Councillors (17 March 2011, 31 May 2011, 21 June 2011, 5 July 2011 and 15 November 2011). Internal comment was provided with relevant information being included in the review of the document and preparation of this Report.

Matters raised by government agencies have been addressed under the *Legal, Policy and Risk Implications* section of this Report.

The main issues raised in submissions have been addressed below with a full list of the submissions received detailed at **Attachment 2** (provided under separate cover).

An important feature of the PSPS is the need to provide additional housing opportunities in the area. Although sites have been identified, due to the highly constrained nature of most of the LGA dwelling yields may not always be achievable once the detailed studies are undertaken during the rezoning process. As a result the importance of pursuing Wallalong as an urban release area remains. Of the 13 submissions received, eight relate to individual sites, some for residential and some for employment generating uses. Some of these sites may have merit, however the DoPI have advised that they do not support inclusion of sites not identified in the LHRS, however, the LHRS is under review which provides for the opportunity for proponents and Council to consider additional sites particularly when considering the needs of the timely delivery of new dwellings for the increasing population. Some of the submissions suggest sites not previously considered, which although they may have merit have not been considered by the community in the exhibition process. New sites need to be considered in an open and transparent process and the review of the LHRS, and submission by Council could commence this process.

**Key Amendments to the draft Port Stephens Planning Strategy**

Identification of additional sites

DoPI have advised that they can not endorse lands outside those identified in the LHRS and Office of Environment and Heritage (OEH) have advised that they object to the inclusion of these sites. Issues raised by both agencies are dealt with in detail in the Legal Policy and Risk Implications section of this Report. The result being that no additional sites are proposed in the Strategy except Wallalong and Boundary Road Medowie.

Growth Corridors

The recommended draft PSPS presented to Council on 26 July 2011 (Resolution Number 247) identified a Primary Growth Corridor located on the western side of the LGA. Council Resolved to rename the Primary Growth Corridor to Western Growth Corridor and insert an additional corridor on the eastern side of the LGA. The now Western Growth Corridor stretches from Kings Hill down to Tomago. Kings Hill is identified as a new release area and was rezoned in December 2010. It is estimated that Kings Hill will provide for an additional 4500 new dwellings. Raymond Terrace is identified in the Lower Hunter Regional Strategy as a Major Regional Centre. To facilitate this role, Council is currently undertaking the Raymond Terrace/Heatherbrae Growth Strategy. This Strategy seeks to reinforce that role of Raymond Terrace, promote increased residential development both in the commercial area and immediately adjacent, as well as promote economic growth through improved planning controls. The inclusion of Heatherbrae in this Strategy is critical in promoting the growth of Raymond Terrace. Heatherbrae is currently undergoing change which will accelerate with the construction of the RTA bypass. The repositioning of Heatherbrae needs to be undertaken in a strategic way to ensure it complements not competes with Raymond Terrace. If Council does not provide clear direction for the area, the risk is that Heatherbrae will experience economic decline rather than growth once bypassed. This was one reason plus the location of existing businesses that Heatherbrae was identified as an Enterprise Corridor.

The anchor for this Western Growth Corridor is Tomago. Tomago is a critical component for economic growth in the LGA and the Hunter. Large tracts of land have been rezoned under a state planning policy as well as existing land zoned under the current LEP 2000. The importance of this area is also reflected in the Port Stephens Economic Development Strategy adopted in 2009.

Essentially, the premise for identifying a Primary Growth Corridor was purely to emphasis the importance and significant amount of growth expected in both the residential and employment land sectors of the economy as well as utilising the existing Pacific Highway infrastructure.

The inclusion of the proposed Eastern Growth Corridor enabled by the Council Resolution Number 247 is problematic. This Corridor is not of the same level of growth projected for the Western Growth Corridor creating an unrealistic perception. Firstly, the Eastern Growth Corridor starts at Medowie which is also identified as an urban release area in both the LHRS and PSPS. Council has already resolved to review the Medowie Strategy. Additional work has commenced on infrastructure needs and



constraints which will inform the review. It is possible that the review of the Medowie Strategy may result in changes to dwelling yields and timeframes for delivery. The Defence and Airport related Employment Zone (DAREZ) Business Park and Newcastle Airport are important employment generators as the population of the area continues to expand. The Business Park is currently being developed with approximately 90 hectares zoned for this purpose. Newcastle Airport has experienced strong growth over the last decade and has positioned itself well in the market. The Airport also has a Master Plan which identified a large area for a business park. Both areas are focused on supporting and promoting the specialist aviation industry. Neither area has identified the need for bulky goods retailing to support their growth.

The bulk of the Eastern Growth Corridor from Medowie down to Fern Bay is within the Green Corridor in the LHRS. Both OEH and DoPI do not support inclusion of lands for development outside of those identified in the LHRS. Further, areas such as Fern Bay and Fullerton Cove have experienced growth outside of a strategic plan due to utilisation of state policy such as Seniors Living SEPP. The need for a Strategy for this area has been identified previously and will commence in the medium term as resources become available.

The Council Resolution (247) identified the Eastern Growth Corridor – "recognising the growth potential and retail, commercial and infrastructure needs and opportunities within the corridor". In regard to the retail and commercial development two submissions were received supporting the inclusion of the new corridor. The first submission was from Williamstown with the proponents having previously presented the argument to Council for the inclusion of their site for bulky goods retailing. The site was not recommend for inclusion previously due to several issues including but not limited to the site being within the Green Corridor, no demonstrated demand, inconsistency with the established centres hierarchy. The proponent raised concerns with the accuracy of the SGS Commercial and Industrial Lands Study which did not support their proposed bulky goods retailing proposal.

The second submission related to a proposed Woolworths at Fullerton Cove. It is acknowledged that additional commercial activity would be desirable in the locality. However, the site chosen is highly vegetated, has many ecological constraints, is not part of the existing urban area and is located within the Green Corridor. Pre-lodgement discussions have occurred with the proponent with these and additional issues raised. Additional evaluation of this site is needed before it should be considered fully for inclusion in the PSPS.

In response to the criticism of the SGS Commercial and Industrial Lands Study, Council engaged an independent economic consultant, Leyshon Consulting, to review the Study and provide direction on the suitability of Heatherbrae as the identified preferred location for intensification of bulky goods retail in the LGA. The Consultant's Report is attached at **Attachment 3** (provided under separate cover). Mr Leyshon was provided with a full copy of the information provided by the proponents of land at Heatherbrae and Williamstown. Mr Leyshon acknowledged that the SGS report did not provide sufficient analysis of the issue, stating that he agreed that the population projections probably would not generate a need for a large scale bulky goods centre, however, there was opportunity to encourage some

level of bulky goods retailing in the LGA to support the local residents. Mr Leyshon also stated that Williamstown, or other places could support some level of bulky goods, however, consolidation of the activity is preferable. Mr Leyshon concluded that Heatherbrae is better placed for bulky goods retailing from both a strategic planning and market perspective. Mr Leyshon further advised that although bulky goods retailing may be possible at Williamstown in the future, this could be to the detriment of the growth of Heatherbrae and Raymond Terrace. It should be noted that the proponent for Williamstown advised at the Public Hearing that they would not expect any activity on their site within the next five years. As a result Heatherbrae is recommended to be supported as the Enterprise Corridor and key location for bulky goods retailing in the LGA. As part of the Raymond Terrace/Heatherbrae Growth Strategy additional work on the matter of bulky goods retailing is being undertaken. This work will need to be finalised prior to any additional areas being considered in the medium to long term for the LGA.

The submission from the Williamstown proponent who is strongly advocating bulky goods for their site in Williamstown also provided an analysis asserting that development at Kings Hill as supported by the Council and developers of Kings Hill is incorrect. Concluding that "land sale rates at Kings Hill are likely to be between 20 and 40 lots per year for the next 25 years". As a result further discussion will occur to ensure a clear and comprehensive understanding of lot yields and timing is held by all parties involved.

## **OPTIONS**

- 1) Council resolve to adopt the revised draft Port Stephens Planning Strategy, as recommended, and forward to the Department of Planning and Infrastructure seeking endorsement;
- 2) Council make modifications to the revised draft Port Stephens Planning Strategy. Depending on the nature of the amendments, this may result in a further public exhibition and delay the implementation of the Strategy. This is not a recommended option;
- 3) Council not proceed with the revised draft Port Stephens Planning Strategy. This is not the preferred option as the current document is not endorsed by the Department of Planning and Infrastructure and will not enact the Council resolution to include Wallalong as a new town in the Strategy. This is not a recommended option.

## **ATTACHMENTS**

- 1) Draft Port Stephens Planning Strategy 2011 – under separate cover;
- 2) Submission Register – under separate cover;
- 3) Leyshon Consulting Report – under separate cover.

## **COUNCILLORS ROOM**

- 1) Copy of Submissions.

## **TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**

**DRAFT PORT STEPHENS PLANNING STRATEGY 2011**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 2**

**SUBMISSION REGISTER**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 3**

**LEYSHON CONSULTING REPORT**

**PROVIDED UNDER SEPARATE COVER**

**ITEM NO. 3**

**FILE NO: 16-2009-257-1**

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

**REPORT OF: MATTHEW BROWN - DEVELOPMENT ASSESSMENT AND ENVIRONMENTAL HEALTH**

**GROUP: SUSTAINABLE PLANNING**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse DA 16-2009-257-1 for the following reasons:  
The site is not considered suitable for 229 caravan sites providing long term accommodation, because:
  - a) The site is not considered suitable for the proposed quantity of long term sites following assessment of the application against Clause 10 of State Environmental Planning Policy 21 Caravan Parks;
  - b) The development is inconsistent with the objectives of the 1(a) Rural Agriculture Zone;
  - c) The development is not consistent with the strategy map or Sustainability Criteria (specifically points 1. Infrastructure Provision, 2. Access, 8. Quality and Equity in Services) in the Lower Hunter Regional Strategy;
  - d) The development is not consistent with the proposed Town Plan in the Anna Bay Strategy.

**COUNCIL COMMITTEE MEETING – 13 DECEMBER 2011**

**RECOMMENDATION:**

	<p><b>Councillor Steve Tucker</b> <b>Councillor Sally Dover</b></p>
	<p>That Council resolve to approve the development application DA 16-2009-257-4 for a 229 site Caravan Park, Managers Residence, Community Hall &amp; Recreation facilities at 19 &amp; 20 Road 580 off Port Stephens Drive, Anna Bay subject to the condition of consent contained in ATTACHMENT 3.</p>

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

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

## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

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

The motion was lost.

### ORDINARY COUNCIL MEETING – 20 DECEMBER 2011

<b>443</b>	<b>Councillor Bruce MacKenzie</b> <b>Councillor Sally Dover</b>
	It was resolved that Council resolve to approve the development application DA 16-2009-257-4 for a 229 site Caravan Park, Managers Residence, Community Hall & Recreation facilities at 19 & 20 Road 580 off Port Stephens Drive, Anna Bay subject to the condition of consent contained in <b>ATTACHMENT 3</b> .

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

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

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

Cr Glenys Francis left the meeting at 6.30pm.  
Cr Glenys Francis returned to the meeting at 6.32pm.  
Cr Peter Kafer left the meeting at 6.34pm  
Cr Peter Kafer returned at 6.36pm.

### MATTER ARISING

	<b>Councillor Ken Jordan</b> <b>Councillor John Nell</b>
	That Council request the General Manager to draft a policy on restricting any further caravan parks/mobile homes on Rural 1(a) land.

Cr Jordan withdrew the Matter Arising.

### BACKGROUND

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

The Applicant has proposed a 3 stage development for creation of 229 long term caravan sites and construction of a manager's residence, community hall and

recreation facilities. Manufactured homes are to be installed on each caravan site.

It should be noted that the proposal has been specifically lodged as a caravan park, and has been assessed as such despite having manufactured homes on each of the 229 sites. The Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 allows manufactured homes to be placed on approved caravan sites.

Although the proposal is not consistent with the definition of a caravan park in SEPP 21 Caravan Parks (requires a caravan park component), it is still considered that the proposal is permissible under LEP 2000, due to its different definition of caravan parks.

The recommendation for refusal is a result of a merit assessment against the relevant legislation and policies, which determined that the location of the site is not suitable for the proposed quantity of long term sites. Similar types of developments, such as Manufactured Home Estates, Seniors Living developments and residential subdivision would all be prohibited on the site due to its distance to existing centres (Anna Bay, Salamander Bay or Nelson Bay).

The following file history is provided for information purposes:

- The DA was first reported to Council on 8 June 2010. The matter was deferred for a site inspection until the meeting of 13 July 2010, at which time Council resolved to approve the application in principle and called for draft conditions of consent to be provided.
- Draft conditions were reported to Council on 28 September 2010. Council resolved to approve the application subject to the draft conditions.
- On 19 October 2010, Council resolved to rescind its decision to approve the application on the 28 September 2010.
- On 2 November 2010, the Applicant requested that reporting the matter back to Council be deferred until further information could be provided regarding staging of the development, traffic and road closure between the site and Port Stephens Drive.
- Since then, the Applicant has been in the process of preparing the amended information, which was submitted to Council on 3 August 2011 during a meeting between the Mayor, the Applicant and Council staff.
- This report and attached conditions have been amended to reflect the assessment of the amended proposal, including approvals/concurrence from the NSW RFS and RTA.

The amended proposal makes provision for a staged development, as follows:

- |         |  |
|---------|--|
| Stage 1 | 65 caravan sites, manager's residence, community hall, associated recreation facilities, public road and intersection works. |
| Stage 2 | 117 caravan sites  |
| Stage 3 | 45 caravan sites.  |



The amended proposal included an updated traffic impact statement, bushfire report and considers the closure of the public road between the site and Port Stephens Drive, which was originally going to provide emergency access (required by the RFS) and pedestrian access to public transport and the coastal cycleway.

Although the amended information addresses a number of draft conditions previously recommended by staff, it does not impact the overall recommendation for refusal of the application on the grounds of the site being unsuitable for 100% (229) long term sites within the caravan park.

The amended information has been referred to the RTA, RFS as well as Council's Development and Traffic Engineers. Necessary approvals from both the RTA and RFS have been obtained.

The attached draft conditions in Attachment 3 have been updated with regard to the amended proposal (which includes staging) and advice from the RTA and RFS.

Please note that an integrated approval required from the NSW Office of Water (NOW) remains outstanding, and was not addressed by the amended information recently submitted by the applicant. Notwithstanding this, the Applicant can seek approvals separate and removed from the DA process.

Advice previously provided to Council regarding the outstanding issues is included below for your information:

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

*The development is recommended for refusal because the location is considered unsuitable for 100% long term accommodation after assessing the proposal against the 1(a) zone objectives, SEPP 21 Caravan Parks and the Lower Hunter Regional Strategy.*

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

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

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

*No information has been provided on the availability or cost to residents for these services. It should also be noted that continued provision of these services cannot be conditioned or guaranteed. Any loss or reduction of services would result in long term*

*residents having unreasonably low levels of access to essential services and facilities. The risk of this would likely be reduced if the development was in closer proximity to existing urban areas.*

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

The site is approximately 1.2km from Anna Bay (3km by road) and 3.5km from Salamander Bay, which are the nearest centres with the majority of essential services.

### **FINANCIAL/RESOURCE IMPLICATIONS**

The development is unlikely to have any immediate financial or resource implications for Council. However, Council is likely to have increasing and ongoing costs arising from maintaining the 400m long public road from Nelson Bay Rd to the development, and providing services and facilities in local town centres as a result of the increase in population.

Council could also incur significant costs should the new road not be built above predicted sea level rise projections and future elevation of the road becomes necessary.

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

The development is considered to be inconsistent with Council's Local Environmental Plan 2000, State Environmental Planning Policy 21 Caravan Parks and the Lower Hunter Regional Strategy (2006). Approval of this application may set an undesirable precedent under current environmental planning legislation.

Additionally, a number of issues including water quality, stormwater and infrastructure remain outstanding and require the submission of further information. The draft conditions request the information required, however, Council faces significant legal risk if the conditions of consent are found not to be achievable.

Further, any development consent issued by Council could be subject to an appeal to the Land & Environment Court. In this instance, the development is considered to be permissible following assessment against applicable planning legislation, policies and relevant legal cases, but it should be noted that this is based on an interpretation of these documents, in particular the court case *Wygiren v Kiama* (2008, NSWLEC 56, File No. 11026 of 2007).

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

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

## **CONSULTATION**

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

## **OPTIONS**

- 1) Adopt the recommendation and refuse the development application DA 16-2009-257-4 for a 229 site Caravan Park, Managers Residence, Community Hall & Recreation facilities at 19 & 20 Road 580 off Port Stephens Drive, Anna Bay;
- 2) Reject the recommendation and defer the application DA 16-2009-257-1 for a 229 site Caravan Park, Managers Residence, Community Hall & Recreation facilities at 19 & 20 Road 580 off Port Stephens Drive, Anna Bay pending submission of additional information required for completion of the Section 79C assessment. This includes stormwater, water quality, infrastructure and environmental issues.
- 3) Consider the draft conditions and resolve to approve the development application DA 16-2009-257-4 for a 229 site Caravan Park, Managers Residence, Community Hall & Recreation facilities at 19 & 20 Road 580 off Port Stephens Drive, Anna Bay subject to the recommended conditions;

## **ATTACHMENTS**

- 1) Locality Plan;
- 2) Assessment;
- 3) Conditions of Consent.

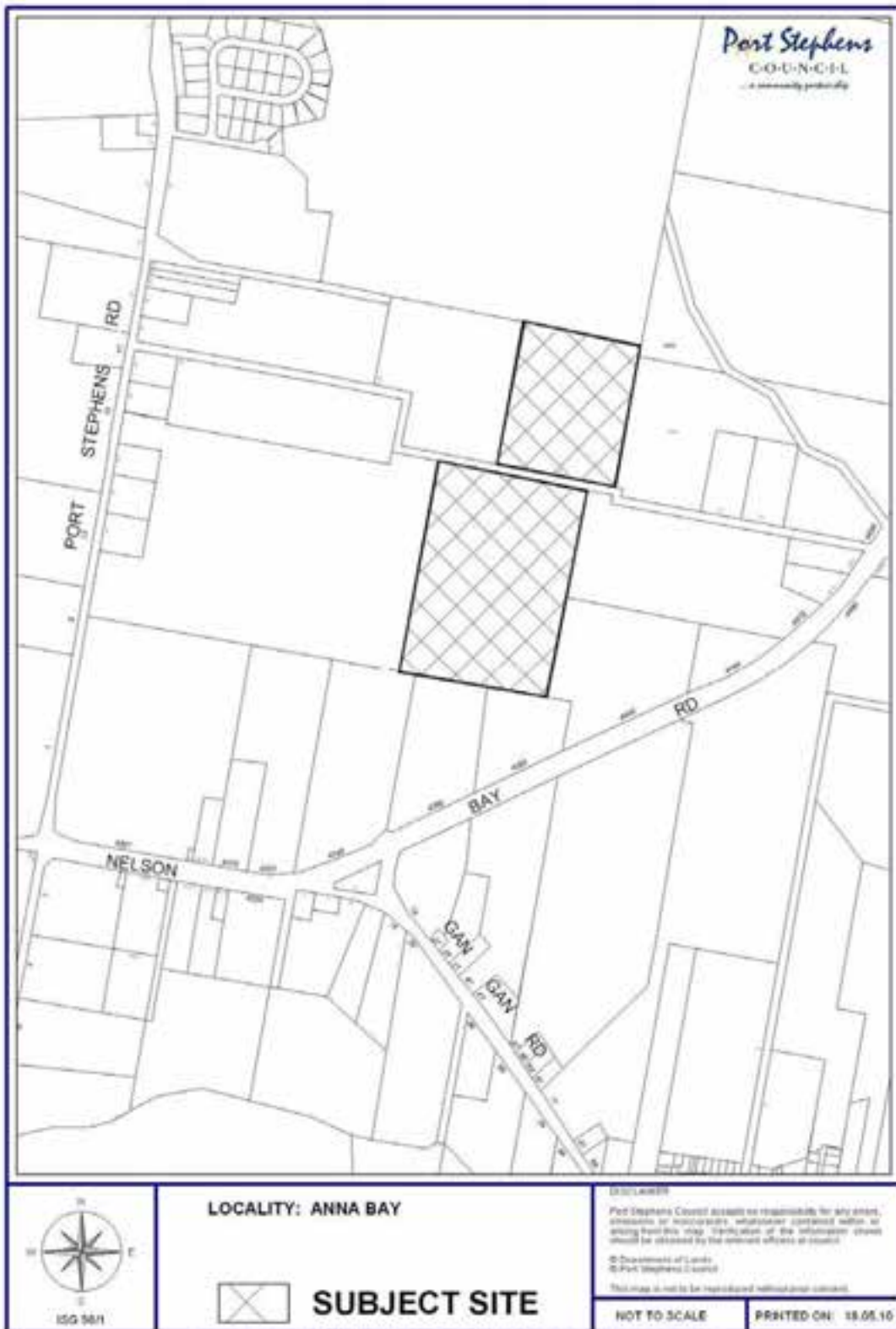
## **COUNCILLORS ROOM**

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**

The proposal is for a 3 stage development for creation of 229 long term caravan sites and construction of a manager's residence, community hall and recreation facilities. Manufactured homes are to be installed on each caravan site.

The development is to be staged as follows:

- |         |   |
|---------|---|
| Stage 1 | 65 caravan sites, managers residence, community hall, associated recreation facilities, public road and intersection works. |
| Stage 2 | 117 caravan sites   |
| Stage 3 | 45 caravan sites  |

**THE APPLICATION**

Owner	Bodiam Properties Pty Ltd
Applicant	Mr P Malloch

**THE LAND**

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

**THE ASSESSMENT**

**1. Planning Provisions**

LEP 2000	
Zoning	1 (a) Rural Agriculture
Relevant Clauses	11 Rural Zonings 12 Subdivision in rural zones 37 Development on flood prone land 44 Appearance of land and buildings 47 Services 51A Development on land identified on Acid Sulphate Soil Maps

Development Control Plan 2007

Relevant Sections B2 Environment & Construction  
B3 Parking & Traffic

State Environmental Planning Policies SEPP 21 Caravan Parks  
SEPP Infrastructure 2007

Lower Hunter Regional Strategy (2006)

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

#### Clause 11 Rural Zonings

- Permissibility

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

*"a site used for the purpose of:*

*(a) placing moveable dwellings within the meaning of the Local Government Act 1993 for permanent accommodation, or for the accommodation of tourists, or*

*(b) the erection, assembly or placement of cabins for the temporary accommodation of tourists."*

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

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

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

- Zone Objectives

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

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

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

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

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

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

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

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

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

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

The provision of 229 (100%) long term accommodation sites in the area is considered to be a fragmented and isolated development of rural land, as it is not located close to existing centres (1.2km to Anna Bay, 3.5km to Salamander Bay and 7.5km from Nelson Bay) nor identified as an urban growth area in any strategic planning document.

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

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

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

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

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

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

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

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

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

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

The application was reviewed by Council's Strategic Engineer, who had no objections subject to conditions regarding compensation for loss of flood storage and construction requirements.

#### Clause 12 Subdivision within rural zones

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

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

#### Clause 37 Development on flood prone land

The site is mapped as being flood prone. The application was reviewed by Council's Strategic Engineer, who had no objections subject to recommended conditions. As such, the proposal is considered to be consistent with the objectives for development on flood prone land.



Clause 44 Appearance of land and buildings

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

Clause 47 Services

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

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

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

**State Environmental Planning Policy 21 Caravan Parks**

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

Clause 6 – Definitions

SEPP 21 defines “caravan parks” as:

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

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

However, *Wygiren v Kiama* (2008, NSWLEC 56, File No. 11026 of 2007) found that the caravan park definition in SEPP 21 only ensures that references to caravan parks in LEPs include those specified in the SEPP.

Nothing prevents a definition in a Local Environmental Plan being more inclusive than the definition in the SEPP. In this case, the inconsistency with the definition for caravan parks in SEPP 21 does not undermine the fact that the development is permissible under LEP 2000.

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

Clause 8 Development consent required for caravan parks

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

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

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

The development is similar in nature to manufactured home estates and seniors living developments, both of which are prohibited unless within or adjoining existing urban areas. It is arguable, in practical terms, that the proposal is a manufactured home estate and should be assessed accordingly.

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

A manufactured home estate would be prohibited on the site, due to its distance to urban centres. Further, following consideration of SEPP 21, it is considered that the site is unsuitable for a high percentage of long term accommodation.

The application was referred to Council’s Strategic and Community Planning Sections, who both objected to the development based on the location and remoteness/isolation from essential services.

Clause 10 Matters to be considered by Councils

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

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

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

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

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

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

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

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

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

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

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

However, the application wasn't supported by any information clearly demonstrating to what extent the development can be considered low cost housing in comparison to existing housing available on the Tomaree Peninsula.

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

A key concern with the development is its isolated location and distance to essential services and facilities provided in Anna Bay, Nelson Bay and Salamander Bay. The proposal will include a community/recreation hall containing a medical room, hairdresser, small library, computer room, theatre, games and craft room, gymnasium and swimming pool.

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

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

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

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

*(e) Guidelines issued by the Director*

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

*(f) Provisions of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*

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

### **State Environmental Planning Policy 36 Manufactured Home Estates**

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

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

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

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

The Applicant however, contends that the development is a caravan park and thus permissible under LEP 2000 and SEPP 21 Caravan Parks. It is arguable, in practical terms, that the proposal is a manufactured home estate and should be assessed accordingly.

### **State Environmental Planning Policy (Infrastructure) 2007**

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

The RTA originally refused to give concurrence in their correspondence dated 23 June 2010.

However, the amended Traffic Impact Statement submitted by the applicant was referred to the RTA for consideration, and concurrence was granted on 27 July 2011. The conditions included in their correspondence have been incorporated into the draft conditions in Attachment 3.

### **Lower Hunter Regional Strategy**

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

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

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

#### **1. Infrastructure Provision**

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

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

#### **2. Access**

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

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

#### **3. Housing Diversity**

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

## 6. Natural Resources

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

## 7. Environmental Protection

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

## 8. Quality and Equity in Services

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

Although lower in the assessment "heads of consideration" hierarchy, the LHRS provides a legitimate and reasonable policy to which the proposal is assessed.

### **Development Control Plan 2007**

#### Section B2 Environment & Construction Management

- Section B2.4 Acid Sulphate Soils

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

- Section B2.5 Landfill

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

#### Section B2.9 Mosquito Control

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

Section B3 Parking & Traffic

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

**Section 94 Contributions**

It is recommended that Section 94 contributions be required for each stage of the development as per Council policy.

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

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

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

**2. Likely Impact of the Development**

Flora & Fauna

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

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

The applicant submitted a flora and fauna report which determined that there would be a "moderate" impact on threatened local flora and fauna species.

Further consideration of any potential flora and fauna impacts has been deferred due to the need for additional information (requested on 11 December 2009) addressing conflicting information in the application about wildlife corridors, cleared areas and the Asset Protection Zones required by the NSW RFS.

Context, Setting & Public Domain

The development will introduce a significant urban element, due to its size and density, which will not be consistent with the existing rural character of the area. The most likely impact from the development is likely to be increased traffic along Road 580 and additional demand for services and facilities in Anna Bay, Salamander Bay and Nelson Bay.

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

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

Water Management

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

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

Access, Transport & Traffic

▪ Traffic

The proposal will require construction of Road 580 from the site to Nelson Bay Rd, and an upgrade to the intersection at Nelson Bay Rd as per the amended Traffic Impact Statement prepared by Mark Waugh Pty Ltd.

The amended TIS estimates an additional 69 trips during peak hours (8am to 9am and 4pm to 5pm) and states a Type AUR intersection is supported by Sidra modelling, and is recommended for the development.

The amended report has been referred to Council's Traffic Engineer, who does not have any further objections subject to the draft conditions.

▪ Transport

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

This is a significant consideration given the number of manufactured home sites, which could result in some 480 residents not having access to public transport.

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



operating successfully in perpetuity.

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

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

#### Environmental Constraints

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

- Bushfire

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

The amended proposal was also referred to the NSW Rural Fire Service, who issued updated general terms of approval on 15 November 2011. The recommended conditions have been included in this report.

- Flooding

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

### **4. Submissions**

The proposal was advertised and notified in accordance with Council policy. Seven (7) submissions (6 objections, 1 support) were received. The concerns raised are listed below, along with the relevant assessment comments:

- Nature of development, and whether it should be considered as a "caravan park"
- Need for additional information
- Impact regarding additional traffic and what speed limits will be imposed
- Impact of development on existing drainage system
- Impact on amenity/safety of adjoining properties
- Development unsuitable for the area due to large number of existing caravan parks
- Access to development has not been done with consultation with neighbours

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

This information has been requested, but has not been provided by the Applicant to date.

### **5. Public Interest**

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

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

**ATTACHMENT 3  
DRAFT CONDITIONS OF CONSENT**

**Standard Conditions**

1. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
2. Works shall not commence until such time as the necessary construction certificates and Roads Act approvals have been issued for the 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.

**Prior to issue of any Construction Certificate**

3. The development will require a controlled activity approval from the NSW Office of Water under the Water Management Act 2000, which shall be obtained and submitted to Council **prior to the issue of any construction certificate**.
4. An amended site plan shall be submitted to and approved by Council **prior to the issue of any Construction Certificate**. The amended plan must be consistent with the recommendations of the Ecological Report submitted with the application, prepared by Peak Land Management dated February 2009, particularly regarding:
  - A wildlife corridor (minimum of 30m wide) must be provided along the western boundary. The corridor must not include any asset protection zones for bushfire protection, stormwater infrastructure or recreation areas.
  - A minimum 50m buffer area must be provided between the development and identified endangered ecological communities located north and south of the development area.
  - Asset protection zones for bushfire protection are to be reduced to the minimum amount required by the conditions imposed by the NSW Rural Fire Service. All other areas disturbed by clearing are to be rehabilitated.
5. A stormwater strategy and detailed stormwater engineering plans shall be submitted to and approved by Council under section 68 of the Local Government Act 1993 **prior to the issue of any Construction Certificate**. The stormwater strategy shall include assessment of upstream and downstream catchments, groundwater impacts, location of legal point of discharge and onsite stormwater management. Detailed stormwater plans shall show full details including all supporting calculations and assumptions.

6. Stormwater Quality Improvement Devices (SQID's) such as bio-swales, bioretention systems and constructed wetlands shall be incorporated into the water quality stormwater design. In this regard, provision is to be made for best practice SQIDs as a treatment train to collect sediment, hydrocarbons, nutrients, pathogens etc. The treatment train design is to be designed and submitted (along with accompanying MUSIC model) to Council with the engineering drawings. The design is to be capable of retaining pollutants in accordance with chapter 8 and Table 8-3 of Council's Urban Stormwater and Rural Water Quality Management Plan. Design of the device(s) shall be in accordance with Water By Design's "Construction and Establishment Guidelines: Swales, Bioretention Systems and Wetlands". A Site specific Operation and Maintenance Manual is also to be provided. All details for the system shall be submitted to Council under Section 68 of the Local Government Act, 1993 for approval **prior to the issue of a Construction Certificate.**
  
6. All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993. Engineering details shall be submitted with a Roads Act application form and then approved by Council **prior to approval to commence these works and prior to issue of the Construction Certificates.**

Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional, in accordance with Council's 'Infrastructure Design Specification – AUS Spec', and Section B of Development Control Plan 2007.

The required works to be designed are as follows:

- a. Full width rural road including a minimum width of 6 metres wide two-coat hot flush bitumen sealed pavement, 1.0m wide sealed shoulders, 3% cross fall each side of the centreline, minimum 250mm deep table drain, subsoil drainage. The road shall extend from the proposed Nelson Bay intersection to the access point for the development. The road shall also construct at or above Council's infrastructure planning level.
- b. Roadside furniture and safety devices including fencing, signage, guide posts, chevrons, directional arrows and guard rail in accordance with RTA and Australian Standards.
- c. Signage and line marking. The signage and line marking plan shall be approved by the Council Traffic Committee.

The following items are also required to be approved by Council prior to approval being granted to commence works:

- a) Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual;
- b) Payment of fees and bonds (same Principle Certifying Authority fees, inspection fees and maintenance bonds as relevant to subdivisions);

- c) Contractors public liability insurances to a minimum value of \$10 million dollars.
  - d) Erosion and Sediment Control plan prepared by a suitably qualified engineer and in accordance with the Managing Urban Stormwater Volume 1, 2004 (Blue Book)
7. An application shall be submitted to, and approved by Council for the drainage works within the public stormwater easement, pursuant to section Part B – Section 68 of the Local Government Act. 1993). An approval shall be obtained from Council **prior to issue of the Construction Certificate.**
8. Comprehensive details regarding connection of water and sewer services shall be submitted to and approved by Council **prior to the issue of any Construction Certificate or Roads Act Approval.**
9. The construction of the general store shall comply with the requirements of Australia Standard AS4674. **Prior to the issue of the relevant Construction Certificate**, full construction and fit-out details are to be provided to Council's Environmental Health Officer (Food Inspection) for approval.
10. An Acid Sulphate Soils Management Plan is to be submitted to Council for approval **prior to the issue of any Construction Certificate.**

**Prior to any Approval to Operate**

11. An approval to operate a caravan park under Section 68 of the Local Government Act shall be obtained from Council **prior to occupation of any building and following completion of all construction works.**
12. The premises are to be designed, constructed and operated in accordance with the requirements of the Local Government (Caravan Parks, Camping grounds and Moveable Dwellings) Regulation 2005. Confirmation that all works comply with the regulations is to be provided to Council **prior to the issue of an approval to operate the caravan park.**
13. All building work (including the community hall, office buildings, visitor parking, amenities and provision of services) and civil engineering works (including internal and external roads, stormwater infrastructure) for the respective stages are to be completed **prior to the issue of an approval to operate the caravan park and prior to any caravan site being occupied for that stage.**
14. The community bus is to be available for use **prior to the issue of an approval to operate the caravan park and prior to any caravan site being occupied.** The bus service shall be available for use whenever any caravan site is occupied.
15. Due to previous sand mining operations on the site and the potential for contamination, appropriate certification incorporating a preliminary investigation shall be submitted to Council demonstrating that the site is suitable for residential use in accordance with SEPP 55 Remediation of Land

and Managing Contaminated Land Planning Guidelines **prior to the issue of an approval to operate the caravan park and prior to any caravan site being occupied.**

16. A bushfire report certifying compliance with the Bushfire Safety Authority conditions imposed by the Rural Fire Service shall be submitted to Council **prior to the issue of an approval to operate the caravan park and prior to any caravan site being occupied.**
17. A Compliance Certificate under Section 50 of the Hunter Water Corporation Act, 1991 shall be submitted to Council **prior to the issue of an Approval to Operate.** Applications for Section 50 Certificates are to be made direct to the Hunter Water Corporation.
18. To protect the occupants of the premises and to ensure that asset protection zones are maintained effectively, the following fire safety measures are considered to be essential fire safety measures and are to be installed throughout the property:
  - Fire hoses installed in accordance with AS2441- so that any temporary sites are covered by at least one (1) hose reel.
  - Fire hydrants installed in accordance with AS2419-2005 so that no site is more than 70m from a hydrant standpipe.
  - Bushfire asset protection zones are to be created and maintained for the life of the development in accordance with NSW Rural Fire Service's document 'Standard for Asset Protection Zones' to protect structures within the development and provide safety for fire fighters and occupants.
  - That all moveable dwellings satisfy the construction standards under AS3959-2009 and specified in this consent and attached schedule to provide ongoing protect to residents from the threat of bushfire.
  - That landscaping of the site is to be in accordance the conditions of this consent and Planning for Bushfire Protection 2009, to ensure that the risk of bushfire attack is not increased by inappropriate plantings.

A final fire safety certificate is to be provided to Council **prior to the issue of an approval to operate the caravan park and prior to any caravan site being occupied.**

19. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Infrastructure Specification, to the satisfaction of Council or the Certifying Authority **prior to issue of an approval to operate the caravan park and prior to the occupation of any caravan site.**
20. Civil construction of the crown road in accordance with Council's Infrastructure Specification, including associated drainage shall be completed and dedicated to Port Stephens Council at no cost to Port Stephens Council **prior to issue of an approval to operate the caravan park and prior to the occupation of any caravan site.**

21. Submission of Works-As-Executed plans and report prepared and certified by a suitability qualified drainage engineer confirming all drainage works (volume, discharge, levels, location, etc) are built in accordance with conditions of consent and the approved plan. Minor variations in height can be certified providing they are clearly identified in the report and the engineer certifies that the overland flow paths are not altered, discharge rates are not increased, and no additional negative effects are imparted on any dwellings or property. Minor variations can only be certified where it can be demonstrated that the ease of maintenance and monitoring of the system has not been negatively affected.

The documents shall be submitted to, and accepted by the Certifying Authority, **prior to issue of any Occupation Certificate or Approval to Operate.**

22. A certificate of completion shall be issued by Council for the Local Government Act approval works **prior to issue of any Occupation Certificate or Approval to Operate.**

**Stage 1 Conditions**

23. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act, 1979 and Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of the following public facilities:

	<b>Per Lot</b>	<b>Total</b>
Civic Administration	(\$202)	(\$13,130)
Public Open Space, Parks and Reserves	(\$1,095.5)	(\$71,207.5)
Sports and Leisure Facilities	(\$2,581.5)	(\$167,798.5)
Cultural and Community Facilities	(\$1,298)	(\$84,370)
Fire & Emergency Services	(\$100.5)	(\$6,532.5)
Roadworks	(\$489)	(\$31,785)
Anna Bay S94 Drainage Catchment	(\$339)	(\$22,035)
<b>Total</b>	<b>(\$6,106)</b>	<b>(\$396,858)</b>

Note:

a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, Raymond Terrace.

b) Contributions are to be paid **prior to issue of an Approval to Operate Stage 1 of the Caravan Park.**

c) The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of original consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this

respect the attached fee schedule is valid for twelve months from the date of original consent.

**Stage 2 Conditions**

24. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act, 1979 and Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of the following public facilities:-

	<b>Per Lot</b>	<b>Total</b>
Civic Administration	(\$202)	(\$23,634)
Public Open Space, Parks and Reserves	(\$1,095.5)	(\$128,173.5)
Sports and Leisure Facilities	(\$2,581.5)	(\$302,035.5)
Cultural and Community Facilities	(\$1,298)	(\$151,866)
Fire & Emergency Services	(\$100.5)	(\$11,758.5)
Roadworks	(\$489)	(\$57,213)
Anna Bay S94 Drainage Catchment	(\$339)	(\$39,663)
<b>Total</b>	<b>(\$6,106)</b>	<b>(\$714,344)</b>

Note:

a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, Raymond Terrace.

b) Contributions are to be paid **prior to issue of an Approval to Operate Stage 2 of the Caravan Park.**

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



**Stage 3 Conditions**

25. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act, 1979 and Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of the following public facilities:

	<b>Per Lot</b>	<b>Total</b>
Civic Administration	(\$202)	(\$9,090)
Public Open Space, Parks and Reserves	(\$1,095.5)	(\$49,297.5)
Sports and Leisure Facilities	(\$2,581.5)	(\$116,167.5)
Cultural and Community Facilities	(\$1,298)	(\$58,410)
Fire & Emergency Services	(\$100.5)	(\$4,522.5)
Roadworks	(\$489)	(\$22,005)
Anna Bay S94 Drainage Catchment	(\$339)	(\$15,255)
<b>Total</b>	<b>(\$6,106)</b>	<b>(\$274,748)</b>

Note:

a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, Raymond Terrace.

b) Contributions are to be paid **prior to issue of an Approval to Operate Stage 3 of the Caravan Park.**

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

**General Conditions**

26. Manufactured homes shall not be constructed on site, in accordance with the requirements of the Local Government (Caravan Parks, Camping grounds and Moveable Dwellings) Regulation 1995.
27. The development shall be serviced by the Hunter Water Corporation with water and sewerage facilities.
28. Only Virgin Excavated Natural Material (VENM) in accordance with the Environmental Protection Agency NSW statutory definition shall be used for the approved land filling activities. The use of any material other than VENM may require an EPA licence for use as a landfill. The use of any material other than

VENM for land filling purposes, without prior approval of council is prohibited. Council will insist on the removal of any prohibited material.

29. The following fees and/or bonds are to be paid as part of this consent:
- a) Subdivision construction certificate/plan approval fee, prior to approval of construction certificate or plans.
  - b) PCA/inspection fee, prior to approval of construction certificate or plans.
  - c) Long Service Levy, prior to issue of construction certificate (verification of payment is required if paid directly to Long Service Board)
  - d) Maintenance Bond, prior to release of subdivision certificate.

The rates are as listed in Council's fees and charges. Contact Council's Subdivision Engineer prior to payment.

30. Works associated with the approved plans and specifications located within the existing Road Reserve shall not commence until:
- i) a Roads Act Approval has been issued, and
  - ii) all conditions of the Roads Act Approval have been complied with to Council's satisfaction.
31. All civil engineering works within the development site are subject to:
- a. inspection by Council, or the Certifying Authority
  - b. testing by a registered NATA Laboratory and
  - c. approval by Council or the Certifying Authority at each construction stage
- as determined by Council's Subdivision & Development Code.
32. Works associated with the Roads Act Approval are subject to:
- a. inspection by Council,
  - b. testing by a registered NATA Laboratory and
  - c. approval by Council at each construction stage as determined by Council.
33. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
34. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
35. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.

36. 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.

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

38. Separate approval is required to occupy, close or partially close the road reserve adjacent to the property under the Roads Act. The storage of materials, placement of toilets and rubbish skips within the road reserve is not permitted.

39. No construction or demolition work shall obstruct pedestrian or vehicular traffic in a public place, a hoarding or fence must be erected between the construction site and the public place.

40. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.

41. Retaining Walls, not clearly noted on the approved plans or not identified as "Exempt Development", are to be subject to a separate development consent.

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

42. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with AS2601-2001 and Workcover Authority requirements.

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

43. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an

adjoining allotment, the person undertaking the excavation must preserve and protect the building from damage, which may involve underpinning and supporting the building in an approved manner.

The adjoining property owner shall be given 7 days notice before excavating below the level of the base of the footings of a building on an adjoining allotment of land. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, allotment of land includes a public road and any other public place.

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

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

45. A "KEEP PORT STEPHENS WATERWAYS POLLUTION FREE" sign shall be displayed and be clearly visible from the road frontage for public viewing on the site at the commencement of works and remain in place until completion of the development. Signs are available from Port Stephens Council.
46. Prior to the commencement of work, provide a 3m wide all weather vehicle access from the road to the development site under construction for the delivery of materials & trades to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.
47. All stockpiled materials shall be retained within the property boundaries. Stockpiles of topsoil, sand, aggregate, spoil or other materials shall be stored clear of the all weather vehicle access and drainage lines.
48. The principal certifying authority shall only issue an occupation certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the principal certifying authority issues an occupation certificate. Note: if an accredited certifier approves occupation, the accredited certifier is to immediately notify council in writing.

49. **Prior to occupying the site**, contact Council's Mapping Section on 49800304 to obtain the correct address numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.
50. **Prior to commencement of any works** within the road reserve for the provision of a driveway crossing, the applicant or their nominated contractor shall make application to Council and receive approval for the construction of the access road.

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

### **RTA Conditions**

51. The intersection of the proposed access road to the subject development and Nelson Bay Road shall be a Type CHR/CHL intersection. The intersection shall be designed and constructed in accordance with Austroad guidelines (with RTA supplements) to the satisfaction of the RTA. Provision shall be made for on road cyclists through the intersection.
52. Indented bus bays and shelters shall be provided on both sides of Nelson Bay Road on the departure side of the access, or appropriate alternative arrangements, in consultation with Council and relevant bus companies. Pedestrian refuges shall be provided to offer a safer environment for pedestrians crossing Nelson Bay Road.
53. The developer shall provide street lighting at the intersection of the proposed access to the development and Nelson Bay Road. The street lighting shall be in accordance with the relevant Australian Standards, or as determined by the RTA.
54. Any property acquisition and/or dedication required to accommodate the road works associated with the proposed development shall be at full cost to the applicant and no cost to the RTA or Council. This land shall be designated public reserve in favour of Council.
55. The development will be required to enter into a Works Authorisation Deed (WAD) with the RTA. In this regard, the developer is required to submit detailed design plans and all relevant additional information, as may be required in the RTA's WAD documentation, for each specific change to State road network for the RTA's assessment and final decision concerning the work.
56. The WAD shall be executed prior to granting a Construction Certificate for the proposed development.

57. All road works under the WAD shall be completed prior to issuing an Occupation Certificate (interim or final) for the proposed development.
58. Council should ensure the applicant is aware of the potential for road traffic noise to impact the development as a result of the operation of Nelson Bay Road. In this regard, the applicant not the RTA is responsible for providing noise attenuation measures in accordance with the Environmental Protection Authority's Environmental Criteria for Road Traffic Noise should the applicant seek assistance at a later date.
59. All works shall be undertaken at full cost to the development to the satisfaction of the RTA and Council.

### **Bushfire Conditions**

60. The development has been granted a conditional approval from the NSW Rural Fire Service dated 15 November 2011 under their relevant legislation. The development shall comply with the following conditions imposed by the authority with their general terms of approval.
61. At the commencement of building works and in perpetuity the property around the proposed development shall be managed as follows as outlined within Section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones':
  - North for a distance of 15 metres as an Inner Protection Area (IPA);
  - East for a distance of 15 metres as an IPA;
  - South for a distance of 15 metres as an IPA;
  - West for a distance of 10 metres as an IPA.
62. Water electricity and gas are to comply with Section 4.1.3 and 4.2.7 of 'Planning for Bushfire Protection 2006'.
63. The proposed main access servicing the development from Nelson Bay Rd shall comply with Section 4.1.3(1) of 'Planning for Bushfire Protection 2006'.
64. Internal roads shall comply with Section 4.2.7 of 'Planning for Bushfire Protection 2006'.
65. New construction shall comply with Australian Standard AS3959-2009 'Construction of buildings in bushfire prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bushfire Protection'.
66. 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.

**GENERAL ADVICES**

- a) Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- b) This approval relates to Development Consent only and does not infer any approval to commence excavations or building works upon the land. A Construction Certificate should be obtained prior to works commencing.
- c) The subject site is located within the Anna Bay Drainage Union Catchment. Prior to commencement of work, consult the secretary of the Anna Bay Drainage Union, RMB 8aa Frost Road, Anna Bay NSW 2316 as required under the Water Management Act 2000.
- d) The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
- e) Any tree clearance on the site will likely require approval from the local Catchment Management Authority under the Native Vegetation Act 2003. The CMA should be consulted prior to any works being undertaken.

**ITEM NO. 4**

**FILE NO: 16-2011-638-1**

**DEVELOPMENT APPLICATION FOR TWO LOT SUBDIVISION AT NO. 456 FULLERTON COVE ROAD FULLERTON COVE**

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

**GROUP: SUSTAINABLE PLANNING**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application 16-2011-603-1 for the reasons contained below:
- The development is concluded to be prohibited development as it is inconsistent with clause 12 of the Port Stephens Local Environmental Plan 2000.

**COUNCIL COMMITTEE MEETING – 13 DECEMBER 2011**

**RECOMMENDATION:**

	<p><b>Councillor Bruce MacKenzie</b> <b>Councillor Ken Jordan</b></p>
	<p>That the development application for a two lot subdivision at No. 456 Fullerton Cove Road, Fullerton Cove be approved as the subject land is divided by an existing road.</p>

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

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

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

	<p><b>Councillor John Nell</b> <b>Councillor</b></p>
	<p>That Item 4 be deferred and request a report be provided to Council amending the Port Stephens Council Local Environmental Plan to enable the subdivision to occur.</p>



**AMENDMENT**

	<p><b>Councillor Bruce MacKenzie</b>  <b>Councillor Ken Jordan</b></p>
	<p>That Council:</p> <ol style="list-style-type: none"> <li>1) Receive and note the legal advice that the subdivision cannot be approved;</li> <li>2) Representations be made with the Member for Port Stephens to seek an appointment with the Director General of the Department of Planning.</li> </ol>

**PROCEDURAL MOTION**

<b>444</b>	<p><b>Councillor Glenys Francis</b>  <b>Councillor Caroline De Lyall</b></p>
	<p>It was resolved that Council move into confidential session to discuss the confidential legal advice.</p>

Council's Manager Communications and Customer Relations and Communication and Marketing Coordinator were present during the confidential session.

Cr Bruce MacKenzie left the meeting at 6.52pm.

<b>445</b>	<p><b>Councillor Glenys Francis</b>  <b>Councillor Peter Kafer</b></p>
	<p>It was resolved that Council move into Committee of the Whole to allow discussion on the legal advice.</p>

**Committee of the Whole recommendation**

	<p><b>Councillor John Nell</b>  <b>Councillor Glenys Francis</b></p>
	<p>That Council:</p> <ol style="list-style-type: none"> <li>1) Receive and note the legal advice that the subdivision cannot be approved;</li> <li>2) Representations be made with the Member for Port Stephens to seek an appointment with the Director General of the Department of Planning to seek his agreement to expedite a site specific amendment to the Port Stephens Council Local Environmental Plan enabling this subdivision to be given consent in the future.</li> </ol>

**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

<b>446</b>	<b>Councillor Steve Tucker</b> <b>Councillor Glenys Francis</b>
	It was resolved that Council move out of Committee of the Whole.

<b>447</b>	<b>Councillor Steve Tucker</b> <b>Councillor Glenys Francis</b>
	It was resolved that Council move out of confidential session.

Cr Bruce MacKenzie returned at 7.04pm.

<b>448</b>	<b>Councillor John Nell</b> <b>Councillor Glenys Francis</b>
	It was resolved that Council:  1) Receive and note the legal advice that the subdivision cannot be approved; 2) Representations be made with the Member for Port Stephens to seek an appointment with the Director General of the Department of Planning to seek his agreement to expedite a site specific amendment to the Port Stephens Council Local Environmental Plan enabling this subdivision to be given consent in the future.

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

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

Those against the Motion: Nil.

## **BACKGROUND**

**The purpose of this report is to present a development application to Council for determination, called to Council by Cr MacKenzie.**

The development application proposes the two (2) lot subdivision of rural land at 456 Fullerton Cove Road, Fullerton Cove.

The development site is zoned 1(a) – Rural Agriculture and currently contains a Dual Occupancy.

Key issues associated with the development are:

- Permissibility of the development under the Port Stephens Local Environmental Plan 2000 (LEP);

- Bushfire.

The subject site was originally subject to development application 16-2003-2173-1, lodged on the 4<sup>th</sup> December 2003 proposing a 2 lot subdivision of the site. The development was ultimately refused on the 25<sup>th</sup> September 2008 as it was considered to constitute prohibited development as the subdivision was contrary to the provisions of Clause 12 of the LEP.

Subsequent to the refusal, the applicant has made representation to Council with respect to the potential to subdivide the property and has received written advice consistent with the original refusal on 30<sup>th</sup> April 2009, 29<sup>th</sup> April 2010 and verbal advice. On each occasion the advice has been clear that any subdivision of the site would need to be carried out in accordance with the controls contained within Clause 12 of the LEP.

The current application was lodged on the 7<sup>th</sup> September 2011 and is considered to be prohibited development as the subdivision of rural land is prohibited except in certain circumstances where permitted by Clause 12. Clause 12 is discussed elsewhere in this report.

The intention of the subdivision is understood and is also noted to be consistent with the surrounding subdivision layout. Council staff have explored all avenues practical to arrive at the applicants desired outcome, however current provisions in the Port Stephens Local Environmental Plan 2000 present a legal impediment to the subdivision of the subject allotment to separate the titles of the two existing dwellings.

### **FINANCIAL/RESOURCE IMPLICATIONS**

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

If Council rejects the recommendation and supports the subdivision of rural land contrary to the provisions of the Port Stephens Local Environmental Plan 2000, the decision could be subject to challenge, via a Section 123 breach of the Environmental Planning and Assessment Act, 1979.

It should also be noted that the merit assessment of the proposal which has been undertaken of the proposal, (not fully complete due to the status of the development being prohibited under the Port Stephens Local Environmental Plan 2000) concludes that there are merit based issues with the proposal.

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

The development application is inconsistent with the Port Stephens Local Environmental Plan 2000, specifically Clause 12, and as such is considered to be prohibited development.

Having consideration to Council's standard risk Matrix and considering all factors the risk of determining the application by way of approval, contrary to the provisions of

the Port Stephens Local Environmental Plan, is calculated at possible and catastrophic.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Approval of the subdivision of rural land would be contrary to the provisions of the Port Stephens Local Environmental Plan 2000.

While it is noted that the creation of an additional dwelling entitlement may result in some positive social impacts in the immediate area, the proposal is prohibited under the Port Stephens Local Environmental Plan 2000.

No adverse economic implications have been identified.

While it is noted that the creation of an additional dwelling entitlement may result in some positive short term economic impacts in the immediate area, the proposal is prohibited under the Port Stephens Local Environmental Plan 2000.

No adverse environmental implications have been identified.

### **CONSULTATION**

In accordance with Section A1.9 of DCP 2007, no notification or advertising of the proposal was required to be undertaken.

### **OPTIONS**

- 1) Adopt the recommendation.

### **ATTACHMENTS**

- 1) Locality Plan;
- 2) Assessment.

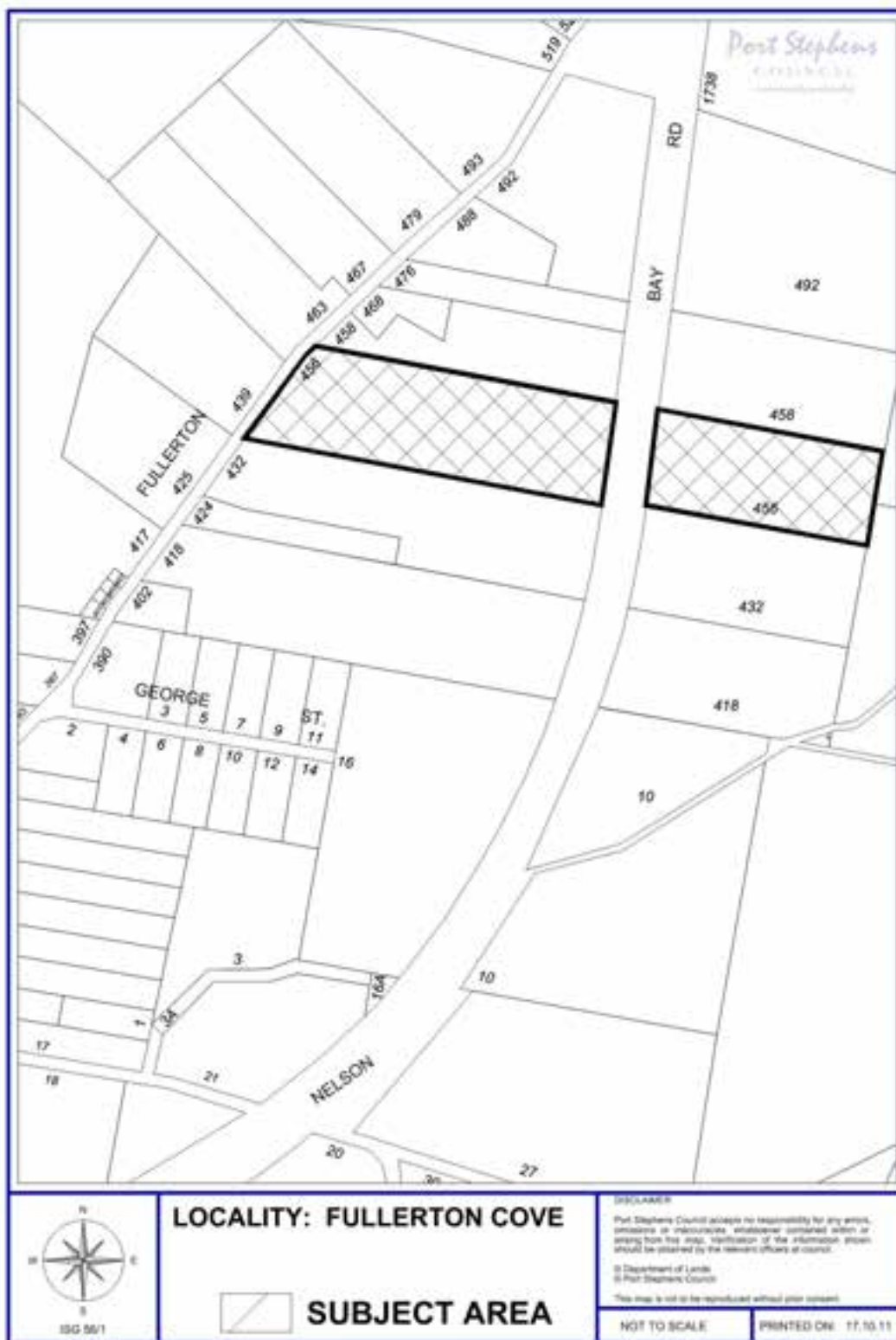
### **COUNCILLORS ROOM**

- 1) Subdivision Plans;
- 2) Statement of Environmental Effects.

### **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 development application proposes a two (2) lot subdivision of land zoned 1(a) – Rural Agriculture. The site currently contains a rural dual occupancy and the subdivision proposes to facilitate each dwelling being on a separate title.

**THE APPLICATION**

Owner	Mrs J M Joy & Ms D J Brooks
Applicant	Mr M J McDougall
Detail Submitted	Statement of Environmental Effects Plan of Subdivision

**THE LAND**

Property Description	Lot 1 DP 997897
Address	456 Fullerton Cove Road Fullerton Cove.
Area	10.34 ha
Dimensions	Generally rectangular
Characteristics	flat, currently occupied by a Rural Dual occupancy. The allotment is severed by Nelson Bay Road to the rear of the site.

**THE ASSESSMENT**

**1. Planning Provisions**

LEP 2000 – Zoning	1a) – Rural Agriculture Relevant Clauses 11, 12
Development Control Plan	Section B1 – Subdivision and Streets Section B2 – Environmental and Construction Management
State Environmental Planning Policies	SEPP71 – Coastal Protection

Discussion

**Environmental Planning and Assessment Act 1979**

Clause 91

The development is considered to be integrated development under the provisions of the Environmental Planning and Assessment Act 1979. Specifically, the development requires a Bushfire Safety Authority to be issued under the provisions of Section 100B of the Rural Fires Act, 1997.

Given the development is prohibited under the Port Stephens Local Environmental Plan 2000, and the applicant indicated on 12<sup>th</sup> October 2011 that it was their intent to not supply the relevant information until such time as support for the proposal had been received from Council, the development has not been granted a Bushfire Safety Authority.

**Rural Fires Act 1997**

Under the provisions of clause 91 of the Environmental Planning and Assessment Act 1979, the application is considered to be "Integrated Development". A referral to the NSW Rural Fire Service is required to be submitted with the application, however the applicant indicated on 12<sup>th</sup> October 2011 that it was their intent to not supply the relevant information until such time as support for the proposal had been received from Council.

The application is unable to be determined by way of approval without a Bushfire Safety Authority being issued by the NSW Rural Fire Service.

**State Environmental Planning Policies**

SEPP 71 Coastal Protection

Policy 71 aims to protect and manage the New South Wales coast and foreshores and requires certain development applications in sensitive coastal locations to be referred to the Director-General for comment, and it identifies master plan requirements for certain development in the coastal zone.

The proposal of a subdivision will not impact on the foreshore and it is not seen as the type of development that needs to be assessed under policy 71 at a state level. As such the application is acceptable under Policy 71.

**Port Stephens Local Environmental Plan 2000**

Clause 11 – Rural Zonings

Under the provisions of Clause 11, Subdivision of Rural land is permitted by clause 12.

Clause 12 – Subdivision of Rural Zones Generally

Clause 12 sets the development guidelines for the subdivision of land within the Rural 1(a) zoning. Clause 12 states;

*12 Subdivision within rural zones generally*

*(1) A person must not subdivide land within any rural zone except:*

*(a) for any of the following purposes:*

- (i) the opening or widening of a public road,*
- (ii) to change a common boundary with an adjoining allotment, but not so as to create additional allotments,*
- (iii) consolidation of allotments,*
- (iv) rectification of any encroachment on any existing allotments,*
- (v) the creation of allotments corresponding to the parts into which a single allotment is divided by a public road, or*

*(b) for the purpose of the creation of an allotment or allotments intended to be used for any one or more of the purposes (excluding dwelling-houses or dual occupancy housing) for which it may be used with or without the consent of the consent authority, or*

*(c) in the case of land within a Rural Small Holdings zone—as permitted by clause 13.*

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

The main issue revolves around permissibility. The applicant seeks to undertake a 2 lot subdivision of rural land. Clause 12 of the LEP prohibits subdivision, except for certain circumstances. The options outlined below to are pathways to achieve the end result or creating two new entitlements.

1) Road Severance.

Clause 12 (1)(a)(v) allows for the subdivision of rural land by Road severance. While the subdivision of the land by road severance could be achieved, the land east of Nelson Bay Road would have no legal access. A future boundary adjustment to achieve the proposed lot configuration could not be undertaken as following road severance the newly created allotments do not share a common boundary to adjust.

Using road severance would not lawfully separate the titles of the dwellings and would result in an allotment without legal access.



2) Managers Residence

Clause 12(1 (b) allows for the subdivision of Rural Land for an approved use. To go down this submission/assessment, the applicant would need to demonstrate that the use of the land justifies the need for a managers residence. This property would not have a dwelling entitlement and the managers residence could only remain while the use continued. This scenario is typically fraught with difficulty and is practically not ideal to manage in perpetuity. To this end, the Department of Planning and Infrastructure has detailed performance provisions in the Standard Instrument LEP as a guide that managers/rural workers dwellings need to meet to ensure legitimacy and warrant demand.

Under the proposed subdivision, no managers residence or approved use has been applied for and it is considered questionable that any potential use of the site would be of the scale that justifies the need for a managers residence.

3) Rural Subdivision

The straight subdivision of Rural land to create two allotments with a dwelling entitlement is not permissible under the LEP and as such is considered to be prohibited development.

**Port Stephens Development Control Plan 2007**

The application has been assessed against the relevant provisions of Port Stephens Development Control Plan, 2007, as follows:

**B1 – Subdivision and Streets**

The application has been assessed against the applicable provisions of Port Stephens Development Control Plan, 2007 – Subdivision and Streets, as follows:

<b>DCP Control</b>	<b>Control</b>	<b>Applicable</b>	<b>Compliance</b>
<b>B1.2</b>	Types of Subdivision	Yes	<b>Yes</b>
<b>B1.3</b>	Site Analysis	Yes	<b>Yes</b>
<b>B1.4</b>	Topography and Views	Yes	<b>Yes</b>
<b>B1.5</b>	Street and Block Layout - Residential	N/A	<b>N/A</b>
<b>B1.6</b>	Footpath and Cycleways	N/A	<b>N/A</b>
<b>B1.7</b>	Parks and Open Space	N/A	<b>N/A</b>
<b>B1.8</b>	Lot Layout	Yes	<b>Yes</b>
<b>B1.9</b>	Street Trees	N/A	<b>N/A</b>
<b>B1.10</b>	Infrastructure	Yes	<b>Yes</b>

**Comments:**

The application is considered satisfactory with regards to B1 – Subdivision and Streets. Notwithstanding this, the provisions of the Port Stephens Local Environmental Plan 2000 take precedence over the provisions of Development Control Plan 2000 and the development is considered to be prohibited development.

**2. Likely Impact of the Development**

The development as proposed is not considered to result in a development contrary to the provisions of the Port Stephens Local Environmental Plan 2000, specifically Clause 12 – Rural Subdivision. The proposed development will further fragment land zoned for agricultural purposes and as such should not be supported.

**3. Suitability of the Site**

The development site is zoned 1(a) – Rural Agriculture and within this zone subdivision is only permissible in accordance with clause 12 of the LEP2000. The subdivision as proposed is inconsistent with the provisions of clause 12 as it seeks to create an additional allotment with a dwelling entitlement.

As the development is a form of Rural Residential subdivision suited to a Rural Small Holdings zoned allotment of land, it is considered that the subject site is not suitable for the development as proposed.

Despite being a form of prohibited development, it is noted that the subdivision pattern sought by the development is consistent with the general layout of the locality.

**4. Submissions**

In accordance with Section A1.9 of DCP 2007, no notification or advertising of the proposal was required to be undertaken.

**5. Public Interest**

It is considered to be contrary to the public interest to subdivide agriculturally zoned land contrary to the provisions of the Port Stephens Local Environmental Plan 2000, given the Port Stephens Local Environmental Plan 2000 originally went through a rigorous and robust community exhibition period. It is considered to be not in the public interest to endorse developments contrary to publically accepted planning provisions in the Local Environmental Plan.

**ITEM NO. 5**

**FILE NO:**

**PSC2011-01407**

**REVIEW OF SECTION 94 DEVELOPMENT CONTRIBUTIONS LEVIED ON AFFORDABLE HOUSING**

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

**GROUP: SUSTAINABLE PLANNING**

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**RECOMMENDATION IS THAT COUNCIL:**

Note the content of this report and:

- 1) Endorse for public exhibition a draft amendment to Clause 2.1.3 of the Port Stephens Section 94 Development Contributions Plan, 2007 (Incorporating Port Stephens, Great Lakes and Newcastle Cross Boundary Section 94 Contributions Plans) to remove the current provision for Granny Flats and replace it with a specific provision to reduce contributions by 50% of the general contribution rate for Secondary Dwellings approved under the State Environmental Planning Policy (Affordable Rental Housing) 2009 AHSEPP, as shown in Attachments 2 and 3.

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**COUNCIL COMMITTEE MEETING – 13 DECEMBER 2011**

**RECOMMENDATION:**

	<b>Councillor John Nell Councillor Steve Tucker</b>
	<b>That the recommendation be adopted.</b>

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

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

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>449</b>	<b>Councillor Steve Tucker Councillor Ken Jordan</b>
	It was resolved that the recommendation be adopted.

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

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

Those against the Motion: Nil.

## **BACKGROUND**

In 2009 the State Government introduced the State Environmental Planning Policy (Affordable Rental Housing) 2009 (AHSEPP) with the inclusion of Secondary Dwellings (Granny flats) as a development type that can assist in delivering affordable rental housing within infill areas. The objectives of the AHSEPP provide for infill development such as Granny Flats for low income earners whilst reducing the demand of infrastructure and costs to Council's and communities when compared to single dwelling developments.

Following the introduction of the AHSEPP a Section 96 application to modify development consent 16-2010-327-2 was presented to Council on 8 February 2011 to reduce the developer contributions payable (at that time) under Council's S94 contributions Plan from \$11,429 to \$5,297. (The contributions now payable after CPI adjustments is \$12,209). Council's resolution on this matter was that the item be deferred following a report back to Council outlining options to amend Council's S94 Contributions Plan to include the objectives of the AHSEPP.

Council, at its meeting of 08 February 2011 resolved:

"That Item 4 be deferred for the Development Assessment and Environmental Health Manager to bring forward a report regarding options to amend the Section 94 Plan on Affordable Housing."

As a result, this report details options for Council to consider in relation to amending development contribution requirements for 'Granny Flats' and 'Secondary Dwellings' within the Port Stephens Local Government Area.

### History

30 June 2007	Port Stephens S94 Contributions Plan (Incorporating Port Stephens, Great Lakes and Newcastle Cross Boundary) adopted.
31 July 2009	AHSEPP introduced by the State Government to increase the supply and diversity of affordable rental housing in NSW for low income earners.
8 February 2011	Section 96 application brought to Council to reduce developer contributions payable on a secondary dwelling under the AHSEPP from \$11,429 to \$5,297.

AHSEPP

The AHSEPP covers a variety housing types including villas, townhouses and apartments which contain an affordable rental housing component, along with secondary dwellings (also referred to as Granny Flats), new generation boarding houses, group homes, social housing and supportive accommodation.

A secondary dwelling is a new use defined under the AHSEPP and in the State Government's Standard Instrument for Local Environmental Plans as follows:

Secondary dwelling means a self-contained dwelling that:

- (a) Is established in conjunction with another dwelling (the principal dwelling), and
- (b) Is on the same lot of land as the principal dwelling, and
- (c) Is located within, or is attached to, or is separate from, the principal dwelling.

The objectives of the AHSEPP is to increase the supply and diversity of affordable rental and social housing in NSW by encouraging home owners, social housing providers and developers to invest in affordable housing. The AHSEPP promotes infill affordable rental housing in existing residential areas that are easily accessible by existing public transport and aims to provide affordable rental housing for very low, low and moderate income earning households.

The AHSEPP does not provide any directions regarding the levying of development contributions under Section 94 of the Environmental Planning & Assessment Act 1979 and as a result the provisions set out within Council's Section 94 Contributions Plan apply. Attachment 1, AHSEPP fact sheet, "Supporting Secondary Dwellings (Granny Flats)", summarises general provisions, including a maximum area of 60m<sup>2</sup> for Secondary Dwellings.

Port Stephens Council Development Contributions Plans

Council currently has two development contributions plans:

Port Stephens Section 94 Development Contributions Plan, 2007 (Incorporating Port Stephens, Great Lakes and Newcastle Cross Boundary Section 94 Contributions Plans); and

Port Stephens Section 94A Development Contributions Plan, 2006.

The developer contributions plan which applies to residential development in Port Stephens LGA is Port Stephens Section 94 Development Contributions Plan, 30 June 2007 (Incorporating Port Stephens, Great Lakes and Newcastle Cross Boundary Section 94 Contributions Plans) (the Plan).

The Plan currently requires a contribution of \$12,209 per additional lot or dwelling. There is however, current provision for waiving contributions for 'Granny Flat' developments under Section 2.1.3 of the Plan. The definition of 'Granny Flat' in the Plan differs considerably from, and is more restrictive than, the definition of

Secondary Dwelling (Granny Flat) under the AHSEPP. Waiving contributions under the Plan only applies in circumstances where a temporary consent is granted for a maximum of five (5) years, as follows:

"Council will consider waiving of the relative Section 94 contribution, for a free standing, 1 bedroom mobile home type structure, provided by a family member to accommodate an aged parent(s). Any proposal must be supported by a Statutory Declaration as to circumstance of occupation of the accommodation unit. All applications will be considered on a merit basis, with time limited consent to a maximum of five years."

Given the adoption of the S94 Contributions Plan prior to the making of the AHSEPP, the Plan does not provide for any reduction specifically for housing under the AHSEPP. While Clause 2.1.3 of the Plan provides that Council may consider a reduction in Section 94 contributions, this provision does not provide any criteria for Council when considering the objectives of the AHSEPP and is therefore considered contradictory to the AHSEPP. Additionally, due to the nature of approving temporary mobile homes under the Granny Flat provision of the Plan, there are compliance issues for planning staff when monitoring time limited consents of this nature, which mean many become permanent.

#### Reduced infrastructure requirements for Secondary Dwellings

To be consistent with Council's existing provision for reduced S94 contribution rates in the Plan for Permanent Caravans/Mobile Homes, Tourist Accommodation, Bed and Breakfast establishments and Seniors Living developments, there is merit in considering a discount in contribution fees for Secondary Dwellings that meet the strict criteria of the AHSEPP. It is considered that due to this criteria, in particular the requirement for a maximum applicable floor area of 60m<sup>2</sup>, these Secondary Dwellings will generally only be capable of housing 1 or 2 persons and that this level of occupation would not create the same level of demand on infrastructure and services as would the occupation of a standard family home. This view is consistent with Council's current provision in the Plan for reduced development contributions for Seniors Housing, introduced under an amendment to the Plan in 2009, for developments permitted under State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004.

Further justification that reduced infrastructure requirements apply to Secondary Dwellings is outlined in the RTA Manual, Guide to Traffic Generating Developments, which indicates an average traffic generating rate of 4-5 vehicles per day for smaller units and flats (up to 2 bedrooms). This compares to 9 vehicles per day for a standard residential dwelling. Therefore, determining the amount of contributions based upon an average dwelling ratio for a small residential flat building that is significantly less than the average occupancy ratio for standard residential dwellings is a sound and defensible rationale for applying a 50% reduction in the general contribution rate for Secondary Dwellings approved under the AHSEPP.

This report proposes that Council considers amending the Plan to include provision for a 50% reduction of Secondary Dwellings approved under the AHSEPP, as per the proposed summary schedule and amended clause shown in **Attachments 2 and 3**.

The table in **Attachment 2** shows a proposed Summary Schedule of Contribution Rates by Development type, including a provision for Secondary Dwellings (highlighted), which could be included in an amendment to the Plan. **Attachment 3** includes a proposed clause for Secondary Dwellings in Accordance with AHSEPP, which could be included in an amendment to the Plan.

## **FINANCIAL/RESOURCE IMPLICATIONS**

As part of the NSW Department of Planning and Infrastructure's current planning review, sections 94 and 94A of the EP&A Act and the developer contributions system as a whole, are being reviewed. It therefore seems pertinent to amend the current contributions plan at this time to include secondary dwellings only, and postpone a review of the additional development types identified in the AHSEPP (villas, townhouses, new generation boarding houses, group homes or social housing and supportive accommodation), as part of a full review of the current development contributions plans, in line with possible legislative changes. It is intended that this review would likely conclude with the development of a new contributions plan which could include, but not be limited to, new urban release areas and provision for further types of affordable housing as identified in the AHSEPP.

Under the Department of Planning & Infrastructure's Development Practice Note on Exemptions, Discounts, Credits and Refunds (July 2005):

"A Council may elect to exempt particular types of development or class of development from payment of development contributions on the basis of strategic planning, economic or social purposes...Where exemptions are granted, Council should not factor this exempt development into the assessment of demand for the purposes of a Section 94 development contributions plan. Where the exempted development will create future demand, and the Council intends to cater for this demand through the provision of facilities, it must specify the amount of apportionment that will be applied to the development which is exempted."

The AHSEPP specifically states that it does not affect the levying of development contributions under Section 94 of the Environmental Planning and Assessment Act 1979. Therefore, if Council does resolve to waive the applicable development contributions under the current provisions of Clause 2.1.3 without amending the Plan to include specific provision for discounted contributions for Secondary Dwellings, it is then required to bear the full cost of the exemption as contributions that are foregone through exemption cannot be sought through higher charges on other developments (as outlined in the Practice Notes).

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

Proposals to reduce or be exempt from all or certain levies under the Port Stephens Section 94 Contributions Plan for differing types of residential development should be considered against equity between current and future individual residents and the current and future broader community and the need to maintain a contributions plan that is simple, defensible and efficiently administered. Determining the amount of levies based upon what a current or future resident may or may not use is not considered an equitable, pragmatic and defensible policy. However, determining

the amount of contributions based upon an average dwelling ratio for a small residential flat building that is significantly less than the average occupancy ratio for standard residential dwellings is a sound and defensible policy.

Public notice of Council's decision is required to be placed in a local newspaper within 28 days after the decision is made and the contributions plan comes into effect on the date that public notice of its approval is given, or on a later date specified in the notice.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed reduction in developer contributions for secondary dwellings is significant and will contribute to making this type of infill development more financially attractive to the general public and will, in turn, help to increase the supply and diversity of affordable rental housing in the Port Stephens LGA.

On 20 May 2011 the NSW Government made changes to the AHSEPP, however none of these changes relate to the levying of Section 94 Contributions. The amendments seek to stop private developers using the AHSEPP provisions to build townhouses and villas in low density areas, where the development is not compatible with the design of the locality and not well served by public transport. A second stage of the amendments seeks to establish an Affordable Housing Taskforce and the development and implementation of a new Affordable Housing Choice SEPP. It therefore considered that any amendment to the Port Stephens Section 94 Developer Contributions Plan at this time in relation to affordable housing should be limited to secondary dwellings and that a review of further types of affordable housing identified in the AHSEPP be deferred pending legislative changes, in line with a full review of Council's developer contributions plans.

There are no environmental implications.

### **CONSULTATION**

Other Councils have adopted a variety of policies in relation to affordable housing:

#### **Newcastle City Council**

Newcastle Council cannot levy affordable housing developments due to the Newcastle City Council Section 94A Development Contributions Plan 2009 applying to all residential land within the LGA apart from the Blue Gum Hills area. A Ministerial direction issued under Section 94E(1)(d) of the EP&A Act prevents a consent authority from applying a Section 94A levy on development for the sole purpose of affordable housing.

#### **Lake Macquarie City Council**

Lake Macquarie City Council makes no allowances for exemption or discount of development contributions on affordable housing developments.



**Maitland City Council**

Maitland City Council may consider a reassessment of contributions payable for specific types of development but not those development types specifically identified in the AHSEPP.

**OPTIONS**

- 1) Endorse for public exhibition a draft amendment to Clause 2.1.3 of the Port Stephens Section 94 Development Contributions Plan, 2007 (Incorporating Port Stephens, Great Lakes and Newcastle Cross Boundary Section 94 Contributions Plans) to remove the current provision for Granny Flats and replace it with specific provision to reduce contributions by 50% of the general contribution rate for Secondary Dwellings approved under the AHSEPP, as shown in Attachments 2 and 3;
- 2) Endorse for public exhibition a draft amendment to Clause 2.1.3 of the Port Stephens Section 94 Development Contributions Plan, 2007 (Incorporating Port Stephens, Great Lakes and Newcastle Cross Boundary Section 94 Contributions Plans) to include a specific provision to reduce contributions by 50% of the additional dwelling rate for secondary dwellings approved under the AHSEPP, as shown in Attachments 2 and 3, in addition to the current provision for granny flat development;
- 3) Make no change to the Port Stephens Section 94 Development Contributions Plan, 2007 (Incorporating Port Stephens, Great Lakes and Newcastle Cross Boundary Section 94 Contributions Plans).

**ATTACHMENTS**

- 1) NSW Government Planning & Infrastructure Fact Sheet: Supporting Secondary Dwellings (granny flats) (May 2011);
- 2) Proposed Summary Schedule – Contribution Rates by Development Type;
- 3) Proposed Clause for Secondary Dwellings in accordance with AHSEPP.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ATTACHMENT 1  
NSW Department of Planning and Infrastructure Fact Sheet  
Supporting secondary dwellings (granny flats)



Planning & Infrastructure

Fact Sheet: May 2011

## Supporting secondary dwellings (granny flats)

### STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009

The State Environmental Planning Policy (Affordable Rental Housing) 2009 encourages the development of secondary dwellings, commonly known as granny flats, by:

- Allowing granny flats to be approved as complying development in 10 days;
- Allowing granny flats to be built in all residential zones;
- Setting clear standards for the development of granny flats.

#### What is the Affordable Rental Housing SEPP?

The State Environmental Planning Policy (Affordable Rental Housing) (AHSEPP) was introduced on 31 July 2009 to increase the supply and diversity of affordable rental and social housing in NSW.

The AHSEPP provides for the development of secondary dwellings (commonly known as granny flats) which can be a positive way to add value and flexibility to your home.

The AHSEPP aims to help mums and dads create a place for those who need a space of their own, like elderly relatives or younger people who have not left home. You may choose to make the secondary dwelling available to a relative or a friend or simply rent it out. There are no rent provisions for secondary dwellings outlined within the AHSEPP.

The NSW Government made amendments to the AHSEPP on 20 May 2011 after in a review of the AHSEPP that was carried out after it had been in effect for a year.

Feedback during the review revealed general community support for a State planning policy to encourage more affordable rental housing, but also highlighted the need for the NSW Government to work more closely with councils and the community on identifying the most appropriate locations for new affordable housing.

No changes were made to the secondary dwellings/granny flats provisions.

#### Why do we need affordable housing?

Throughout NSW there is a strong need for affordable housing amongst the community. This is reflected in figures which show there were over 47,000 people in NSW on waiting lists for suitable accommodation in February 2010.

It is essential that government at all levels, private industry and the non-government sector work in partnership towards finding innovative ways to provide more affordable housing.

### GENERAL INFORMATION ABOUT SECONDARY DWELLINGS

#### What is a secondary dwelling?

A secondary dwelling, commonly known as a 'granny flat' is a self-contained dwelling:

- Established in conjunction with another dwelling (the principal dwelling), and
- On the same lot of land as the principal dwelling (not being an individual lot in a strata plan or community title scheme), and
- May be located within, or attached to, or separate from, the principal dwelling.



Granny flat  
Newbury, Stanhope Gardens  
Image Source: Landcom



**Where are secondary dwellings permitted?**

- Zone R1 General Residential
- Zone R2 Low Density Residential
- Zone R3 Medium Density Residential
- Zone R4 High Density Residential
- Zone R5 Large Lot Residential (via DA only)
- Or equivalent zones for the local council area. A guide to the equivalent zones can be found at: <http://housingcode.planning.nsw.gov.au/LegislativeandPolicyDocuments/NSWCouncilEquivalentZonesUndertheCode.aspx>

**What is the assessment process?**

**Complying development:** A secondary dwelling may be approved in 10 days by a council or accredited certifier, if it meets the complying development provisions in the AHSEPP.

A list of accredited certifiers can be found at [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au).

See the flow chart at page 6.

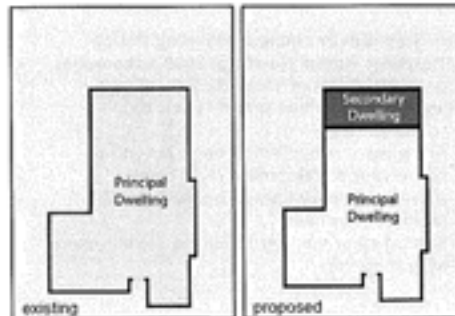
**Development application:** You may lodge a development application with your local council where your proposal is not able to meet complying development provisions in the AHSEPP. In this case, council assesses and determines the proposal in accordance with the AHSEPP and any relevant council policies.



**Design Options**

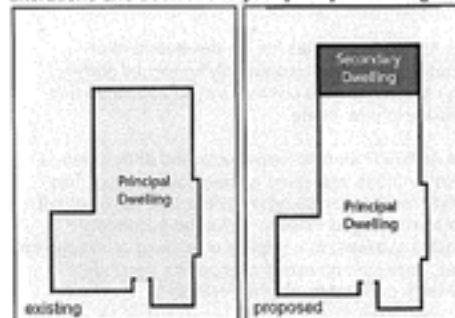
**Option: Conversion**

The AHSEPP allows you to convert part of the principal dwelling, structure or garage into a secondary dwelling.



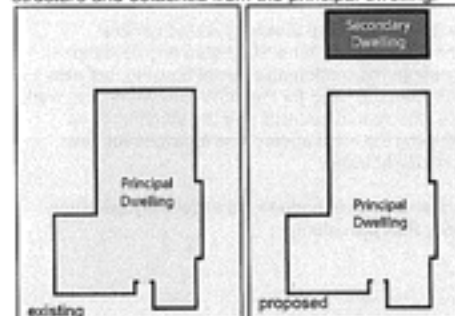
**Option: Attached**

A secondary dwelling can be built as an extension, alterations and additions to your principal dwelling.



**Option: Detached**

A secondary dwelling can be built as a separate structure and detached from the principal dwelling.





**SECONDARY DWELLING PROVISIONS**

The following provides an overview of the minimum controls outlined in the AHSEPP:

**General Provisions**

**One primary dwelling, one secondary dwelling:** Development of a secondary dwelling can only result in there being one principal dwelling and one secondary dwelling on the site.

**Subdivision:** Not permitted.

**Total floor area:** Maximum 60m<sup>2</sup> with the maximum floor area of the principal dwelling and secondary dwelling being no greater than that permitted by the local council in that zone.

**Site area:** Minimum of 450m<sup>2</sup>.

**Building Code of Australia (BCA):** All relevant requirements within the BCA apply. Some secondary dwellings may result in a change in building classification under the BCA.

For example, if any part of the secondary dwelling is built above or below the primary dwelling, the building containing both dwellings will be classified as Class 2 under the BCA.

This constitutes a change of use of the primary dwelling and will require a development application.

**Complying Development Provisions**

**Partial / Internal Conversions:** (See Division 2, clause 23(2) in the AHSEPP).

**Lot requirements:** Excludes environmentally sensitive land and heritage restrictions.

**Specific requirements:** Must not involve external alterations to the principal dwelling other than an additional entrance, erection of a basement or alterations to an existing basement, or the erection of a roof terrace. For attached and detached secondary dwellings see Division 2, clause 23 and Schedule 1 in the AHSEPP.

**Site area:** Minimum 450m<sup>2</sup>.

**Main Schedule 1 requirements include:**

**Height:** Maximum 8.5 metres and does not include the erection of a basement or additions to a basement or the erection of a roof terrace.

**Lot requirements:** Outlined in the AHSEPP (see Schedule 1, Part 2, Clause 2).

**Site coverage and floor area:** See Schedule 1, Part 2, Clause 3, 4 and 5.

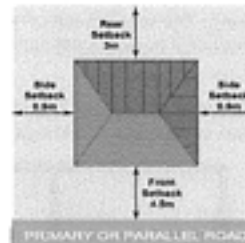
**Landscaped area:** As outlined in Schedule 1, Part 4, Clause 16 and varies depending on the size of the site.

**Privacy:** As outlined in Schedule 1, Part 3, Clause 15 a new window in either the secondary or primary dwelling must have a privacy screen if it is in a habitable room and is 1 metre or more above floor level, the wall is set back less than 3 metres from a side or rear boundary and the window has a sill height of less than 1.5 metres.

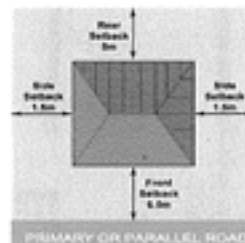
Setbacks and floor heights also need to be considered when including a balcony, deck, patio, pergola, terrace or verandah.

**Setbacks:** As outlined in Schedule 1, Part 3, Clauses 7-12, the setback of a site with a front boundary on a primary road or parallel road is equal to the average of the front setbacks of the nearest two dwelling houses on the same road. These dwelling houses must be located within 40 metres of your lot (see Schedule 1, Clause 7). Otherwise setbacks are shown below:

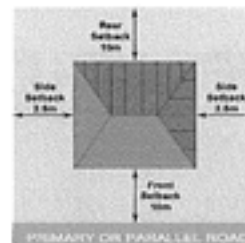
**Lot size:**  
At least 450m<sup>2</sup>, but less than 900m<sup>2</sup>



**Lot size:**  
At least 900m<sup>2</sup>, but less than 1,500m<sup>2</sup>



**Lot size:**  
At least 1,500m<sup>2</sup>





**Private open space:** As outlined in Schedule 1, Part 4, Clause 17, at least 24m<sup>2</sup> and accessible from a habitable room, at least 4 metres wide and with a gradient not steeper than 1:50.

**Earthworks and drainage:** As outlined in Schedule 1, Part 4, Clauses 18-21.

**Articulation zones:** As outlined in Schedule 1, Part 3, Clause 13-14, the principal and secondary dwelling must have a front door and a window to a habitable room facing the primary or parallel road.

**Development application requirements**

**Site area:** The consent authority cannot refuse consent on the grounds of site area if the site area is at least 450 square metres. However, a consent authority can grant consent to development of a secondary dwelling on a site of less than 450 square metres.

**Parking:** The consent authority cannot refuse the application if no additional parking is provided on the site.

**Council controls:** Any relevant council policy that applies to secondary dwellings will continue to apply.



New granny flat in Grafton  
Images courtesy of GrannyFlatsAustralia

**FREQUENTLY ASKED QUESTIONS**

**Q. How does a person apply for approval of a secondary dwelling?**

**A.** Applications can be made in one of the following ways:

- Complying development, by applying to an accredited certifier to construct a secondary dwelling if the secondary dwelling meets the complying development provisions in the AHSEPP, or
- A development application to the local council.

A list of accredited certifiers can be found at: [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au).

**Q. Are secondary dwellings permissible in rural zones?**

**A.** The AHSEPP provisions for secondary dwellings do not apply to rural zones. Secondary dwellings may be permitted under the council's LEP in these zones, but this will need to be checked with the relevant council.

**Q. Can a secondary dwelling be established in conjunction with a 'principal dwelling' where the 'principal dwelling' is a dwelling in a dual occupancy or residential flat building (rather than a dwelling house)?**

**A.** No. Under clause 22 of the AHSEPP, development for the purposes of a secondary dwelling cannot result in there being on the land any dwelling other than the principal dwelling and the secondary dwelling. This means that there can only be one other dwelling on the land with the secondary dwelling.

**Q. What is the height limit for a secondary dwelling that is complying development under the AHSEPP, if the council's LEP or development control plan imposes a lower limit?**

**A.** The height limit is 8.5 metres under the AHSEPP. Clause 23 of the AHSEPP references the standards outlined in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (which includes the General Housing Code). Normally 8.5 metres will allow two storeys. Height limits in the council's LEP or development control plan will not apply.

**Q. Will this cause overshadowing or loss of privacy?**

**A.** The height limit is the same as for dwelling houses under the Housing Code. The AHSEPP also has setback provisions which are the same as the Housing Code, to minimise impacts like overshadowing and loss of privacy.

ATTACHMENT 2

Proposed Summary Schedule Contribution Rates by Development Type

	Contribution – General (additional lot or dwelling)	Secondary Dwellings AHSEPP (per additional dwelling)	Permanent Caravans/ Mobile Homes	Tourist Accommodation (per unit)	Bed and Breakfast (per bedroom after 3 <sup>rd</sup> )	Seniors Living SEPP 2004 (per unit)	Non Residential
<i>Civic Administration</i>	\$407	\$204	\$204	\$204	\$102	\$204	\$6 (per additional sq m of leasable floor area)
<i>Public Open Space, Parks and Reserves</i>	\$2,205	\$1,103	\$1,103	\$1,103	\$550	\$1,103	
<i>Sports and Leisure Facilities</i>	\$5,195	\$2,597	\$2,597	\$2,597	\$1,299	\$2,597	
<i>Cultural and Community Facilities</i>	\$2,612	\$1,306	\$1,306			\$1,306	
<i>Road Haulage</i>							Transportation and Economic Assessment Study Required
<i>Roadworks</i>	\$1,476 (9 vehicle trips per day)	\$738 (4.5 trips per day)	\$492 (3 vehicle trips per day)	\$246 (1.5 vehicle trips per day)	\$246 (1.5 vehicle trips per day)	\$295 (20% of general rate)	\$164 (Per vehicle trip)
<i>Fire &amp; Emergency Services</i>	\$202	\$101	\$101	\$101	\$51	\$101	
<b>TOTAL</b>	<b>\$12,097</b>	<b>\$6,049</b>	<b>\$5,803</b>	<b>\$4,251</b>	<b>\$2,248</b>	<b>\$5,606</b>	
<i>Richardson Road North, Raymond Terrace</i>	\$2,189						
<i>Heatherbrae Industrial Land</i>							\$1.00 (per square metre of developable land)
<i>Raymond Terrace Commercial / Retail Area Carparking</i>							\$17,085 (per parking space)
<i>Nelson Bay Commercial / Retail And Foreshore Area Carparking</i>							\$13,343 (per parking space)
<i>Boat Harbour And Anna Bay Catchment – Drainage Upgrade</i>	\$682						
<i>Fern Bay – Bus Shelters</i>	\$142						
<i>Karuah Cross Boundary</i>	\$10,161						
<i>Fern Bay Cross Boundary</i>	\$11,882						

**ATTACHMENT 3**  
**Proposed Clause for Secondary Dwellings in accordance with AHSEPP in Council's**  
**S94 Contributions Plan**

**2.1.3 DISCOUNT OF CONTRIBUTION**

Secondary dwellings in accordance with AHSEPP.

Permitted with consent under State Environmental Planning Policy (Affordable Rental Housing) 2009.

All new development, including secondary dwelling development, intensifies the use of the existing resources and adds incrementally to the demand for public amenities and services. In this regard, development for the purposes of secondary dwellings, approved under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 will be levied development contributions under this Plan.

The RTA Manual, Guide to Traffic Generating Developments indicates an average traffic generating rate of 4-5 vehicles per day for smaller units and flats (up to 2 bedrooms). This compares to 9 vehicles per day for a residential dwelling.

The Developer Contribution Levy will therefore be 50% of the general levy for all categories.

**ITEM NO. 6**

**FILE NO: PSC2009-09538**

**KARUAH GROWTH STRATEGY AND DCP**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the Karuah Growth Strategy as it refers to land in Port Stephens Local Government Area (**Attachment 1 - under separate cover**);
- 2) Adopt the amended Karuah Development Control Plan Chapter as it refers to land in Port Stephens Local Government Area pursuant to the Environmental Planning and Assessment Act (**Attachment 2 - under separate cover**) incorporating the proposed amendments;
- 3) The owner of Lot 52 DP 735066 be advised to seek clarification of the status of their land from the Department of Planning and Infrastructure in relation to the Green Corridor in the context of review of the Lower Hunter Regional Strategy.

**COUNCIL COMMITTEE MEETING – 13 DECEMBER 2011**

**RECOMMENDATION:**

	<b>Councillor Peter Kafer Councillor Bob Westbury</b>
	<b>That the recommendation be adopted.</b>

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

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

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>450</b>	<b>Councillor Glenys Francis Councillor Peter Kafer</b>
	It was resolved that the recommendation be adopted.



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

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

Those against the Motion: Nil.

## **BACKGROUND**

The purpose of this report is to inform Council of the outcomes of the exhibition of the draft Karuah Growth Strategy, the draft Karuah Development Control Plan (DCP) Chapter, and seek Council's adoption of the final Strategy and DCP Chapter.

It should be noted that both documents refer to land in Port Stephens Local Government Area (LGA) and in Great Lakes Shire. This Report only addresses matters in Port Stephens LGA. Great Lakes Shire Council is considering the matters which affect their LGA.

The Growth Strategy and DCP chapter are the culmination of considerable research and consultation into the needs and circumstances of the local area since the Pacific Highway bypass was opened in 2004. Population growth is one important strategy to revitalise Karuah as a way of addressing the impact of the highway bypass on local businesses.

The Growth Strategy and DCP chapter provide the basis upon which Karuah can grow while maintaining its village ambience and natural setting. The Strategy will enable Karuah to at least double its current population of around 1000 residents. However, the rate of growth will be dependent on market conditions, public interest and the development of land for housing by the private sector. The Growth Strategy anticipates a range of growth rates, including up to three times the current rate of 11 dwellings per year.

On 22 March 2011 Council resolved to place the Draft Strategy and draft DCP Chapter on exhibition. Details of the exhibition are in the consultation section below.

18 submissions were received as a result of the exhibition. A summary of the submissions is at **Attachment 3 (under separate cover)**. This report only discusses submissions which relate to that part of Karuah in Port Stephens Local Government Area. Submissions that refer to that part of Karuah in Great Lakes Shire are being addressed by that Council. Submissions were received from the Karuah working Together, Karuah Chamber of Commerce, Karuah Progress Association, and Karuah Tidy Towns Parks Reserves and Wetland Committee. Many of the other submissions were from landowners seeking rezoning for urban development or their representatives.

Generally there was strong support for the draft Growth Strategy and Development Control Plan, including several submissions which "strongly endorsed" the thoroughness and principles of the draft Strategy and draft DCP chapter.

The major issues raised in the submissions were:

Land west of Karuah Wetland

Concern regarding possible rezoning of vegetated land to the west of the SEPP 14 wetland commonly known as the "Karuah Wetland". Part of this land (Part Lot 52 DP 735066) was previously subject to a rezoning proposal, known as Draft LEP Amendment 27. The location of this land is shown in the aerial photograph at **Attachment 4 (under separate cover)**. The land is completely vegetated by native woodland and a SEPP 14 wetland (which is part of the "Karuah Wetland"). Most of the land drains to the SEPP 14 wetland. Several submissions were received from local peak bodies and individuals advocating the conservation of this land, and one submission on behalf of the landowner advocating its partial development.

The final Growth Strategy and DCP do not propose the development of this vegetated land because there is sufficient cleared land potentially suitable for urban development adjacent to or very close to the existing residential areas of Karuah.

If the owner of Lot 52 wishes to pursue rezoning of their land to an urban related purpose, it is considered that they should seek clarification of the Green Corridor status of the land in the context of the review of Lower Hunter Regional Strategy being undertaken by the Department of Planning and Infrastructure.

Wetland Buffer

Concern was expressed by landowners regarding the buffer distance being required between urban development and the wetland to the west of Holdom Road. It is recommended the DCP be amended to incorporate a reduced buffer, which had been previously agreed by Council and the Office of Environment and Heritage, and which had been overlooked in the draft DCP. There was also some concern in one submission about conservation areas embracing a wider area than just SEPP 14 wetlands.

Lower Hunter Regional Strategy Green Corridor

The Office of Environment and Heritage (OEH) raised concern regarding the maps in the draft Growth Strategy and draft DCP chapter showing areas within the Green Corridor of the Lower Hunter Regional Strategy marked "insufficient information (biodiversity/land capability)". The OEH requested that an additional map layer be provided to show the Green Corridor. This has been partially addressed in the final Growth Strategy and the DCP chapter. The concern has not been completely addressed because advice from the Department of Planning and Infrastructure is that Green Corridor maps are meant to be viewed on a regional scale and not overlaid for cadastral purposes. Therefore, the Green Corridor boundaries do not have sufficient definition to be portrayed accurately on a local map, and accordingly the EPA (formerly OEH or DECCW) request for an additional map layer can not be met.

Large Rural Holdings

OEH also requested that the mapping labels in the draft Growth Strategy and DCP chapter that show the large cleared rural area to the north west of the town as “maintain as large rural holding” be deleted. OEH believe that the map label is unnecessary because the rural land is in the Green Corridor and therefore is unable to be developed. It is considered that the map reference should not change. It is important that the land is not subdivided, including for smaller rural holdings or “lifestyle” acreages, so as not to diminish its conservation and/or development potential in the future.

Lionel Morton Oval

There was also concern that the Lionel Morton Oval should be retained as community sporting space when additional facilities are developed elsewhere in the future (there is limited capacity for additional facilities on the current site). This is an operational matter and not within the scope of the Growth Strategy or DCP.

Development Control Plan (DCP)

The DCP has been amended by simplifying its content and by reformatting it consistent with Council new DCP format. This has led to a reduction in a number of principles and controls in the Plan where they are superfluous or too general to be effective as a control.

A number of specific controls have been amended, of which the most significant are:

- Additional clauses under *Waterfront industries* stating that “buildings may be built up to and over the foreshore retaining wall to meet their functional requirements subject to State government approval, and that storage areas should be neat and well maintained”;
- Additional narrative under *Biodiversity* stating that that “a reduced buffer of 50m has been agreed by Council and the Office of Environment and Heritage in some locations of the Holdom Road/Wattle Street area”;
- Deletion of narrative in a clause under *Biodiversity Areas* stating that areas shown on the map having “insufficient information (biodiversity or land capability)” must be treated as if they are of high biodiversity significance unless studies demonstrate they are of lesser significance and propose a suitable environmental management regime, to the satisfaction of the consent authority”. This deletion was at the request of the EPA (formerly OEH or DECCW);
- An additional clause under *Staging* that “consent will not be granted for the subdivision of land for residential development unless there is adequate access and capacity in reticulated water supply and sewerage, telecommunications, transport infrastructure and community facilities”;
- Addition of a note under *Overall land use strategy* stating that “some potential urban growth areas appear to be within the Green Corridor of the Lower Hunter Regional Strategy (2006). The Green Corridor is partially based on regional level mapping. The Green Corridor status of these lands will need to be clarified and or changed if rezoning and development is to occur”.

## **FINANCIAL/RESOURCE IMPLICATIONS**

There will be significant financial implications from the implementation of the Growth Strategy and the DCP chapter. This is because the growth of Karuah will require additional and/or upgraded infrastructure. It is anticipated that Section 94 contributions will meet most of this need. Regular review of Section 94 Plans will be necessary to ensure their adequacy to meet these costs.

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

The adoption of the Growth Strategy and DCP chapter will enable the growth of Karuah consistent with the Lower Hunter Regional Strategy and the draft Port Stephens Planning Strategy. The Growth Strategy will provide a consistent policy framework within which decisions can be made about such matters as future rezonings. The DCP chapter will provide a locally specific suite of development controls to consistently guide development in Karuah.

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The Growth Strategy and DCP chapter will assist in guiding new economic and social investment in Karuah. They provide greater certainty about the future development of the town, and assist in decision making by business. By stimulating population growth, the Growth Strategy and DCP aims to assist in the economic revitalisation of the town by ensuring enough urban land is available to meet growth.

The Growth Strategy and DCP chapter build on the existing village structure and community of Karuah. By increasing the size of the village social and economic services will be more viable, and as a result there will be improved local access to community services. Growth is likely to be relatively slow and steady which will enable the community to maintain its relaxed character and close knit nature.

The Growth Strategy and DCP chapter seek to permit growth while conserving the natural features of the town, including several biodiversity corridors and areas of biodiversity significance. A compact urban form is an objective of the strategy, and this will enable most residents to be within walking or cycling distance of facilities, and reduce dependence on the motor vehicle.

## **CONSULTATION**

The draft Growth Strategy and draft DCP were placed on public exhibition from 5 May 2011 until 2 June 2011.

The documents were made available at the Council Administration Building, Raymond Terrace Library, Tomaree Library (Salamander), Karuah Community Centre, Karuah Post Office, and in Council's mobile library.

The exhibition of the Growth Strategy and DCP chapter has provided an opportunity for the community, landowners, and developers to review and comment on their contents. The exhibition follows extensive consultations with the community over

several years about the future of Karuah. Ongoing discussions are being held with the Karuah Aboriginal Land Council about the future development of their land in the context of the LGA wide comprehensive LEP (Standard Instrument).

The Karuah Working Together Group was briefed prior to the exhibition of the draft Growth Strategy and DCP chapter, and has made a generally supportive submission.

A summary of submissions is at **Attachment 3 (under separate cover)**.

### **OPTIONS**

- 1) Council could resolve not to adopt the Growth Strategy or DCP chapter. This would create uncertainty in the local community and lead to the absence of direction for the growth of the town;
- 2) Council could resolve to amend the Growth Strategy and/or DCP chapter. This would require additional consultation with the community. There is general support for the documents;
- 3) Council could adopt the Growth Strategy and DCP chapter. This is the recommended option.

### **ATTACHMENTS**

- 1) Karuah Growth Strategy – under separate cover;
- 2) Karuah DCP chapter – under separate cover;
- 3) Summary of submissions – under separate cover;
- 4) Location of Lot 52 DP 735066 – under separate cover.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**

**KARUAH GROWTH STRATEGY**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 2**

**KARUAH DCP CHAPTER**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 3  
SUMMARY OF SUBMISSIONS  
PROVIDED UNDER SEPARATE COVER**



**ATTACHMENT 4**

**LOCATION OF LOT 52 DP 735066**

**PROVIDED UNDER SEPARATE COVER**

**ITEM NO. 7**

**FILE NO: PSC2006-6753**

**REZONING 22 HOMESTEAD STREET, SALAMANDER BAY FROM RECREATION TO RESIDENTIAL**

**REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER**

**GROUP: COMMERCIAL SERVICES**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) That Council as landowners, submit a planning proposal, to rezone (Option 2, **ATTACHMENT 1**) Lot 598 DP 27382, 22 Homestead Street, Salamander Bay to Residential 2(a) and Environmental 7(a) and Reclassify and Rezone Part Lot 51 DP 803471 from Community to Operational and 6(a) to Residential 2(a) as shown in **ATTACHMENT 1**.

**COUNCIL COMMITTEE MEETING – 13 DECEMBER 2011**

**RECOMMENDATION:**

	<p><b>Councillor Ken Jordan</b> <b>Councillor Bob Westbury</b></p>
	<p>That Council as landowners, submit a planning proposal, to rezone (Option 2, <b>ATTACHMENT 2</b>) Lot 598 DP 27382, 22 Homestead Street, Salamander Bay to Residential 2(a) and Environmental 7(a) and Reclassify and Rezone Part Lot 51 DP 803471 from Community to Operational and 6(a) to Residential 2(a) as shown in <b>ATTACHMENT 2</b>.</p>

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

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

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>451</b>	<p><b>Councillor John Nell</b> <b>Councillor Sally Dover</b></p>
	<p>It was resolved that Council as landowners, submit a planning proposal, to rezone (Option 2, <b>ATTACHMENT 2</b>) Lot 598 DP 27382, 22 Homestead</p>

## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

Street, Salamander Bay to Residential 2(a) and Environmental 7(a) and Reclassify and Rezone Part Lot 51 DP 803471 from Community to Operational and 6(a) to Residential 2(a) as shown in <b>ATTACHMENT 2</b> .
--

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

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

Those against the Motion: Nil.

### BACKGROUND

The purpose of this report is for Council as landowner to submit a Planning Proposal to the Environmental and Development Planning Section to partially rezone 22 Homestead Street Lot 598 DP 27382 Salamander Bay from 6(a) Recreation to 2(a) Residential and Environmental 7(a) and reclassify and rezone Part Lot 51 DP 803471 from Community to Operational and from 6(a) to Residential 2(a) (see Attachment 1).

Council purchased the 3.8ha (22 Homestead Street) parcel of land in late 1996. The land was zoned 6(a) Open Space. Upon acquisition by Council the land was classified "Operational. It was the intention of Council at the time of the acquisition that the land be consolidated with the adjoining Council owned lot (Lot 599) with a view to extend the light industrial zoning and create 40 industrial allotments (attachment 4). Prior to Council's purchase of the land the previous owner of 22 Homestead Street had made approaches to Council regarding lodging an application to rezone the lot to residential. 22 Homestead Street is located in a suburban area in the suburb of Salamander. Adjoining the land to the north and east is existing residential dwellings and it would be a logical extension of the adjacent residential zoning. A report was prepared by Strategy Hunter in January 2008 on various sites in Salamander Bay and Soldiers Point of which 22 Homestead Street was one, the report recommended that 22 Homestead Street be rezoned to part 2(a) Residential and Part 7(a) environmental.

Council resolved on the 8 June 2010 that Council Investigate rezoning the whole site to residential and that Council have the opportunity to have another ecologist review the site and potential offsetting.

Additionally the Hunter Strategy Report recommended the reclassification and rezoning of a triangular piece of land adjoins 22 Homestead Street to the south and existing residential to the west. This will provide an improved urban and development outcome.

To facilitate the rezoning and reclassification a Planning Proposal was prepared by Hunter Strategy to submit firstly to Council then to the Department of Planning and

Infrastructure under the provisions of the "Gateway Process". The ecological review forms part of the Planning Proposal.

The Planning Proposal that has been prepared supports that the land does not meet the criteria for Open Space and that the surrounding area is supplied with open space to at least Council's standards of provision.

Additionally the report makes the following observations:

The site:

- Has access to urban infrastructure, including services to local shops and parks
- Is adjacent to land zoned for residential and other development permissible in a 2(a) residential zone
- Is mainly cleared
- Can probably be developed in a way which achieves substantial residential development and at the same time achieve an "improve or maintain" biodiversity outcome
- Contains habitat for endangered species
- Contains some areas of preferred habitat under the Port Stephens Comprehensive Koala Plan of Management
- Is not within the ANEF 2012 or ANEF 2025 aircraft noise contours
- Is mainly flood prone
- Needs to be carefully managed for acid sulphate soils
- Has community land nearby for informal recreation.

The previous ecological assessment found the subject site offers high value interconnectivity between vegetation remnants to the southwest and southeast and linking to the north. It states that it is essential that the integrity of the corridor is retained in perpetuity. The vegetation in the southern part of the site was also found to comprise of Swamp Mahogany Forest, an Endangered Ecological Community. This part of the subject site is also mapped as preferred koala habitat in the Port Stephens Comprehensive Koala Plan of Management.

The most recent study of the land by Ecological Australia prepared in April 2011 noted that 32% of the site contained Endangered Ecological Community (EEC) listed under the NSW Threatened Species Conservation Act (Swamp Mahogany – Paperbark Forest).

The report then considered three options for the development of the land and considered the options capability to achieve the "improve and maintain outcome" as calculated by the Biodiversity Certification Assessment Methodology. An improved and maintain outcome is achieved where there is no impact on "red flagged" species or ecosystems and where all losses of non – red flagged species and ecosystems are fully offset.

The options were:

Option 1 - Develop the entire site  
(4.34 hectares = 43 allotments)

Option 2 - Retain the endangered ecological community on the site and develop the remainder.  
(Approximately 3.34 hectares = 33 allotments)

Option 3 - Develop on the cleared lands.  
(Approximately 2.34 hectares = 23 allotments).

The study concluded that it would be theoretically possible to offset the biodiversity impacts of the development but also stated that it would be unlikely Option 1 or 2 would be supported by the Office of Heritage and Environment (OEH) regardless of any offset proposal. This is because Option 1 and 2 will reduce the width of the north-south corridor by around 30%. Option 1 would require the clearing of the EEC and the "improve and maintain" outcome cannot be achieved because of the red flag rule therefore Council would need to demonstrate that proposal could meet certain criteria which would then have to be approved by OEH, the report considers that it is highly unlikely. Option 2 protects the EEC however clears two other vegetation communities (Coastal Sand Apple – Blackbutt Forest and Coastal Foothills Spotted Gum comprising 16% of site coverage) and the "improve and maintain" outcome is not achieved within the site boundaries. However it is assumed that the retained vegetation would be managed and improved therefore is providing a better outcome for the site. Option 3 has no impact on biodiversity but to develop only the cleared portion of the land would not be financially viable. It is therefore recommended that Council proceeds with Option 2.

## **FINANCIAL/RESOURCE IMPLICATIONS**

Council would receive revenue from the proposed disposal of the land. The value of the land will significantly increase with the change of zoning to Residential 2a. The development of a residential subdivision is estimated to realise a yield of approximately 30 housing lots, based on the developable area being proposed.

The current cost of developing residential allotments is circa \$80k per lot, making a project cost of circa \$2.4m. Based on other residential estates in the Port Stephens LGA, it is estimated that the lots could be marketed at \$160k to \$180k per lot. Adopting \$170k as the median price, the total income from the development has the potential of returning \$5.1m.

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

The subject land requires approval by the Department of Planning for the rezoning of the land from 6(a) General Recreation to 2(a) Residential and 7(a) Environmental and part of the land, being the triangular section located between 22 Homestead Street and the adjoining relocatable home village, also requires reclassification from Community to Operational.

On successful completion of the Rezoning and Reclassification process, the land will require the preparation of a Development Application for the subdivision into residential lots. On approval, the construction of the subdivision works will take place, with registration of the final plan of subdivision by the Land & Property Information on completion of the works.

The above processes are anticipated to be quite lengthy.

The sale of the land is consistent with the Property Investment and Development Policy.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The amount of land available for residential development within the Tomaree Peninsula is a limited resource. The land provides Council with an opportunity to provide additional housing lots in an existing residential area within the Port Stephens Local Government Area.

This project will create economic stimulus for the community, through construction and a further revenue stream for Council through land sales. The creation of additional housing lots also provides a further flow on effect in the form of additional ratepayers.

Part of the site contains endangered ecological community, however the proposal does not intend to develop these areas. The environmental constraints are addressed and there will be minimal impact on the environment.

### **CONSULTATION**

- 1) Group Manager – Sustainable Planning;
- 2) Strategic Planning Staff.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Development Option 2;
- 2) Development Option 1;
- 3) Development Option 3;
- 4) Business Paper September 1996.

Marked up aerials:

**Yellow Boundary** = Lot Boundary

**Black Boundary** = Proposed rezoning

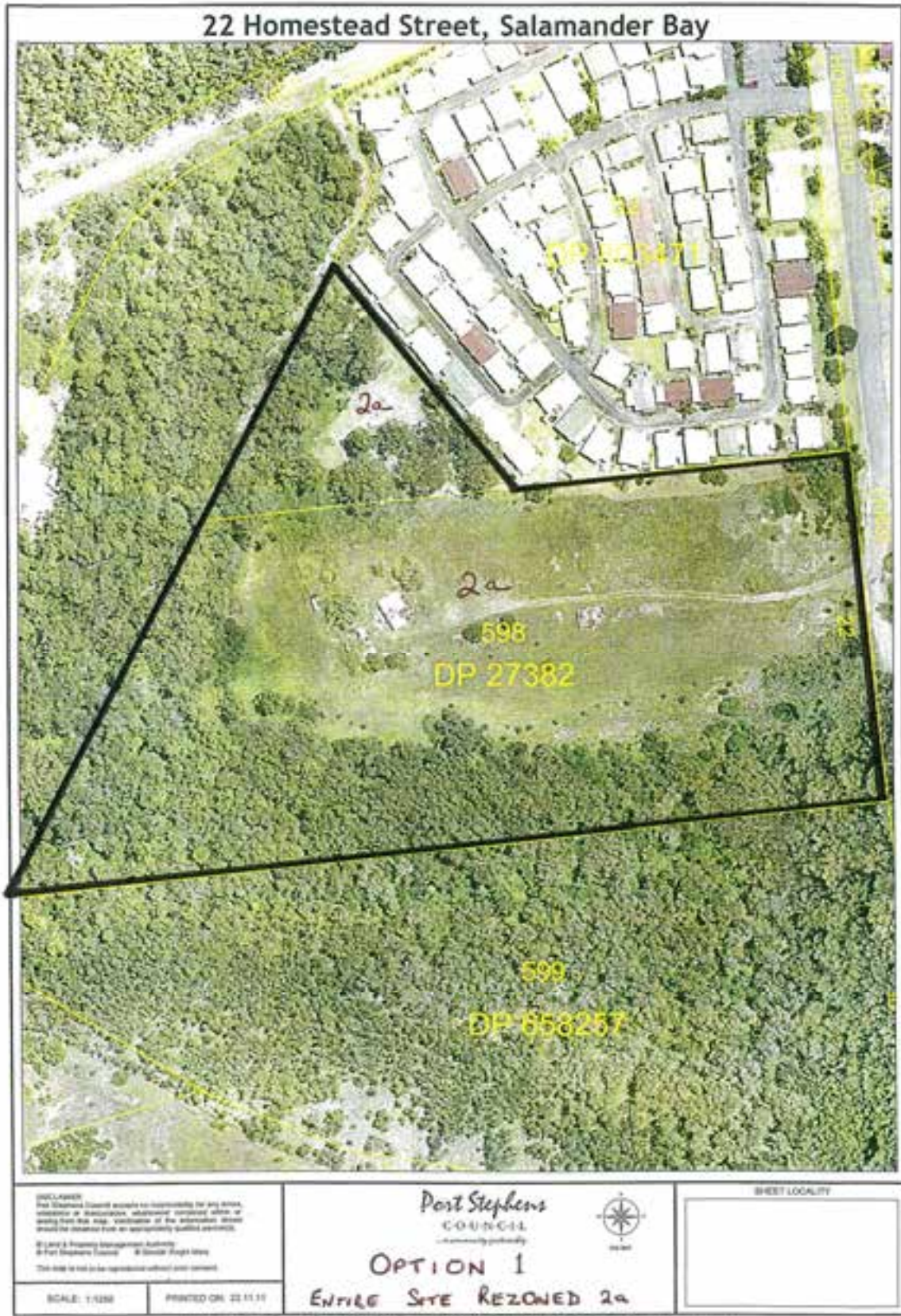
**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ATTACHMENT 1





ATTACHMENT 2



ATTACHMENT 3



ATTACHMENT 4

Minutes of 10 September 1996 Ordinary Meeting

CONFIDENTIAL  
CORPORATE COMMITTEE

ITEM NO 2  
PROPOSAL TO PURCHASE LOT 598 GEORGE ROAD,  
SALAMANDER BAY

FILE NO: M3470-10

AUTHOR: Jim Neely

GENERAL MANAGER'S RECOMMENDATION:

1. That Council accept the offer from Banora Projects P/L to sell Lot 598 DP 27382 George Road, Salamander Bay for \$325,000.00.
2. That the Common Seal of Council be affixed to all necessary documents.
3. That under Section 31 of the LG Act 1993 the land be classified "operational".

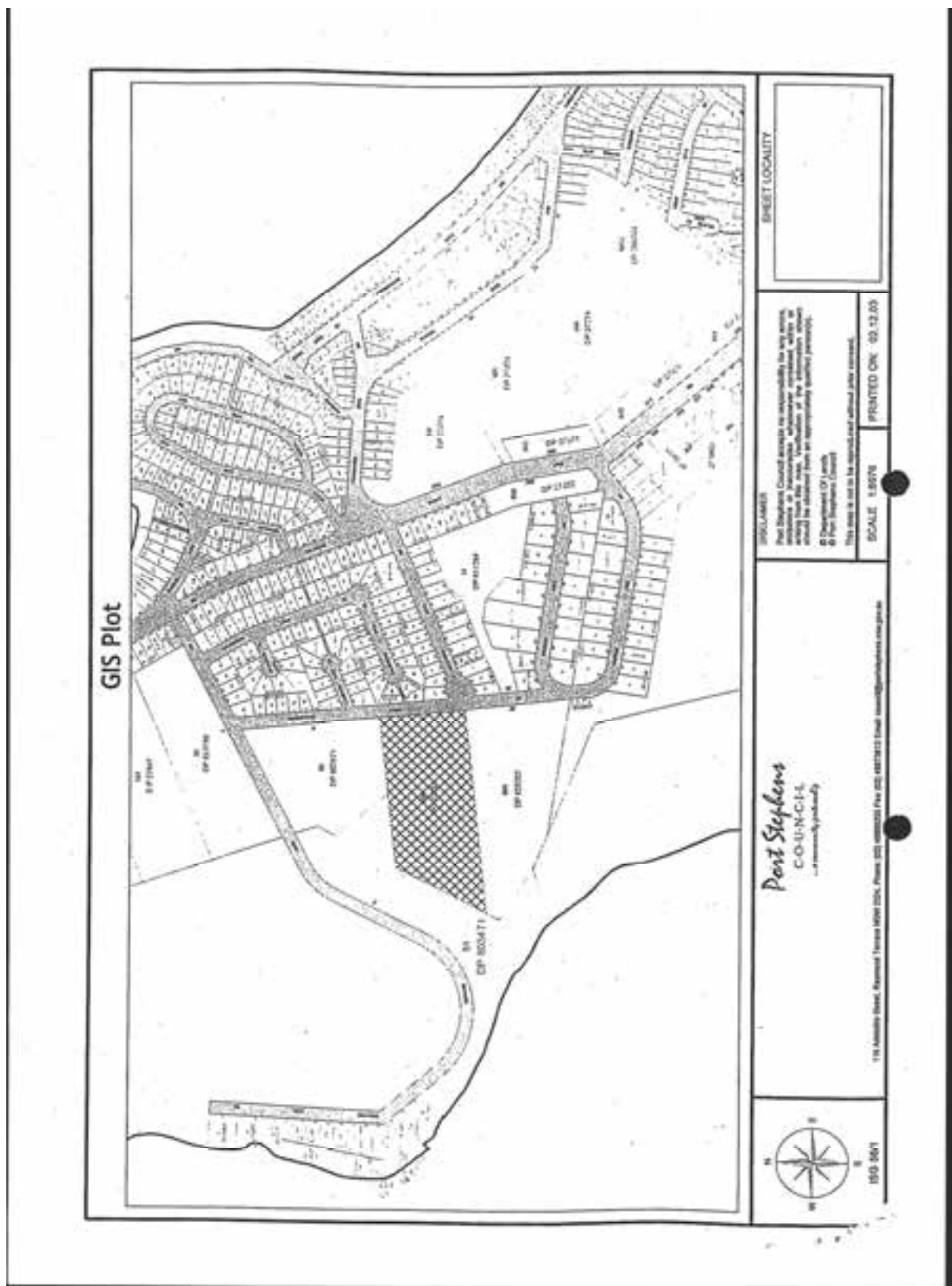
Manex Comments: The appropriate co-ordination and corporate consultation has taken place.

Corporate Committee's Recommendation: That the General Manager's recommendations be adopted.

536 Councillor MacKenzie  
Councillor Creighton

Resolved that the Corporate Committee's Recommendation be adopted.

ATTACHMENT 4



ATTACHMENT 4

Minutes of Ordinary Meeting 10 September 1996

CONFIDENTIAL  
CORPORATE COMMITTEE

ITEM NO 2 FILE NO: M3470-10  
PROPOSAL TO PURCHASE LOT 598 GEORGE ROAD,  
SALAMANDER BAY

AUTHOR: Jim Neely

**GENERAL MANAGER'S RECOMMENDATION:**

1. That Council accept the offer from Banora Projects P/L to sell Lot 598 DP 27382 George Road, Salamander Bay for \$325,000.00.
2. That the Common Seal of Council be affixed to all necessary documents.
3. That under Section 31 of the LG Act 1993 the land be classified "operational".

**Manex Comments:** The appropriate co-ordination and corporate consultation has taken place.

**Corporate Committee's Recommendation:** That the General Manager's recommendations be adopted.

536 Councillor MacKenzie                      Resolved that the Corporate Committee's  
Councillor Creighton                      Recommendation be adopted.

**BACKGROUND**

Council is the owner of Lot 599 George Road, Salamander Bay and now has the opportunity to acquire the adjoining Lot 598 having an area of approximately 9 acres (see Attachment 10.1).

The acquisition of this property is seen to have two benefits. Firstly, it would together with the adjoining allotment already owned by Council, be a logical extension of the adjacent Light Industrial zoning. Secondly, a proposed road through this land could link with the existing quarry and provide a more desirable route for trucks that use the quarry. Residents have continually complained about the noise and dust from trucks that travel along George Road.

ATTACHMENT 4

Minutes of Ordinary Meeting 10 September 1996

This proposal would create approximately forty (40) light industrial allotments and provide for the closure of part of George Road (see Attachment 10.2). It is estimated that Council would make a profit on the development in the order of \$500,000.

Both allotments of land are zoned Public Recreation 6(a) and would require re-zoning for this proposal to proceed. The owner of Lot 598 could require Council to acquire this property under the provisions of Council LEP 1987.

The owner of Lot 598 has approached Council with a view to lodging an application to have the land re-zoned Residential 2(a), or failing this, to develop a Mobile Home Park that is permitted under the current zoning. Following further negotiations with the owner he has agreed to sell the land to Council for \$325,000.00 (see Attachment 9.3).

Council has obtained a valuation from Wolthers Pawlik Simm P/L who have valued the land as follows:-

Based on current Public Recreation 6(a) zoning	-	\$200,000.00
Based on Residential 2(a) zoning	-	\$380,000.00

Given the potential advantages to be had it is recommended that Council acquire this property. The major risk to Council is that an application to re-zone the land Light Industrial may be unsuccessful.

**FINANCIAL/RESOURCE IMPLICATIONS**

Funds are available in the Acquisition of Assets Reserve.

**LEGAL AND POLICY IMPLICATIONS**

Nil

**PUBLIC IMPACT**

Once the land is acquired the proposal could be communicated to the residents in the area who would more than likely favour the proposal.

**CONSULTATION**

Some Councillors have inspected the site. Other Council Departments have been consulted.

**OPTIONS**

Accept/reject the recommendation.

ITEM NO. 8

FILE NO: PSC2005-4390

**TREE PRESERVATION ORDER AND PROCEDURES**

**REPORT OF: BRUCE PETERSEN – ENVIRONMENTAL AND DEVELOPMENT PLANNING  
MANAGER**  
**GROUP: SUSTAINABLE PLANNING**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the amended Tree Preservation Order (**Attachment 1 – under separate cover**);
- 2) Adopt the amended Tree Management Procedures (**Attachment 2 – under separate cover**);
- 3) Note the submissions received on the draft Tree Preservation Order and the draft Tree Management Procedures (**Attachment 3 – under separate cover**);
- 4) Delegate, under section 377(1) of the LG Act, to create a 355b Committee of Council for each ward for the purposes of carrying out 82A reviews of Tree Preservation Order applications.

**COUNCIL COMMITTEE MEETING – 13 DECEMBER 2011**

**RECOMMENDATION:**

	<p><b>Councillor Bruce MacKenzie</b> <b>Councillor Shirley O'Brien</b></p>
	<p>That Item 8 be deferred to the Ordinary meeting of Council.</p>

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

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

Those against the Motion: Nil.

Cr Glenys Francis vacated the chair at 8.55pm and Cr Geoff Dingle chaired the meeting.

Cr Glenys Francis left the meeting at 8.55pm.

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

	<p><b>Councillor Sally Dover</b> <b>Councillor Shirley O'Brien</b></p>
	<p>That Council:</p> <ol style="list-style-type: none"> <li>1) Adopt the amended Tree Preservation Order (<b>Attachment 1 – under separate cover</b>);</li> <li>2) Adopt the amended Tree Management Procedures (<b>Attachment 2 – under separate cover</b>);</li> <li>3) Note the submissions received on the draft Tree Preservation Order and the draft Tree Management Procedures (<b>Attachment 3 – under separate cover</b>);</li> <li>4) Delegate, under section 377(1) of the LG Act, to create a 355b Committee of Council for each ward for the purposes of carrying out 82A reviews of Tree Preservation Order applications.</li> <li>5) Amend 1 (g) of the Tree Preservation Order and the associated procedures to read "providing economic benefit, health and safety to the residents".</li> </ol>

**AMENDMENT**

<p><b>452</b></p>	<p><b>Councillor Bruce MacKenzie</b> <b>Councillor Ken Jordan</b></p>
	<p>It was resolved that Council defer Item 8 to allow for a further 2 way conversation with Councillors.</p>

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

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

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

Those against the Motion: Nil.

**BACKGROUND**

The purpose of this report is to recommend Council adopt the amended Tree Preservation Order and the Tree Management Procedures, included as attachments 1 and 2 respectively. These documents have been amended from the exhibited



copies in line with the legal advice obtained from Harris Wheeler, and to give consideration to the submissions summarised in attachment 3. This report also puts forward a revised process for ward Councillors' reviews under section 82A of the Environmental Planning and Assessment Act (EP&A Act).

Council has a Tree Preservation Order (TPO) that is made under section 50 of the Port Stephens Local Environment Plan 2000. An application under the TPO is considered a Development Application and as such must be administered according to the Environmental Planning and Assessment Act.

Clause 50 of the Port Stephens Local Environment Plan 2000 (LEP 2000) has two subclauses that are relevant to this issue. Clause 50 (4) states that a person can not remove or prune a tree without consent from council while clause 50 (5) states that 50 (4) does not apply where it can be demonstrated to the satisfaction of the consent authority that the tree is dead, dying or dangerous.

The exhibited TPO attempted to deal with Council needing to be satisfied that a tree was dangerous in residential and rural residential areas by including a definition of a dangerous tree in the exemptions that related to the height of a tree and the trees distance from a building.

Legal advice has concluded that the draft exemption would breach sub-clause 50 (5) of the LEP 2000 on two counts. Firstly the LEP 2000 requires an exemption for any dangerous tree, and should not be defined by land zoning, and secondly as the term 'dangerous' is not defined in the LEP the word has its normal meaning which is not matched by the definition in the exhibited TPO.

Legal advice concludes that TPO is a subsidiary instrument which must be made in accordance with the parent instrument, i.e the LEP 2000. The TPO can not include a definition of 'dangerous' in conflict with the LEP.

The amendment was also not in line with relevant Australian Standards, industry best practice or tree assessment standards and methods.

Council should also note that the State Government has expressed concerns that the exhibited TPO may be in conflict with the Native Vegetation Act for rural residential areas and that this exemption may result in residents unintentionally breaching this Act.

Council received a number of submissions in relation to the draft documents which are summarised in attachment 3. The bulk of the submissions, 80%, were against the exhibited TPO citing concerns for the environment of Port Stephens, a desire to retain a system where the health of trees are assessed by a professional, a fear that the exhibited TPO will result in the spurious and selfish removal of trees, and a belief that the existing system was working.

Other concerns related to tree removal and pruning occurring in an unregulated manner that would put the public at risk, the increased impact from developments that would now clear fell building blocks and the transfer of legal risk to the

community who may unintentionally breach Threatened Species legislation. Other submissions, including one from the Environmental Defenders Office, questioned the legal legitimacy of the exhibited documents.

The remaining 20% of submissions supported the amendments mainly due to concerns about large trees on their blocks. It should be noted that an analysis of the Tree Preservation Register showed that the properties concerned by these large trees had either not applied to have them assessed under the TPO or had been given approval to remove trees.

It is acknowledged, and supported by legal advice, that amendments to the TPO to more easily allow for the removal of dangerous trees would streamline the process. As such, and in response to the submissions, a number of amendments to the draft exhibited TPO and Tree Management Procedures have been proposed.

These include:

- Extending the exemption relating to trees in close vicinity of a structure from 3 meters to 5 meters;
- Exempting the maintenance of hedges from requiring approval;
- Further clarifying that when a tree presents a real and imminent danger to persons or property then approval from council is not required to remove the tree; and
- Allowing for the removal of any tree which is dead, dying or dangerous, provided the landowner first submits to Council a notification on the approved form, that will constitute a statutory declaration, and receives from Council written acceptance of that declaration;

This last addition is based on legal advice that, as per sub-clause 50(5) of the LEP, Council must be satisfied that the tree is dead, dying or dangerous and that putting the onus of proof on the land holder is unsatisfactory.

The recommended changes to the TPO meet the Council resolution as it formalises the dead, dying or dangerous tree exemption and allows trees closer than 5m to a structure to be approved thereby dealing with the majority of falling branches.

These amendments will allow for more flexibility when dealing with residents' concerns but allow for an assessment of the environmental values to be considered. An application being submitted allows council to place conditions on the trees removal such as replanting, or a wildlife carer being present if the tree is being used as a nesting site.

In practice when a resident calls Council to ask about a dangerous tree they will be advised that if the tree presents an imminent risk from failure then they should remove the tree as per exemption XII in the draft TPO included as Attachment 1. This is usually the case when a tree has been damaged due to a storm or other event. Residents are advised to take photos as Council staff often receives multiple complaints from adjoining neighbours when trees are removed.

If a resident wants to remove a tree that is not covered by the exemptions then they will be advised to put in a TPO application. The council officer will take into consideration the social needs of the resident and if the resident is still not satisfied with the outcome they will be informed of review options including the 82A ward councillor review.

It should be noted that 68% of TPO applications are currently approved and of the remaining that are refused, 24% of applications do not request a reassessment. Of those that do request a reassessment 4% are approved by staff, 2% are refused by staff and do not request further assessment and 2% are refused by staff but request a review by Councillors and are approved.

A major review of vegetation management is required as part of the new standard instrument Local Environment Plan and it is likely that more changes will occur to the dead, dying and dangerous provisions as the new standard instrument LEP requires Council to be satisfied that the tree(s) are dead, dying or dangerous. This has the effect of Council not being able to accept a statutory declaration from residents and the removal of this option under the Standard Instrument LEP, which also requires the habitat of native fauna to be considered. The Standard Instrument Local Environment Plan seeks to resolve the confusion around the dual consent issue with both Council and the Catchment Management Authority having a role. Under the Standard Instrument Local Environment Plan it is likely that Council will be the determining authority for vegetation removal in land zoned residential, business, and industrial, with the Catchment Management Authority being responsible for rural land and both authorities having a role in environmentally zoned land.

Amendments to the exhibited Tree Management Procedures document mirror the changes to the TPO and, on legal advice, the statement regarding Council officers having a moral and ethical obligation to consider the effects rigidly applying the law has been removed. Legal advice has concluded that officers can only exercise their discretionary powers in accordance with the relevant legislation and policies and that if a council officer is not implementing policy appropriately that this is a staffing matter. Inclusion of such a statement in a policy document could lead to unnecessary exposure of Council to liability. This issue will be dealt with by staff training.

A review of the TPO procedures found that some practices were not in line with the relevant legislation and that the Tree Management Procedures needed to be updated.

In formatting the proposed changes to the review process several options were considered and legal advice was sought. It was advised that:

- 1) To ensure the process is legally valid an 82A review under the EP&A Act should be undertaken by staff who do not report to the original determining officer, or by the full Council;
- 2) In 1998 Council adopted that ward councillors undertake TPO reviews however if this approach is to continue enhanced formalisation in Councils delegations is required;

- 3) Having all councillors sign a form to undertake a review outside of a formal council meeting would not be valid.

It is understood that Councillors wish to retain a role in TPO reviews and as such further legal advice was sought to determine options for Councillors to retain this role. Three options are available:

- 1) A TPO application can be called to the full council for determination once it is lodged (as per other Development Applications).
- 2) If an application is refused by staff it can be called to the full council for determination under section 82A of the EP&A Act.
- 3) Council could exercise its powers of delegation under section 377(1) of the Local Government Act (LG Act) and delegate the right to carry out an 82A review to a 355b committee of Councillors. That committee could comprise of the Councillors representing the relevant ward. In effect there would be 3 committees created.

Reporting to the full council for initial TPO determinations and TPO reviews would be time consuming and, provided the appropriate legal framework and documented process can be put in place, it is concluded that ward councillors reviews will be a more efficient delivery model for the community.

Should Councillors want to proceed with the third option, as shown in attachment 4, then the following will need to occur:

- Amendment of the Tree Management Procedures, included as the second recommendation.
- A resolution of Council to exercise its powers of delegation under section 377(1) of the LG Act and create a 355b committee of Council for each ward, made up of ward Councillors, for the purposes of carrying out 82A reviews of Tree Preservation Order applications, included as the fourth recommendation.
- It should be noted that these 355b committees are made up of ward councillors and are not the same as the volunteer 355c committees which work in Council parks and reserves.
- The delegation to the ward councillors would have to form part of councils delegation register and be reviewed by each Council within 2 months of its first term, as required by section 380 of the LG Act.

## **FINANCIAL/RESOURCE IMPLICATIONS**

The amendment to the procedure will be implemented by existing staff. There will be a small additional amount of time required to record the minutes from the 355b committee and report these to council as an information paper.

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

The attached revised TPO has been amended in line with legal advice.

The current ward councillor review is not in line with legislation, this needs to be amended. Adopting the process as documented in the attached draft procedures will amend this situation.

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The Tree Management Procedure and the TPO aim to protect and preserve trees throughout the Council area in order to maximise the benefits they provide including sustaining the biodiversity of our ecosystems; limiting the effects of pollution; providing economic benefit; controlling sunlight, shade and winds; beautification of urban/commercial areas; and soil enrichment and protection.

There are also social and economic implications that need to be taken into account. Studies have shown that streets with trees have higher property values than streets without trees and trees make a positive contribution to the streetscape, and visual amenity of the urban landscape.

It is recognised that trees in urban areas can cause problems when they are not managed correctly. The TPO seeks to preserve trees that are safe by providing a service to the community of specialised arboriculture advice and by having a range of exemptions to deal with situations where the TPO should not apply or when a tree should be removed due to safety concerns.

## **CONSULTATION**

Relevant sections of Council who are affected by the TPO and Procedures have been consulted. This includes relevant staff from the Civil Assets section, Operations section and the Building Assessment Team. The draft procedure and the TPO have been on exhibition for more than 28 days and the submissions are summarised in attachment 3.

## **OPTIONS**

Council can:

- 1) Adopt the TPO and Procedures as attached, noting the amendments from the exhibited versions to recognise the legal advice and the submissions;
- 2) Adopt the exhibited TPO and Procedures rejecting the amendments resulting from the submissions and noting that this is against legal advice;
- 3) Make no changes to the TPO and Procedures leaving the existing system in place until the comprehensive LEP review takes place thereby removing the need for multiple changes and possible confusion.

**ATTACHMENTS**

- 1) Proposed Tree Preservation Order;
- 2) Proposed Tree Management Procedure;
- 3) Summary of Submissions – under separate cover;
- 4) Proposed new TPO process.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1  
PROPOSED TREE PRESERVATION ORDER  
PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 2  
PROPOSED TREE MANAGEMENT PROCEDURE  
PROVIDED UNDER SEPARATE COVER**



**ATTACHMENT 3  
SUMMARY OF SUBMISSIONS  
PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 4  
PROPOSED NEW TPO PROCESS**

**PROVIDED UNDER SEPARATE COVER**

ITEM NO. 9

FILE NO: PSC2007-2685

**COUNCIL OWNED LAND AT SALAMANDER BAY/SOLDIERS POINT/TAYLORS BEACH**

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

GROUP: **SUSTAINABLE PLANNING**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Subject to item 3 below to forward the exhibited Planning Proposal at **Attachment 1** incorporating amendments to the NSW Minister for Planning and Infrastructure under Section 59 of the Environmental Planning and Assessment Act 1979 requesting that the proposal be made to:
    - a. Reclassify Lot 1 in DP 263269 (314 Soldiers Point Road) from "Community" to "Operational" land and maintain the current 4(a) Industrial zoning;
    - b. Rezone the southern part of Lot 600 in DP 27382 (308 Soldiers Point Road) from 6(a) General Recreation to 4(a) Industrial and reclassify that part from "Community" to "Operational" land;
    - c. Rezone part Lot 51 in DP 803471 (1 Diemars Road) from 6(a) General Recreation to 7(a) Environment Protection;
    - d. Rezone Lot 3 in DP 791551 (160B Soldiers Point Road) from 6(a) General Recreation to 7(a) Environment Protection;
    - e. Rezone Lot 164 in DP 27047 (160A Soldiers Point Road) from 6(a) General Recreation to 7(a) Environment Protection; and
    - f. Rezone the northern part of Lot 2 in DP 791551 (8 Fleet Street) from 6(a) General Recreation to 7(a) Environment Protection and reclassify that part from "Operational" to "Community" land;
  - 2) Exclude from the Planning Proposal two privately-owned lots being:
    - a. Lot 54 in DP 260211 (25 Diemars Road); and
    - b. Lot 56 in DP 618505 (27 Diemars Road);
  - 3) Note that a management plan will be prepared to improve vegetation management and wildlife corridors in the vicinity of Lot 600 DP 27382 (308 Soldiers Point Road);
  - 4) Waive the reclassification and rezoning fees as there are no significant commercial values added to the properties as a consequence of the reclassification and rezoning processes.
-

**COUNCIL COMMITTEE MEETING – 13 DECEMBER 2011**

**RECOMMENDATION:**

	<p><b>Councillor John Nell</b> <b>Councillor Frank Ward</b></p>
	<p>That the recommendation be adopted.</p>

**AMENDMENT**

	<p><b>Councillor Sally Dover</b> <b>Councillor John Nell</b></p>
	<p>That Council:</p> <ol style="list-style-type: none"> <li>1) Subject to item 3 below to forward the exhibited Planning Proposal at <b>Attachment 1</b> incorporating amendments to the NSW Minister for Planning and Infrastructure under Section 59 of the Environmental Planning and Assessment Act 1979 requesting that the proposal be made to:             <ol style="list-style-type: none"> <li>a. Reclassify Lot 1 in DP 263269 (314 Soldiers Point Road) from "Community" to "Operational" land and maintain the current 4(a) industrial zoning;</li> <li>b. Rezone part Lot 51 in DP 803471 (1 Diemars Road) from 6(a) General Recreation to 7(a) Environment Protection;</li> <li>c. Rezone Lot 3 in DP 791551 (160B Soldiers Point Road) from 6(a) General Recreation to 7(a) Environment Protection;</li> <li>d. Rezone Lot 164 in DP 27047 (160A Soldiers Point Road) from 6(a) General Recreation to 7(a) Environment Protection; and</li> <li>e. Rezone the northern part of Lot 2 in DP 791551 (8 Fleet Street) from 6(a) General Recreation to 7(a) Environment Protection and reclassify that part from "Operational" to "Community" land;</li> </ol> </li> <li>2) Exclude from the Planning Proposal two privately-owned lots being:             <ol style="list-style-type: none"> <li>a. Lot 54 in DP 260211 (25 Diemars Road);</li> <li>b. Lot 56 in DP 618505 (27 Diemars Road);</li> <li>c. Rezone the southern part of Lot 600 in DP 27382 (308 Soldiers Point Road) from 6(a) General Recreation to 4(a) Industrial and reclassify that part from "Community" to "Operational" land;</li> </ol> </li> <li>3) Note that a management plan will be prepared to improve vegetation management and wildlife corridors in the vicinity of Lot 600 DP 27382 (308 Soldiers Point Road);</li> <li>4) Waive the reclassification and rezoning fees as there are no significant commercial values added to the properties as a consequence of the reclassification and rezoning process.</li> </ol>

## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

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

Those for the Motion: Crs Peter Kafer, Bob Westbury, Caroline De Lyall, John Nell, Sally Dover, Glenys Francis and Geoff Dingle.

Those against the Motion: Crs Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien and Frank Ward.

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

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

Those for the Motion: Crs Peter Kafer, Bob Westbury, Caroline De Lyall, John Nell, Sally Dover, Glenys Francis and Geoff Dingle.

Those against the Motion: Crs Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien and Frank Ward.

### FORESHADOWED AMENDMENT

	<b>Councillor Frank Ward</b> <b>Councillor</b>
	That Council defer Item 9 to allow discussion with the adjoining landowners.

	<b>Councillor Glenys Francis</b> <b>Councillor John Nell</b>
	That the Council Committee meeting continue until the end of Item 9 and that all other matters be deferred to the Ordinary Council meeting on 20 December 2011.

There being no further business the meeting closed at 9.16pm following Item 9.

### ORDINARY COUNCIL MEETING – 20 DECEMBER 2011

<b>453</b>	<b>Councillor John Nell</b> <b>Councillor Sally Dover</b>
	It was resolved that Council:  1) Subject to item 3 below to forward the exhibited Planning Proposal at <b>Attachment 1</b> incorporating amendments to the NSW Minister for Planning and Infrastructure under Section 59 of the

	<p>Environmental Planning and Assessment Act 1979 requesting that the proposal be made to:</p> <ol style="list-style-type: none"> <li>a. Reclassify Lot 1 in DP 263269 (314 Soldiers Point Road) from "Community" to "Operational" land and maintain the current 4(a) industrial zoning;</li> <li>b. Rezone part Lot 51 in DP 803471 (1 Diemars Road) from 6(a) General Recreation to 7(a) Environment Protection;</li> <li>c. Rezone Lot 3 in DP 791551 (160B Soldiers Point Road) from 6(a) General Recreation to 7(a) Environment Protection;</li> <li>d. Rezone Lot 164 in DP 27047 (160A Soldiers Point Road) from 6(a) General Recreation to 7(a) Environment Protection; and</li> <li>e. Rezone the northern part of Lot 2 in DP 791551 (8 Fleet Street) from 6(a) General Recreation to 7(a) Environment Protection and reclassify that part from "Operational" to "Community" land;</li> </ol> <ol style="list-style-type: none"> <li>2) Exclude from the Planning Proposal two privately-owned lots being:             <ol style="list-style-type: none"> <li>a. Lot 54 in DP 260211 (25 Diemars Road);</li> <li>b. Lot 56 in DP 618505 (27 Diemars Road);</li> <li>c. Rezone the southern part of Lot 600 in DP 27382 (308 Soldiers Point Road) from 6(a) General Recreation to 4(a) Industrial and reclassify that part from "Community" to "Operational" land;</li> </ol> </li> <li>3) Note that a management plan will be prepared to improve vegetation management and wildlife corridors in the vicinity of Lot 600 DP 27382 (308 Soldiers Point Road);</li> <li>4) Waive the reclassification and rezoning fees as there are no significant commercial values added to the properties as a consequence of the reclassification and rezoning process.</li> </ol>
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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, Bob Westbury, Caroline De Lyall, Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Sally Dover and Glenys Francis.

Those against the Motion: Nil.

**BACKGROUND**

The purpose of this report is to advise Council on the public exhibition of, and public hearing into, a Planning Proposal to rezone and reclassify various parcels of Council-owned land at Soldiers Point. The Manager of Environmental & Development Planning has also been requested to waive its Statutory Fee for rezoning.

A copy of the Planning Proposal is at Attachment 1.

A table summarising the Planning Proposal including location maps are included at Attachment 2.

In accordance with the requirements of the Environmental Planning and Assessment Act 1979 an independently chaired public hearing was held on 27th July 2011 in respect to reclassification of land and a relevant report is at Attachment 3.

At its meeting on 25th November 2008 Council resolved to investigate the rezoning and reclassification of various parcels of land at Soldiers Point for a range of purposes. The Planning Proposal followed an independent review into Council-owned land in the area carried out by consultants Strategy Hunter (refer to Strategic Overview – Council Owned Lands at Salamander/Soldiers Point, Strategy Hunter, January 2008).

The Planning Proposal was referred to the former NSW Department of Planning for a Gateway determination (issued on 3rd August 2009) which resulted in all sites proceeding to exhibition with the exception of Diemars Quarry.

The Planning Proposal has been updated following consideration of the issues raised during the consultation process, in particular by the removal of two privately owned parcels of land on Diemars Road that were associated with the proposed rezoning of Diemars Quarry and provision of public access to the waterfront.

### **FINANCIAL/RESOURCE IMPLICATIONS**

It is recommended that Council waive the reclassification and rezoning fees as there is no significant commercial values added to the properties as a consequence of the reclassification and rezoning processes.

The Commercial Property Section has incurred costs of \$20,000 to date for the preparation of the Planning Proposals.

The Strategic Planning Section has incurred costs associated with appointing a consultant to independently chair and report on a public hearing (\$3,600) and managing the rezoning process.

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

There are no legal, policy and risk implications if Council resolves to proceed with the Planning Proposal.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

If the Planning Proposal proceeds as recommended Council will have the ability to lease or sell the following land:

- Site 3(a) Lot 1 in DP 263269 (314 Soldiers Point Road). This Site is zoned 4(a) Industrial and is recommended to be reclassified from "Community" to "Operational" land; and
- Part Site 3(b) Part Lot 600 in DP 27382 (308 Soldiers Point Road). The southern part of this Site, below George Road, is proposed to be rezoned from 6(a)

General Recreation to 4(a) Industrial and reclassified from "Community" to "Operational" land.

The other sites in the Planning Proposal do not propose a change in zoning or classification that will provide a financial benefit to Council. That is, that are proposed for rezoning from 6(a) General Recreation to 7(a) Environment Protection and/or reclassification from "Operational" to "Community" land.

The Planning Proposal has positive environmental implications by rezoning Site 4, Site 5(a), Site 5(b) and part of Site 5(c) from 6(a) General Recreation to 7(a) Environment Protection. These Sites form part of the Stoney Ridge Reserve network of bushland.

There is potential environmental impact if Site 3(b) is rezoned from 6(a) General Recreation to 4(a) Industrial and developed as proposed. This Site has a relatively intact section of natural bush that is known to contain at least 1 threatened species *Callistemon linearifolious*. The site is also being used by Koalas as they move from Wanda Wetlands through to the area around Stoney Ridge. The corridor between Wanda Wetlands and Stoney Ridge is already fragmented and any further loss of established vegetation will impact on the corridor unless the loss of the trees can be mitigated by other actions such as:

- Revegetation of the adjacent narrow east-west reserve Lot 13 DP 1018723 (27 Homestead Street) and the northern half of Site 3(b);
- Rezoning the above land to 7(a) Environmental Protection;
- Rezoning of another nearby reserve further to the west (Lot 599 DP 658257) to 7(a) Environmental Protection to protect the end of the corridor
- Completion of a management plan to ensure the ongoing recognition and care of the above land as a wildlife corridor;
- Fencing off the Rural Fire Service facility to halt encroachment on the reserve; and
- Traffic calming at Soldiers Point Road and Homestead Street at both ends of the narrow east-west reserve.

The preparation of a management plan will be initiated to improve vegetation management and wildlife corridors in the vicinity of Site 3(b) to compensate for the likely vegetation loss and reduce any impact.

### **Traffic**

Concern was raised during the public consultation process about potential industrial development on sites 3(a) and 3(b) and the potential negative impact on traffic safety. Council's Traffic Engineer advises there is unlikely to be any safety implications with regards to sight distance restrictions at the intersection. The property setback is adequate and sight distance will not be obstructed by development on the land. The only implication may be a requirement to restrict parking on Soldiers Point Road if necessary in future to ensure proper function of the intersections of George Road with Soldiers Point Road.



## **CONSULTATION**

The Planning Proposal was placed on public exhibition from 12<sup>th</sup> May to 9<sup>th</sup> June 2011. Three submissions were received and are summarised and responded to in the table at **Attachment 4**.

### **Port Stephens Koala Plan of Management Committee**

The Port Stephens Comprehensive Koala Plan of Management Steering Committee (CKPoM Committee) considered the planning proposal at its meeting on 10<sup>th</sup> August 2011. The Committee confirmed their knowledge that Koalas definitely use the trees on Site 3(b) and use the street trees around this area. The adjacent narrow east/west corridor (Lot 13 DP 1018723, 27 Homestead Street) was also confirmed as being known to support Koala movement. The Committee recommends:

- Enhancement of the adjacent east-west reserve Lot 13 DP 1018723 with more Koala feed trees;
- Fencing to stop Rural Fire Service encroachment from the north; and
- Enhancement of the remaining northern vegetation patch on Site 3(b) in accordance with a management plan.

The recommendations of the CKPoM Committee were referred to Facilities and Services Section whose comments are:

- Any tree planting strategy needs to be considered to ensure functionality of the open drain in the adjacent east/west narrow corridor is not impacted by vegetation;
- The planting of more trees would have to cater for enough room to allow for future mechanical cleaning of any open drain;
- A great deal of consideration is required as to how trees would be used (to ensure that a continuous run of fire is not created); and
- Fencing to Stop Rural Fire Service is not opposed, if the location of any such fence does not hinder the operation of the existing RFS facility on the Site (the disturbed area to the south of the RFS car park will still need to be used for RFS purposes).

### **NSW Office of Environment and Heritage**

The NSW Office of Environment and Heritage (OEH) provided the following comment on the Planning Proposal:

- OEH supports the rezoning of sites 4, 5(a) and 5(b) and part of 5(c) to 7(a) Environmental Protection in recognition of the significant biodiversity and corridor values present in these areas. OEH encourages Council to manage these lands for conservation in perpetuity to protect the high biodiversity and corridor connectivity values present;
- The rezoning of sites 7(b) and 7(c) to Open Space or Environmental Protection is supported (Note: it is a recommendation of this Report to exclude these sites from the updated Planning Proposal).

- The change in classification of Site 3(a) to "Operational" land is supported given the small size of the lot and minimal biodiversity values present.
- Site 3(b) is located in an area known to be used by koalas crossing east-west across the peninsula, including across Soldiers Point Road. OEH does not object to the southern section of the site being zoned to 4(a) Industrial and the northern section remaining zoned for 6(a) General Recreation. However, given the importance of this area as a koala corridor, OEH encourages Council to implement traffic calming and speed reduction on Soldiers Point Road to improve koala road crossing success. In addition, Council is encouraged to revegetate the northern section of the site and the adjoining drainage line to the west with suitable local native species to enhance the corridor connectivity function of this area for koalas and other local fauna species.

### **NSW Rural Fire Service**

The NSW Rural Fire Service (RFS) provide the following comment on the Planning Proposal:

- Some of the subject sites are identified as bush fire prone. Future residential or Special Fire Protection Purpose developments are likely to be subject to the requirements of section 100B of the Rural Fires Act 1997 and section 79BA of the Environmental Planning and Assessment Act 1979; and
- Future developments will have to provide compliant asset protection zones, access arrangements, water supply and utilities, building construction and design and emergency management arrangements in accordance with Planning for Bush Fire Protection 2006. Setbacks will depend on proximity to vegetation, vegetation type and slope.

### **Public hearing**

In accordance with the NSW Department of Planning Practice Note Classification and reclassification of public land through a local environmental plan Mr Jim Davies of Insite Planning chaired an independent public hearing into the Planning Proposal on 27th July 2011 at Salamander Library. The issues raised at the Hearing have been considered in updating the Planning Proposal and forming the recommendations of this Report.

A copy report into the public hearing including minutes is at Attachment 3.

### **OPTIONS**

- 1) Adopt the recommendations of this report and:
  - proceed with each site as recommended in the Planning Proposal;
  - exclude from the Planning Proposal two privately-owned lots being Lot 54 in DP 260211 (25 Diemars Road) and Lot 56 in DP 618505 (27 Diemars Road); and
  - Prepare a management plan to improve vegetation management and wildlife corridors in the vicinity of Lot 600 DP 27382 (308 Soldiers Point Road);

## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

- 2) Amend the recommendations of this report and:
  - proceed with only some sites as recommended in the Planning Proposal;
  - Include in the Planning Proposal two privately-owned lots being Lot 54 in DP 260211 (25 Diemars Road) and Lot 56 in DP 618505 (27 Diemars Road); and
  - Not require a management plan be prepared to improve vegetation management and wildlife corridors in the vicinity of Lot 600 DP 27382 (308 Soldiers Point Road).;
- 3) Reject the recommendations of this report and not proceed with the Planning Proposal.

### ATTACHMENTS

- 1) Updated Planning Proposal - under separate cover;
- 2) Public Hearing Report – under separate cover;
- 3) NSW Department of Planning and Infrastructure Gateway Determination 3<sup>rd</sup> August 2009 – under separate cover;
- 4) Submission Summary Table – under separate cover.

### COUNCILLORS ROOM

- 1) Folder including Attachments and Submissions.

### TABLED DOCUMENTS

Nil.

**ATTACHMENT 1  
UPDATED PLANNING PROPOSAL  
PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 2  
PUBLIC HEARING REPORT  
PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 3  
NSW DEPARTMENT OF PLANNING AND INFRASTRUCTURE GATEWAY DETERMINATION  
3<sup>RD</sup> AUGUST 2009**

**PROVIDED UNDER SEPARATE COVER**

**ATTACHMENT 4  
SUBMISSION SUMMARY TABLE**

**PROVIDED UNDER SEPARATE COVER**

ITEM NO. 10

FILE NO: PSC2009-02442

**DRAFT DEVELOPMENT CONTROL PLAN CHAPTER C10 DEFENCE AND AIRPORT RELATED EMPLOYMENT ZONE WILLIAMTOWN**

REPORT OF: BRUCE PETERSEN - MANAGER ENVIRONMENTAL & DEVELOPMENT PLANNING

GROUP: SUSTAINABLE PLANNING

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Resolve to publicly exhibit the *Draft Port Stephens Development Control Plan 2007 Chapter C11 Williamtown Defence and Airport Related Employment Zone* at **Attachment 1** for 28 days for the purposes of section 18 of the *Environmental Planning and Assessment Regulation 2000*.

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**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>454</b>	<b>Councillor Ken Jordan</b> <b>Councillor Caroline De Lyall</b>
	It was resolved that the recommendation be adopted.

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

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

Those against the Motion: Nil.

**BACKGROUND**

The purpose of this Report is to recommend Council place on public exhibition draft *Port Stephens Development Control Plan 2007 Chapter C11 Williamtown Defence and Airport Related Employment Zone* (Draft DCP) at **Attachment 1**. The purpose of the draft DCP is to provide detailed guidance for future development and buildings on land zoned for defence and airport related employment located next to RAAF Base Williamtown/Newcastle Airport.

At its meeting on 26<sup>th</sup> February 2008 Council resolved to initiate the rezoning process to create a specialised defence and airport related employment zone adjacent to RAAF Base Williamtown/Newcastle Airport. At the same meeting Council also resolved to prepare a draft development control plan for the site. In February 2009 the NSW Minister for Planning rezoned the land. Council subsequently assessed and approved a development application for the subdivision of the land (DA 2009-0324-



001) that addresses a range of matters for the site including: road layout, site access and flooding and drainage provisions. Many of these matters required resolution to inform the preparation of the Draft DCP and it is now timely to proceed to public exhibition.

The draft DCP will apply to land zoned SP1 Defence and Airport Related Employment Development. Within this zone the Draft DCP will encourage different uses within different 'precincts':

- Aerospace commercial precinct – at the entrance to the estate;
- Aerospace commercial support precinct – next to the commercial precinct;
- Aerospace precinct – large lots with runway access for aircraft maintenance;
- Aerospace support precinct – next to the aerospace precinct.

The location of each precinct will take advantage of site characteristics. For example the aerospace precinct is designed to take advantage of direct access to the airfield for servicing of aircraft; alternatively the aerospace commercial precinct is located at the road entry to Newcastle Airport and will experience high traffic exposure. A diagram showing the location of each precinct is in the Draft DCP.

The Draft DCP will provide development controls for the following matters:

- Building setbacks - Building setbacks are reduced in the commercial precinct to encourage an active and vibrant commercial area. Building setbacks are increased in other precincts to encourage landscaping where there is likely to be less pedestrian activity.
- Building design – A high standard of architectural building design is being encouraged in recognition of the site's role as the Gateway to the Hunter Region and as a high technology aerospace park.
- Building height – Taller buildings up to 20m in height are encouraged in the commercial precinct to reinforce its role as a significant commercial centre. Other buildings are to be no taller than 15m in height and aircraft hangars in the aerospace precinct will be large enough to accommodate a range of aircraft.
- Landscaping – landscaping will be required to enhance the setting of buildings and create an attractive and consistently themed landscape and contribute to water quality and stormwater management.
- Drainage and stormwater management – drainage is a very significant issue in the Williamtown area with limited capacity in the existing drainage system. The development application for subdivision of the site examined in great detail the drainage limitations for development of the site. The Draft DCP controls will provide further management of drainage and stormwater with a focus on the development of each allotment within the subdivision.
- Traffic, parking and access – controls to ensure that car parking and vehicle storage areas are planned so they do not detract from the appearance of the overall development and each site.
- RAAF Base and airport operational requirements – controls to ensure that development will not impact on the operational needs of military and civilian aircraft and the security of the Williamtown RAAF Base.

- Advertising and signage – controls to ensure that advertising and signage is coordinated and makes a positive contribution to the overall development. Each building will be required to submit a signage strategy for assessment.

### **FINANCIAL/RESOURCE IMPLICATIONS**

Internal staff time has been used to prepare the Draft DCP.

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

The Draft DCP has been prepared to support the development of the land by providing building design guidelines to specifically address DAREZ site issues. If it is adopted by Council post-exhibition it will be inserted into the Port Stephens Development Control Plan 2007 as a site-specific chapter and will be a matter for consideration when Council is assessing development applications.

Other general chapters of the Port Stephens Development Control Plan 2007 may remain relevant in the assessment of development applications; however, in the event of any inconsistency the provisions of the site-specific draft DCP will prevail.

The DCP will only apply to land zoned SP1 Defence and Airport Related Employment Development under Port Stephens Local Environmental Plan 2000. The zone regulates which land uses may occur on the site and the Draft DCP focuses on building design guidelines.

### **SUSTAINABILITY IMPLICATIONS**

Includes social, environmental and economic implications

The Draft DCP primarily provides controls for buildings that will be located on the site following the subdivision of the land.

Development of the DAREZ area will have significant economic benefits for the Hunter Region and Port Stephens Local Government Area as there is the potential to create approximately 3800 jobs (Economic Analysis, Buchan, 2009).

The environmental impacts of the development have primarily been considered at the rezoning stage and the assessment of the development application for subdivision. Regardless of this, environmental impacts will also need to be addressed in development applications for buildings on each subsequent allotment.

### **CONSULTATION**

The Draft DCP Chapter will be placed on public exhibition for a period of 28 days and reported back to Council for final consideration. The primary property owner has provided comment as to their expectations for controls to be included in the Draft DCP.

**OPTIONS**

- 1) Adopt the recommendation of this report and exhibit the Draft DCP. This is the recommended option;
- 2) Amend the recommendation of this Report and exhibit the Draft DCP with changes;
- 3) Reject the recommendation of this Report and not exhibit a Draft DCP for the site.

**ATTACHMENTS**

- 1) Draft Port Stephens Development Control Plan 2007 Chapter C11 Williamtown Defence and Airport Related Employment Zone.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1  
DRAFT PORT STEPHENS DEVELOPMENT CONTROL PLAN 2007 CHAPTER C11  
WILLIAMTOWN DEFENCE AND AIRPORT RELATED EMPLOYMENT ZONE**

Port Stephens DCP 2007

DRAFT Williamtown Defence and Airport Related Employment Zone

C11

**Chapter C11 – Williamtown Defence and Airport Related Employment Zone**

**1. Where this part applies**

This part applies to land within Figure 1 DAREZ Location Plan.



**Figure 1 DAREZ Location Plan**

The DAREZ site is comprised of Commercial, Commercial Support, Aerospace and Aerospace Support Precincts as shown in Figure 2 DAREZ Precinct Plan. There are specific Development Requirements within each Precinct.

**2. Relationship to other parts of the Port Stephens Development Control Plan 2007**

The objectives and controls of this Chapter take precedence in the event of any inconsistency with other provisions of the Port Stephens Development Control Plan 2007.



Figure 2 DAREZ Precinct Plan

### 3. Objectives

#### Building setbacks

- 3.1 To encourage an active and vibrant streetscape – principally in the Commercial Precinct.

#### Building design

- 3.2 To encourage the design of buildings to an exceptionally high architectural standard in recognition of the sites role as a gateway to the Hunter Region and as a high-tech aerospace park.
- 3.3 To encourage active and interesting street fronts by including architectural design elements that promote high-tech and aerospace themes.

#### Building height

- 3.4 To encourage taller buildings in the Commercial Precinct to reinforce its role as the commercial centre of the site.

#### Landscaping

- 3.5 To encourage high quality landscaping to enhance the setting of buildings, create an attractive and consistently themed landscape and contribute to water quality and stormwater management in accordance with the Williamtown Aerospace Park Landscape Master Plan (Terras Landscape Architects, August 2009).

#### Drainage

- 3.6 To ensure development does not detrimentally impact on downstream or upstream receivers.
- 3.7 To ensure post development runoff is equal to or less than pre-development runoff for the broader DAREZ site.
- 3.8 To ensure development of each allotment incorporates Water Sensitive Urban Design measures.
- 3.9 To ensure drainage and stormwater systems for each site consider water quality and quantity control measures in accordance with the current version of the Williamtown Aerospace Park Flood Assessment and Stormwater Strategy (Parsons Brinkerhoff, June 2010 and as amended).

#### Traffic, parking and access

- 3.10 To ensure car parking and vehicle storage areas are planned and landscaped so that they do not visually dominate buildings or detract from the streetscape.
- 3.11 To ensure subdivision will provide an alternative road connection to alleviate the impact onto Nelson Bay Road.

**RAAF Base and airport operational requirements**

- 3.12 To ensure that the operational needs of military and civilian aircraft and the Williamtown RAAF Base are the primary consideration in the development of land within the DAREZ.

**Advertising and signage**

- 3.13 To ensure that the location, size and configuration of advertising and signage make a positive contribution to the design and appearance of buildings and the streetscape.
- 3.14 To ensure signage and advertising (including billboards) exhibit a consistent and high level of design quality.
- 3.15 To ensure signage and advertising is integrated with building design and site layout.
- 3.16 To ensure the amount of signage and advertising is minimised so that the streetscape and buildings are free of visual and physical clutter.

**4. Development Requirements**

Development is to satisfy the requirements set-out in the following table.

**Table 1 – Development Requirements**

Control		Requirements
<b>Building Setbacks</b>		
4.1	Commercial Precinct	<ul style="list-style-type: none"> <li>0m from the front property boundary.</li> <li>5m from the property boundary along Nelson Bay Road and Williamtown Drive.</li> </ul>
4.2	Aerospace, Support, and Commercial Support Precincts	<ul style="list-style-type: none"> <li>5m from the front property boundary.</li> <li>3m to the front property boundary.</li> <li>2m to the second property boundary on corner allotments.</li> </ul>
4.3	Articulation	<ul style="list-style-type: none"> <li>Parts of a building may have variation in setback to provide design articulation.</li> </ul>
<b>Building Design</b>		
4.4	Materials, details and finishes	<ul style="list-style-type: none"> <li>Building design elements such as modulated and articulated façade treatments, texture colour treatments and materials are to be used to create architectural interest and visual relief to the built form from public spaces.</li> <li>Buildings are to be visually and physically emphasised through the use of awnings, porticos, recessed doorways, colour and the like.</li> </ul>

Control		Requirements
		<ul style="list-style-type: none"> <li>Non-reflective materials are to be used to avoid hazardous glare to aircraft. Excessive areas of glass are to be avoided, or be suitably screened and have low reflectivity.</li> </ul>
4.5	Frontages	<ul style="list-style-type: none"> <li>Buildings are to address the street (where buildings have double frontages they should be designed to address both streets).</li> </ul>
4.6	Entrances	<ul style="list-style-type: none"> <li>Buildings in the Commercial and Commercial Support precincts are to contribute towards a vibrant streetscape through the provision of entry features and/or commercial displays.</li> </ul>
4.7	Equipment and Storage	<ul style="list-style-type: none"> <li>Plant, equipment, storage areas and communication structures and devices are to be suitably screened from public places by landscaping or architectural design elements.</li> </ul>
<b>Building Height</b>		
4.8	Commercial Precinct	<ul style="list-style-type: none"> <li>20m (maximum building height above finished ground level).</li> <li>Minor variation to building height (up to 10%) will be considered on merit.</li> </ul>
4.9	Aerospace, Support and Commercial Support Precincts	<ul style="list-style-type: none"> <li>15m (maximum building height above finished ground level).</li> <li>Minor variation to building height (up to 10%) will be considered on merit.</li> </ul>
4.10	Aircraft Hangars	<ul style="list-style-type: none"> <li>The height of aircraft hangars will be considered on merit to accommodate aircraft servicing requirements.</li> </ul>
4.11	General	<ul style="list-style-type: none"> <li>The built form, including parapets, lift tow, machinery plant rooms and storage space, must be contained within the permissible height. Chimney stacks, vent pipes, communication devices and the like may only exceed the permissible height if they are not readily visible from the public domain and do not impede the operation of the airport.</li> </ul>



Control		Requirements
Landscaping		
4.12	General	<ul style="list-style-type: none"> <li>Landscaping must be consistently themed and contribute to water quality and stormwater management (a landscape plan is to be prepared by a suitably qualified person demonstrating consistency with the Williamtown Aerospace Park Landscape Master Plan).</li> <li>Landscaping should cover a minimum of 10% of each allotment or provide a merit based assessment for allotments in the Aerospace Precinct.</li> </ul>
Drainage and Stormwater Management		
4.13	Water Quality	<ul style="list-style-type: none"> <li>On-site water quality treatment structures will be required to remove sediments, nutrients and pollutants from the stormwater leaving the site to a standard that satisfies the objectives specified in Australian Runoff Quality (ARQ, Engineers Australia, 2006) as follows:                             <ul style="list-style-type: none"> <li>Sustainable Solids: 80% retention of the average annual load</li> <li>Total Phosphorous: 45% retention of the average annual load</li> <li>Total Nitrogen: 45% retention of the average annual load</li> <li>Litter: Retention of litter greater than 50mm for flows up to the 3 month ARI peak flow</li> <li>Coarse sediment: Retention of sediment coarser than 0.125mm for flows up to the 3 month ARI peak flow</li> <li>Oil and grease: No visible oil flows up to 3 month ARI peak flow</li> </ul> </li> <li>Runoff from all hard stand areas (including car parks and driveways) must be directed into an appropriately designed water quality treatment device prior to entering any on-site detention and/or infiltration system or being discharged to the public drainage system (via street or easement).</li> </ul>

Control		Requirements
		<ul style="list-style-type: none"> <li>Runoff from car parking areas (which may contain other contaminants such as hydrocarbons and heavy metals) must be pre-treated by use of either mechanical proprietary devices such as hydrocarbon pillows, separators, enhanced grass pollutant traps, or natural devices such as bio-filtration trenches and swales. Any on-site bio-filtration trenches for runoff from car parking areas should be lined. Bio-filtration trenches provided for roof runoff (only) may be unlined.</li> <li>On-site water quality treatment devices shall be installed and made functional prior to the construction of any hardstand areas.</li> </ul>
4.14	Water Tanks	<ul style="list-style-type: none"> <li>Development of each allotment is to include water tanks to harvest water from roof areas for the purpose of offsetting potable water supply.</li> </ul>
4.15	On-Site Detention	<ul style="list-style-type: none"> <li>Allotments that do not drain directly to the subdivision drainage system (those allotments that drain directly to Williamtown Drive or Nelson Bay Road) must provide adequate on-site detention of water prior to discharge to the subdivision drainage system (refer to Appendix G – Table of Permissible Site Discharges (on-site Detention) of the Williamtown Aerospace Park Flood Assessment and Stormwater Strategy, Parsons Brinkerhoff, June 2010 and as amended).</li> </ul>
4.16	Flooding	<ul style="list-style-type: none"> <li>All buildings are to have a minimum floor level equal to or higher than the Flood Planning Level for the site (the Flood Planning Level can be obtained from Council).</li> <li>All car parking areas and driveways are to be located at a level greater than RL 2.5m AHD.</li> </ul>

Control		Requirements
Traffic, Parking and Access		
4.17	Parking Commercial Precinct	<ul style="list-style-type: none"> <li>Parking should be located at the rear, side or within buildings except for allotments 101, 102 and 103 (identified in Figure 2 DAREZ Precinct Plan).</li> </ul>
4.18	Aerospace, Support and Commercial Support Precincts	<ul style="list-style-type: none"> <li>Parking should be located behind a 2m landscaped area.</li> </ul>
4.19	Restricted Driveway Access	<ul style="list-style-type: none"> <li>No new direct driveway access is permitted from Nelson Bay Road and only left-in and left-out for allotments along Williamtown Drive.</li> </ul>
4.20	Road Connectivity	<ul style="list-style-type: none"> <li>A road shall be constructed to connect with Cabbage Tree Road as indicated in Figure 2 DAREZ Precinct Plan prior to release of any subdivision certificate for Stage 5. Stage 5 means any subdivision of the land substantially the same as that identified on the plan approved with the Williamtown Aerospace Park Development Consent (DA 16-2009-324); or Any subdivision which would result in parts of the land having an area equal to or exceeding the areas of Stage 1A, 1B, 1C, 2, 3, 4 and 5 being subdivided.</li> </ul>
RAAF Base and Airport Operational Requirements		
4.21	Consultation with Airport Operator	<ul style="list-style-type: none"> <li>Development that has the potential to impact upon the operation of the RAAF Base will be notified to the Department of Defence for comment.</li> <li>All buildings and structures are not to exceed the Obstruction Clearance Zones for RAAF Base Williamtown (this requires referral to the Department of Defence, until Defence advises Council otherwise).</li> </ul>

Control		Requirements
4.22	General	<ul style="list-style-type: none"> <li>• Development involving electromagnetic radiation or radio frequency emitting devices which may affect the operation of airfield navigation aids or communications or radars – regardless of structure height – must not interfere with Department of Defence operations.</li> <li>• Development must consider existing navigational markers located within Defence land and must not interfere with their operation.</li> <li>• External lighting is not to cause confusion, distraction or glare to pilots in the air or on the ground or affect the visibility of staff in the air traffic control tower.</li> <li>• No lighting is to be directed upwards.</li> </ul>
<b>Signage and Advertising</b>		
4.23	General	<ul style="list-style-type: none"> <li>• A signage and advertising strategy is to be submitted with applications for each building/site that:                             <ul style="list-style-type: none"> <li>◦ demonstrates consistency with the principles of this DCP;</li> <li>◦ identifies the location, type, size, design, structure design, illumination, content of signage and advertising structures;</li> <li>◦ demonstrates integration of signage and advertising structure with building design and site layout.</li> </ul> </li> <li>• The signage and advertising strategy will form part of any development consent and will be used to guide future development applications on a site.</li> </ul>

ITEM NO. 11

FILE NO: PSC2005-4161

**ESTABLISHMENT OF ALCOHOL-FREE ZONE AT LAKESIDE, RAYMOND TERRACE**

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

**GROUP: SUSTAINABLE PLANNING**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Establishes an Alcohol-Free Zone at Lakeside, Raymond Terrace for four years with the expiry date being 31 August 2015 in accordance with the boundary specified in **Attachment 1** of this report.

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>455</b>	<b>Councillor Peter Kafer</b> <b>Councillor Glenys Francis</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to:

- 1) Inform Council of the consultation outcomes in connection with the proposed establishment of the Alcohol-Free Zone at Lakeside, Raymond Terrace;
- 2) Recommend the establishment of the Alcohol-Free Zone at Lakeside, Raymond Terrace.

At Council's Ordinary Meeting on 8 March 2011, a Notice of Motion was moved by Cr Peter Kafer that Council 'investigates the establishment of an alcohol free zone (AFZ) in the vicinity of the Lakeside Tavern, Raymond Terrace'.

Council undertook a public consultation process that included forwarding the proposal to relevant stakeholders and advertising the proposal in the local press. This consultation process complied fully with the Department of Local Government's Ministerial Guidelines on Alcohol-Free Zones.

The area to be included within the Alcohol-Free Zone has been formulated based on recommendations from the Port Stephens Local Area Police Command Licensing Co-ordinator. The proposed area would include the road and footpath on Benjamin Lee Drive from Clarke Close to Hastings Drive and along Mount Hall Road to Dunn Place as per **Attachment 1**. Council's Lakeside Park No 2 and the car parks for Lakeside Shopping Centre and Lakeside Village Tavern will also be included.

The Alcohol-Free Zone would operate 24 hours per day, 7 days per week. Any person observed to be drinking in an alcohol-free zone may have the alcohol in their possession immediately seized and tipped out or otherwise disposed of and may be fined.

Written support for the establishment of the Lakeside Alcohol-Free Zone was received from the local Police and the Owners of Strata Plan 50019 known as the *Lakeside Shopping Village*.

No written submissions against the proposal were received.

### **FINANCIAL/RESOURCE IMPLICATIONS**

The costs involved in establishing an Alcohol-Free Zone are installation of signs and advertising. Funds will be sourced from within the existing Social Planning budget.

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

The establishment of an Alcohol-Free Zone is governed by Section 646 (1) of the Local Government Act 1993 and by the Local Government Amendment (Alcohol-Free Zones) Act 1995. An Alcohol-Free Zone can only be established for a maximum period of four years, after which it must be re-established following the procedure prescribed by the Department of Local Government's Ministerial Guidelines on Alcohol-Free Zones (as amended February 2009).

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Alcohol-Free Zones are effective tools for local police to deal with alcohol-related offences in an effort to eliminate anti-social behaviour and provide a safer street environment for the community. The establishment of the Lakeside Alcohol-Free Zone will improve public perceptions of safety in the area and reduce fear of crime. It is anticipated that Lakeside Alcohol-Free Zone will help change patterns of alcohol consumption and associated anti-social and criminal behaviour in the area.

Reductions in alcohol-related criminal incidents and improved perceptions of safety may lead to increased economic activity, as more people may be willing to patronise local businesses. Reduced crime can also reduce the costs of repairing vandalised premises, replacing stolen goods and insurance premiums.

### **CONSULTATION**

All relevant stakeholders as prescribed by the Department of Local Government's *Ministerial Guidelines on Alcohol-Free Zones* have been consulted as per following requirements:

## **MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

- Publishing a notice of the proposal in a newspaper circulating in the area, allow inspection of the proposal and invite representations or objections within 14 days. The notice should state the exact location of the proposed AFZ and the place and time at which the proposal may be inspected.
- Sending a copy of the proposal to:
  - (a) the officer in charge of the police station within or nearest to the proposed zone;
  - (b) liquor licensees and secretaries of registered clubs whose premises border on or adjoin or are adjacent to the proposed zone, and invite representations or objections within 30 days.

A notice was published in the Port Stephens Examiner on 25 August 2011 inviting community comment on the proposed Alcohol-Free Zone at Lakeside, Raymond Terrace. No written submissions were received by the deadline of 26 September 2011.

### **OPTIONS**

- 1) Accept the recommendation;
- 2) Reject the recommendation.

### **ATTACHMENTS**

- 1) Map of Lakeside Alcohol-Free Zone.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1 – MAP OF LAKESIDE ALCOHOL-FREE ZONE





**ITEM NO. 12**

**FILE NO: PSC2005-0629**

**ABORIGINAL PROJECTS FUND 2011/2012**

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

**GROUP: SUSTAINABLE PLANNING**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Supply funds from Council's Aboriginal Projects Fund in accordance with the amounts and purposes prescribed below:
  - i) \$4,020 to Tomaree Community College for the 'Community Garden Indigenous Art Project';
  - ii) \$5,865 to Youyoong Local Aboriginal Education Consultative Group for the 'Ngarra-gu Banba Project';
  - iii) \$8,515 to Youyoong Local Aboriginal Education Consultative Group for the 'Birriwal-Numa Project';
  - iv) \$4,000 to Port Stephens Family Support for the 'Aboriginal & non-Aboriginal Women's Networking Project';
  - v) \$10,000 to Worimi Local Aboriginal Land Council for the 'Mobile Educational Resources Project';
- 2) Subject to recommendation (1) allocate all grants in accordance with the funding conditions specified in **Attachment 1** of this report.

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>456</b>	<b>Councillor Sally Dover Councillor Peter Kafer</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to seek Council endorsement for the allocation of available Aboriginal Projects Funds for the following projects as follows:

<b>Applicant</b>	<b>Project</b>	<b>Project Overview</b>	<b>Amount \$</b>
Tomaree Community College	Community Garden Indigenous art project	Aim of project is to help the Community College to become more welcoming for Indigenous students. Student's artistic talents and stories of their family culture will be captured in a mural on the shipping storage container at the college's community garden.	4020
Youyoong Local Aboriginal Education	Ngarra-gu Banba	Run a mentoring program for senior primary school Aboriginal children at risk of not completing their schooling. Program is linked to trained mentors and local Aboriginal Elders based on a series of weekly 1	5865

## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

Consultative Group		day workshops. Workshop content will cover topics such as respect, importance of education, culture, future role modelling. Will cover approx 26 schools.	
Youyoong Local Aboriginal Education Consultative Group	Birriwal-Numa	Bring together Aboriginal young people from local high schools via a camp at end of Term 1 2012. Project aims to strengthen students' local Aboriginal cultural knowledge and gain self respect.	8515
Port Stephens Family Support	Aboriginal & non-Aboriginal Women's Networking Project	Facilitate a gathering of Aboriginal and non-Aboriginal women and their children aged 0 – 5 yrs of age to share, learn and network with professional Aboriginal women from Port Stephens and Hunter region.	4000
Worimi Local Aboriginal Land Council	Mobile Educational Resources	A staffed mobile educational program which visits high schools to increase awareness of Aboriginal culture through learning and experiencing all aspects of Aboriginal culture including dance, language and use of Traditional Tools.	10000
<b>Total:</b>			<b>32400</b>

Council's Aboriginal Projects Fund that has been operating since 2002. The fund was established to encourage local organisations to develop projects to meet needs identified within the local Aboriginal community by: -

- Providing local community organisations with access to a funding pool aimed specifically at funding projects that address priority needs within the Aboriginal community;
- Providing organisations with the opportunity to decide what projects are important to their community;
- Demonstrating Council's commitment to allocate resources towards achieving its social objectives contained within the Council Plan and Council's Social Policy.

Council advertises annually seeking funding proposals in accordance with the guidelines of Council's Aboriginal Projects Fund guidelines.

### FINANCIAL/RESOURCE IMPLICATIONS

A total of \$35,000 is currently available in 2011/2012 budget for projects under Council's Aboriginal Projects Fund. The projects recommended for funding in this report total \$32,400.

All funded projects will be required to adhere to the conditions of funding as detailed in **Attachment 1** of this report.

### LEGAL, POLICY AND RISK IMPLICATIONS

Recipients of funding under the Aboriginal Projects Fund shall accept full responsibility for the liability of any programs or projects funded.

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The projects recommended for funding will assist in building and strengthening the well-being of the Port Stephens Aboriginal community.

## **CONSULTATION**

Council advertised widely through the local press and local networks seeking funding proposals under stage 1 of the Aboriginal Projects Fund. All of the funding proposals submitted were formulated at the outset in consultation with the Worimi and Karuah Local Aboriginal Land Councils. The Aboriginal Strategic Committee met on 2 August 2011 to assess and shortlist the Stage 1 funding proposals. Shortlisted applicants were invited to submit a detailed application in accordance with Stage 2. A further meeting of the Aboriginal Strategic Committee on 18 October 2011 and was attended by shortlisted applicants who made a presentation on their proposed project as per **Attachment 2** of this report.

Following the presentations the Aboriginal Strategic Committee finalised their assessment and formulated their recommendations to Council that form the basis of this report.

The Aboriginal Strategic Committee granted an extension to two shortlisted stage 1 applicants who were unable to lodge a stage 2 application within the designated timeframe. These 2 applications have since been submitted within the extended timeframe and were circulated to members of the Aboriginal Strategic Committee for comment and advice on whether these 2 applications should be recommended to Council for funding consideration. As a result of this process the members of the Aboriginal Strategic Committee have reviewed these 2 applications and have recommended that they be considered by Council for funding. Subsequently these 2 additional projects are included in the projects recommended for funding herein.

## **OPTIONS**

- 1) Accept the recommendations;
- 2) Reject the recommendations calling for more information to support the report.

## **ATTACHMENTS**

- 1) Conditions of funding;
- 2) Minutes of Special Meeting of Aboriginal Strategic Committee on 18 October 2011.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**

**ABORIGINAL PROJECT FUND  
2011/2012 GRANT APPLICATIONS**

**CONDITIONS OF FUNDING**

- 1) Grant to be expended in accordance with the purpose specified in funding submission
- 2) Grants over \$5,000 shall be allocated in two instalments, 50% in advance of the project and the remaining 50% upon presentation of final receipts (excluding only capital projects).
- 3) Funds to be fully expended by 31st December 2012 unless specified otherwise.
- 4) A formal invitation be extended to Council's Aboriginal Strategic Committee and Port Stephens Councillors to attend any official launches, openings, events and/or activities associated with the project.
- 5) In accordance with the funding guidelines, a representative from each organisation funded under the 'Aboriginal Project Fund' shall attend a meeting of Council's Aboriginal Strategic Committee following the expenditure of the grant to present details of the project's outcomes
- 6) At the conclusion of the project, Council is to be supplied with a financial statement of project expenditure and any unexpended monies are to be returned to Council
- 7) All grants are GST exempt
- 8) Recipients of funding shall accept full responsibility for the liability and ongoing costs associated with projects funded under the Aboriginal Project Fund
- 9) A member of Council's Social Planning Team shall monitor the establishment and implementation of each project
- 10) Comply with any further conditions prescribed by Council's Aboriginal Strategic Committee during the assessment process.

ATTACHMENT 2



**Aboriginal Strategic Committee  
Special Meeting – Assess Stage  
2 Aboriginal Project Fund  
Applications**



**MINUTES**

**Minutes of special meeting held on 18 October 2011 at Port Stephens Council  
(Committee Rooms)**

Chair: Cr Dover

Minute taker: Paul Procter

**1. Present**

Andrew Smith	Worimi LALC
Val Merrick	Worimi LALC
Elaine Larkins	Worimi LALC
David Feeney	Karuah LALC
Kevin Manton	Karuah LALC
Cr Westbury	PSC
Cr Shirley O'Brien	PSC
Cr Dover	PSC
Paul Procter	PSC
Steve Bernasconi	PSC

**2. Apologies:**

Cr Bruce MacKenzie	PSC
Cr Kafer	PSC
Jason Linnane	PSC
Grace Kinsella	Worimi LALC
Sharon Feeney	Karuah LALC

**3. Purpose of meeting**

To assess Aboriginal Project Fund Stage 2 funding proposals and make recommendations to Council on the allocation of available Aboriginal Project Funds.

**4. Overview of Aboriginal Strategic Committee's recommendations on Stage 1 applications:**

Aboriginal Strategic Committee met on 2 August 2011 where it assessed stage 1 applications. The applications and recommendations are summarised in the following table: -

## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

Applicant	Amount requested \$	Invite to Stage 2 (yes/no)
Tomaree Community College (community garden Indigenous art project)	4000	Yes
Port Stephens Family Support (Trip to Miittigar Aboriginal & Education Centre)	8000	No
Port Stephens Family Support (Field Trip to Toronga Zoo and Aquarium)	8000	No
Port Stephens Family Support (Aboriginal & non-Aboriginal Women's Networking Project)	4000	Yes
Port Stephens Family Support (Outdoor play equipment)	4000	No
Youyoong Local Aboriginal Education Consultative Group (Bularr Wangga Festival)	10000	No
Youyoong Local Aboriginal Education Consultative Group (Ngarra-gu Banba)	5000	Yes
Youyoong Local Aboriginal Education Consultative Group Birriwal-Numa)	6500	Yes
Worimi LALC (Mobile Education Resources)	7500	Yes

**Note:**

*KLALC indicated to Council's Social Planning Co-ordinator prior to the meeting that they would support the recommendations of the ASC concerning assessment of stage 1 applications.*

### 5. Balance of Available Funds

\$35,000 is available in 2011/2012 budget for Aboriginal Projects Fund.

### 6. Overview of Stage 2 proposals:

#### Stage 2 applications received:

Council's Social Planning Co-ordinator invited each of the above shortlisted applicants to prepare and submit a detailed proposal under stage 2 of the Aboriginal Project's Fund. Despite this invitation only the following 3 stage 2 applications were received.

Applicant	Project	Amount requested \$
Tomaree Community College	Garden Indigenous art project	* 4020
Youyoong Local Aboriginal Education Consultative Group	Ngarra-gu Banba	*5865
Youyoong Local Aboriginal Education Consultative Group	Birriwal-Numa	*8515

**Denotes:** \* amount of grant requested has been adjusted from stage 1 application.

## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

Subsequently an extension was given to the other 2 applicants (which they gladly welcomed); however they failed to still submit a stage 2 application by the extended deadline.

### Stage 2 applications not received:

Applicant	Project	Amount requested \$
Port Stephens Family Support	Aboriginal & non-Aboriginal Women's Networking Project	4000
Worimi LALC	Mobile Education Resources	7500

### 7. Aboriginal Strategic Committee recommendations on stage 2 applications not received by due date:

#### Recommendations:

i) Council's Social Planning Co-ordinator to give the following two applicants a further 2 week extension to complete and submit their stage 2 grant applications.

Applicant	Project
Port Stephens Family Support	Aboriginal & non-Aboriginal women's networking project
Worimi LALC	Mobile Education Resources

ii) Upon receipt of these 2 applications, Council's Social Planning Co-ordinator to email to members of Aboriginal Strategic Committee for feedback and advice on whether one and/or both applications should form part of the recommended package of projects presented to Council to be considered for funding under 2011/2012 round of Aboriginal Projects Fund.

### 8. Verbal Presentations by Applicants

Stage 2 applicants each made a brief presentation to the Aboriginal Strategic Committee (ASC) on their project and answered related questions.

### 9. Assessment of Stage 2 funding proposals

The stage 2 funding proposals were assessed as follows:

Applicant	Project	Amount requested \$	Project Description	Recommend to Council for funding?	Grant Recommended \$
Tomaree Community College	Garden Indigenous art project	4020	Aim of project is to make community college more welcoming for 30-40 indigenous students through capturing student's artistic talents and their stories of their family culture which will	Yes	4020

**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

			be captured in a mural on the shipping storage container at the college's community garden.		
Youyoong Local Aboriginal Education Consultative Group	Ngarra-gu Banba	5865	Run a mentoring program for Aboriginal young people in years 5 and 6 at risk of not completing their schooling through a program linked to trained mentors and local Aboriginal Elders. This will be through a weekly 1 day workshops. Workshop content will cover respect, importance of education, culture, future role modelling. Will cover approx 26 schools.	Yes	5865
Youyoong Local Aboriginal Education Consultative Group	Birriwal-Numa	6500	Bring together Aboriginal young people from local high schools through as camp at end of Term 1 2012 to strengthen their local Aboriginal cultural knowledge and gain self respect.	Yes	8515
<b>Total:</b>					<b>18,400</b>

**10. Where to from here?**

- Council's Social Planning Co-ordinator to give the following two applicants a further 2 week extension to complete and submit their stage 2 grant applications.

<b>Applicant</b>	<b>Project</b>
Port Stephens Family Support	Aboriginal & non-Aboriginal Women's Networking Project
Worimi LALC	Mobile Education Resources

- Upon receipt of these 2 applications, Social Planning Co-ordinator to email to members of Aboriginal Strategic Committee for feedback and advice on whether one and/or both applications should form part of the recommended package of projects presented to Council to be considered for funding under 2011/2012 round of Aboriginal Projects Fund;
- Council's Social Planning Co-ordinator to prepare and present a report to Council based on recommendations of the Aboriginal Strategic Committee on the allocation of available Aboriginal Project Funds.

Meeting closed at 3:30pm



**ITEM NO. 13**

**FILE NO: PSC2011-01786**

**INSTRUMENT SETTING OUT TERMS OF EASEMENT – 49 WILLIAM STREET RAYMOND TERRACE**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Authorise the General Manager to execute the instrument setting out terms of the easement pursuant to Section 88B of the Conveyancing Act 1919 and to affix the Council Seal.

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>457</b>	<p><b>Councillor Bruce MacKenzie</b>  <b>Councillor Ken Jordan</b></p>
	<p>It was resolved that the recommendation be adopted.</p>

**BACKGROUND**

The purpose of this report is to recommend that Council execute an instrument setting out terms of the easement pursuant to Section 88B of the Conveyancing Act 1919 in respect of Council owned Land being Lot 3 in Deposited Plan 880718, known as 49 William Street Raymond Terrace (Best and Less building).

Council on 24 May 2011 resolved to execute the formal Deed of Agreement for Easement and to negotiate compensation in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991.

Executing the instrument setting out terms of the easement will formalise the rights conferred by the agreement on the title of the land.

**FINANCIAL/RESOURCE IMPLICATIONS**

Council has received Compensation of \$15,500.

**LEGAL, POLICY AND RISK IMPLICATIONS**

Nil.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**CONSULTATION**

- 1) Commercial Property;
- 2) Group Manager;
- 3) Commercial Services;
- 4) Acting General Manager;
- 5) Civil Assets.

**OPTIONS**

- 1) Accept the recommendation;
- 2) Reject the recommendation.

**ATTACHMENTS**

- 1) Instrument setting out terms of the easement pursuant to Section 88B of the Conveyancing Act 1919;
- 2) Council Minutes of 24 May 2011.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ATTACHMENT 1

ATTACHMENT 1

Instrument Setting out Terms of Easements or Profits à Prendre Intended to be Created or Released and of Reservations on the Use of Land or Possibilities Governed Intended to be Created Pursuant to Section 39A Conveyancing Act 1919

(Sheet 1 of 2 Sheets)

Plan: Easement for Electricity and Other Purposes under Lot 3 DMB6073

Full name and address of the owner of the land: Port Stephens Council, 115 Adelaide Street, WARRIMUNG TERRACE NSW 2254

Part 1 (Creation)

Number of easements or profits à prendre intended to be created and referred to in the plan	Identity of easements, profits à prendre, red-emption or positive covenants to be created and referred to in the plan	Burdened lot(s) or part(s)	Benefited lot(s) or part(s) or parties
1	Easement for Electricity and Other Purposes under (E)	Lot 3	Adjacent Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

Part 2 (Terms)

Terms of Easement for Electricity and Other Purposes 2 under (E) Easement referred to in the abovementioned plan

Easements are created on the terms and conditions set out in memorandum registered number A2782641 in this easement, together with electricity and other easements under (E) under the same plan and easement for electricity works in this memorandum.

The Common Seal of Port Stephens Council was hereunto affixed pursuant to a resolution of Council dated this \_\_\_\_\_ day of \_\_\_\_\_ 2011 in the presence of \_\_\_\_\_ 15th \_\_\_\_\_ The

ATTACHMENT 1

ATTACHMENT 1

Page 2 of 2 sheets

Re:

Plan of Encasement for Electricity and Other  
Purposes (over 1 of 3 DE100011)

Signed, sealed and delivered for and on behalf  
of Apsco by Katherine Marjorie Gunn as  
Solicitor and Attorney pursuant to Power of  
Attorney Registered Book 4528 No 461 in the  
presence of

:  
:

--- Attorney ---

Witness

Name of Witness

1/10 George Street  
SYDNEY NSW 2000



ATTACHMENT 1

PLAN FORM 8A (Annexure Sheet) Warning: Creasing or folding will lead to rejection

**DEPOSITED PLAN ADMINISTRATION SHEET** Sheet 2 of 2 sheets

PLAN OF EASEMENT FOR ELECTRICITY AND OTHER PURPOSES WITHIN LOT 3 D.P.880718		*
	Registered:	*
Subdivision-Certificate-No:	Title System:	
SURVEYOR'S REFERENCE: 16683_4A		

\* OFFICE USE ONLY



ATTACHMENT 2

MINUTES ORDINARY COUNCIL – 24 MAY 2011

ITEM NO. 1 FILE NO: PSC2005-1076

DEED OF AGREEMENT FOR EASEMENT – 49 WILLIAM STREET  
RAYMOND TERRACE NSW

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

RECOMMENDATION IS THAT COUNCIL:

- a. Authorise the General Manager to execute the Deed of Agreement for Easement and ask the Council Seal and
- b. Further authorise the General Manager to negotiate any variation as generated in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

ORDINARY COUNCIL MEETING – 24 MAY 2011

181	<p>Councillor John Nell Councillor Frank Ward</p>	<p>It was resolved that the recommendation be accepted and that the cover page and page 2 of the Deed document be replaced with the pages enclosed in the Supplementary Information.</p>
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BACKGROUND

The purpose of the report is to inform and seek Council approval of Deed of Agreement for an easement over Council owned land being Lot 5 in Certificate of Title 490/18, known as 49 William Street (Best) and lots 60/61, Lot 8 comprises the land used for the building and the land to the rear of the building which for a number of purposes forms the roadway and on street car parking between 18A Sturges Street (known as the center of the rear of shops fronting William Street and extending in a north westerly direction to the Marketplace Shopping Centre).

The Easement to be the subject of the Deed is required to accommodate electric supply cables to a newly erected 11kv transformer which is located from the road reserve adjacent to a building to be situated on lot 61 at the rear elevation of the Best and less parking.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial implications other than the fee of Compensation payable to Council. Compensation will be determined in accordance with the 1991 Act.



ATTACHMENT 2

**MINUTES ORDINARY COUNCIL – 24 MAY 2011**

(and terms of reference) Act 1991 and that be payable to the Council for the term of the agreement.

**LEGAL, POLICY AND RISK IMPLICATIONS**

It is not envisaged that there would be any Legal, Policy or Risk implications arising from the recommended option.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic, and Environmental implications.

The Easement is being offered to legally bind an interest in Council's land over existing land to the new Police Station at Raymond Terrace. The environmental implications are not in play.

**CONSULTATION**

Commercial Property Group Manager, Commercial Services, Acting General Manager, Civil Assets

**OPTIONS**

- 1) Accept the recommended option.
- 2) Reject the proposed transaction.

**ATTACHMENTS**

- i) Draft of Agreement for Easement.

**COUNCILLORS ROOM**

14

**TABLED DOCUMENTS**

Annexure A from Council Draft Easement

ITEM NO. 14

FILE NO: PSC2007-1506

**LEASE OF HUNTER WATER LAND AT 31 REES JAMES ROAD, RAYMOND TERRACE**

**REPORT OF: CARMEL FOSTER - COMMERCIAL PROPERTY MANAGER AND STEVEN BERNASCONI - COMMUNITY AND RECREATION MANAGER**

**GROUP: COMMERCIAL SERVICES AND FACILITIES AND SERVICES**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Authorise the signing and affixing the seal of Council to the proposed lease documentation.

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>458</b>	<b>Councillor John Nell</b> <b>Councillor Bruce MacKenzie</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to advise that Council has negotiated a long term lease of Part Lot 12 in Deposited Plan 882528 known as 31 Rees James Road, Raymond Terrace.

An agreement between Council and Hunter Water in 1992 was for Council to lease approximately 2400m<sup>2</sup> of land for a peppercorn rent to accommodate the State Emergency Service (SES) and Rural Fire Service. Council has constructed three buildings to house the staff and equipment.

During that time there has been no legal documentation or signed agreement in place. Council and Hunter Water have been in discussion to formalise the occupation of the site and have now reached agreement to lease the land for a 20 year period.

The terms of the lease are as follows:

Commencement: 1 December 2011  
Term: 10 years  
Options: 5 + 5  
Outgoings: Payable by tenant  
Rent: \$1,000 per annum  
Review: CPI annually

Council staff elected to have options in place to allow for flexibility should the location of the SES and Rural Fire Service needs to change as the Kings Hill development progresses.

### **FINANCIAL/RESOURCE IMPLICATIONS**

The rental payment of \$1,000 per annum is considered a nominal rent and is in accordance with the lands use as an emergency centre. Any previous claims for rental payments by Council to Hunter Water have been waived by Hunter Water.

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

It is a requirement of the Real Property Act that leases in excess of three years duration must be registered upon the title of the land to which they apply. If the lease is to be registered the seal must be affixed upon signing. The seal of a Council must not be affixed to a document unless the document relates to the business of a Council and the Council has resolved (by way of a resolution specifically referring to the document that the seal be affixed).

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The site is occupied by Rural Fire Service and State Emergency Services. The location is currently the most appropriate locality for these community services. The lease of the site provides Council with security of tenure and enables the continuation of these important community functions.

### **CONSULTATION**

- 1) Hunter Water;
- 2) Harris Wheeler Lawyers.

### **OPTIONS**

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

### **ATTACHMENTS**

Nil.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

ITEM NO. 15

FILE NO: PSC2005-3231

**ASSET MANAGEMENT POLICY****REPORT OF: JASON LINNANE – GROUP MANAGER FACILITIES AND SERVICES****GROUP: FACILITIES AND SERVICES****RECOMMENDATION IS THAT COUNCIL:**

- 1) Revoke the previous Asset Management Policy, Dated 22<sup>nd</sup> May 2007 (Minute number 131) (Attachment 1)
- 2) Adopt the revised Asset Management Policy, Dated 8<sup>th</sup> March 2011 (Minute number 064) (Attachment 2).

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>459</b>	<b>Councillor John Nell</b> <b>Councillor Ken Jordan</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to have Council adopt the revised Asset Management Policy. The revised version of the policy was considered by Council at its meeting 8 March 2011 (Minute number 064). At this time, Council resolved to place the revised policy on public exhibition. The public exhibition period was held between 14th March 2011 and 22 April 2011. There were only three (3) submissions received.

No changes to the revised Policy have been made following the public exhibition.

The proposed Asset Management Policy has a review date of February 2012. The timing of this report would make this review date to soon and more appropriate date for revision being March 2013.

**FINANCIAL/RESOURCE IMPLICATIONS**

Implementation of the revised Policy is minimal and within existing budget.

**LEGAL, POLICY AND RISK IMPLICATIONS**

There are no legal or policy implications. The revised Asset Management Policy has taken account of the risks to assets and made provision for risk management in the asset management context.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

All categories of asset contribute to one or more pillars of sustainability and the revised policy provides for sustainable asset management, having regard to current global best practice in asset management.

### **CONSULTATION**

The three submissions made from the Community during the public exhibition did not relate to the policy, but were about the Asset Management Plan which is directed by the Policy. Hence the submissions have not been included in this report. No submissions about the policy itself were made during the public exhibition.

### **OPTIONS**

- 1) Accept the recommendation;
- 2) Amend the Asset Management Policy and re-exhibit for a period of 28 days.

### **ATTACHMENTS**

1. Previous Asset Management Policy;
2. Revised Asset Management Policy.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1

COUNCIL COMMITTEE – 1 MARCH 2011

ATTACHMENT 2

*Port Stephens*  
C·O·U·N·C·I·L  
POLICY

Adopted: 23 May 2006  
Minute No: 532  
Amended: 22 May 2007  
Minute No: 131

FILE NO: PSC2005-3231

TITLE: ASSET MANAGEMENT POLICY

RESPONSIBLE OFFICER: ENGINEERING SERVICES MANAGER

**BACKGROUND**

Port Stephens Council is responsible for a large and diverse asset base. These assets include roads, bridges, footpaths, drains, libraries, childcare centres, halls, parks, sporting facilities, land, commercial properties and investments to name a few. According to Council's Charter under the Local Government Act, with regard to asset management, Council should:

- Provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services are managed efficiently and effectively;
- Have regard to the long term and cumulative effects of its decisions; and
- Bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible.

Over time Port Stephens Council has greatly increased its net assets, which has consequently increased its depreciation, operating and maintenance costs to an already large and aging asset base. In order to manage this asset base, strategies and plans designed to address issues regarding asset lifecycles need to ensure that priorities are designed in line with organisational objectives, that financing and expenditure is planned and controlled in accordance with these priorities, and that resources are used as effectively and efficiently as possible. This Asset Management Policy is a general statement of how Port Stephens Council will manage its assets into the future.

**OBJECTIVE**

The objectives of this policy is to demonstrate Council's commitment to developing, managing, maintaining and operating its assets to an agreed level of service with its community while optimising lifecycle costs in accordance with current asset management world and Australian best practice.

ATTACHMENT 1

COUNCIL COMMITTEE – 1 MARCH 2011

**PRINCIPLES**

**Australian Business Excellence Framework**

This aligns with the following Principles of the ABE Framework namely:

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions
- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 4) To improve the outcome, improve the system and its associated processes
- 8) Effective use of facts, data and knowledge leads to improved decisions
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders

**POLICY STATEMENT**

Council is committed to undertake the management of assets in accordance with current best practice that is outlined in the accompanying Port Stephens Council's Asset Management Guideline. The guideline details areas of asset management to be addressed including:

- Gathering Background Data of the Asset (What is the asset, the capacity, the value)
- Planning (The Big Picture)
- Creation / Acquisition / Augmentation Plan (How we gain assets)
- Financial / Risk Management Plan (How we fund asset management)
- Operations and Maintenance Plan (How we maintain asset and to what standard)
- Condition and Performance Monitoring (What is asset performance against needs)
- Rehabilitation / Replacement Plan (How and when we upgrade our asset)
- Consolidation / Rationalisation Plan (How we optimise our management of assets)
- Audit Plan (Is the process working efficiently and effectively)

In accordance with asset management best practice Council in consultation and partnership with its community shall:

- Provide non-asset answers for current and future service delivery wherever possible
- Prefer rehabilitation to replacement to embellishment to new asset works to become more sustainable in the long term
- Provide consolidated assets designed to fulfil multi-purpose activities thereby maximising utilisation and lowering overhead and other costs
- Provide consolidated assets also designed for flexibility to respond to changing community needs into the future
- Periodically review its asset base based on changing community needs and expectations.

**RELATED POLICIES**

Asset management covers many activities in local government and as a multidisciplinary organisation there is an extensive list of related community and Council strategies, plans and

ATTACHMENT 1

COUNCIL COMMITTEE – 1 MARCH 2011

policies. Therefore only a selection of key related strategies, plans and policies are listed below.

- Port Stephens Local Environmental Plan (LEP) 2000
- Port Stephens Urban Settlement Strategy
- Port Stephens Economic Development Strategy
- Port Stephens Community Services and Facilities Strategy
- Port Stephens Social and Community Plan
- Port Stephens S94 Plans
- PS 10 Building Standards and Notification Procedures for Development Applications
- PS 8 Guidelines for Exempt and Complying Developments
- PS Generic Sportsground Plan of Management
- Communication and Consultation Strategy
- Sustainability Policy
- Risk Management Strategy
- Disability Access Policy
- Assessment and Maintenance of Roads Policy
- Assess and Maintenance of Footways Cycleways Policy

**SUSTAINABILITY IMPLICATIONS**

The Port Stephens Council's Asset Management Policy and accompanying Asset Management Guideline provides the tools to ensure that Council examines and reviews the services and standards provided by its assets to sustainability meet current and futures needs. Asset management directions and actions shall be considerate of but not limited to the implications listed below.

**SOCIAL IMPLICATIONS**

The social implication of community safety, needs and priorities, equity, amenity and utilization.

**ECONOMIC IMPLICATIONS**

asset condition, availability of external funds, user and owner costs, impacts on local economic activities

**ENVIRONMENTAL IMPLICATIONS**

protection and conservation of environmental assets, resource use, energy and water conservation.

**RELEVANT LEGISLATIVE PROVISIONS**

Local Government Act 1993 - Section 8 The Council Charter

**IMPLEMENTATION RESPONSIBILITY**

All Council Staff responsible for the whole or part lifecycle management of Council assets.

**REVIEW DATE**

May 2009



ATTACHMENT 1

COUNCIL COMMITTEE – 1 MARCH 2011

ATTACHMENT 2

EXTRACT FROM DEPARTMENT OF LOCAL GOVERNMENT REPORT "LOCAL GOVERNMENT REFORM PROGRAM, PROMOTING BETTER PRACTICE" ASSET MANAGEMENT RECOMMENDATIONS FOR PORT STEPHENS COUNCIL.

**Recommendation 13:**

Council should develop a comprehensive disposal policy for its assets.

**Recommendation 27:**

Council should complete the development of its long-term financial plan in conjunction with its strategic planning processes, taking into account the following considerations

- a. Alternative sources of revenue
- b. Long term rates strategy (rating structure, special variations etc)
- c. Long term borrowing needs and debt service ratio
- d. Investment strategies
- e. The alignment of its long-term financial plan with other strategic directions such as 2030, asset management, social and strategic plans
- f. Long-term plans for capital works, land acquisition and anticipated demand for community facilities
- g. Reserves and Section 94 contributions
- h. Asset management plan
- i. Ward funds

**Recommendation 29:**

Council should link its current review of Section 94 contributions plans to its capital works program and long term financial and asset management plans.

**Recommendation 30 and 31:**

Council should continue to develop a comprehensive asset management plan, which includes the rationalisation of assets and a maintenance program. Council is encouraged to continue in its process of linking:

- Inventory collection – frequency, condition assessments
- Service levels – internal and external, maintenance plans
- Risk assessment – public liability and risk
- Asset life – future demand analysis, deterioration and depreciation
- Sustainability gap.

ATTACHMENT 2

COUNCIL COMMITTEE – 1 MARCH 2011

ATTACHMENT 1

*Port Stephens*  
C·O·U·N·C·I·L

POLICY

Adopted: 23 May 2006  
Minute No: 532  
Amended: 22 May 2007  
Minute No: 131

FILE NO: PSC2005-3231

TITLE: ASSET MANAGEMENT POLICY

REPORT OF: GROUP MANAGER FACILITIES & SERVICES

**BACKGROUND**

Port Stephens Council is responsible for a large and diverse asset base. These assets include roads, bridges, footpaths, drains, libraries, childcare centres, halls, parks, sporting facilities, fleet, land and information communication technology-related assets. According to Council's Charter under the Local Government Act, Council should:

**provide directly or on behalf of other levels of government after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed effectively and efficiently;**  
**have regard for the long term and cumulative effects of its decisions;**  
**bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.**

Over time Port Stephens Council has greatly increased its assets, which has consequently increased its depreciation, operation and maintenance costs to an already large sum and contributed aging asset base.

In order to manage this asset base, strategies and plans need to be developed which are designed to address issues regarding asset life cycles and risk. Such strategies and plans should ensure that their content addresses priorities in line with organisational objectives. Finance and expenditure should also be planned and controlled in line with these priorities. Resources should be used as effectively and efficiently as possible. Technical levels of service that related to compliance requirements in legislation should be maintained.

## ATTACHMENT 2

### COUNCIL COMMITTEE – 1 MARCH 2011

#### OBJECTIVE

The objective of this policy is to provide a framework for:

- developing, managing, maintaining and operating Council's assets;
- ensuring levels of service agreed in consultation with the community;
- optimising life cycle costs in accordance with current asset management global best practice.

#### PRINCIPLES

- 1) Understand what markets and customers value, now and into the future and use this to drive organisational design, strategy, products and services;
- 2) Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision-making;
- 7) Behave in an ethically, socially and environmentally responsible manner
- 8) Focus on sustainable results, value and outcomes

#### POLICY STATEMENT

Council is committed to undertake the management of assets in accordance with current global best practice and Asset Lifecycle Management. Asset Lifecycle Management is the term used to describe the management of an asset during its life. Asset Lifecycle Management is comprised of processes or planning documents that outlines what is required to effectively undertake the lifecycle management of an asset. These processes form the basis of an Asset Management Plan.

- Background Data of the Asset
- Planning
- Creation/Acquisition/Augmentation Plan
- Financial/Risk Management Plan
- Operations and Maintenance Plan
- Condition and Performance Monitoring
- Rehabilitation/Renewal/Replacement Plan
- Consolidation/Rationalisation Plan
- Audit Plan/Review
- 

Key elements that drive the above asset lifecycle management processes include:

- Levels of Service
- Future Demand
- Lifecycle Management Plan
- Financial Summary
- Asset Management Practices
- Plan Improvement and Monitoring

Council will maintain and regularly review the Strategic Asset Management Plan.

## ATTACHMENT 2

### COUNCIL COMMITTEE – 1 MARCH 2011

#### RELATED POLICIES

Asset management covers many activities in local government and as a multidisciplinary organisation there is an extensive list of related community and Council strategies, plans and policies. However the Integrated Plans 2010-2022 is the principal document that reflects the associated policies.

#### SUSTAINABILITY IMPLICATIONS

#### SOCIAL/CULTURAL IMPLICATIONS

This policy has implications of community safety, needs and priorities, equity, amenity and utilisation.

#### ECONOMIC IMPLICATIONS

The provision of assets such as roads, drainage and lighting facilitates economic development and employment locally. Of particular economic impact are assets such as sports grounds, parks, beaches and open space in Port Stephens. Asset condition, availability of external funds, user and owner costs have local economic implications. Maintaining quality infrastructure facilitates transport and attracts businesses and tourists to the LGA. This policy recognises the contribution these assets make to the economy of the LGA.

#### ENVIRONMENTAL IMPLICATIONS

The policy impacts on protection and conservation of environmental assets, resource use, energy and water conservation.

#### GOVERNANCE AND CIVIC LEADERSHIP

The policy provides for the management of risks associated with assets.

#### RELEVANT LEGISLATIVE PROVISIONS

Local Government Act 1993  
Local Government (Integrated Planning & Reporting) Act 2009

#### IMPLEMENTATION RESPONSIBILITY

Group Manager Facilities & Services

#### REVIEW DATE

February 2012

ITEM NO. 16

FILE NO: A2004/0511

**LOCAL TRAFFIC COMMITTEE MEETING – 1 NOVEMBER 2011**

REPORT OF: JOHN MARETICH – CIVIL ASSETS SECTION MANAGER

GROUP: FACILITIES AND SERVICES

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the recommendations contained in the minutes of the Local Traffic Committee meeting held on 1<sup>st</sup> November 2011

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>460</b>	<b>Councillor Peter Kafer</b> <b>Councillor Caroline De Lyall</b>
	It was resolved that the recommendation be adopted.

**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. (Community Strategic Plan Section 5.4)

**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 capital works such as traffic control devices and intersection improvements resulting from the Committee's recommendations are not included in this funding and are to be listed within Council's "Forward Works Plan" for consideration in the annual budget process.

The recommendations relating to the installation of regulatory traffic controls 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 of the Traffic Committee 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 Services Group Manager and Council's Road Safety Officer. During this period comments are received and taken into consideration during discussions at the Traffic Committee meeting.

### **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 other than that recommended by the Traffic Committee for a particular item. In which case Council must first notify 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 of 1 November 2011.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

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**LOCAL TRAFFIC COMMITTEE MEETING  
HELD ON TUESDAY 1<sup>ST</sup> NOVEMBER 2011  
AT 9:30AM**

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**Present:**

Cr Bob Westbury – Mayor, Cr Peter Kafer, Cr Geoff Dingle, Snr Const John Simmons - NSW Police, Mr Bill Butler, Mr Dean Simmonds – RMS, Mr John Meldrum – Hunter Valley Buses, Mr Joe Gleeson (Chairperson), Mr Graham Orr, Ms Michelle Page, Ms Lisa Lovegrove – Port Stephens Council, Mr Charles Mangion - RAAF Base Support Manager

**Apologies:**

Craig Baumann MP, Mr Dave Davies – Busways, Mr Mark Newling - Port Stephens Coaches

**A. ADOPTION OF MINUTES OF MEETING HELD 4<sup>TH</sup> OCTOBER, 2011**

The minutes of the previous Local Traffic Committee Meeting were adopted.

- 1) BUSINESS ARISING FROM PREVIOUS MEETING**
  
- 2) LISTED MATTERS**
  
- 3) INFORMAL MATTERS**
  
- 4) GENERAL BUSINESS**

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**PORT STEPHENS  
LOCAL TRAFFIC COMMITTEE AGENDA**

**INDEX OF LISTED MATTERS  
TUESDAY 1<sup>ST</sup> NOVEMBER, 2011**

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- A. ADOPTION OF THE MINUTES OF 4<sup>TH</sup> OCTOBER, 2011**
- 1) **BUSINESS ARISING FROM PREVIOUS MEETING**
- B.1 32\_08/11 **DIGGERS DRIVE TANILBA BAY - REQUEST FOR INSTALLATION OF GIVE WAY SIGNS AT INTERSECTIONS**
- C. LISTED MATTERS**
- C.1 40\_11/11 **CROMARTY ROAD SOLDIERS POINT - REQUEST FOR CHANGES TO PARKING RESTRICTIONS AT SOLDIERS POINT PUBLIC SCHOOL**
- C.2 41\_11/11 **BAGNALL AVENUE SOLDIERS POINT - REQUEST FOR CONSTRUCTION OF A RAISED PEDESTRIAN CROSSING AT SOLDIERS POINT SCHOOL**
- C.3 42\_11/11 **MAGNUS STREET NELSON BAY - REQUEST FOR INSTALLATION OF SIGNS ALLOWING TAXIS IN 'NO STOPPING' AREAS**
- C.4 43\_11/11 **WILLIAM STREET RAYMOND TERRACE - REQUEST FOR ANGLE PARKING AT THE RAYMOND TERRACE POLICE STATION**
- D. INFORMAL MATTERS**
- D.1 504\_11/11 **MEDOWIE ROAD WILLIAMTOWN - REQUEST FOR IMPROVED SAFETY AT THE RAAF BASE ENTRANCES**
- D.2 505\_11/11 **HIGH STREET WALLALONG - REQUEST FOR REVIEW OF INTERSECTION SAFETY AT CLARENCETOWN ROAD**
- D.3 506\_11/11 **GRAHAMSTOWN ROAD FERODALE - SAFETY CONCERNS REGARDING THE INTERSECTION OF RICHARDSON ROAD**
- D.4 507\_11/11 **NEWLINE ROAD RAYMOND TERRACE - APPLICATION FOR B-DOUBLE ACCESS ALONG NEWLINE ROAD TO THE SITA WASTE FACILITY**
- E. GENERAL BUSINESS**



**B. BUSINESS ARISING FROM PREVIOUS MEETING**

**B.1 Item: 32\_08/11**

**DIGGERS DRIVE TANILBA BAY - REQUEST FOR INSTALLATION OF GIVE WAY SIGNS AT INTERSECTIONS**

**Requested by:** A resident

**File:**

**Background:**

In August 2011 the Port Stephens Local Traffic Committee recommended installation of 'Give Way' signs on the Diggers Drive legs of the 'Y' intersections at Reliance Boulevard and Pyramus Way. Council has since received complaints from residents that the altered priorities proposed will be even more confusing to drivers than the current situation.

**Comment:**

The installation of altered priorities can assist in reducing vehicle speeds but does increase confusion for drivers who are unfamiliar with an area. A standard design with 'Give Way' signs on the terminating legs is a more appropriate treatment.

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

ARR Part 7 Div.1 – Rule 69 – Giving way at a give way sign or give way line at an intersection (except at a roundabout)

AS 1742.2 – Manual of uniform traffic control devices

RTA Regulatory Signs Manual – R1-2

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

**Recommendation to the Committee:**

Install 'Give Way' signs and lines at the intersections of Diggers Drive and Pyramus Way and Reliance Boulevard, as shown on the attached sketch, Annexure A.

**Discussion:**

**Support for the recommendation:**

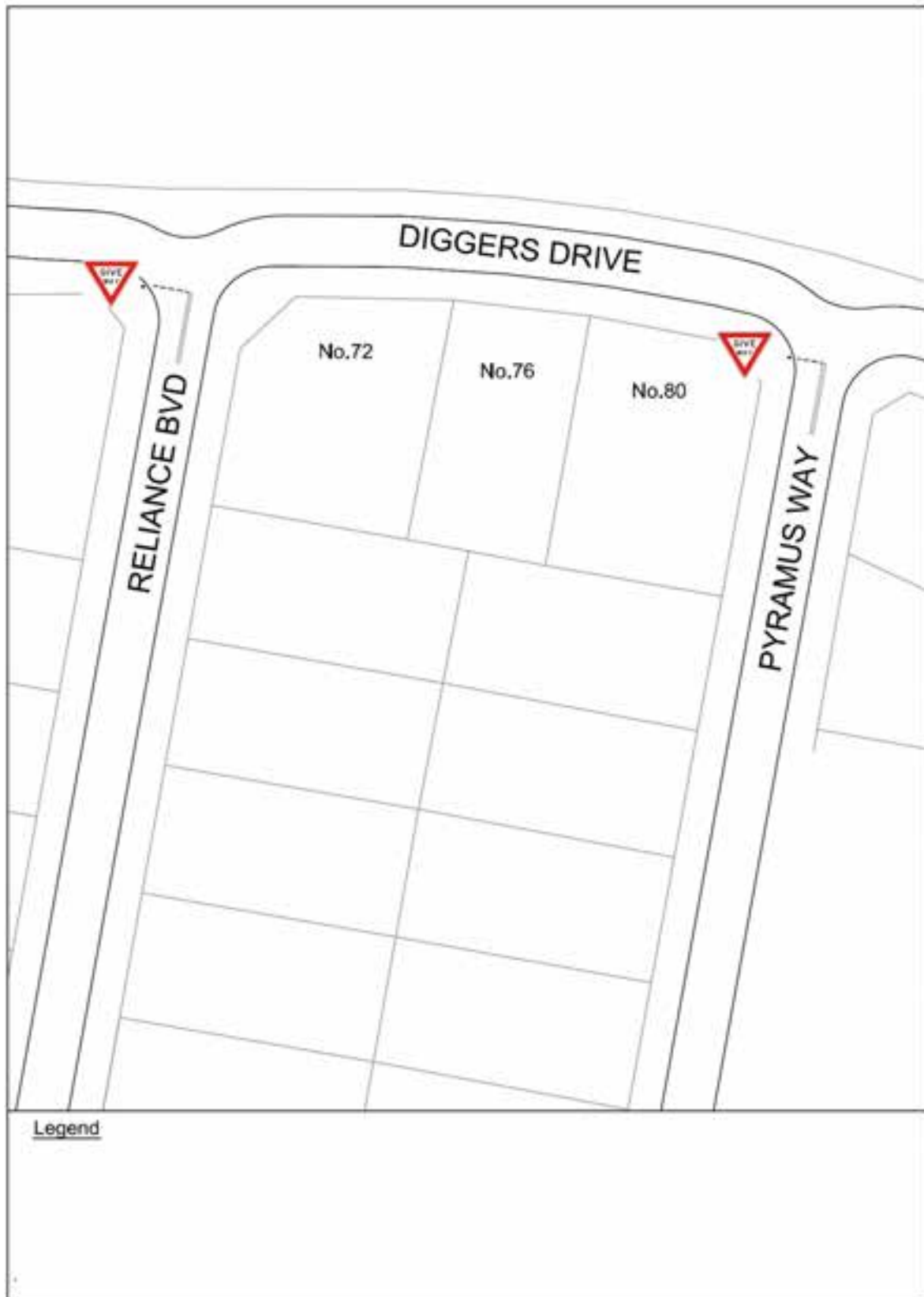
1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	

MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

PORT STEPHENS TRAFFIC COMMITTEE  
Tuesday 1 November 2011

ITEM NO. 32\_08/11  
Street: Diggers Drive

ANNEXURE A  
Page 1 of 1



**C. Listed Matters**

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**C.1 Item: 40\_11/11**

**CROMARTY ROAD SOLDIERS POINT - REQUEST FOR CHANGES TO PARKING RESTRICTIONS AT SOLDIERS POINT PUBLIC SCHOOL**

**Requested by:** Soldiers Point Public School

**File:** PSC2005-4189/052

**Background:**

An additional off-street car park has been constructed at the school with separated entry and exit driveways. This has created a need for minor relocation of some existing parking restrictions to ensure safe entry and exit to the school.

**Comment:**

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

NSW Road Rules –Part 12 Div.2 – Rule 205 – Parking for longer than indicated

AS 1742.11 – Parking Controls

RTA signs database – R5-15, R5-400

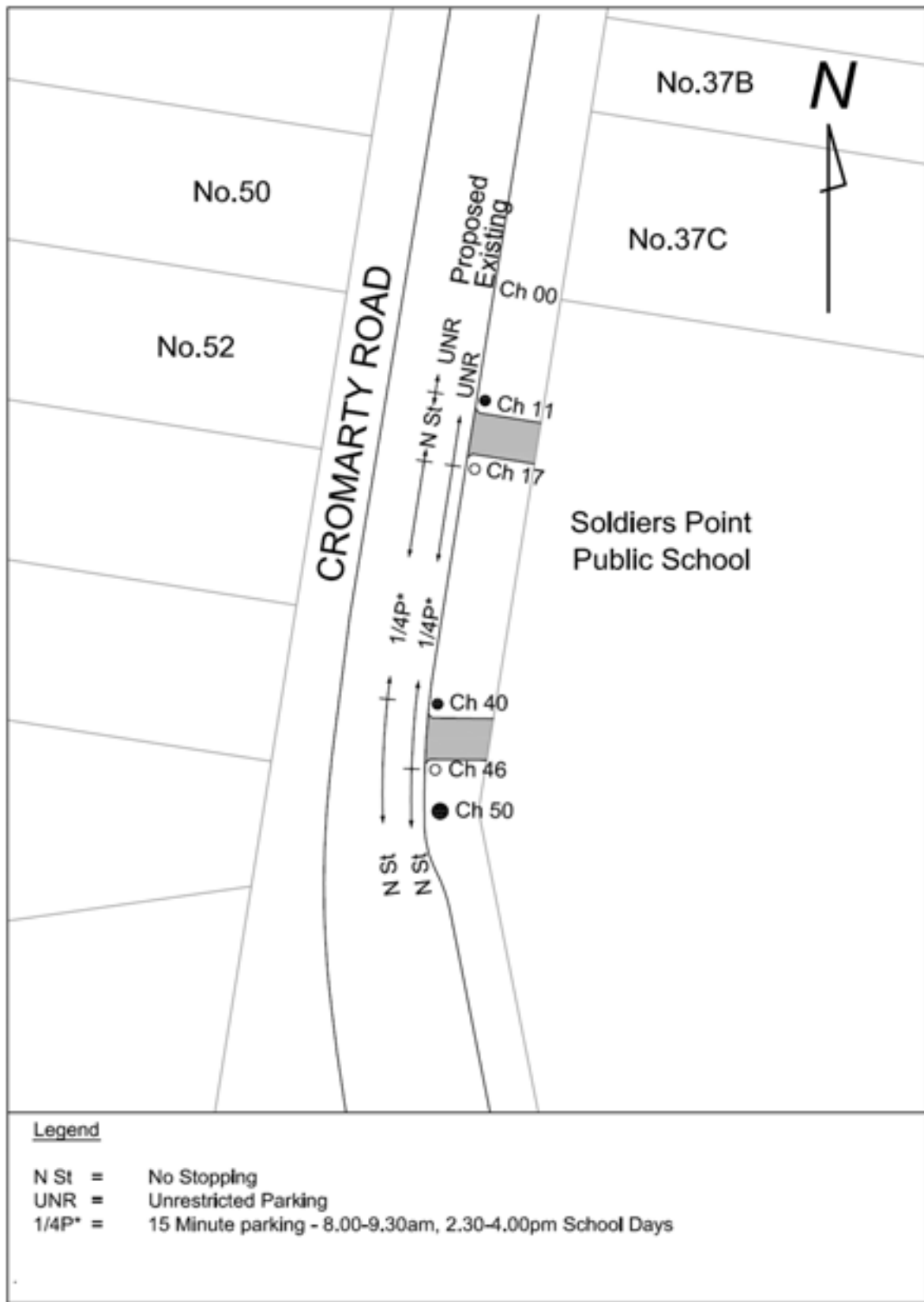
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

**Recommendation to the Committee:**

Approve relocation of the existing 1/4P parking restriction and installation of 'No Stopping' at the driveways to the new car park, as shown on the attached sketch, Annexure A.

**Support for the recommendation:**

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



**C.2 Item: 41\_11/11**

**BAGNALL AVENUE SOLDIERS POINT - REQUEST FOR CONSTRUCTION OF A RAISED PEDESTRIAN CROSSING AT SOLDIERS POINT SCHOOL**

**Requested by:** Soldiers Point Public School

**File:** PSC2005-4030/129

**Background:**

Members of the Soldiers Point School Council have approached Port Stephens Council with requests to improve safety for children crossing Bagnall Avenue at the school.

**Comment:**

There is currently a children's crossing at the school however the school representatives have requested that a raised pedestrian crossing be installed to improve safety by reducing traffic speeds and making the crossing more obvious. Council conducted a pedestrian and vehicle survey at the crossing during October to determine if the warrant for a pedestrian crossing would be met.

In cases where a crossing is predominantly used by children a reduced warrant for installation of a pedestrian crossing applies as follows:

- 1) In 2 periods of 1 hour duration immediately before and after school hours pedestrians shall be more than 30 and vehicles more than 200.

The results of the survey are attached as Annexure A and show that although the reduced warrant is met for numbers of pedestrians that the number of vehicles passing the site is below that required.

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

ARR Part 7 Div.5 – Rule 81 – Giving way at a pedestrian crossing

Australian Standard AS1742.10

RTA Regulatory Signs Manual – R5-15

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

**Recommendation to the Committee:**

That the Traffic Committee does not support installation of a raised pedestrian crossing and that a request is referred to the RTA for the provision of a crossing supervisor at Soldiers Point School.

**Support for the recommendation:**

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

MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

PORT STEPHENS TRAFFIC COMMITTEE  
 Tuesday 1 November 2011

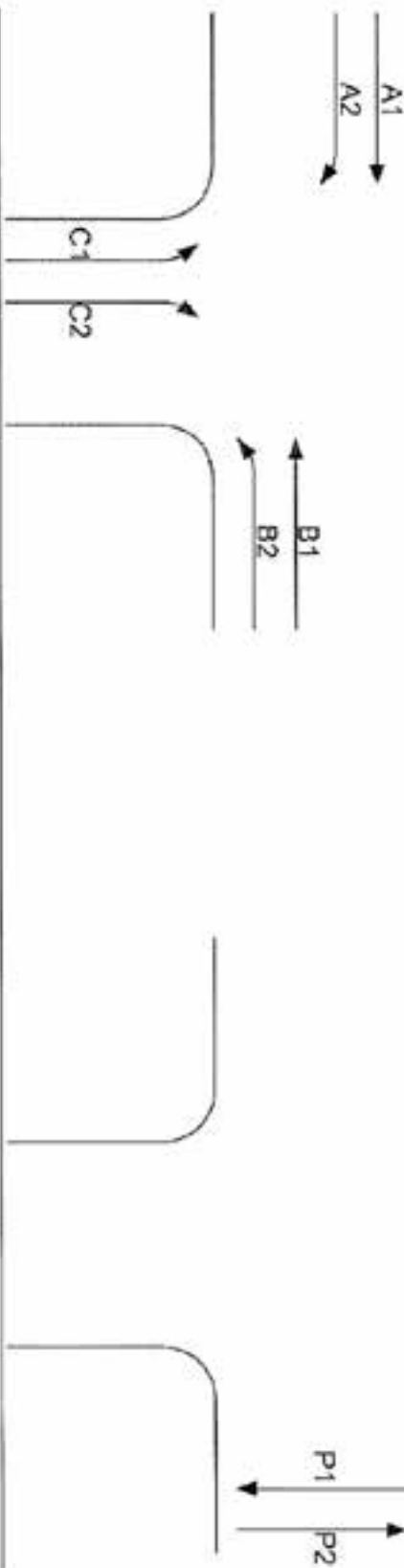
ITEM NO.41\_11/11  
 Street: Bagnall Avenue

ANNEXURE A  
 Page 1 of 1

Pedestrian / Vehicle Survey Form

Location: Soldiers Point School Major Road: Bagnall Avenue Minor Road: Kent Gardens

Date: 11/10/2011 & 13/10/2011



Time am	Movement A			Movement B			Movement C			Movement D			Pedestrians								
	A1	A2	A3	B1	B2	B3	C1	C2	C3	D1	D2	D3	P1	P2	P3	P4	P5	P6	P7	P8	
8.30 - 8.45	21			23									24	10							
8.45 - 9.00	41			45									43	27							
9.00 - 9.15	32			8									14	9							
9.15 - 9.30	13			4									3	5							
Total	107			80									84	51							
	Σ 197											Σ 135									
Time pm	Movement A			Movement B			Movement C			Movement D			Pedestrians								
2.30 - 2.45	4			20									0	5							
2.45 - 3.00	10			16									22	22							
3.00 - 3.15	40			13									59	11							
3.15 - 3.30	2			8									0	0							
Total	56			57									81	38							
	Σ 113											Σ 119									

**C.3 Item: 42\_11/11**

**MAGNUS STREET NELSON BAY - REQUEST FOR INSTALLATION OF SIGNS ALLOWING TAXIS IN 'NO STOPPING' AREAS**

**Requested by:** Nelson Bay Taxis  
**File:** PSC2005-4189/053  
**Background:**

Nelson BayTaxis report great difficulty finding areas to pick-up and set-down in Nelson Bay CBD without having to double park. They have requested installation of 'No Stopping - Taxis excepted' signs in existing 'No Stopping' areas.

**Comment:**

Traffic Inspection Committee members noted that there is little opportunity in Magnus Street for drop-off/pick-up areas. The existing 'No Stopping' zones are over driveways or near the planter islands and would not be easy to access without blocking the travel lane. In addition, it would not be safe to have elderly or infirm passengers alighting into the travel lane by stopping on the northern side of Magnus Street. Nelson Bay Taxis have requested an area in Donald Street near the NAB ATM as well as in Magnus Street. A sketch is attached showing existing parking restrictions in the areas requested.

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

RTA Technical Direction TD2008/06 – Guidelines for the use of 'No Stopping – Taxis Excepted – 1 Minute limit' zones and signposting  
AS 1742.11 – Parking Controls  
RTA signs database – R5-405, R5-406  
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

**Recommendation to the Committee:**

For discussion

**Discussion:**

Traffic Committee members noted that parking spaces are at a premium in the Nelson Bay town centre and that the existing restrictions have been installed for good reason. It was recommended that a trial area be discussed with Nelson Bay Taxis and that if agreeable a 3-month trial be undertaken in the 'No Stopping' zone on the northern side of Magnus Street at the northern end of Yacaaba Street. Council officers will monitor usage especially with regard to any conflict with buses attempting to turn from Yacaaba Street into Magnus Street.

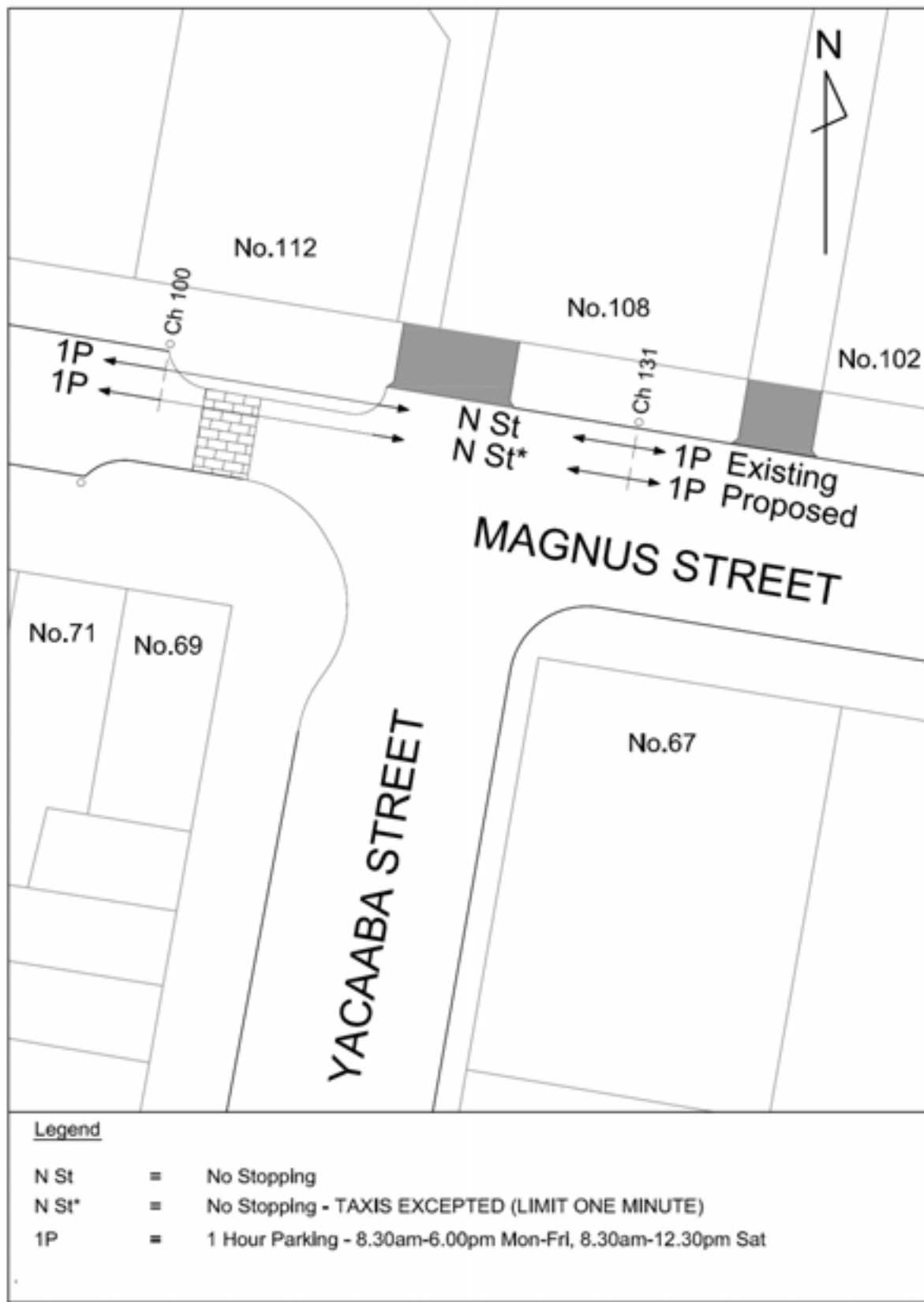
**Committee's Recommendation:**

That a 3 month trial be undertaken with installation of 'No Stopping – Taxis Excepted – 1 Minute limit' signage in Magnus Street Nelson Bay, as shown on the amended attached sketch (Annexure A).

**Support for the recommendation:**

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





**C.4 Item: 43\_11/11**

**WILLIAM STREET RAYMOND TERRACE - REQUEST FOR ANGLE PARKING AT THE RAYMOND TERRACE POLICE STATION**

**Requested by:** Cr Kafer -

**File:**

**Background:**

The new Raymond Terrace Police Station has been operating for a couple of months and concerns have been raised regarding an occupational health and safety issue for Police officers. The issue is that drivers of Police vehicles are placed at a higher risk due to having to access the driver's door from the area adjacent to the travel lane. The passenger, by comparison enters the vehicle from the footpath. This risk would be decreased if the vehicles were allowed to be angle parked.

**Comment:**

Traffic Inspection Committee members noted that the reason that angle parking has not been installed is because the road is narrower than is required by Australian Standard 2890.5. However, the section of William Street to the south of Adelaide Street is a similar width but has angle parking on both sides of the road. The recommendation of the Traffic Inspection Committee is for a detailed plan to be tabled at traffic committee to enable further discussion.

30° angle parking can be accommodated however there would be no gain in number of parking spaces and a reduced width of the travel lane. Vehicles would have to reverse into the travel lane when exiting the parking.

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

AS 2890.5 – Parking facilities – On-street parking

RTA signs database – R5-205

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

**Discussion**

Traffic Committee members noted that nose-to-kerb parking would not be practical for Police vehicles in an emergency response situation, as there would be risks reversing into traffic and potential for traffic queued at the traffic signals to actually block Police vehicles.

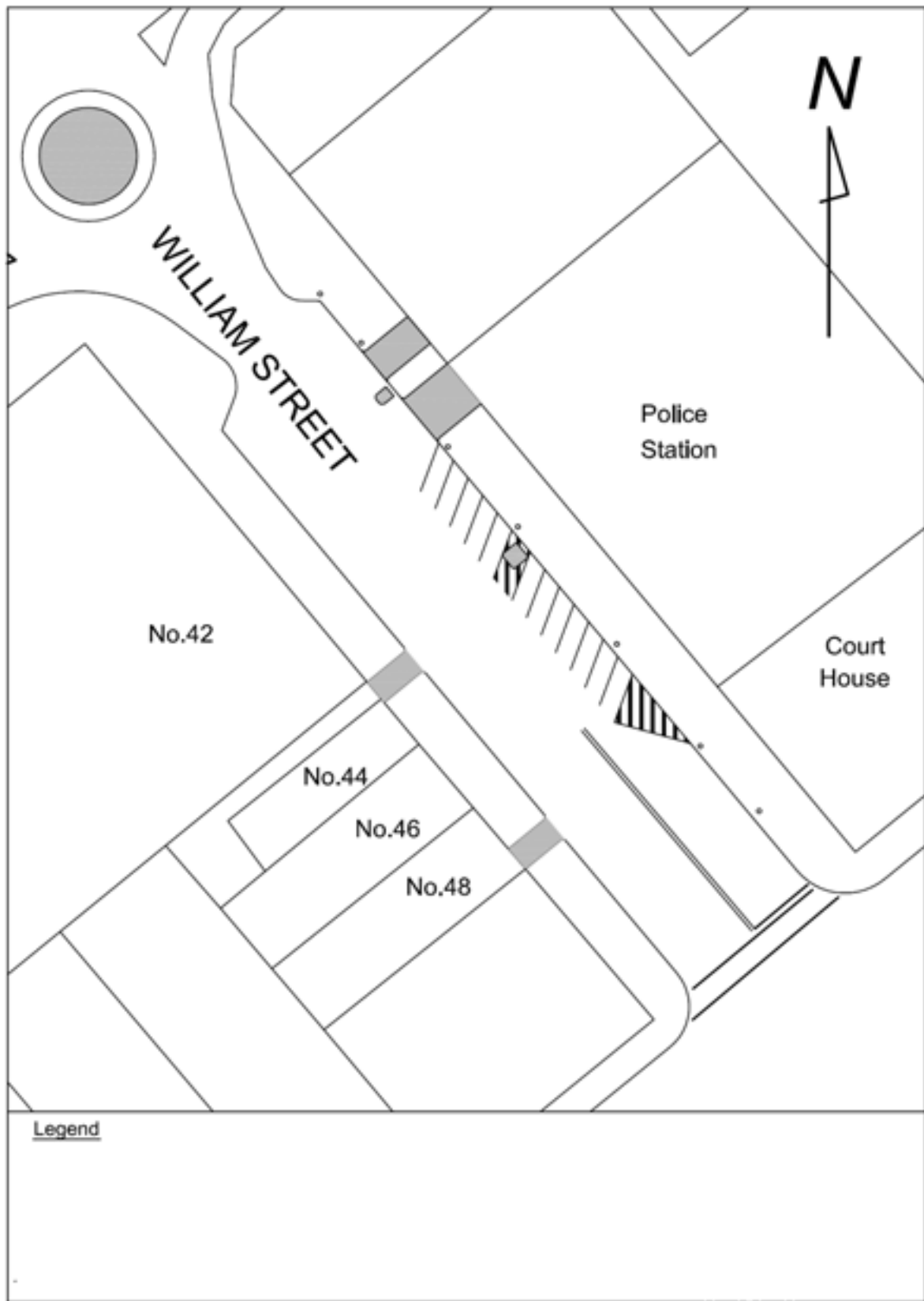
Several options were presented of various combinations of parking angles and locations. Traffic Committee members noted that the only option which significantly improved the situation and would meet the Australian Standard is for 60° rear-to-kerb angle parking on the northern side of William Street and parallel parking along the southern side. This option requires further investigation including detailed design to determine if it is practically possible. There would also be substantial capital works required for this option including removal of existing trees on the southern side of William Street.

**Committee's recommendation:**

That the option of 60° rear-to-kerb angle parking on the Police Station side of William Street (Annexure A) be further investigated, including survey and design and to include provision of an accessible parking space in front of the Raymond Terrace Court House.

**Support for the recommendation:**

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



**D. Informal Items**

---

**D.1 Item: 504\_11/11**

**MEDOWIE ROAD WILLIAMTOWN - REQUEST FOR IMPROVED SAFETY AT THE RAAF BASE ENTRANCES**

**Requested by:** Squadron Leader John Cody - RAAF

**File:**

**Background:**

RAAF Williamtown has raised concerns about the traffic management on Medowie Road during peak base entry/exit periods. Two issues the RAAF would like addressed are the speed of traffic during peak periods and the removal of the dedicated bicycle crossing at the northern gate.

**Comment:**

Traffic Inspection Committee members noted that the main issue is the 100km/h speed limit and that the RTA is currently conducting a speed limit review of Medowie Road.

The issue of traffic queuing to enter the base is being created by the RAAF base itself. There needs to be provision for a separate entry road that will allow traffic to queue in safety without affecting traffic on Medowie Road.

The request for removal of the pedestrian refuge needs to be conditional on a suitable replacement by either construction of another refuge that will not impact traffic or by extending the off-road pathway right through to Medowie. These options need to be considered as part of the redevelopment works at the air base.

**Discussion:**

Mr Charles Mangion, RAAF Williamtown Base Support Manager, addressed the Traffic Committee with regard to the safety concerns that have been raised through the Base O, H & S Committee. The main issue is the length of queues that form on Medowie Road leading into the base and the speed of traffic on Medowie Road going past the base. The queues form as a result of the security checks that are required for all vehicles entering the base. The vehicle queues are of most concern between 8-9am and 4-5pm on weekdays.

The NSW Police representative stated that there needs to be a dedicated queuing space separated from the civilian traffic on Medowie Road. This could be achieved by constructing a new road inside the RAAF base along the boundary fence. This would remove the safety issue of traffic queued on-road being exposed to fast-moving, through-traffic.

Another issue raised by the RAAF was the existence of the pedestrian/cyclist refuge located near the north gate. It was stated that this reduces safety for vehicles by narrowing the road and forcing queued vehicles into the path of the through-traffic and should be removed.

Cr Dingle stated that before consideration could be given to removing the refuge that the shared pathway going past the RAAF base should be extended at least to Richardson Road. This would benefit the many RAAF employees who cycle to and

from work from Medowie as well as the many pedestrians who walk or run on the road shoulder.

Mr Mangion stated that the budget for the construction works at the RAAF base has been set and that there is limited scope for including other road safety improvements not already in the design.

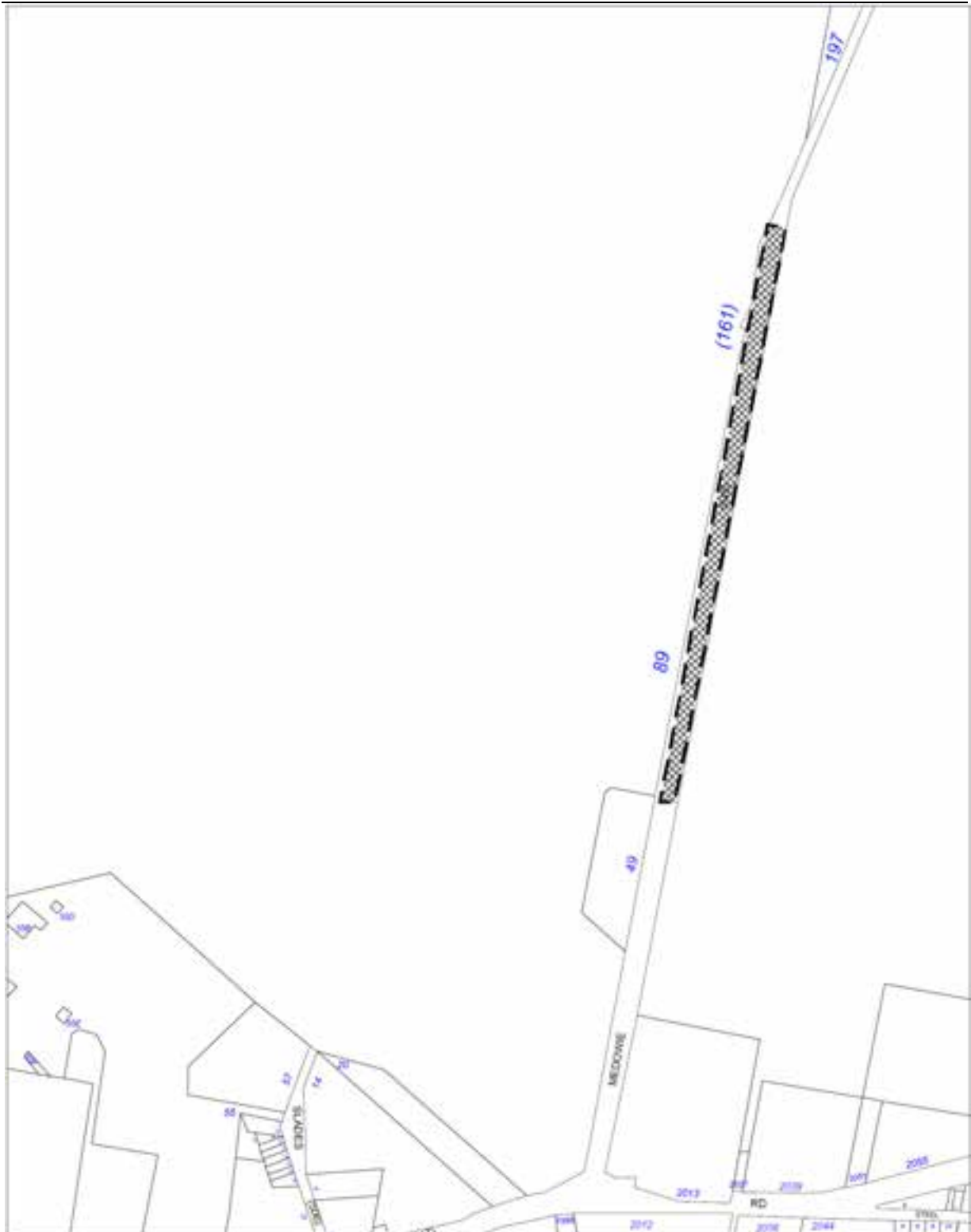
The speed limit on Medowie Road was raised as a safety issue with the 100km/h limit to the north of the RAAF base being inconsistent with speed limits in the area and contributing to increased speeds past the base. Cr Westbury noted that a speed limit of 60km/h would be appropriate between the RAAF base entrances and would improve safety.

The Roads and Maritime Services (RMS – formerly RTA) representative noted that a speed limit review would be undertaken for Medowie Road but that it would be unlikely to be rated as a high priority at the moment.

The Hunter Valley Buses representative noted that if it was considered that the right-turns into the base were a significant safety hazard that these could be banned during peak times. This could be achieved with lane closures and a well-thought out traffic management plan. This would force vehicles to utilise the roundabout on Nelson Bay Road to u-turn and enter the base via a left turn manoeuvre.

**Committee's advice:**

The Traffic Committee noted that the speed limit review will be undertaken by Roads and Maritime Services and is outside the control of the Port Stephens Local Traffic Committee. It was also noted that the development works to be undertaken at the RAAF base in the future will provide an ideal opportunity for safety improvements at the base entrances. It is in the interests of the RAAF that sufficient funds are set aside to allow for safe and efficient traffic facilities to be included in the development works at the base.



D.2 Item: 505\_11/11

**HIGH STREET WALLALONG - REQUEST FOR REVIEW OF INTERSECTION SAFETY AT CLARENCETOWN ROAD**

**Requested by:** Cr Ken Jordan

**File:**

**Background:**

Cr Jordan identified a problem at the intersection of Clarencetown Road and the Northern end of High Street Wallalong. In the dark, and particularly with early morning fog or rain it is very difficult to see the traffic island when coming from a westerly direction and making a right hand turn into High Street heading south towards Hinton.

This traffic island is plain concrete and needs a coat of white paint to make it easy to see.

There was an accident at this intersection last week and judging by where the vehicle ended up through a fence I consider he possibly misjudged the location of the traffic island.

**Comment:**

A blackspot application has been made for funding to improve delineation and signage at this intersection.

**Committee's advice:**

A customer request has been entered to have the median re-painted and missing signage replaced.

No further action at this time

**Discussion:**

The Traffic Committee was advised that a customer request has been entered for the re-painting of the median and the replacement of any missing signs.

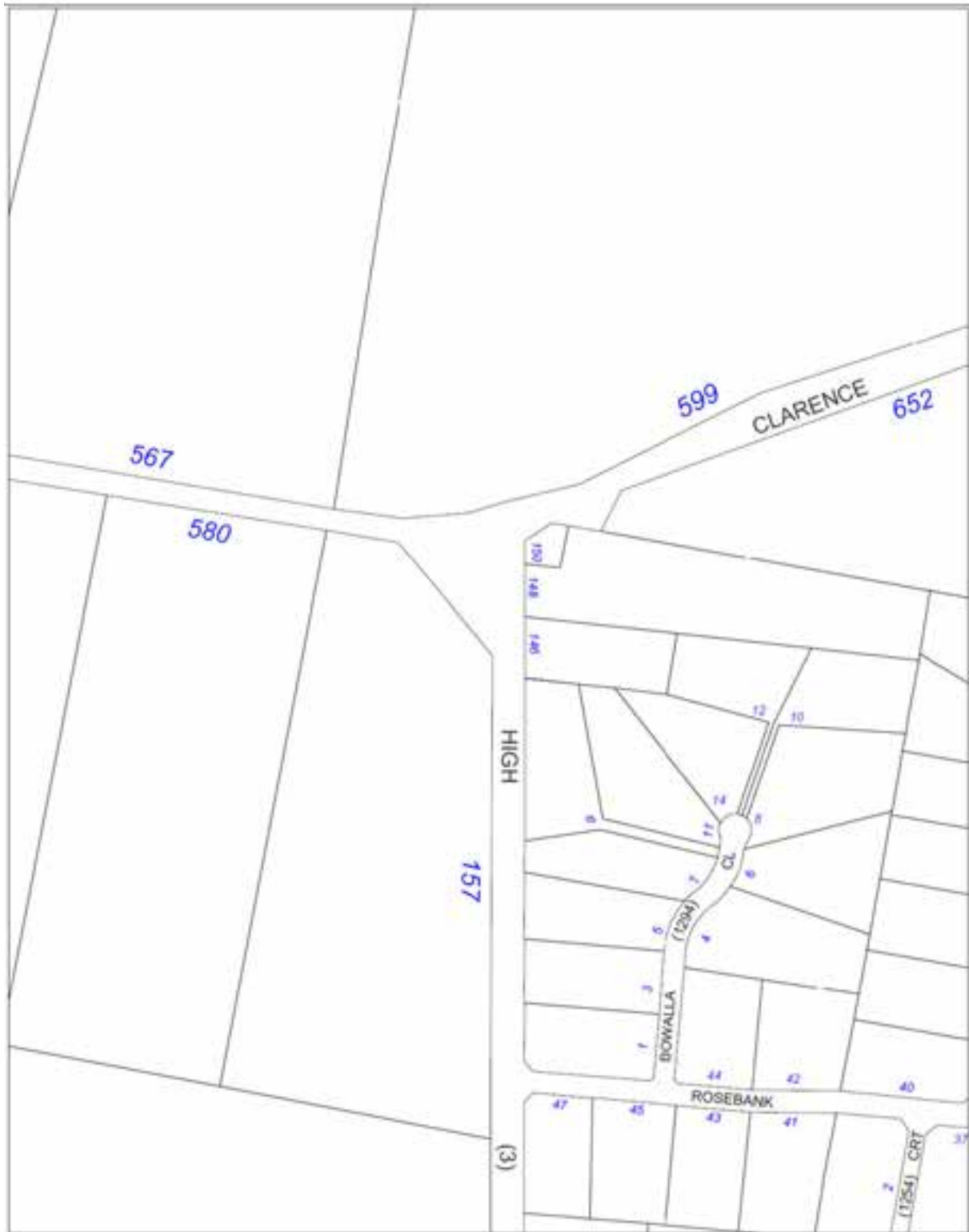


MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

PORT STEPHENS TRAFFIC COMMITTEE  
Tuesday 1 November 2011

ITEM NO.40\_11/11  
Street: High Street

ANNEXURE A  
Page 1 of 1



D.3 Item: 506\_11/11

**GRAHAMSTOWN ROAD FERODALE - SAFETY CONCERNS REGARDING THE INTERSECTION OF RICHARDSON ROAD**

**Requested by:** Cr Geoff Dingle -

**File:**

**Background:**

Cr Dingle raised concerns about safety at the above intersection. He has witnessed many near misses and believes that it is only a matter of time before a fatality or serious accident occurs.

**Comment:**

The Traffic Inspection Committee stopped for a time near the intersection to observe driver behaviour and although the traffic was not busy at the time of inspections, it was evident that many drivers do take risks when turning out of Grahamstown Road. Sight distance is adequate according to Austroads Guidelines and the intersection improvements undertaken by the RTA have improved conditions but more needs to be done.

**Committee's advice:**

For discussion

**Discussion:**

The Traffic Committee members noted that there had been blackspot money spent at the intersection approximately 18 months ago, by the RTA, to improve safety. Anecdotal evidence is that the number and severity of crashes at the intersection had reduced since the improvements however crash statistics should now be available to verify this.

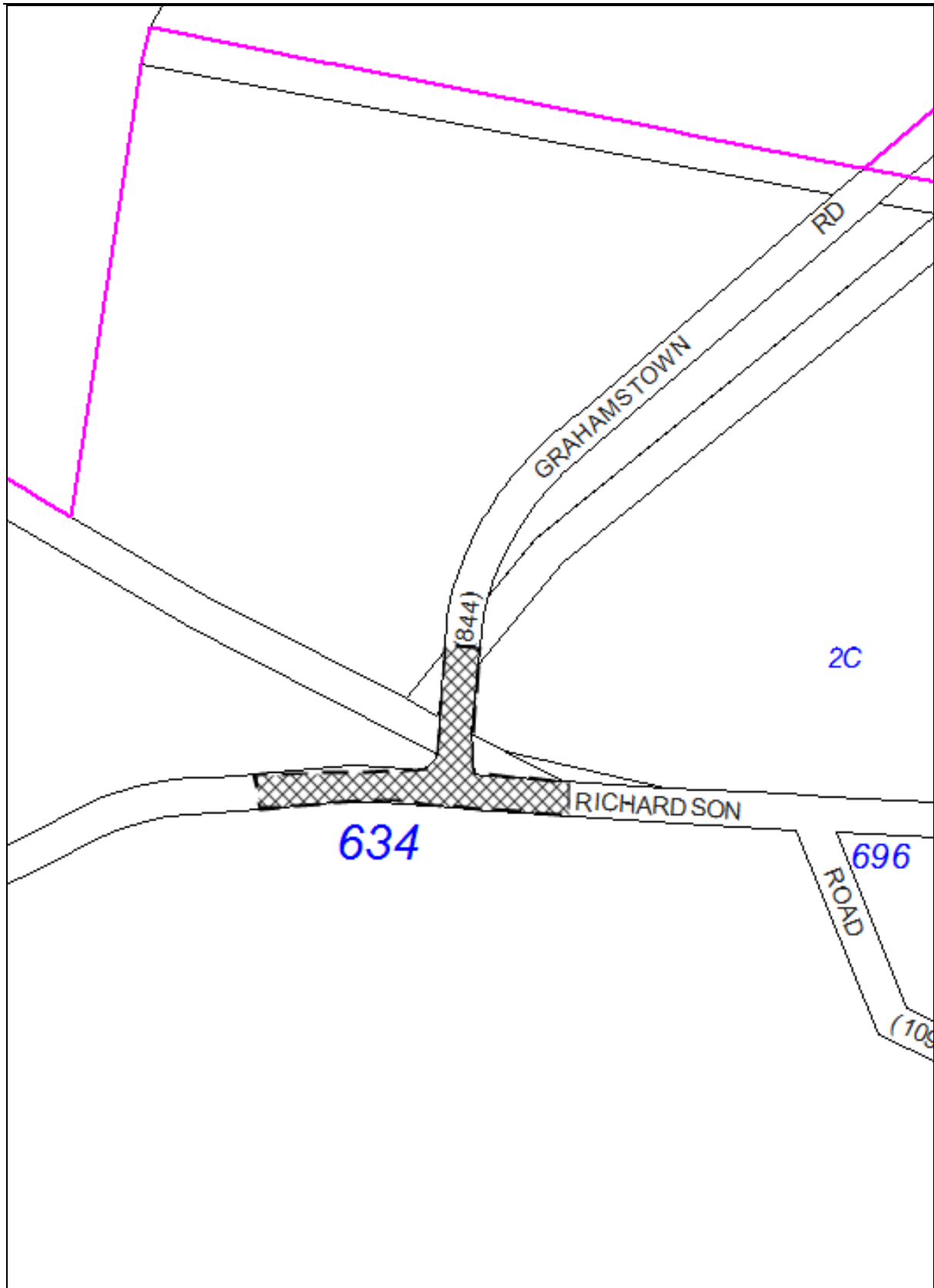
Recent traffic data obtained by Council indicates that average vehicle speed along Richardson Road is well above the posted speed limit with distinct patterns emerging as to specific times of day when this occurs. Council Officers advised that the next Police speed reduction operation will target Richardson Road during November.

MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

PORT STEPHENS TRAFFIC COMMITTEE  
Tuesday 1 November 2011

ITEM NO.506\_11/11  
Street: Grahamstown Road

ANNEXURE A  
Page 1 of 1



D.4 Item: 507\_11/11

**NEWLINE ROAD RAYMOND TERRACE - APPLICATION FOR B-DOUBLE ACCESS ALONG  
NEWLINE ROAD TO THE SITA WASTE FACILITY**

**Requested by:** Viking Waste Pty Ltd

**File:** PSC2010-03994/018

**Background:**

Viking Waste Pty Ltd has applied to Council for B-Double access between William Bailey Street Raymond Terrace and the SITA waste facility at 330 Newline Road. B-Double access will allow larger volumes of waste to be carried by trucks to the waste facility and in theory should reduce the number of trucks on the road.

**Comment:**

There is a need to ensure that access to the waste facility is designed to cater for B-Double access as part of current Development Applications at the site.

**Committee's advice:**

That approval be given for B-Double access on Newline Road Raymond Terrace as proposed

**Discussion:**

No objections were raised



**E. General Business**

Nil.

**ITEM NO. 17**

**FILE NO: PSC2009-02637**

**AUDIT COMMITTEE 2010-2011 ANNUAL REPORT**

**REPORT OF: WAYNE WALLIS - GROUP MANAGER**

**GROUP: CORPORATE SERVICES**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the Audit Committee 2010-2011 Annual Report as presented.

---

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>461</b>	<b>Councillor Ken Jordan</b> <b>Councillor John Nell</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to present to Council the Audit Committee's Annual Report for the period 2010-2011.

At its meeting held on 9 February 2010, Council resolved to establish an Audit Committee in accordance with the Division of Local Government *Best Practice Guidelines 08/64*.

The Annual Report to Council summarises the Audit Committees activities for the 2010-2011 period in accordance with the Audit Committee Charter, Item 5.1 *Reporting to Council*.

**FINANCIAL/RESOURCE IMPLICATIONS**

There are no financial or resource implications arising from the annual report.

**LEGAL, POLICY AND RISK IMPLICATIONS**

Audit Committee activities remain consistent with the Audit Committee Charter, all relative legislative requirements and DLG Guidelines.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

It is considered that the Audit Committee will continue to add significant rigour to Council's governance framework, risk control, compliance and financial reporting and will enhance Council's reputation, operations and financial sustainability.

**CONSULTATION**

- 1) Audit Committee;
- 2) Executive Leadership Team;
- 3) Internal Auditors;
- 4) External Auditors.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Audit Committee 2010-2011 Annual Report.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ATTACHMENT 1



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

DX 21406 | ABN 16 744 377 876



## Report

Date: 10 November 2011

File No: PSC2009-02637

Subject: Audit Committee 2010-2011 Annual Report

### Background:

At its meeting held on 9 February 2010, Port Stephens Council resolved to establish a Section 355c Audit Committee (Committee) in accordance with Division of Local Government best practice guidelines 08/64. The objective of the Committee is to enhance the corporate governance of Council through the provision of independent oversight, review and advice. The Committee has no executive powers and assists Council by providing independent assurance and critical review on the organisation's governance, financial, risk control and compliance frameworks.

The Committee met for the first time in July 2010 and held its inaugural meeting on 10 November 2010.

The Committee's Charter includes a requirement to report annually to Council on the Committee's achievements. Accordingly, the Committee is pleased to present this report on its activities for the 2010/2011 financial year.

Management by Council of governance and risk activities is a crucial requirement for business success. The Audit Committee in its first year of operation has taken up the challenge to guide Council in managing risk as an integral part of management practices and as a safe guard to ensuring continuity of business.

### Audit Committee structure

The Committee has four voting members. Two are independent members in accordance with the Division of Local Government's best practice guidelines, and two Councillors represent Council on the committee. Non-voting members include the General Manager and Group Managers. Representatives from Council's internal audit provider, Lawler Partners and external audit provider, PricewaterhouseCoopers also attend meetings as required.

Audit Committee members 2010/2011 are:

Mr David Wheeler (Independent Chair)  
Mr Bob Ury (Independent member)  
Councillor Ken Jordan  
Councillor Peter Kaler

Committee meetings were held on the following dates:

- 11 November 2010
- 24 February 2011
- 26 May 2011



The budget for the Audit Committee enables a minimum of four meetings (held quarterly) per year; however, the actual number held is dependent on the committee and the extent of issues awaiting review.

Attendance at the three meetings held to 30 June 2011 is as follows:

David Wheeler	3
Bob Urry	0
Councillor Kafer	1
Councillor Jordan	1
General Manager	3
Group Manager Corporate Services	3
Group Manager Commercial Services (or representative)	3
Group Manager Facilities and Services (or representative)	3
Group Manager Sustainable Planning (or representative)	3
Internal Auditor representative	3
External Auditor representative	2

It should be noted that representation by the external auditor is only required twice per annum, reflecting key stages of the external audit scope.

**Cost of audit activities to Council**

The following provides an estimate of the cost of audit related activities to Council for 2010/2011:

Internal Audit contract fees	\$45,490
2009/2010 External Audit fee	\$78,518
Additional external audit related services	\$12,500
Grant audits	7,000
Audit Committee attendance fees	\$2,550
<b>TOTAL</b>	<b>\$146,058</b>

**Engagement with external auditors**

The Audit Committee undertakes a general oversight role of the external auditor's audit scope, approach and reliance on internal audit activity. The committee also monitors management's implementation of recommendations identified within the external auditor's management letters.

During 2010/2011 the identified management issues were monitored and discussed.

Actions to address outstanding matters have been established and responsibilities assigned by management. Issues before the committee include:

- Segregation of duties of identified staff processing and reviewing transactions
- Master file reporting data changes
- Long outstanding bonds held for third parties
- Monthly account reconciliations
- Authorisation of purchases by senior staff
- Tip income reconciliation
- Reliance on automated accounting software for financial statement preparation

The Committee also has a role in the oversight of Council's financial statements. During the year the Committee considered Council's 2009/2010 financial statements and external audit focus areas.

**Risk management**

A key role of the committee is to review and monitor the effectiveness of the key controls in place to manage and mitigate the risks encountered by Council. These matters include operational, strategic, financial and fraud control environments, as well as ensuring adequate insurance coverage and business continuity planning.

During 2010/2011, the committee considered the high priority risks facing the organisation and monitored risk treatment plans established by management to reduce or mitigate those risk exposures.

Current high priority risks include:

- Governance: Political decisions being made contrary to professional advice, policy or legislation
- Financial: Financial performance impacting on achievement of community strategic plan objectives
- Financial: Cash investment portfolio potential for loss of principle
- People: Health and safety systems ensuring a safe work environment
- People: Leadership impacting on efficiency and effectiveness of projects and service delivery
- Environment: Environmental and planning legislation breaches impacting on biodiversity
- Environment: Town planning controls being outdated or inadequate leading to poor urban design
- Technology: Disaster recovery capacity for ICT
- Compliance: Application of documented policies, procedures, processes and strategies impacting on achievement of community strategic plan objectives
- Compliance: Records management compliance with State legislation
- Resilience: Meeting service and project commitments in the event of a major disaster

**Legal matters**

By nature of its legislative compliance role, Council has a history of various legal actions over time. Legal matters can have a significant impact on the financial and resource capacity of the organisation. Management considers the merits of all legal action and seeks to mediate and settle matters where appropriate. The committee has an oversight role on key litigation and compliance matters before the Council.

During 2010/2011 the committee considered the following significant legal matters:

- Melaleuca Estate Pty Ltd (in liquidation) – claim against Council in the Supreme Court seeking damages over drainage
- Lawrence Waterhouse Pty Ltd (in liquidation) – Council seeking to recover significant legal costs awarded by the Courts
- MM Constructions (Australia) Pty Ltd – insurance liability matter in Supreme Court
- EPA (Meadow Quarry) – breach of environmental protection legislation
- Motto Farm Hotel – development application appeal
- Hooper – development application appeal

**Internal audit**

At its first meeting on 11 November 2010, the Audit Committee endorsed the Internal Audit Program 2010-2013. This document represents the forward program for the Internal Auditor for the coming financial year, together with an estimated timing and risk rating of future audits across Council.

The Audit Committee has identified 17 auditable areas across Council for the period of the Internal Audit plan 2010-2013. Given the resources available auditable areas of highest risk have been prioritised.

The table below lists internal audit reports examined by the Audit Committee at the three meetings held since November 2010:

## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

Report	Risk rating	Area/s of Council where applicable
End of financial year process	Moderate	Financial Services
<b>Key findings:</b> The overall results were satisfactory. Areas identified for improvement related to administrative aspects of the general ledger reconciliation and documentation.		
IT governance and disaster recovery	High	Information Management
<b>Key findings:</b> The overall results of the audit indicate that existing control procedures are inadequate for the level of risk presented. Allocation of internal resources to complete critical remediation works is not able to be achieved while maintaining current levels of service (including system and network maintenance and help desk services). Aspects requiring remediation include: overall ICT security and governance, with various external consultants being able to access security levels; ICT backup procedures; defining service standards, role and responsibilities for the ICT environment.		
Complaints management	Moderate/Low	Governance/Communications & Customer Relations
<b>Key findings:</b> The overall audit result was satisfactory, with most controls in place for processing and responding to complaints operating effectively. However, some control weaknesses were identified in relation to the complaint handling process including the timeliness of a complaint lifecycle, mechanisms in place to identify trends and underlying causes, and the absence of a consistent complaints management system across the organisation.		

Action plans to address the Internal Audit findings have been established by management and are maintained by the Committee.

The following table details the area of activity scheduled for internal audit during 2011/2012:

Area of activity	Risk rating	Timing for completion
Waste management	Critical	August 2011
Purchasing & procurement – initial review	Moderate/High	August 2011
Project management – initial review	Critical	August 2011
Financial sustainability and planning	Critical	October 2011
Asset maintenance	Critical	February 2012
Purchasing and procurement	Major	February 2012
Capital projects/works management	Major	February 2012
Section 94 contributions	Critical	May 2012
Succession planning	Critical	May 2012
Investments	Critical	May 2012
Government Information (public access) Act (NSW) 2009 operational review	Major	May 2012
Project management	Critical	July 2012
Developer applications	Major	February 2012

## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

### General activities of the Audit Committee

The following represents a summary against the Audit Committee Charter of matters discussed at the Committee meetings held during 2010/2011:

TASK	11/11/2010	24/02/2011	26/05/2011
Receive presentations and reports from internal and external auditors	✓	✓	✓
Review implementation of internal and external audit recommendations	✓	✓	✓
Review risk register actions and implementation	✓	✓	✓
Review Fraud and corruption prevention plan		✓	
Review Risk management framework	To be considered (February 2012)		
Approve annual internal audit program	✓		
Determine Audit Committee meeting schedule	✓		
Review Audit Committee's performance	To be considered at meeting August 2011		
Review Audit Committee Charter	To be considered at meeting August 2011		
Review and approve the Audit Committee's annual report to Council	To be considered at meeting October 2011		
Review annual financial statements	To be considered at meeting October 2011		

### Conclusion

The Committee looks forward to the opportunity to continue to provide input to Council's governance and audit processes over the coming year.

### Recommendations:

- 1) Accept the Audit Committee 2010/2011 Annual Report as presented.

**David Wheeler**  
**CHAIR – AUDIT COMMITTEE**

### Communication method

- Post on myPort
- Post on PSC website
- Memo to section managers
- Presentation to SLT
- Snapshot article
- All staff memo from General Manager
- 2 way conversation with Councillors
- Councillors weekly PS newsletter
- Report to Council
- Media release
- Other \_\_\_\_\_

ITEM NO. 18

FILE NO: PSC2009-02637

## REVISED AUDIT COMMITTEE CHARTER

REPORT OF: WAYNE WALLIS - GROUP MANAGER CORPORATE SERVICES  
GROUP: CORPORATE SERVICES

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the revised Audit Committee Charter as detailed in attachment 1.
- 

### ORDINARY COUNCIL MEETING – 20 DECEMBER 2011

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

### BACKGROUND

The purpose of this report is to present recommended amendments to the current Audit Committee Charter adopted by Council on 13 September 2011, Minute No. 329.

At its meeting on 27 October 2011, the Audit Committee agreed to recommend to Council that section 4.6 External Audit, of the Audit Committee Charter be amended to reflect changes made in the DLG Better Practice Audit Committee Guidelines.

The proposed amendment reflects more accurately the general oversight role of the External Audit function by the Audit Committee.

### FINANCIAL/RESOURCE IMPLICATIONS

There are no financial implications arising from amendment to the Audit Committee Charter.

### LEGAL, POLICY AND RISK IMPLICATIONS

The Audit Committee Charter remains consistent with all relative legislative requirements and DLG Guidelines.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

It is considered that the Audit Committee will continue to add significant rigour to Council's governance framework, risk control, compliance and financial reporting and will enhance Council's reputation, operations and financial sustainability.

**CONSULTATION**

- 1) Audit Committee;
- 2) Executive Leadership Team.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Audit Committee Charter.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ATTACHMENT 1

PORT STEPHENS COUNCIL



# AUDIT COMMITTEE CHARTER

Adopted by Council on 9 February 2010  
(Amended by Council on 19 October 2010)  
(Amended by Council on 13 September 2011)

Insert (Amended  
By Council on 22  
November 2011)



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### 1. OBJECTIVE

The objective of the Audit Committee (Committee) is to enhance the corporate governance of Port Stephens Council (Council) through the provision of independent oversight, review and advice. The Committee will assist Council by providing independent assurance and assistance on the organisation's governance, risk, control and compliance frameworks.

In fulfilling its objective, the ability of the Committee to maintain independent and objective judgement is vital.

The Committee will report to Council and provide independent advice and recommendations on matters relevant to the Committee's Charter. The Committee will also act as a forum for communication between Council, General Manager, senior management, internal audit and external audit.

### 2. AUTHORITY

Port Stephens Council will establish the Audit Committee to operate as an independent and objective advisory committee to Council. The Committee is established as an advisory committee of Council pursuant to Section 355C of the Local Government Act 1993 (as amended).

The Council authorises the Committee, within the scope of its roles and responsibilities, to:

- obtain information it needs from any employee or external party (subject to their legal obligations to protect information and with prior consultation with the General Manager);
- discuss any matters with the internal and external auditors or other external parties (subject to confidentiality considerations);
- request the attendance of any employee at Committee meetings (subject to prior consultation with the General Manager); and
- obtain external legal or other professional advice considered necessary to meet its responsibilities (in accordance with Council procurement arrangements and subject to prior consultation with the General Manager).

The Committee does not have any delegations or authority to implement actions not otherwise specified or authorised by Council. The Committee does not have any management functions and is independent of management.

### 3. COMPOSITION AND TENURE

The Committee will consist of four voting members – two elected members of Council (excluding the Mayor) and two external independent members.

The members of the Committee, taken collectively, will have a broad range of skills and experience relevant to Council's operations.



### **3.1 Elected Member of Council**

The elected member of Council (excluding the Mayor) appointed to the Committee will have relevant and appropriate experience in business, risk, law and financial management.

Appointment of the elected member to the Committee will be determined by Council as resolved from time to time.

Council may resolve to appoint an elected member for consecutive terms.

### **3.2 Independent External Member**

The two independent external members will have relevant and appropriate experience in business, risk, law and financial management.

The independent external members will be appointed on the terms and conditions determined by Council.

Council may resolve to appoint an independent external member for consecutive terms.

### **3.3 Invitees (non-voting)**

Unless the Committee determines otherwise, the following Council officers and representatives will be required to attend meetings of the Committee for specific agenda items:

- General Manager
- Group Managers
- Manager Financial Services
- Manager Legal Services
- Executive Officer
- Corporate Risk Manager
- Representatives of the external auditor
- Representatives of the internal auditor
- Other officers may attend by invitation as requested by the Chair of the Committee.

The Council officers and representatives will have no voting entitlements.

### **3.4 Independent Chair**

An independent external member will be the Chair of the Committee.

Appointment of the independent external member Chair to the Committee will be determined by the Committee as resolved from time to time.

The Committee may resolve to appoint an independent external member as Chair for consecutive terms.

In the absence of the Chair the members present at the meeting will elect an acting Chair.



#### **4. ROLES AND RESPONSIBILITIES**

The Committee has no executive powers, but may from time to time be delegated specific powers by Council.

In carrying out its responsibilities, the Committee, must at all times, recognise that primary responsibility for management of Council rests with the Council and the General Manager as defined by the Local Government Act.

Council or the General Manager may refer any matter to the Committee within the scope of its roles and responsibilities.

The responsibilities of the Committee may be revised or expanded by the Council from time to time.

The Committee's specific responsibilities include:

##### **4.1 Risk Management**

- Review Council's risk management framework to ensure comprehensive processes exist to identify operational, strategic, financial and fraud risks. Review controls to ensure effective processes to reduce risks to an acceptable residual level.
- Review whether a sound and effective approach has been followed in developing strategic risk management plans for major projects or undertakings.
- Review the impact of the risk management framework on its control environment and insurance arrangements.
- Review whether a sound and effective approach has been followed in establishing business continuity planning arrangements, including whether plans have been tested periodically.
- Review and endorse the Risk management (and related) policies and procedures.

##### **4.2 Control Framework**

- Review whether management has adequate internal controls in place, including over external parties such as contractors and advisors.
- Review whether management has in place relevant directives and procedures, and these are periodically reviewed and updated.
- Progressively review whether appropriate processes are in place to ensure adequate compliance to policies and procedures.
- Review whether appropriate policies and procedures are in place for the management and exercise of delegations.
- Review the Code of Conduct as it applies to ethical and lawful behaviour.

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**4.3 External Accountability**

- In consultation with management ensure the annual financial reports comply with applicable Australian Accounting Standards and Department of Local Government Guidelines.
- Review the external audit opinion, including whether appropriate action has been taken in response to audit recommendations and adjustments.
- Consider responses on contentious financial reporting matters in conjunction with Council's management and external consultants.
- Review the processes in place designed to ensure financial information included in the annual report is consistent with the signed financial statements.
- Ensure timely and accurate publishing of the annual report to include the signed financial statements as per Australian Accounting Standards and Department of Local Government Guidelines.
- Ensure appropriate controls are in place to satisfy compliance to State Government reports and recommendations.
- Ensure management has in place an appropriate framework to link organisational objectives and outcomes meet Council expectations.

**4.4 Legislative Compliance**

- Ensure an appropriate compliance framework exists to identify risks and controls over legislative compliance to relevant laws, regulations and associated government policies.

**4.5 Internal Audit**

- Ensure the Internal Audit Plan meets the objectives of management and recommend adoption as required.
- Consider the adequacy of internal audit resources to carry out its responsibilities, including completion and compliance of the approved Internal Audit Plan within the designated timeframe.
- Provide input (but not decision) into the tender, remuneration and appointment of the internal auditor.
- Ensure the existence and provide input into an effective long-term internal audit strategic plan.
- Receive audit reports and consider significant issues that have been identified. Review recommendations and ensure appropriate follow up of issues is effected within a timely manner.
- Review and endorse the Internal Audit Charter.
- Periodically review the performance of Internal Audit.

**4.6 External Audit**

- Review and endorse the proposed scope and engagement terms of the external auditor.

Delete 'Review and endorse ...auditor'.

Insert 'Note the external auditor's scope and approach, including any reliance on internal auditor activity'.

## PORT STEPHENS COUNCIL



- Review and ensure management implement recommendations contained within the external auditor's management letter as appropriate.
- Provide input (but not decision) into the tender, remuneration and appointment of the external auditor.

### **4.7 Responsibilities of Members**

Members of the Committee are expected to:

- have a good understanding of the Committee's position within the Council's governance framework;
- understand the regulatory and legislative requirements appropriate to Council;
- understand and ensure clearly defined roles and responsibilities for audit related positions and consultancies exist;
- ensure effective communication exists between the Committee, management and key stakeholders;
- provide professional competency to be able to meet the objectives of the Committee; and
- contribute effectively to the quality assurance and continuous improvement process as it relates to the objectives.

## **5. REPORTING**

### **5.1 Reporting to Council**

The Committee, through the Chair, will report regularly to Council on significant governance, risk and internal control issues including:

- significant control weaknesses or breakdowns in critical controls;
- fraudulent or illegal activities;
- evaluation of the effectiveness of the internal and external audit functions; and
- endorsement of the financial statements.

The Committee will also report immediately to the General Manager any matter it deems of sufficient importance.

Where the Committee makes a recommendation to Council on a matter within the scope of its Charter, the matter will be listed as an agenda item for consideration by Council.

The Committee will submit an annual report to Council summarising its activities for the previous year.

### **5.2 Internal Audit Reporting**

At the first Committee meeting after 30 June each year, Internal Audit will provide a performance report of:

- the performance of Internal Audit for the financial year as measured against agreed key performance indicators; and
- the approved Internal Audit Plan of work for the previous financial year showing the current status of each audit.



## **6. ADMINISTRATIVE ARRANGEMENTS**

### **6.1 Meeting Practice**

Unless otherwise specified in this Charter and in accordance with any Local Government Act requirements, the Committee will determine its meeting practice, processes and protocols.

### **6.2 Voting**

Matters under consideration by the Committee will be determined by consensus whenever possible. In the event that consensus cannot be achieved, an item is adopted by the Committee where a majority of members vote for the subject. If the voting is tied the Chair has a second (casting) vote which is used to break the deadlock.

### **6.3 Meeting Schedule**

The Committee will meet at least four times per year, with one of these meetings to include review and endorsement of the annual audited financial reports and external audit opinion.

The need for any additional meetings will be decided by the Chair of the Committee, though the Council, General Manager or other Committee members may make requests to the Chair for additional meetings.

A forward meeting plan, including meeting dates and agenda items, will be agreed by the Committee each year. The forward meeting plan will cover all Committee responsibilities as detailed in this Audit Committee Charter (refer attachment A).

### **6.4 Attendance of Meetings and Quorums**

A quorum will consist of a majority of Committee members, including at least one independent external member.

### **6.5 Secretariat**

The General Manager will ensure that appropriate secretariat support is provided to the Committee. The secretariat is the liaison between the Committee and the day to day operations and staff of Council.

### **6.6 Agenda**

The secretariat will ensure the agenda for each meeting and supporting papers are circulated to members in sufficient time (at least three working days) before the meeting.

Circulation of the agenda will be by normal postal services or electronic means as determined by the Committee.

### **6.7 Minutes**

Minutes of Committee meetings will be recorded by the secretariat and reviewed by the Chair prior to circulation to members for information and action arising.

**PORT STEPHENS COUNCIL**



The minutes will be circulated within three weeks of the meeting being held.

**6.8 Implementation of Auditor Recommendations**

The Committee will maintain a register to track the implementation of both internal and external audit recommendations. The register will include all audit recommendations, together with management responses, that have yet to be implemented or where implementation is in progress. The status of recommendations will be reviewed by the Committee at each meeting.

**6.9 Code of Conduct**

Committee members are bound by the terms and conditions of the Port Stephens Council Code of Conduct.

Committee members must declare any conflicts of interest at the start of each meeting. Details of any conflicts of interest must be appropriately minuted.

Where members or invitees at Committee meetings are deemed to have a real or perceived conflict of interest, it may be appropriate they be excused from Committee deliberations on the issue where the conflict of interest may exist.

**6.10 Induction**

The General Manager will ensure that new Committee members receive relevant information and briefings on their appointment to assist them to meet their Committee responsibilities.

**6.11 Performance Assessment**

The Chair of the Committee will initiate an annual review of the performance of the Committee. The review will be conducted on a self-assessment basis (unless otherwise determined by the Committee), with appropriate input from management and any other relevant stakeholders, as determined by the Committee.

**6.12 Review of Audit Committee Charter**

The Committee will review the Audit Committee Charter on an annual basis and make recommendation on any changes to Council for its determination.

Any changes to the Audit Committee Charter must be approved by Council.

<b>Approved:</b>	Port Stephens Council Meeting	Date: 9 February 2010
<b>Amended:</b>	Port Stephens Council Meeting	Date: 19 October 2010
<b>Reviewed:</b>	Audit Committee meeting	Date: 4 August 2011
<b>Amended:</b>	Port Stephens Council Meeting	Date: 13 September 2011

Insert 'Amended: Port Stephens Council Meeting – Date 22 November 2011'.



**ATTACHMENT A**

**Audit Committee –Work Plan**

<b>TASK</b>	<b>TIMING</b>
Receive presentations and reports from internal and external auditors	Standing item
Review implementation of internal and external audit recommendations	Standing item
Review risk register actions and implementation	Standing item
Review fraud and corruption prevention plan	February
Review Risk management framework	February
Approve annual internal audit program	May
Determine Audit Committee meeting schedule	May
Review Audit Committee's performance	July
Review Audit Committee Charter	July
Review and approve the Audit Committee's annual report to Council	October
Review annual financial statements	October

**Audit Committee – Proposed Meeting Schedule**

July  
 October (Financial Statements)  
 February  
 May



ITEM NO. 19

FILE NO: PSC2011-00312

## SUSTAINABILITY REVIEW – CORPORATE STRATEGY AND PLANNING

REPORT OF: WAYNE WALLIS - GROUP MANAGER CORPORATE SERVICES

GROUP: CORPORATE SERVICES

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Note the information contained in the Service Strategy – Corporate Strategy and Planning;
- 2) Endorse the Service Delivery Review Findings No.1 – 14 detailed below:
  1. That integrated planning be coordinated by the Corporate Strategy and Planning Coordinator via teams (already constituted).
  2. That the Corporate Strategy and Planning Coordinator convene the Combined Leadership Team (CLT) annually to develop the operational plan and every four years to develop the delivery program in draft for a workshop with Councillors.
  3. That facilitation of community consultation to review the community strategic plan every four years facilitated by the Mayor, Councillors and executive staff with support from team one (designing and facilitating CLT and Councillors workshops).
  4. That the Executive Leadership Team (ELT) note the agreement between Corporate Strategy and Planning and its customer, the General Manager, including dates and output quality of the integrated plans of Port Stephens Council.
  5. That the monthly and quarterly reports no longer be produced.
  6. That managers and responsible officers produce reports via Performance Manager and BIS monthly, one week after the end of each month.
  7. That the preparation of the six-monthly and annual report and the end of term report continue to be done in-house.
  8. That the production values agreed for the six-monthly and annual report continue to apply and also to apply to the end of term report.
  9. That Corporate Strategy and Planning negotiate with Communications and Customer Relations for editing/proof reading services in high production value documents.
  10. That the Natural Resources Coordinator investigates the option of producing a regional State of environment report in 2012 and thereafter, with costs to be shared with other councils.
  11. That the Corporate Strategy and Planning Coordinator continues to develop common community indicators in a process with other councils in the region and through the auspices of the Department of Premier and Cabinet.
  12. That the customer satisfaction survey continue to be provided in-house with adjustments as noted above.
  13. That the service be increased to allow for additional data collection.
  14. That the increase be provided for in the existing Corporate Strategy and Planning budget and no additional funds be required due to the savings proposed in other areas as above.

**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

- 3) Note the efficiency mechanisms implemented in delivering the service detailed under the Financial/Resource Implications section.
- 

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>463</b>	<b>Councillor Caroline De Lyall</b> <b>Councillor Sally Dover</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to present to Council the outcomes of the Sustainability Review for Corporate Strategy and Planning Services (stage 3) and seek endorsement of the recommendations contained in the Service Strategy.

The comprehensive review of this service is in line with the principles of Best Value and are in accordance with the delivery of Council's Operational Plan 2011/2012, Item 5.3.4: Implement the sustainability review of Council's levels of services and delivery.

By way of background, the sustainability reviews currently being undertaken across all Council services comprise three key stages:

- Stage 1      Reviewing what is currently delivered – ie. service drivers (legal, financial, operational).
- Stage 2      Reviewing what should be delivered – ie. service levels (at what standard and at what cost).
- Stage 3      Reviewing how it should best be delivered – ie. service delivery method (delivery model).

The findings of all stages of the review are documented into a comprehensive service strategy, with recommendations on the way forward.

**Corporate Strategy and Planning Services**

The Corporate Strategy and Planning sustainability review undertook an examination of all activities undertaken by the Corporate Strategy and Planning unit and these individual activities were consolidated into three primary service packages.

<b>Service package</b>	<b>Corporate Planning</b>	<b>Corporate Reporting</b>	<b>Customer Satisfaction Survey</b>
Key activities	Facilitation of development and production of:	<ul style="list-style-type: none"> <li>Monthly reporting</li> </ul>	In-house implementation and reporting of customer satisfaction survey
	<ul style="list-style-type: none"> <li>Community strategic plan;</li> </ul>	<ul style="list-style-type: none"> <li>Quarterly reporting against Council plan</li> </ul>	
	<ul style="list-style-type: none"> <li>Delivery program;</li> </ul>	<ul style="list-style-type: none"> <li>Six-monthly reporting against Council plan</li> </ul>	
	<ul style="list-style-type: none"> <li>Operational plan;</li> </ul>	<ul style="list-style-type: none"> <li>Annual report</li> </ul>	
	<ul style="list-style-type: none"> <li>Resource strategy (long term financial plan; workforce strategy; strategic asset management plan).</li> </ul>	<ul style="list-style-type: none"> <li>End of term report</li> </ul>	
Legal requirement to deliver service	Yes	Yes	No

Corporate Strategy and Planning (CSP) is part of the Office of the Group Manager Corporate Services and was formed in 2009. In summary, the service entails:

- 1) Staffing – 1.0 (EFT)
    - a. Indoor staff member located in the administration building
  - 2) Funding
    - a. Recurrent annual budget of \$193,209
      - i. Delivery
- 1) CSP provides services for all of Council and in addition to the key leadership process services, which are the subject of the sustainability review.
  - 2) CSP provides statistical analysis services on demand, research projects and manages the Performance Manager (PM) reporting system.

**Service review findings**

This review was undertaken between 1 July and 30 September 2011. The review team comprised the Group Manager Corporate Services and Corporate Strategy and Planning Coordinator. As part of the review, service levels were discussed and agreed with the General Manager on behalf of Council.

Stage 2 of the review involved consultation with the customer (General Manager) and establishment of a service level agreement in terms of what should be delivered, at what standard and at what cost. The service package was then benchmarked against equivalent service packages from Auburn, Cessnock, Gosford, Lake Macquarie, Maitland, Newcastle, and Wyong Councils.

The findings of the sustainability review have identified the following:

- Staff
- All benchmarked councils have a minimum of 2.0 EFT to deliver corporate planning and reporting and it is done in-house. With this staff level they do not do in-house surveys of customers. PSC does both plus surveying with 1.0 EFT.
- Surveys
- All benchmarked councils outsource customer satisfaction surveys at a cost of between \$30,000 and \$60,000 pa using either Micromex or Hunter Valley Research Foundation. PSC does this work in-house at a cost, including staff time, of \$5,050 with full data analysis.
- Production values
  - All benchmarked councils provide outputs (reports, plan documents) at the equivalent of PSCs award quality, ie. full design with high production values (glossy etc.), perfect bound.
- Technology
  - All benchmarked councils, except Newcastle, have introduced electronic performance monitoring and reporting. PSC has Performance Manager.

Service delivery specifications:

- Corporate Planning
  - On time: all plans adopted on/before 30 June each year
  - On/below budget
  - Medium quality output – MS Word and Excel documents with designed cover and layout
  - Drafts including exhibition drafts to be basic MS Word documents

## Corporate Reporting

- On time: Annual report by 30 November each year; six-monthly reports five weeks after end of half-year; end of term report – 1 August each quadrennial
  - On/below budget
  - Six-monthly report: medium quality output – MS Word and Excel with some design elements and designed cover
  - Annual report: award quality – full design with high production values (glossy etc.), perfect bound
  - End of term report – medium quality output
- Customer Satisfaction Survey
    - On-time (May each year)
    - On/below budget – non-staff costs not to exceed \$3,500
    - Output: report using MS Word and Excel to Council in July each year.

## Service priorities:

Stage 3 of the review involved determining the best method for delivery of the service package and then all three stages of the review were documented into a comprehensive service strategy with recommendations on the way forward. The key findings of the review are as follows:

- 1) That integrated planning be coordinated by the Corporate Strategy and Planning Coordinator via teams (already constituted).
- 2) That the Corporate Strategy and Planning Coordinator convene the Combined Leadership Team (CLT) annually to develop the operational plan and every four years to develop the delivery program in draft for a workshop with Councillors.
- 3) That facilitation of community consultation to review the community strategic plan every four years facilitated by the Mayor, Councillors and executive staff with support from team one (designing and facilitating CLT and Councillors workshops).
- 4) That the Executive Leadership Team (ELT) note the agreement between Corporate Strategy and Planning and its customer, the General Manager, including dates and output quality of the integrated plans of Port Stephens Council.
- 5) That the monthly and quarterly reports no longer be produced.
- 6) That managers and responsible officers produce reports via Performance Manager and BIS monthly, one week after the end of each month.
- 7) That the preparation of the six-monthly and annual report and the end of term report continue to be done in-house.
- 8) That the production values agreed for the six-monthly and annual report continue to apply and also to apply to the end of term report.
- 9) That Corporate Strategy and Planning negotiate with Communications and Customer Relations for editing/proof reading services for high production value documents.

- 10) That the Natural Resources Coordinator investigates the option of producing a regional State of environment report in 2012 and thereafter, with costs to be shared with other councils.
- 11) That the Corporate Strategy and Planning Coordinator continues to develop common community indicators in a process with other councils in the region and through the auspices of the Department of Premier and Cabinet.
- 12) That the customer satisfaction survey continue to be provided in-house with adjustments as noted above.
- 13) That the service be increased to allow for additional data collection.
- 14) That the increase be provided for in the existing Corporate Strategy and Planning budget and no additional funds be required due to the savings proposed in other areas as above.

### **FINANCIAL/RESOURCE IMPLICATIONS**

- The total number of effective fulltime employees (EFT) within Corporate Strategy and Planning is 1.0. The service strategy does not propose to change the number of EFT;
- If adopted, the recommendations related to corporate planning and reporting will deliver for Council net cost savings of \$3,900 in printing and other production costs, and savings in staff time that is valued at \$13,100. These savings are ongoing;
- If adopted, the recommendation to continue to deliver the community satisfaction survey in-house will deliver an estimated saving of \$52,400 when compared with an outsourced comprehensive process. Retaining this service for Council and providing it in-house is a cost and resource efficient alternative;
- If Council considers alternative options to the recommendations within the Corporate Strategy and Planning service strategy, this may affect any savings identified in the sustainability review;
- Should Council adopt a recommendation to reduce or cease the internal provision of this service then the conditions of the Port Stephens Enterprise Agreement Clause 28 will come into effect. This clause establishes Council's duty to notify affected staff and relevant Unions regarding an intention to introduce major changes to programs, sets out the duties of the parties, establishes procedures to be followed and conditions relating to staff redeployment or redundancies. Redundancies could incur costs of up to 39 weeks ordinary pay, for each employee displaced.

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

- Council is required under sections 402-404 of the Local Government Act 1993 (as amended in 2009) to develop with its community a community strategic plan covering at least 10 years; a four year delivery program and annual operational plan. The legislation specifically requires Councils to own and conduct the process so alternatives to in-house corporate planning are not feasible. Some councils use consultants in the engagement process with the community, however this is expensive (minimum of \$25,000);

- Council is required under section 404 of the Local Government Act 1993 to report on progress in the implementation of Council's delivery program every six months;
- Under section 428 of the Act Council is required to provide an annual report, including audited financial statements. Every four years a State of environment report must form part of the Annual Report;
- At the end of a term of Council, Councillors are required under the Act to provide to the community an End of Term report, which the Division of Local Government recommends should be in the form of a State of the Shire report;
- Section 402(4) of the Local Government Act requires councils to have a community engagement plan. As part of ongoing dialogue with our community, and to facilitate prioritising and allocation of resources, the Customer satisfaction survey is conducted.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

- 1) Under the Local Government Act 1993 s402(3)(a) Council must ensure that in all plans it addresses civic leadership, social, environmental and economic issues in an integrated manner. Under s428(1) and s428A, Council must report on its principal activities and (every four years) the State of the environment;
- 2) If Council considers alternative options to the recommendations within the Corporate Strategy and Planning service strategy, this may affect any increase in service levels identified in the sustainability review.

### **CONSULTATION**

Extensive consultation has been undertaken with customers and stakeholders to determine if Council should continue to deliver services provided by Corporate Strategy and Planning in the future, and if so, at what level and at what cost.

A benchmarking exercise was undertaken with Auburn, Cessnock, Gosford, Lake Macquarie, Maitland, Newcastle and Wyong Councils. This covered the areas under review.

### **OPTIONS**

- 1) Council adopt the recommendations;
- 1) Council amend the recommendations;
- 2) Council reject the recommendations.

### **ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

- 1) Sustainability Review – Corporate Strategy and Planning Service Strategy;
- 2) Sustainability Review – Corporate Strategy and Planning Service Strategy – Annexure.



**ITEM NO. 20**

**FILE NO: PSC2011-04344**

**SUSTAINABILITY REVIEW – GENERAL MANAGERS OFFICE**

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

**GROUP: GENERAL MANAGER'S OFFICE**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Notes the information contained in the Service Strategy – General Manager's Office;
  - 2) Further investigate the cost benefit of employing a paralegal or legal administration officer as a shared resource with legal services.
- 

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>464</b>	<p><b>Councillor Ken Jordan</b>  <b>Councillor Caroline De Lyall</b></p>
	<p>It was resolved that the recommendation be adopted.</p>

**BACKGROUND**

The purpose of this report is to present to Council the outcomes of the sustainability review for the General Managers Office and seek endorsement of the recommendations contained in the General Managers Office Service Strategy.

The service links to the Community Strategic Plan 2021 in the following areas:

Strategic Direction – Community Planning & Partnerships – Collaborate with the community of Port Stephens to plan for its facilities & appropriate services.

- 1.5.7 – Conduct citizenship ceremonies as appropriate throughout the year;
- Strategic Direction – Transport – Port Stephens will have sustainable & improving, accessible and flexible transport modes;
- 4.7.6 – Continue to participate in the Pacific Highway Transport Forum;
- Strategic Direction – Infrastructure – Infrastructure & utilities meet the needs of all sections of the community;
- 5.4.4 – Advocate on behalf of Port Stephens LGA to State & Federal governments for improved and affordable utilities for our citizens.

Strategic Direction – Governance and Civic Leadership – Good governance and partnerships in a climate of open and effective communication, accountability and trust.

## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

- 5.5.1 – Advocate for and build strong partnerships between Council and State and Federal agencies, regional and private sector potential partners;
- 5.5.2 – Provide an on-going program of development for Councillors;
- 5.7.1 – Ensure compliance with GIPA.

The key drivers for these services are legal and operational.

By way of background, the sustainability reviews currently being undertaken across all Council services comprise three key stages:

- Stage 1      Reviewing what is currently delivered – ie service drivers (legal, financial, operational);
- Stage 2      Reviewing what should be delivered – ie service levels (at what standard and at what cost);
- Stage 3      Reviewing how it should best be delivered – ie service delivery method (delivery model).

The findings of all stages of the review are documented into a comprehensive service strategy, with recommendations on the way forward.

### General Managers Office (GMO)

As part of its functions, the GMO:

- 1) Provide Councillor Support;
- 2) Provide Executive Support;
- 3) Provide Access to Information;
- 4) Provide direction to staff on matters;
- 5) Provide advice governance requirements;
- 6) Provide legislative & policy advice;
- 7) Provides back-up to the legal service function when required.

There are a number of ongoing challenges facing the General Managers Office:

- A. Being able to provide day to day advice to staff with current resources;
- B. Maintaining training/awareness sessions to meet the legislative requirements;
- C. Broad Legislative Framework – Council's Legislative Compliance Register identifies more than 140 key Acts with which Council must comply. There is a further 800 or so statutes affecting local government in general in NSW;
- D. Knowledge Management – logistics and resourcing required.

Resources available during the current financial year for the GMO comprise:

Operating Expenditure	\$1,016,386
Capital Expenditure	Nil.
Revenue	\$1,000
Staffing (EFT)	3

## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

The breakdown for each service area is:

<b>Service/Activity</b>	<b>Key Metrics</b> Eg financial cost for specified service level
Provision of Councillor Support – EFT 1.0	\$635,557
Provision of Executive Support – EFT 1.0	\$213,273
Access to Information – EFT 1.0	\$167,556
Provision of direction on matters	Included above
Provision of governance requirements	Included above
Provision of legislative & policy advice	Included above

### SERVICE REVIEW FINDINGS

#### Benchmarking

As part of Stage 3 of the review, a survey was undertaken of all Hunter Councils and three (3) outside the Hunter area.

This benchmarking showed that there was a varied approach to provision of these services, in particular governance. Some of those Councils benchmarked have governance within the General Managers Office whilst other are within the Corporate Services area.

The staff number range from:

General Manager Office	2-11 EFT
Mayor's Office	1-3 EFT
Governance	3-10 EFT.

Due to the varied approaches to staffing of these services and what functions are within each area it is difficult to compare exactly between Council. Some of those Councils benchmarked included risk, legal, insurance, Corporate Integrated Planning and Records in governance.

#### Internal Efficiencies and Options

Over recent years a reduction of costs has been achieved by improvement in practices. A saving of \$5,000 annually has been achieved with improvements to the printing of the business paper for Council, additional cost savings have been achieved with the current Council meeting cycle. Also a reduction of one (1) position was achieved in 2008 with the redesign of the Business Paper Coordinator role and the Executive Assistant – Councillor Support into one role. This was previously filled by two (2) employees.

Through further development of the informal relationship between Governance and Legal Services greater efficiencies would allow the development of governance frameworks and policy and in turn potentially drive legal costs down. The development of such frameworks would require additional resources to the existing within governance. The establishment of a paralegal position as a shared resource

between legal services and governance would allow for the development of the framework and also to fill the policy gap that currently exists.

It has been identified that there is a growing need for regular training and awareness sessions under various legislation, such as Code of Conduct, Public Interest Disclosure Act, Privacy and Personal Information Protection Act, Government Information (Public Access) Act to name a few. All of those pieces of legislation require Council to have on going training/awareness in place for staff, councillors and volunteers.

The way to optimise current staff productivity would be to engage a paralegal or legal administration officer in-house. The provision of an additional in-house resource would enable a greater focus on governance at a strategic level rather than the current operational level. The resource could be utilised to undertake the day to day functions under the Government Information (Public Access) Act which currently takes a large amount of the Executive Officers time.

The current median base salary for paralegals in Newcastle is \$50,000 (the equivalent of Grade 10/11 at Council). With on-costs, that would amount to approximately \$68,000 per annum.

#### **SERVICE REVIEW RECOMMENDATIONS**

The review resulted in the following recommendations:

- A. Maintain the current structure within the General Managers Office;
- B. Further investigate the cost benefit of employing a paralegal or legal administration officer as a shared resource with legal services;
- C. Investigate improved alignment with legal services, particularly with a view to a shared resource.

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

Current EFT in the General Managers Office is 3.0.

Should Council adopt a recommendation to reduce or cease the internal provision of this service then the conditions of the Port Stephens Council Enterprise Agreement Clause 28 will come into effect. This clause establishes Council's duty to notify affected staff and relevant Unions regarding an intention to introduce major changes to programs, sets out the duties of the parties, establishes procedures to be followed and conditions relating to staff redeployment or redundancies. Redundancies could incur costs of up to 39 weeks ordinary pay for each employee displaced.

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

Council is legally required to establish a legislative framework to ensure it meets its obligations of approximately 140 pieces of legislation identified in the Compliance Register. Without the appropriate governance frameworks in place, Council could see raising legal costs.

## **SUSTAINABILITY IMPLICATIONS**

Better utilisation of skills in-house has provided more sustainable outcomes at other nearby councils.

## **CONSULTATION**

Two internal surveys were developed and provided to staff and Councillors. Further to this four (4) sessions were held with each Group Manager.

Some of the key findings were:

- 1) The high level of knowledge and advice provided by GMO staff, in particular on governance matters was highlighted by staff;
- 2) Efficiency of staff;
- 3) Recognition of strong governance protocols and processes;
- 4) Further improvements required with respect to the business paper production.

## **OPTIONS**

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

## **ATTACHMENTS**

Nil.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

- 1) Sustainability Review – General Managers Office Service Strategy.

**ITEM NO. 21**

**FILE NO: 1190-001**

**REQUEST FOR FINANCIAL ASSISTANCE**

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

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**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. Rapid Response – Cr Tucker – Tilligerry Community Association - Donation to cover the costs of use of Henderson Park for Tilligerry Festival and supply of 15 additional waste bins for 19 November 2011 - \$500.00;
  - b. Laurelle Gordon – Cr Dover - Reimbursement in respect of cost of hire of 10 painting easels for Studio 13's annual Art Students Show - \$250.00;
  - c. Port Stephens Council – Tidy Towns Groups - Purchase of 227 pairs of Ninja Gloves for protection of members of PSC Tidy Towns 355c Committees - \$499.40;
  - d. Rapid Response – Mayoral Funds – Hunter River High School – Donation towards the cost of awards and trophies - \$200.00;
  - e. Rapid Response – Mayoral Funds – Raymond Terrace Men's Shed Inc – Reimbursement of Application Fee paid to Hunter Water Corporation in respect of "change of use" DA as formerly fire station - \$388.65;
  - f. Rapid Response – Cr Dingle - Medowie Tidy Towns – Reimbursement of materials purchased, including cement, timber, paint and hardware, in respect of the routing of Medowie Tidy Towns sign by Council staff - \$341.00.

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**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>465</b>	<p><b>Councillor John Nell</b>  <b>Councillor Steve Tucker</b></p> <p>It was resolved that Council approve the provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-</p> <ol style="list-style-type: none"> <li>a. Rapid Response – Cr Tucker – Tilligerry Community Association - Donation to cover the costs of use of Henderson Park for Tilligerry Festival and supply of 15 additional waste bins for 19 November 2011 - \$500.00;</li> <li>b. Laurelle Gordon – Cr Dover - Reimbursement in respect of cost of hire of 10 painting easels for Studio 13's annual Art Students Show - \$250.00;</li> <li>c. Port Stephens Council – Tidy Towns Groups - Purchase of 227 pairs of Ninja Gloves for protection of members of PSC Tidy Towns 355c</li> </ol>
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**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

	<p>Committees - \$499.40;</p> <p>d. Rapid Response – Mayoral Funds – Hunter River High School – Donation towards the cost of awards and trophies - \$200.00;</p> <p>e. Rapid Response – West Ward – Raymond Terrace Men's Shed Inc – Reimbursement of Application Fee paid to Hunter Water Corporation in respect of "change of use" DA as formerly fire station - \$388.65;</p> <p>f. Rapid Response – Cr Dingle - Medowie Tidy Towns – Reimbursement of materials purchased, including cement, timber, paint and hardware, in respect of the routing of Medowie Tidy Towns sign by Council staff - \$341.00.</p>
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**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 Financial Assistance Policy 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:

- Mayoral Funds
- Rapid Response
- Community Financial Assistance Grants – (bi-annually)
- 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**

Tilligerry Community Association	Donation to cover the costs of use of Henderson Park for Tilligerry Festival and supply of 15 additional waste bins for 19 November 2011	\$500.00
Port Stephens Council – Tidy Towns Groups	Purchase of 227 pairs of Ninja Gloves for protection of members of PSC Tidy Towns 355c Committees	\$499.40
Cr Dingle	Reimbursement of materials purchased, including cement, timber, paint and hardware, in respect of the routing of Medowie Tidy Towns sign by Council staff	341.00

**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011****EAST WARD – Councillors Westbury, Dover, Nell, Ward**

Laurelle Gordon	Reimbursement in respect of cost of hire of 10 painting easels for Studio 13's annual Art Students Show	250.00
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**MAYORAL FUNDS**

Hunter River High School	Donation towards the cost of awards and trophies	\$200.00
Raymond Terrace Men's Shed Inc	Reimbursement of Application Fee paid to Hunter Water Corporation in respect of "change of use" DA as formerly fire station.	\$388.65

**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**

- 1) Mayor;
- 2) Councillors;
- 3) 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. 22**

**INFORMATION PAPERS**

**REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER**  
**GROUP: GENERAL MANAGERS OFFICE**

**RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 13 December 2011.

<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	CASH AND INVESTMENTS HELD AT 31 OCTOBER 2011	
2	CASH AND INVESTMENTS HELD AT 31 NOVEMBER 2011	
3	WORK HEALTH AND SAFETY ACT	

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>466</b>	<b>Councillor Glenys Francis</b> <b>Councillor John Nell</b>
	It was resolved that the recommendation be adopted.

# COUNCIL COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

**CASH AND INVESTMENTS HELD AT 31 OCTOBER 2011**

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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 2011.

**ATTACHMENTS**

- 1) Cash and Investments held at 31 October 2011;
- 2) Monthly Cash and Investments balance October 2010 – October 2011;
- 3) Monthly Australian Term Deposit Index October 2010 – October 2011.

**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

**ATTACHMENT 1**

**CASH & INVESTMENTS HELD - AS AT 31 OCTOBER 2011**

<b>INVESTED WITH</b>	<b>INV. TYPE</b>	<b>CURRENT RATING</b>	<b>MATURITY DATE</b>	<b>AMOUNT INVESTED</b>	<b>% of Total Portfolio</b>	<b>Current Int Rate</b>	<b>Market Value August</b>	<b>Market Value September</b>	<b>Market Value October</b>	<b>Current Mark to Market Exposure</b>
<b>GRANGE SECURITIES</b>										
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	NR	20-Mar-12	\$1,000,000	4.18%	6.49%	\$871,990	\$871,990	\$871,990	-\$128,010
NEXUS BONDS LTD "TOPAZ AA"	Floating Rate CDO		23-Jun-15	\$412,500	1.73%	0.00%	\$286,688	\$287,760	\$288,960	-\$123,540
HELIUM CAPITAL LTD "ESPERANCE AA+" *	Floating Rate CDO	NR	20-Mar-13	\$1,000,000	4.18%	0.00%	\$0	\$0	\$0	\$1,000,000
GRANGE SECURITIES "KAKADU AA"	Floating Rate CDO	CCC	20-Mar-14	\$1,000,000	4.18%	6.39%	\$340,400	\$207,300	\$210,200	-\$789,800
GRANGE SECURITIES "COOLANGATTA AA" *	Floating Rate CDO	NR	20-Sep-14	\$1,000,000	4.18%	0.00%	\$0	\$0	\$0	\$1,000,000
<b>TOTAL GRANGE SECURITIES</b>				<b>\$4,412,500</b>	<b>18.46%</b>		<b>\$1,499,078</b>	<b>\$1,367,050</b>	<b>\$1,371,150</b>	<b>\$3,041,350</b>
<b>ABN AMRO MORGANS</b>										
GLOBAL PROTECTED PROPERTY NOTES VII	Property Linked Note	matured					\$962,800.00			\$0
<b>TOTAL ABN AMRO MORGANS</b>				<b>\$0</b>	<b>0.00%</b>		<b>\$962,800</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>ANZ INVESTMENTS</b>										
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	B	30-Dec-11	\$1,000,000	4.18%	0.00%	\$910,200	\$900,900	\$914,200	-\$85,800
ANZ ZERO COUPON BOND	Zero Coupon Bond	AA	1-Jun-17	\$1,017,876	4.26%	0.00%	\$701,053	\$727,365	\$742,704	-\$275,172
<b>TOTAL ANZ INVESTMENTS</b>				<b>\$2,017,876</b>	<b>8.44%</b>		<b>\$1,611,253</b>	<b>\$1,628,265</b>	<b>\$1,656,904</b>	<b>-\$360,972</b>
<b>RIM SECURITIES</b>										
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO	matured					\$1,954,020	\$1,954,020		
COMMUNITY CPS CREDIT UNION	Term Deposit	N/R	13-Dec-11	\$1,000,000	4.18%	5.66%			\$1,000,000	\$0
SUNCORP METWAY	Term Deposit	matured					\$1,000,000	\$1,000,000		
QUEENSLAND COUNTRY CREDIT UNION	Term Deposit	N/R	20-Dec-11	\$1,000,000	4.18%	5.80%	\$1,000,000	\$1,000,000	\$1,000,000	\$0
BEIRUT HELLENIC BANK LTD	Term Deposit	N/R	13-Jan-12	\$1,000,000	4.18%	5.95%		\$1,000,000	\$1,000,000	\$0
<b>TOTAL RIM SECURITIES</b>				<b>\$3,000,000</b>	<b>12.55%</b>		<b>\$3,954,020</b>	<b>\$4,954,020</b>	<b>\$3,000,000</b>	<b>\$0</b>

**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

**ATTACHMENT 1**

<b>WESTPAC INVESTMENT BANK</b>										
MACKAY PERMANENT BUILDING SOCIETY	Floating Rate Sub Debt	N/R	21-Nov-11	\$500,000	2.09%	6.09%	\$496,490	\$497,030	\$498,200	-\$1,800
<b>TOTAL WESTPAC INV. BANK</b>				<b>\$500,000</b>	<b>2.09%</b>		<b>\$496,490</b>	<b>\$497,030</b>	<b>\$498,200</b>	<b>-\$1,800</b>
<b>CURVE SECURITIES</b>										
BANK OF CYPRUS AUSTRALIA LIMITED	Term Deposit	withdrawn					\$1,000,000			
QANTAS STAFF CREDIT UNION	Term Deposit	withdrawn					\$1,000,000	\$1,000,000		
CITIGROUP PTY LTD	Term Deposit	A1	16-Nov-11	\$1,000,000	4.18%	5.58%		\$1,000,000	\$1,000,000	\$0
ME BANK	Term Deposit	BBB	12-Dec-11	\$1,000,000	4.18%	5.96%			\$1,000,000	\$0
ING BANK AUSTRALIA	Term Deposit	A1	25-Jan-12	\$1,000,000	4.18%	6.00%		\$1,000,000	\$1,000,000	\$0
<b>TOTAL CURVE SECURITIES</b>				<b>\$3,000,000</b>	<b>12.55%</b>		<b>\$2,000,000.00</b>	<b>\$3,000,000</b>	<b>\$3,000,000</b>	<b>\$0</b>
<b>LONGREACH CAPITAL MARKETS</b>										
LONGREACH SERIES 16 PROPERTY LINKED NOTE	Property Linked Note	A+	7-Mar-12	\$500,000	2.09%	0.00%	\$484,900	\$487,750	\$490,300	-\$9,700
LONGREACH SERIES 19 GLOBAL PROPERTY LINKED NOTE	Property Linked Note	A+	7-Sep-12	\$500,000	2.09%	0.00%	\$470,350	\$475,050	\$477,700	-\$22,300
<b>TOTAL LONGREACH CAPITAL</b>				<b>\$1,000,000</b>	<b>4.18%</b>		<b>\$955,250</b>	<b>\$962,800</b>	<b>\$968,000</b>	<b>-\$32,000</b>
<b>COMMONWEALTH BANK</b>										
EQUITY LINKED DEPOSIT	Equity Linked Note	matured					\$494,950			
EQUITY LINKED DEPOSIT ELN SERIES 2	Equity Linked Note	AA	05-Nov-12	\$500,000	2.09%	3.00%	\$483,500	\$489,750	\$489,750	-\$10,250
BENDIGO BANK SUBORDINATED DEBT	Floating Rate Sub Debt	BBB	09-Nov-12	\$500,000	2.09%	5.98%	\$502,385	\$493,645	\$493,645	-\$6,355
BANK OF QUEENSLAND BOND	Bond	BBB+	16-Mar-12	\$1,000,000	4.18%	5.35%	\$1,000,000	\$1,000,000	\$1,000,000	\$0
COMMONWEALTH BANK	Term Deposit	matured					\$1,000,000	\$1,000,000		
<b>TOTAL COMMONWEALTH BANK</b>				<b>\$2,000,000</b>	<b>8.37%</b>		<b>\$3,480,835</b>	<b>\$2,983,395</b>	<b>\$1,983,395</b>	<b>-\$16,605</b>
<b>FIGI SECURITIES</b>										
TELSTRA LINKED DEPOSIT NOTE	Principal Protected Note		30-Nov-14	\$500,000	2.09%	6.02%	\$481,210	\$500,000	\$500,000	\$0
GATEWAY CREDIT UNION LIMITED	Term Deposit	N/R	16-Dec-11	\$1,000,000	4.18%	5.72%	\$1,000,000	\$1,000,000	\$1,000,000	\$0
<b>TOTAL FIGI SECURITIES</b>				<b>\$1,500,000</b>	<b>6.27%</b>		<b>\$1,481,210</b>	<b>\$1,500,000</b>	<b>\$1,500,000</b>	<b>\$0</b>
<b>MAITLAND MUTUAL</b>										
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt	N/R	30-Jun-13	\$500,000	2.09%	6.54%	\$500,000	\$500,000	\$500,000	\$0
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt	N/R	31-Dec-14	\$500,000	2.09%	6.54%	\$500,000	\$500,000	\$500,000	\$0
<b>TOTAL M'LAND MUTUAL</b>				<b>\$1,000,000</b>	<b>4.18%</b>		<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$0</b>

**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

**ATTACHMENT 1**

<b>FARQUHARSON SECURITIES</b>									
POLICE & NURSES CREDIT SOCIETY LTD	Term Deposit	withdrawn					\$1,000,000		
PEOPLES CHOICE CREDIT UNION	Term Deposit	N/R	7-Nov-11	\$1,000,000	4.18%	5.74%	\$1,000,000	\$1,000,000	\$0
TEACHERS CREDIT UNION	Term Deposit	N/R	14-Dec-11	\$1,000,000	4.18%	5.82%	\$1,000,000	\$1,000,000	\$0
BANK OF QUEENSLAND	Term Deposit	BBB+	9-Jan-12	\$1,000,000	4.18%	5.95%		\$1,000,000	\$0
<b>TOTAL FARQUHARSON SECURITIES</b>				<b>\$3,000,000</b>	<b>12.55%</b>		<b>\$0</b>	<b>\$3,000,000</b>	<b>\$3,000,000</b>
<b>TOTAL INVESTMENTS</b>				<b>\$21,430,376</b>	<b>89.64%</b>		<b>\$17,440,936</b>	<b>\$20,892,560</b>	<b>\$17,977,649</b>
AVERAGE RATE OF RETURN ON INVESTMENTS									<b>\$3,452,727</b>
AVERAGE RATE OF RETURN ON INVESTMENTS						4.36%			
<b>CASH AT BANK</b>				<b>\$2,476,060</b>	<b>10.36%</b>		<b>\$5,766,851</b>	<b>\$1,676,078</b>	<b>\$2,476,060</b>
AVERAGE RATE OF RETURN ON INVESTMENTS + CASH						4.70%			<b>\$0</b>
AVERAGE RATE OF RETURN ON INVESTMENTS + CASH						4.40%			
<b>TOTAL CASH &amp; INVESTMENTS</b>				<b>\$23,906,436</b>	<b>100.00%</b>		<b>\$23,207,787</b>	<b>\$22,568,638</b>	<b>\$20,453,709</b>
BBSW FOR PREVIOUS 3 MONTHS						4.86%			

\* 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.

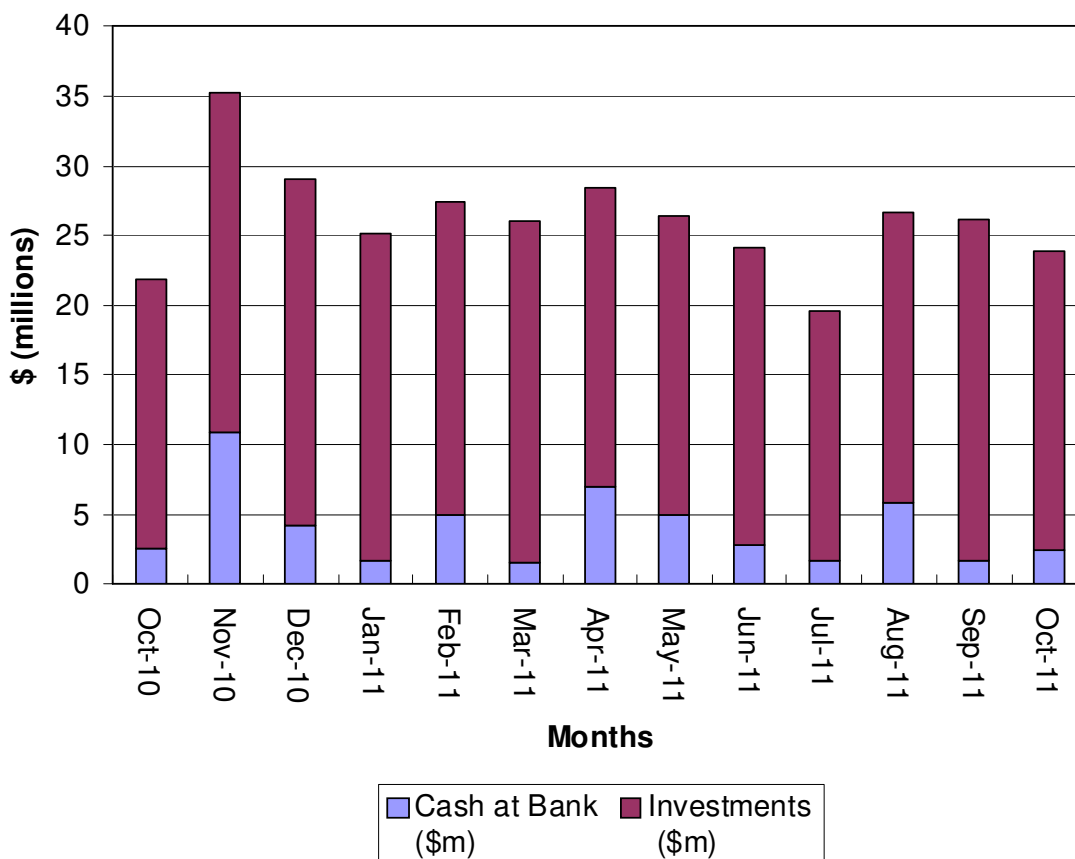
**P GESLING**

ATTACHMENT 2

Cash and Investments Held

Date	Cash at Bank (\$m)	Investments (\$m)	Total Funds (\$m)
Oct-10	2.512	19.380	21.892
Nov-10	10.822	24.380	35.202
Dec-10	4.175	24.930	29.106
Jan-11	1.690	23.430	25.120
Feb-11	4.988	22.430	27.419
Mar-11	1.604	24.430	26.035
Apr-11	6.975	21.430	28.406
May-11	4.976	21.430	26.406
Jun-11	2.752	21.430	24.182
Jul-11	1.657	17.930	19.588
Aug-11	5.767	20.930	26.697
Sep-11	1.676	24.430	26.106
Oct-11	2.476	21.430	23.906

Cash and Invested Funds for the Period ended 31/10/2011



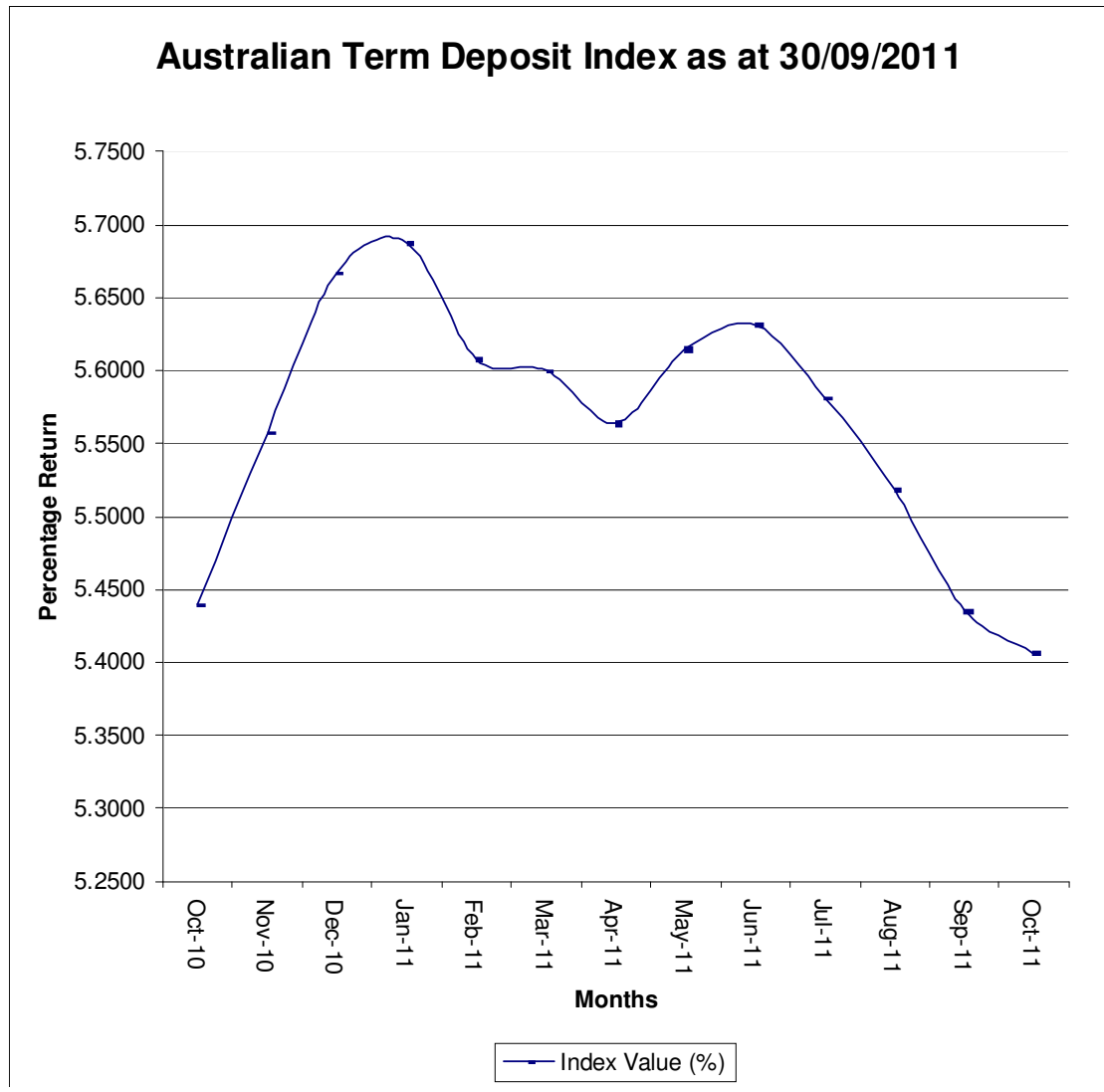


ATTACHMENT 2

Australian Term Deposit Accumulation Index

Date	Index Value (%)
Oct-10	5.4396
Nov-10	5.5583
Dec-10	5.6675
Jan-11	5.6877
Feb-11	5.6079
Mar-11	5.6000
Apr-11	5.5637
May-11	5.6147
Jun-11	5.6312
Jul-11	5.5814
Aug-11	5.5178
Sep-11	5.4358
Oct-11	5.4065

Australian Term Deposit Index as at 30/09/2011



**INFORMATION ITEM NO. 2**

**CASH AND INVESTMENTS HELD AT 30 NOVEMBER 2011**

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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 30 November 2011.**

**ATTACHMENTS**

- 1) Cash and investments held at 30 November 2011;
- 2) Monthly cash and investments balance November 2010 – November 2011;
- 3) Monthly Australian term deposit index November 2010 – November 2011.

**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

**ATTACHMENT 1**

**CASH & INVESTMENTS HELD**

**AS AT 30 November 2011**

Invested With	Inv Type	Current Rating	Maturity Date	Amount Invested	% of Total Portfolio	Current Int Rate	Market Value	Market Value	Market Value	Current Mark to Market Exposure
							September	October	November	
<b>GRANGE SECURITIES</b>										
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	NR	20-Mar-12	\$1,000,000	3.21%	6.49%	\$871,990	\$871,990	\$871,990	-\$128,010
NEXUS BONDS LTD "TOPAZ AA"	Floating Rate CDO	A+p	23-Jun-15	\$412,500	1.32%	0.00%	\$287,760	\$287,760	\$294,113	-\$118,387
HELIUM CAPITAL LTD "ESPERANCE AA+" *	Floating Rate CDO	CCC-(sf)	20-Mar-13	\$1,000,000	3.21%	0.00%	\$0	\$0	\$0	-\$1,000,000
GRANGE SECURITIES "KAKADU AA"	Floating Rate CDO	CCC	20-Mar-14	\$1,000,000	3.21%	6.39%	\$207,300	\$210,200	\$203,200	-\$796,800
GRANGE SECURITIES "COOLANGATTA AA" *	Floating Rate CDO	C	20-Sep-14	\$1,000,000	3.21%	0.00%	\$0	\$0	\$0	-\$1,000,000
<b>TOTAL GRANGE SECURITIES</b>				<b>\$4,412,500</b>	<b>14.16%</b>		<b>\$1,367,050</b>	<b>\$1,369,950</b>	<b>\$1,369,303</b>	<b>-\$3,043,197</b>
<b>ANZ INVESTMENTS</b>										
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	BB+	30-Dec-11	\$1,000,000	3.21%	0.00%	\$900,900	\$914,200	\$923,700	-\$76,300
ANZ ZERO COUPON BOND	Zero Coupon Bond	AA	1-Jun-17	\$1,017,876	3.27%	0.00%	\$727,365	\$742,704	\$733,828	-\$284,048
<b>TOTAL ANZ INVESTMENTS</b>				<b>\$2,017,876</b>	<b>6.47%</b>		<b>\$1,628,265</b>	<b>\$1,656,904</b>	<b>\$1,657,528</b>	<b>-\$360,348</b>
<b>RIM SECURITIES</b>										
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO	matured					\$1,954,020			
COMMUNITY CPS CREDIT UNION	Term Deposit	N/R	13-Dec-11	\$1,000,000	3.21%	5.66%		\$1,000,000	\$1,000,000	\$0
SUNCORP METWAY	Term Deposit	A1	9-Feb-12	\$1,000,000	3.21%	5.88%	\$1,000,000		\$1,000,000	\$0
QUEENSLAND COUNTRY CREDIT UNION	Term Deposit	N/R	20-Dec-11	\$1,000,000	3.21%	5.80%	\$1,000,000	\$1,000,000	\$1,000,000	\$0
BEIRUT HELLENIC BANK LTD	Term Deposit	N/R	13-Jan-12	\$1,000,000	3.21%	5.95%	\$1,000,000	\$1,000,000	\$1,000,000	\$0
POLICE CREDIT UNION LIMITED	Term Deposit	N/R	9-Jan-12	\$1,000,000	3.21%	5.82%			\$1,000,000	\$0
<b>TOTAL RIM SECURITIES</b>				<b>\$5,000,000</b>	<b>16.04%</b>		<b>\$4,954,020</b>	<b>\$3,000,000</b>	<b>\$5,000,000</b>	<b>\$0</b>
<b>WESTPAC INVESTMENT BANK</b>										
MACKAY PERMANENT BUILDING SOCIETY	Floating Rate Sub Debt	matured					\$497,030	\$498,200		
<b>TOTAL WESTPAC INV. BANK</b>				<b>\$0</b>	<b>0.00%</b>		<b>\$497,030</b>	<b>\$498,200</b>	<b>\$0</b>	<b>\$0</b>
<b>CURVE SECURITIES</b>										
BANK OF CYPRUS AUSTRALIA LIMITED	Term Deposit	N/R	14-Feb-12	\$1,000,000	3.21%	5.85%			\$1,000,000	\$0
QANTAS STAFF CREDIT UNION	Term Deposit	withdrawn					\$1,000,000			
CITIGROUP PTY LTD	Term Deposit	withdrawn					\$1,000,000	\$1,000,000		
ME BANK	Term Deposit	BBB	12-Dec-11	\$1,000,000	3.21%	5.96%		\$1,000,000	\$1,000,000	\$0
ING BANK AUSTRALIA	Term Deposit	A1	25-Jan-12	\$1,000,000	3.21%	6.00%	\$1,000,000	\$1,000,000	\$1,000,000	\$0
PEOPLES CHOICE CREDIT UNION	Term Deposit	NR	21-Feb-12	\$1,000,000	3.21%	5.72%			\$1,000,000	\$0
<b>TOTAL CURVE SECURITIES</b>				<b>\$4,000,000</b>	<b>12.83%</b>		<b>\$3,000,000.00</b>	<b>\$3,000,000</b>	<b>\$4,000,000</b>	<b>\$0</b>
<b>LONGREACH CAPITAL MARKETS</b>										
LONGREACH SERIES 16 PROPERTY LINKED NOTE	Property Linked Note	A+	7-Mar-12	\$500,000	1.60%	0.00%	\$487,750	\$490,300	\$491,795	-\$8,205
LONGREACH SERIES 19 GLOBAL PROPERTY LINKED NOTE	Property Linked Note	A+	7-Sep-12	\$500,000	1.60%	0.00%	\$475,050	\$477,700	\$462,400	-\$37,600
<b>TOTAL LONGREACH CAPITAL</b>				<b>\$1,000,000</b>	<b>3.21%</b>		<b>\$962,800</b>	<b>\$968,000</b>	<b>\$954,195</b>	<b>-\$45,805</b>

**MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

**ATTACHMENT 1**

<b>COMMONWEALTH BANK</b>											
EQUITY LINKED DEPOSIT ELN SERIES 2	Equity Linked Note	AA	05-Nov-12	\$500,000	1.60%	3.00%	\$489,750	\$489,750	\$488,450	-\$11,550	
BENDIGO BANK SUBORDINATED DEBT	Floating Rate Sub Debt	BBB	09-Nov-12	\$500,000	1.60%	5.90%	\$493,645	\$493,645	\$492,460	-\$7,540	
BANK OF QUEENSLAND BOND	Bond	BBB+	16-Mar-12	\$1,000,000	3.21%	5.35%	\$1,000,000	\$1,000,000	\$1,000,000	\$0	
COMMONWEALTH BANK	Term Deposit	matured					\$1,000,000	\$1,000,000			
<b>TOTAL COMMONWEALTH BANK</b>				<b>\$2,000,000</b>	<b>6.42%</b>		<b>\$2,983,395</b>	<b>\$2,983,395</b>	<b>\$1,980,910</b>	<b>-\$19,090</b>	
<b>FIGI SECURITIES</b>											
TELSTRA LINKED DEPOSIT NOTE	Principal Protected Note	A+	30-Nov-14	\$500,000	1.60%	6.02%	\$500,000	\$500,000	\$500,000	\$0	
GATEWAY CREDIT UNION LIMITED	Term Deposit	N/R	16-Dec-11	\$1,000,000	3.21%	5.72%	\$1,000,000	\$1,000,000	\$1,000,000	\$0	
<b>TOTAL FIGI SECURITIES</b>				<b>\$1,500,000</b>	<b>4.81%</b>		<b>\$1,500,000</b>	<b>\$1,500,000</b>	<b>\$1,500,000</b>	<b>\$0</b>	
<b>MAITLAND MUTUAL</b>											
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt	N/R	30-Jun-13	\$500,000	1.60%	6.54%	\$500,000	\$500,000	\$500,000	\$0	
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt	N/R	31-Dec-14	\$500,000	1.60%	6.54%	\$500,000	\$500,000	\$500,000	\$0	
<b>TOTAL M'LAND MUTUAL</b>				<b>\$1,000,000</b>	<b>3.21%</b>		<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$0</b>	
<b>FARQUHARSON SECURITIES</b>											
POLICE & NURSES CREDIT SOCIETY LTD	Term Deposit	withdrawn					\$1,000,000				
PEOPLES CHOICE CREDIT UNION	Term Deposit	withdrawn					\$1,000,000	\$1,000,000			
RAILWAYS CREDIT UNION	Term Deposit	N/R	27-Feb-12	\$1,000,000	3.21%	5.85%			\$1,000,000	\$0	
TEACHERS CREDIT UNION	Term Deposit	N/R	14-Dec-11	\$1,000,000	3.21%	5.82%	\$1,000,000	\$1,000,000	\$1,000,000	\$0	
BANK OF QUEENSLAND	Term Deposit	BBB+	9-Jan-12	\$1,000,000	3.21%	5.95%		\$1,000,000	\$1,000,000	\$0	
<b>TOTAL FARQUHARSON SECURITIES</b>				<b>\$3,000,000</b>	<b>9.62%</b>		<b>\$3,000,000</b>	<b>\$3,000,000</b>	<b>\$3,000,000</b>	<b>\$0</b>	
<b>TOTAL INVESTMENTS</b>				<b>\$23,930,376</b>	<b>76.77%</b>		<b>\$20,892,560</b>	<b>\$18,976,449</b>	<b>\$20,461,936</b>	<b>-\$3,468,440</b>	
<b>AVERAGE RATE OF RETURN ON INVESTMENTS</b>										4.52%	
<b>CASH AT BANK</b>				<b>\$7,240,253</b>	<b>23.23%</b>		<b>\$1,676,078</b>	<b>\$2,476,060</b>	<b>\$7,240,253</b>	<b>\$0</b>	
<b>AVERAGE RATE OF RETURN ON INVESTMENTS + CASH</b>										4.51%	
<b>TOTAL CASH &amp; INVESTMENTS</b>				<b>\$31,170,629</b>	<b>100.00%</b>		<b>\$22,568,638</b>	<b>\$20,437,419</b>	<b>\$27,702,189</b>	<b>-\$3,468,440</b>	
<b>BBSW FOR PREVIOUS 3 MONTHS</b>										4.78%	

\* 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.

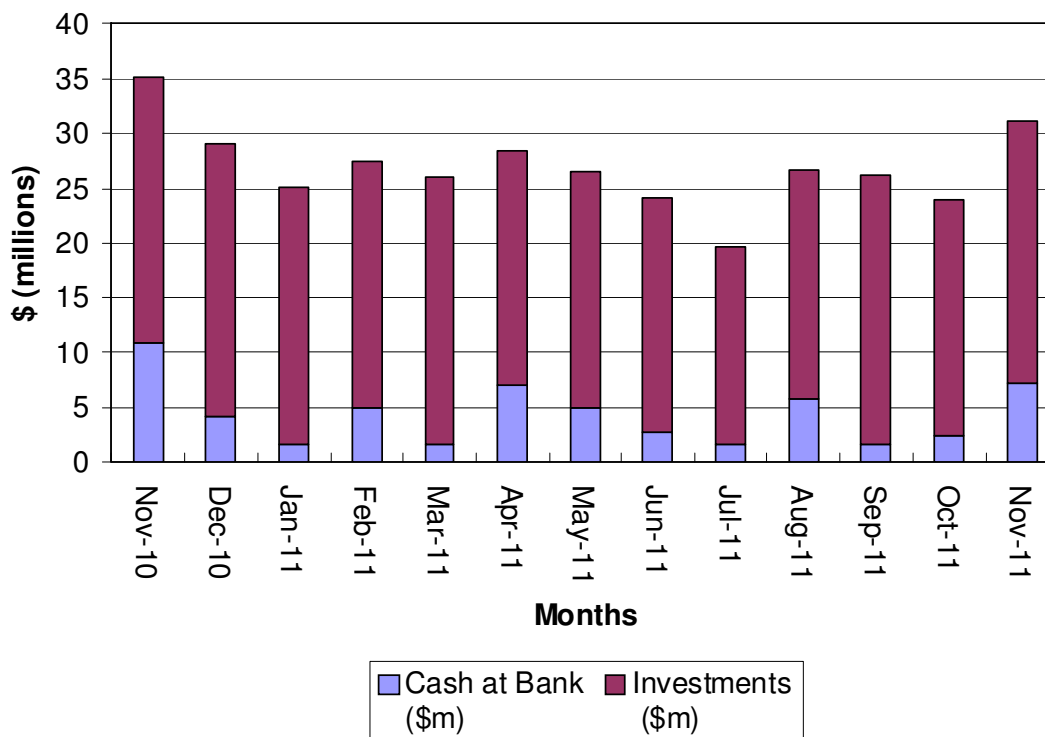
**P GESLING**

**ATTACHMENT 2**

**Cash and Investments Held**

Date	Cash at Bank (\$m)	Investments (\$m)	Total Funds (\$m)
Nov-10	10.822	24.380	35.202
Dec-10	4.175	24.930	29.106
Jan-11	1.690	23.430	25.120
Feb-11	4.988	22.430	27.419
Mar-11	1.604	24.430	26.035
Apr-11	6.975	21.430	28.406
May-11	4.976	21.430	26.406
Jun-11	2.752	21.430	24.182
Jul-11	1.657	17.930	19.588
Aug-11	5.767	20.930	26.697
Sep-11	1.676	24.430	26.106
Oct-11	2.476	21.430	23.906
Nov-11	7.240	23.930	31.171

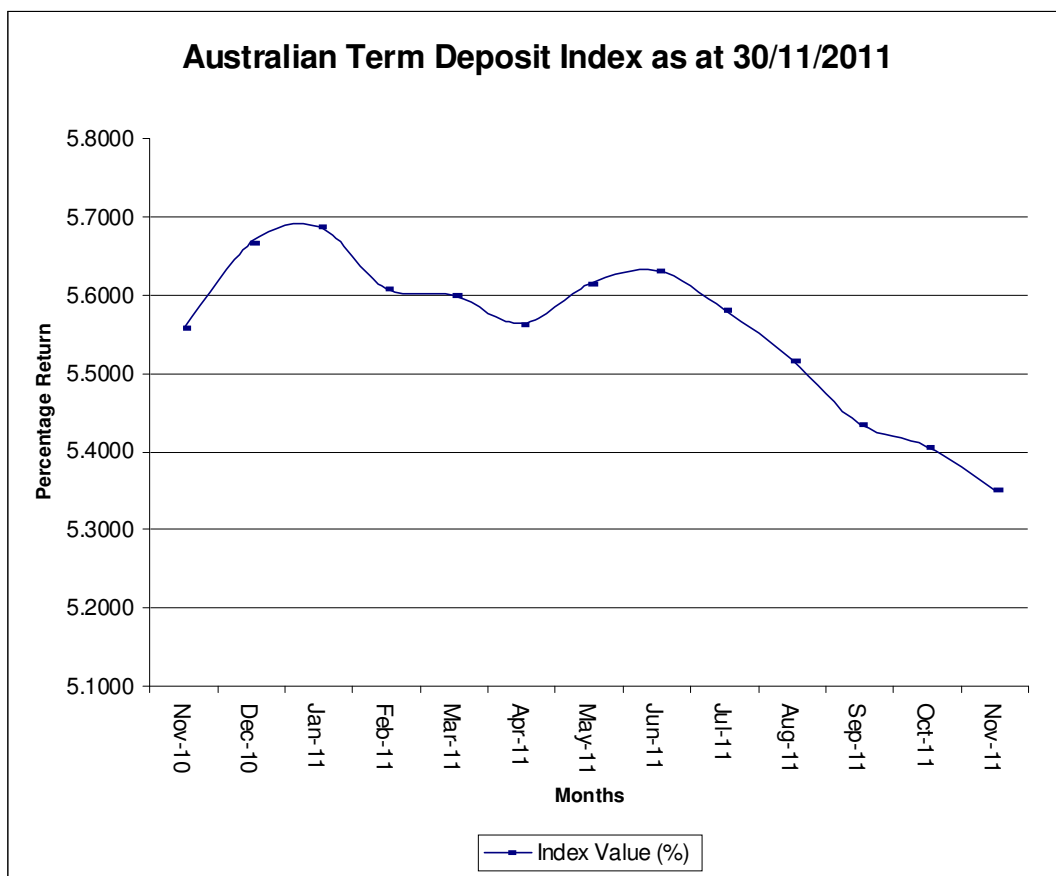
**Cash and Invested Funds for the Period ended 30/11/2011**



**ATTACHMENT 2**

**Australian Term Deposit Accumulation Index**

Date	Index Value (%)
Nov-10	5.5583
Dec-10	5.6675
Jan-11	5.6877
Feb-11	5.6079
Mar-11	5.6000
Apr-11	5.5637
May-11	5.6147
Jun-11	5.6312
Jul-11	5.5814
Aug-11	5.5178
Sep-11	5.4358
Oct-11	5.4065
Nov-11	5.351



**INFORMATION ITEM NO. 3**

**WORK HEALTH AND SAFETY ACT**

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**REPORT OF: ANNE SCHMARR - ORGANISATION DEVELOPMENT MANAGER**

**GROUP: CORPORATE SERVICES GROUP**

**FILE: PSC2011-04442**

The purpose of this report is to inform Councillors of the changes to health and safety legislation that come into effect in NSW from 1 January 2012.

In Australia, each jurisdiction (State, Territory and the Commonwealth) has been responsible for making and enforcing their own work health and safety laws. This has meant nine separate State/Territory laws governing work health and safety across Australia.

As part of the process of national harmonisation of health and safety laws in Australia, the new NSW Work Health and Safety Act (WHS Act) will replace the NSW Occupational Health and Safety Act (OHS Act). Model work health and safety regulations and codes of practice will also come into effect from 1 January 2012.

Under the WHS Act, the main changes for PSC include:

- 1) Port Stephens Council (PSC) will become a person conducting a business or undertaking (PCBU). PSC will have the primary duty of care for workplace health and safety to ensure, as far as reasonably practicable, the health and safety of workers that they engage or cause to be engaged and other persons; "Workers" include employees, independent contractors, apprentices, outworkers, trainees, work experience and volunteers. "Other persons" include persons at the workplace other than workers, visitors, customers, clients, passers-by, relatives and associates of workers and trespassers;
- 2) The Executive Leadership Team will take on the role of 'Officers'. Officers are appointed by the PCBU to make or participate in decisions that affect the whole or a substantial part of the organisation. Under the legislation, an officer excludes ministers of the crown, elected members of local authorities and partners in a partnership;
- 3) Certain volunteers will be included as a worker. Note that a volunteer is regarded as a worker when engaged by a PCBU to carry out work. Council therefore must consult with volunteers on health and safety matters and provide them with the necessary information, training and supervision.

Volunteers must comply with any reasonable instructions, policies and procedures relevant to health and safety given by Council;

- 4) Health and safety representatives (HSRs) will replace occupational health and safety representatives. HSRs will be involved in carrying out the following functions at Council's workplaces:
- Inspecting workplaces when required to do so.
  - Participating in all health and safety matters that affect their work group.
  - Representing workers outside their work group if required to do so.
  - Issuing a Provisional Improvement Notice (PIN) if they reasonably believe there is, or has been, a breach of the Act or to remedy the cause of the risk or hazard. Note they must first consult with the supervisor responsible for resolving the matters before a PIN can be issued. A PCBU or other person to whom the PIN is issued, may within seven days after the issue of a PIN, ask WorkCover to appoint an inspector to review the notice.
  - An HSR can direct members of their workgroup to stop work if there is an immediate health and safety risk to those workers. They are required to first consult with the supervisor unless there is an immediate risk;

Identified work groups at Council will include:

- Administration Building – Administration;
  - Administration Building – Professional/Technical;
  - Maintenance, Construction, Parks, – RT;
  - Maintenance, Construction, Parks, Ngioka, WTS – NB;
  - Trades/Fleet/Store;
  - Children's Services;
  - Libraries;
  - Holiday Parks;
  - Corporate Clean;
  - Economic Development and Tourism;
- 5) A new WHS Committee will replace the existing OHS Committee and OHS Steering Committee and will consist of equal numbers appointed by PSC and workers.

The functions of the new Health and Safety Committee are:

- 1) to facilitate co-operation between the person conducting a business or undertaking (PCBU) and workers in instigating, developing and carrying out measures designed to ensure the health and safety of workers;
- 2) to assist in developing standards, rules and procedures relative to health and safety;
- 3) to monitor and provide advice on strategic directions for health and safety and its effective deployment across PSC;
- 4) to establish, review and maintain a four year corporate strategic WHS Plan;



## MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011

- 5) to provide advice and recommendations to the Executive Risk Management Committee on appropriate matters; and
- 6) to review emergency plans and procedures in accordance with the requirements of AS3745.

Following recent consultation with the current committees, membership of the new WHS Committee to commence from 1 January 2012 will consist of:

### Members Appointed by PSC:

1. General Manager;
2. Group Manager;
3. Operation's Section Manager;
4. Organisation Development Section Manager;
5. Work Health and Safety Manager.

### Members Appointed by Workers:

- 1) Holiday Parks/Corporate Clean;
- 2) Maintenance, Construction, Parks, Trades;
- 3) Children's Services & Libraries;
- 4) Administration Building/Economic Development & Tourism;
- 5) Community and Recreation (including volunteers).

Councillors will be kept informed of matters relating to the implementation of the new legislation.

## **ATTACHMENTS**

Nil.

# GENERAL MANAGER'S REPORT

PETER GESLING  
GENERAL MANAGER

**ITEM NO. 1**

**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 20 December 2011.

<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	ADMINISTRATIVE REVIEW PANEL	
2	AUSTRALIAN BUSINESS EXCELLENCE CONFERENCE – 17 NOVEMBER 2011	
3	STATE GOVERNMENT POLICY REVIEW	

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>467</b>	<b>Councillor John Nell</b> <b>Councillor Glenys Francis</b>
	It was resolved that the recommendation be adopted.

# GENERAL MANAGERS INFORMATION PAPERS



**INFORMATION ITEM NO. 1**

**ADMINISTRATIVE REVIEW PANEL**

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

**FILE: PSC2005-5570; PSC2010-00139, PSC2011-03700**

**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

**BACKGROUND**

The purpose of this information paper is to:

- 1) Report to Council on the outcome of the Administrative Review Panel that is established to assist Council in managing its compliance, regulatory and prosecution processes;
- 2) Referral to the NOM adopted by Council on 13 December 2011.

As a regulatory authority Council issues orders, warnings and infringement notices for a range of non-compliant activities. Council's Prosecution & Compliance Policies emphasises education and negotiated outcomes with legal action being a matter of last resort.

The NSW Ombudsman's Office expects regulatory authorities to take action for matters under their control as part of the process of managing effective community accountability and responsibility. It also accepts the concept of discretion and the availability of limited resources.

The General Manager is required to advise Council of any serious actions in meeting its compliance obligations. This is generally addressed via quarterly briefings.

Councillors and Management have an obligation to not fetter actions of officers delegated with the authority for compliance. To assist in meeting these obligations the Prosecution Policy enables an Administrative Review Panel to support an executive review of actions taken by Council officers when deemed necessary ie in response to Council's concern or to process an appeal when requested by an effected party.

The Administrative Review Panel may include the Governance and Legal Coordinators and a third specialist in the functional area of the particular matter. Three matters have been referred for Administrative Review to date.

The following information provides a brief update of the outcomes:

- 1) **Motor Cycle Noise** (request by Council) (PSC2005-5570): This matter involved complaints between neighbours at Nelson Bay Road. The Panel found that staff had acted appropriately within Council's and the Ombudsman's Policies & Guidelines and that the respondent has the ability to seek a variation to the current negotiated restrictions. To date no request has been received. Council would be required to discuss any variations to the current conditions with the Plaintiff if a request eventuates.
- 2) **Vegetation Removal** (request by Council) (PSC2010-00139): This matter involved the illegal removal of vegetation on the property adjacent to the Nelson Bay Road. The Panel found that staff actions were appropriate but given the statute of limitations for Court action, a Section 121B Order would proceed. Despite unsuccessful requests for further information from the Land owner, a section 121B order will be initiated if the owner continues to not enter into satisfactory negotiations with Council.
- 3) **Compliance with Development Consent at Medowie** (request of Plaintiff) (PSC2011-03700): the issue of a PIN for lack of compliance with conditions of consent has been reviewed with the General Manager determining that:
  - the PIN would be replaced with a warning;
  - the Plaintiff be required to attend discussions with the General Manager and senior staff to address the high level of resources being applied to managing their development; and
  - the General Manager to further review Council processes to ensure that high risk areas are fully documented
  - Further the review ascertained that the investigation was initiated from a member of the public visiting the Chambers regarding public safety.
  - The only Councillors involvement was following up representation from community members.
  - A PIN was withdrawn following review by the General Manager who found that Council's Compliance & Prosecution Policies are premised on the principle of education before prosecution. While the plaintiff is an experienced developer, the General Manager found Council's interests better served by seeking to have the plaintiff raise their standard of project planning and delivery.

**INFORMATION ITEM NO. 2**

**AUSTRALIAN BUSINESS EXCELLENCE CONFERENCE  
– 17 NOVEMBER 2011**

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**REPORT OF: PETER GESLING - GENERAL MANAGER**

**GROUP: GENERAL MANAGER'S OFFICE**

**FILE: PSC2011-02866**

**BACKGROUND**

The purpose of this report is to provide an update on the Australian Business Excellence Conference attended by the General Manager and Business Implementation Coordinator in Sydney on 17 November 2011.

The Keynote Address "Business Performance, Resilience and the Determination to Embrace Change" was provided by Dr John Hewson. Dr Hewson provided a comprehensive assessment of the International and Australian Economies with a message that the world in economic terms is entering uncharted waters.

Due to the scale, volatility, short term nature of business, prioritised economic theory and significant social unrest, he noted that there was largely a need for cultural change that required political leadership. The challenge ahead is to transition to a low debt, low carbon world.

The remainder of the presentations included conversations with leading organisations indentified by exceptional performance through Australian Business Excellence Awards.

These included speakers from:

DORIC Group, a major infrastructure company from Western Australia

City of Marion, South Australia

Computershare based in North Melbourne

Summit Care Australia, a National operator in the aged care sector.

Main Roads, WA

Converga, Data Digital Service Company owned by New Zealand Post

APC Logistics, International Freight

Freemantle Ports

Toyota Australia.

All presenters emphasised the importance of quality systems, the power of a Business Excellence framework and the absolute imperative of leadership on cultural and organisational change.

## **MINUTES FOR ORDINARY MEETING – 20 DECEMBER 2011**

In the final session the Head of Improvement Solutions from SAI Global launched the updated Australian Business Excellence Framework following its recent review process.

The last review occurred in 2007 and while there were a number of important changes, international validation supports the direction being taken with the Australian Business Excellence Framework.

The improvements have come about as a result of a stronger focus on the principles and include an additional principle looking at variation. The categories have been improved to reflect a need for stakeholder consultation.

### **ATTACHMENTS**

Nil.



INFORMATION ITEM NO. 3

STATE GOVERNMENT POLICY REVIEW

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**REPORT OF:** PETER GESLING - GENERAL MANAGER

**GROUP:** GENERAL MANAGER'S OFFICE

**FILE:** PSC2011-02317

**BACKGROUND**

The purpose of this report is to advise of the opportunity for Council and the community to contribute to State Government Policy Proposals. A significant number of proposals have been notified in the last month for response by mid February 2012.

The opportunity to contribute is welcomed and supports the current NSW Government commitment to engage with Local Government. The timeframe is daunting. This issue was discussed at a recent meeting of Hunter Council's General Managers' Advisory Committee. It was agreed to establish a range of sub-committees to prepare discussion papers for the Hunter Councils Board and will be available to Member Councils to assist with their submissions.

The current matters include:

Submissions by:

Destination 2036 Draft Action Plan for Local Government	15 February 2012
Model Code of Conduct Review	13 January 2012
The Way Ahead for Planning in NSW issued 8 December	17 February 2012
Resource Recovery Guidelines	17 February 2012
NSW 2021 – A Plan to Make NSW No 1	TBA
Regional Planning & Infrastructure	TBA
NSW Transport Masterplan	TBA

**Attachment 1** provides a brief overview of the Destination 2036 Action Plan and the proposed process to deliver that Plan.

**ATTACHMENTS**

Destination 2036 Overview;  
Attachment 2 – Action Plan Proposal; and  
Attachment 3 – Agreed Vision.

**ATTACHMENT 1**  
**DESTINATION 2036 OVERVIEW**

Council has previously considered the Outcome Report from Destination 2036 and has been provided with access to the Daft Action Plan seeking submissions from the Council and the community.

The Action Plan was developed by an Implementation Steering Committee (ISC) established by the Minister for Local Government, the Hon Don Page MP. It is intended that the ISC will continue to advise on implementation .

The ISC has nominated "Co-ordinating Agencies" for proposed actions who will be required to develop Project Plans for stakeholder engagement and delivery. Quarterly reporting will be provided via a website.

The Action Plan proposes 5 strategic directions; 16 initiatives; and 43 key activities as detailed in **Attachment 2**. These are to address the agreed vision as detailed in **Attachment 3**.

I will convene an internal focus group to develop a Council Submission, including the Mayor who has agreed to participate in this group. A draft submission will be distributed to Councillors for any further contribution.

ATTACHMENT 2 - ACTION PLAN PROPOSAL



ATTACHMENT 3 – AGREED VISION



**STAGE 1:  
REFINING THE DRAFT  
VISION FOR LOCAL  
GOVERNMENT**

During the first interactive session of the Dubbo workshop, participants considered a number of suggested elements of a Vision for the NSW Local Government sector. On the second day, a small group of volunteer participants worked together to develop a proposed draft based on the key agreed elements. That draft was then presented to the workshop for broader consideration. As noted in the Destination 2036 Outcomes Report, participants overwhelmingly supported the draft Vision "...as a basis for further consultation and development"<sup>1</sup>

As noted below (Stage 4), of those councils that commented on the draft Vision in their submission to the Destination 2036 Outcomes Report, the vast majority supported its adoption.

The ISC has, however, made one minor amendment to the draft based on feedback, by including "economies" in the second last point.

<sup>1</sup> A total of 276 workshop participants responded to this question, with 248 (89%) supporting the draft.

**THE VISION FOR NSW LOCAL GOVERNMENT**

**STRONG COMMUNITIES  
THROUGH PARTNERSHIPS**

By 2036, all NSW communities will be healthy and prosperous – led and served by strong, effective and democratically elected Local Government.

Through leadership, local knowledge and partnerships with community, government and other sectors, we will plan our futures and deliver quality services and infrastructure. We will be recognised, respected and responsible for:

- ▶ Upholding the highest ethical standards
- ▶ Sound financial management
- ▶ Sensitive environmental stewardship
- ▶ Meaningful community engagement, advocacy and leadership
- ▶ Our adaptability, innovation and learning
- ▶ Developing the full potential of our people
- ▶ Responding to our diverse cultures, environments and economies
- ▶ Creating places that people value for

# NOTICES OF MOTION

# NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217, PSC2008-9885V2

## LEGAL CASE

COUNCILLOR: WARD, DINGLE, KAFER

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### THAT:

- 1) The conduct of the legal case by the liquidator *James Alexander Shaw v Lawrence Waterhouse Pty Ltd (In Liquidation)* which was financed by Port Stephens Council be referred to the Australian Securities and Investment Commission (ASIC) for an independent review having regard to the excessive costs incurred by Council.
- 

## ORDINARY COUNCIL MEETING – 20 DECEMBER 2011

	<b>Councillor Geoff Dingle</b> <b>Councillor Peter Kafer</b>
	That the conduct of the legal case by the liquidator James Alexander Shaw v Lawrence Waterhouse Pty Ltd (In Liquidation) which was financed by Port Stephens Council be referred to the Australian Securities and Investment Commission (ASIC) for an independent review having regard to the excessive costs incurred by Council.

The Notice of Motion was lost.

## BACKGROUND REPORT OF: WAYNE WALLIS, GROUP MANAGER CORPORATE SERVICES

### BACKGROUND

This matter is still before the Supreme Court in relation to the hearing concerning transactions received and paid from company accounts.

It should be noted it was Council that elected to indemnify the Liquidator to commence the Supreme Court proceedings *In the matter of Lawrence Waterhouse Pty Ltd (in Liq) – Shaw v Minsden Pty Ltd*. Council also decided to continue indemnifying the Liquidator in the proceedings when settlement with the defendants could not be reached earlier this year.

In her judgment in the proceedings, Ward J canvassed and considered all the allegations made by the defendants about the Liquidator and Council in relation to

conduct of the matter. Her Honour's comments are extensive and answer the questions raised as to conduct.

Given the Court has already considered the conduct of the case and the costs incurred, there would appear to be no merit in pursuing the course of action contemplated by this Notice of Motion. However, to enable Council to consider the matter in full, a report detailing the allegations raised and Her Honour's consideration of them will be provided to the February 2012 meeting of Council. In the interim, a copy of the judgment will be provided to all Councillors under separate cover.

**ITEM NO. 1**

**FILE NO: A2004-0028**

**NEWCASTLE AIRPORT CORPORATE RESTRUCTURE**

**REPORT OF: JEFF SMITH GROUP MANAGER COMMERCIAL SERVICES**  
**GROUP: COMMERCIAL SERVICES**

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**RECOMMENDATION IS THAT COUNCIL:**

Endorse the recommendations of the Newcastle Airport (NAL) Joint Council Sub Committee, being;

- 1) That the Shareholder Councils (being Newcastle City Council and Port Stephens Council) proceed with implementing the "Co-investment ready partnership" structure as outlined in Attachment 1;
- 2) That the Shareholder Councils and Newcastle Airport continue, as a matter of urgency, the negotiations regarding an extension of the Newcastle Airport Head Lease with the Department of Defence;
- 3) That the Shareholder Councils jointly make application to the Minister for Local Government to approve the new structure.

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**ORDINARY COUNCIL MEETING – 20 DECEMBER 2011**

<b>468</b>	<b>Councillor Ken Jordan</b> <b>Councillor Steve Tucker</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to progress the implementation of the corporate restructure of Newcastle Airport in accordance with the recommendations of the Newcastle Airport Joint Council Sub Committee.

Newcastle Airport was originally opened as Williamtown Civilian Airport in 1947 after a charter flight landed at the RAAF Base, Williamtown. It wasn't until 20 February 1948 that scheduled commercial operations commenced at the Airport.

The Commonwealth Government continued to run the Airport until 1990 when Newcastle City Council and Port Stephens Council accepted an invitation by the Government to jointly operate the civil area at RAAF Base, Williamtown.

The two councils accepted full responsibility for operating, maintaining and development of what was to become Newcastle Airport. As a consequence, Newcastle Airport Limited, a not-for-profit company, limited by guarantee, was formed on 25 May 1993 by the two councils and a 30-year lease was signed for 23 hectares including the site of the terminal and land for commercial development.



The lease was modified in 2005 to a 40-year lease (terminating March 2045) and to include an additional five hectares of land.

For many years the passenger terminal was little more than a 'tin shed'. This was remedied with the opening of new terminal facilities in March 1975. In 1994 and 2000 Newcastle Airport underwent further major upgrades which included the doubling of the terminal floor area, total refurbishment of the interior and exterior of the building and the provision of office suites for airlines.

Impulse Airlines began operating B717 jet services from Williamtown in 2000. In November 2003 Virgin Blue introduced B737 aircraft on daily services to Melbourne and in May 2004 introduced daily services to Brisbane. In May 2004 Jetstar also commenced services on the Newcastle-Melbourne and Newcastle-Brisbane routes using the B717 aircraft.

Newcastle Airport underwent another major upgrade in 2005 which doubled the terminal floor area, introduced a retail precinct, doubled the departures and arrivals areas, provided additional office suites and upgraded the car parking and road systems.

Today, Newcastle Airport is serviced by all the major domestic airlines that provide services to the major destinations along the east-coast of Australia. The Airport is significantly contributing to the domestic and international growth of business and tourism to the surrounding region.

Since the introduction of jet services into Newcastle Airport, the number of passengers using the Airport has increased from 214,000 in 2003 to 1,181,000 in the 2010 calendar year.

At its meeting of 11 September 2007, Council resolved to lend NAL \$12m taking NAL's outstanding debt to Council to \$17.1m. At this time, NAL was in the midst of exponential growth with predictions of approximately \$75m of capital works to be undertaken by 2011. Under the current NAL corporate structure, NAL is restricted from borrowing external funds directly and all borrowings must come through its two shareholders, Port Stephens Council (PSC) and Newcastle City Council (NCC). Given these circumstances, PSC resolved to cap borrowings at \$17.1m and called for a review of NAL's corporate structure to determine whether an alternate model would be more appropriate to facilitate NAL's growth.

Since that resolution was adopted a joint Council sub-committee has been established to coordinate a comprehensive review of NAL's corporate structure including consideration of taxation and legal implications of various structure options. Port Stephens Council is represented on the sub committee by the Mayor, Cr Ward, Cr Jordan and Cr Mackenzie. Sub committee meetings are also attended by the General Manager and Group Manager Commercial Services.

Throughout the process of investigating options for future corporate structures a number of issues were identified which have been progressively addressed over the last three years. Most notable of these issues was the risk of the corporate restructure

being subject to Stamp Duty. The potential stamp duty liability was quantified at approximately \$5m. Newcastle Airport, through its tax consultant Ernst & Young lodged an application for an exemption from Stamp Duty and was successful in receiving a private ruling from the Office of State Revenue confirming that no stamp duty would be payable in moving to the proposed structure.

The benefits to Council of moving to the new corporate structure include:

- Newcastle Airport no longer relying on borrowings solely from the shareholder Councils. Newcastle Airport would be free to borrow funds directly from banks which, over time, will reduce Council's outstanding debts;
- Newcastle Airport will be able to pay dividends to its shareholders. Financial modelling has indicated that an annual dividend of between 8% and 10% of Newcastle Airport's net asset value is sustainable. Based on a 10% dividend and Council retaining its 50% shareholding, Port Stephens Council is forecast to receive \$31.7m in Newcastle Airport dividends over the next ten years;
- The new structure would also facilitate the introduction of third party equity into Newcastle Airport at some point in the future if the existing shareholder Councils so desired;
- The new structure would also significantly simplify the accounting treatment of Newcastle Airport in Council's financial statements.

The recommended resolutions above will progress the move to the new corporate structure however further reports will be required to come before both Councils next year to finalise the restructure, subject to Minister for Local Government approval.

### **FINANCIAL/RESOURCE IMPLICATIONS**

The costs associated with the corporate restructure have to date been borne by Newcastle Airport and it is proposed that future costs will also be borne by Newcastle Airport.

The financial implications of the corporate restructure are quite positive with projected dividends to Council over the next ten years of \$31.7m and the removal of any future requirement for Council to borrow money for Newcastle Airport which will see a reduction over time in Council's outstanding borrowings.

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

Section 358 of the Local Government Act states "A Council must not form or participate in the formation of a corporation or other entity, or acquire a controlling interest in a corporation or other entity, except.....with the consent of the Minister and subject to such conditions, if any, as the Minister may specify". Therefore, the shareholder Councils are required to submit an application to the Minister for Local Government for approval of the proposed structure.

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The growth of Newcastle Airport has resulted in a significant boost to the local economy. The Airport's 2008 economic analysis confirmed its role as one of the region's key economic and employment hubs, contributing \$465m annually to the Hunter economy and supporting an estimated 3,278 jobs. The proposed restructure would position the Airport to be able to capitalise on future opportunities for growth which would further build on its contribution to the Port Stephens economy.

## **CONSULTATION**

Newcastle Airport Board and Management, Newcastle Airport Joint Council Sub Committee, Ernst & Young, PricewaterhouseCoopers

## **OPTIONS**

- 1) Accept the recommendations;
- 2) Reject the recommendations;
- 3) Amend the recommendations.

## **ATTACHMENTS**

- 1) Proposed Structure – Co-Investment Ready Partnership;
- 2) Current Structure – Joint Venture Operation.

## **COUNCILLORS ROOM**

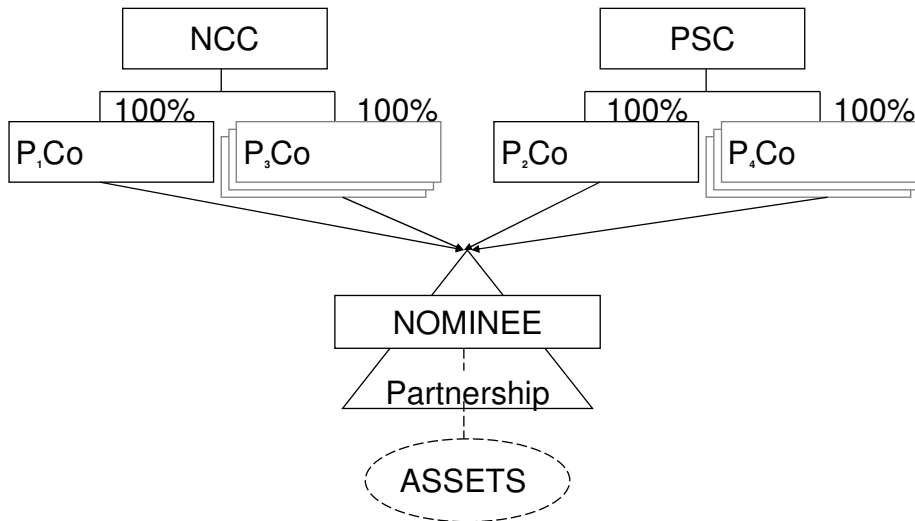
Nil.

## **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1

Proposed Structure: Co-Investment Ready Partnership Structure

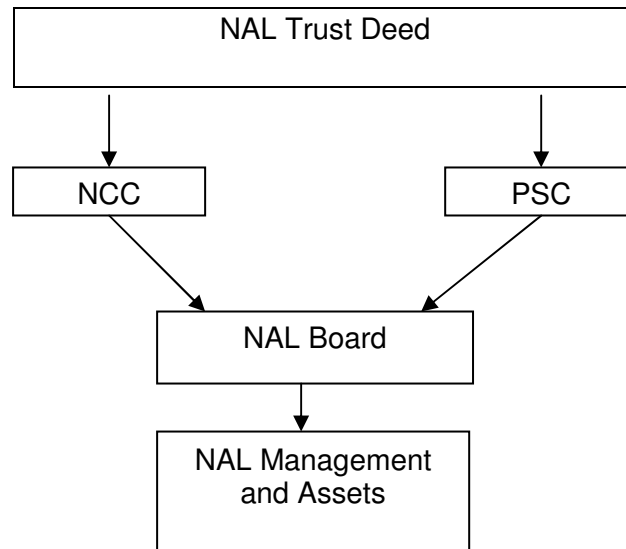


Notes:

- ❖ P<sub>1</sub>Co and P<sub>2</sub>Co hold Councils 'enduring' interests in the Airport
- ❖ P<sub>3</sub>Co and P<sub>4</sub>Co comprise one or more wholly-owned companies per Council, held ready for the introduction of third party equity investors
- ❖ Structure maintains full ownership by Councils with facility for flexible and progressive introduction of new investors without tax leakage for Councils
- ❖ Structure allows for effective introduction of external capital to Airport without income tax cost for Councils
- ❖ Structure allows for payment of dividends to shareholders
- ❖ Exposure of Councils to legal liabilities of Airport managed through use of limited liability company partners

ATTACHMENT 2

**Current Structure: Joint Venture Operation**



There being no further business the meeting closed at 8.05pm.

*I certify that pages 1 to 301 of the Open Ordinary Minutes of Council 20 December 2011 were confirmed by Council at its meeting held on 28 February 2012.*

.....  
**Cr Bob Westbury**  
**MAYOR**