

Minutes 23 August 2011



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 23 August 2011, commencing at 5.32pm.

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

290	Councillor Ken Jordan Councillor Bruce MacKenzie	It was resolved that the apology from Cr Sally Dover be received and noted.
291	Councillor Ken Jordan Councillor Bruce MacKenzie	It resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 9 August 2011 and the Extra-Ordinary Meeting of 16 August 2011 be confirmed.
		Cr Glenys Francis declared a pecuniary interest in Item 1. The nature of the interest being that Cr Francis lives in Raymond Terrace, Port Stephens and may or may not benefit from the outcome of this report. Cr Glenys Francis declared a significant pecuniary interest in Item 8. The nature of the interest being that Cr Francis works

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

		<p>for Hunter New England Health along with 17,000 other employees. Cr Francis does not receive a wage from the GNS to which this refers.</p> <p>Cr Steve Tucker declared a pecuniary interest in Item 8. The nature of the interest being that Cr Tucker receives payment from Hunter New England Health via his employer for services provided to Hunter New England Health.</p>
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**COUNCIL
COMMITTEE
RECOMMENDATIONS**

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

Cr Glenys Francis declared at pecuniary interest in Item 1 and left the meeting at 5.41pm.

ITEM NO. 1

FILE NO: PSC2006-0038

AIRCRAFT NOISE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the revised draft Port Stephens Development Control Plan Chapter B15: "Aircraft Noise" (**Attachment 1** provided under separate cover);
 - 2) Adopt the draft Aircraft Noise Policy (**Attachment 2** – provided under separate cover);
 - 3) Request the Commonwealth Government, through the Parliamentary Secretary of Defence, to urgently revise the ANEF 2025 mapping to minimise impacts on the Port Stephens Community.
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COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

	<p>Councillor Geoff Dingle Councillor John Nell</p>	<p>That Council resolve to:</p> <ol style="list-style-type: none">1) Adopt the 2025 ANEF of 10th August 2011 and former 2012 ANEF (Aircraft Noise Planning Area) as the basis for its draft Aircraft Noise Policy and draft Port Stephens Development Control Plan 2007 Chapter B15 Aircraft Noise for Buildings;2) Use the 2025 ANEF of 10th August 2011 and former 2012 ANEF (Aircraft Noise Planning Area) as the basis for assessing development applications as part of its duty of care under section 79C of the Environmental Planning and Assessment Act 1979.
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In accordance with Section 375A of the Local Government Act, a division is required for this item.

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

Those against the motion: Nil.

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011**MATTER ARISING**

	Councillor John Nell Councillor Steve Tucker	That Council: 1) Forward a letter of appreciation to the Federal Minister for Defence for the assistance with the noise exposure maps. 2) The letter should also address concerns in relation schools in the aircraft noise affected areas.
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ORDINARY COUNCIL MEETING – 23 AUGUST 2011

292	Councillor Geoff Dingle Councillor John Nell	It was resolved that the Council Committee recommendation be adopted.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Ken Jordan, Steve Tucker, Geoff Dingle, John Nell, Frank Ward and Bob Westbury.

Those against the Motion: Crs Peter Kafer, Caroline De Lyall, Bruce MacKenzie and Shirley O'Brien.

MATTER ARISING

293	Councillor Geoff Dingle Councillor John Nell	It was resolved that Council: 1) Forward a letter of appreciation to the Federal Minister for Defence for the assistance with the noise exposure maps. 2) The letter should also address concerns in relation schools in the aircraft noise affected areas.
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294	Councillor John Nell Councillor Steve Tucker	It was resolved that Council request the Department of Defence equip the Williamtown RAAF Base and the Joint Striker Fighter (JSF) with the latest aircraft landing system.
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BACKGROUND

Following the commitment of this report, Senator David Feeney, Parliamentary Secretary for Defence, advised that he will be visiting RAAF Base Williamtown on 10th August to provide resident groups with new information that he is confident will address many of their concerns. A Supplementary Memorandum may be presented to the Council to explain how Senator Feeney's announcement may impact Council's policy position relative to aircraft noise.

General

The purposes of this report are:

- To present revised versions of the draft Development Control Plan Chapter B15 Aircraft Noise and draft Aircraft Noise Policy for consideration (**Attachment 1** and **Attachment 2** respectively - provided under separate cover).
- To review the submissions received during the public exhibition of the draft Development Control Plan Chapter B15 Aircraft Noise and draft Aircraft Noise Policy (**Attachment 3**).
- To advise Council of matters discussed at meetings of the Port Stephens Aircraft Noise Reference Panel
- To advise Council of the impending Environmental Impact Statement for the introduction of the Joint Strike Fighter and the opportunity this presents for gaining an improved outcome for the community

Where relevant this report refers to information provided in previous reports to Council on aircraft noise since the release of the 2025 Australian Noise Exposure Forecast (ANEF) in October 2009.

Council's primary role could be described as managing and planning for positive co-existence between the RAAF base and related military aircraft operations with the satisfactory lifestyle of the local community. The RAAF has over 3000 employees with major, positive multiplier effects. A further \$500 to \$800 million investment is planned with the introduction of the Joint Strike Fighter.

There has been very significant impact on the local community and in particular landowners by the promulgation of the 2025 Australian Noise Exposure Forecast (ANEF) map in October 2009, with approximately 3500 properties affected and disadvantaged to varying degrees (refer to the following table). The social and economic impacts of the 2025 ANEF map at this time are profound with sections of the community voicing very significant concerns about social and economic hardship, and in some instances linking these concerns to health impacts. These issues are occurring now - prior to the actual generation of any noise by the Joint Strike Fighter to be introduced from approximately 2018.

Table 1 2025 ANEF of October 2009 – Predicted Noise Contour and No. of Lots Affected

Noise contour	Number of lots affected
20-25	1937
25-30	1224
30-35	229
35-40	42
40-45	24
45-50	5
50-55	10
55-60	2
TOTAL	3473

(modified from page 109 of the draft Public Environment Report – Operation of the JSF Aircraft at RAAF Base Williamtown, Australian Government, October 2009).

In addition to the primary concern of impact on the community the promulgation of 2025 ANEF has imposed obligations upon Council and placed it in an untenable position. Again, Council has a role in trying to achieve positive coexistence between operational military aircraft at the Williamtown RAAF Base, maintaining appropriate amenity and lifestyle for the local community, providing for population growth and fulfilling its statutory obligations as a planning authority. There are legal and financial risks to Council if it does not properly consider aircraft noise in making development decisions, for example the 2005 NSW Court of Appeal decision over the approval of a tourism development at Swan Bay.

Resolutions Since December 2009

Since the promulgation of 2025 ANEF in October 2009 aircraft noise has been addressed in a number of Council reports. For information and summary purposes those relevant minutes and notices of motion are included (see **Attachment 4**).

Council has actively pursued lobbying of the Commonwealth Government – particularly with Parliamentary Secretary David Feeney and his predecessor, Mike Kelly. This has included focus on compensation for adversely affected landowners.

It is understood that the "Community Map" referred to in the Council resolution of 28 June 2011 will be available for publication by the end of August 2011.

Relevant maps

The official aircraft noise map that relevantly applies in the Port Stephens LGA at the current time is 2025 ANEF dated October 2009. Since that time two ANEC maps being 2025 ANEC of 17th May 2010 and 2025 ANEC of 1st September 2010 have been released that show reductions in the noise footprint.

The 2025 ANEC of 17th May 2010 takes into account a reduction in the usage of the Salt Ash Weapons Range. Under the 2025 ANEC of 17th May 2010 parts of Medowie East are no longer affected and areas of Oyster Cove, Swan Bay and Salt Ash are no longer affected or are located within a lesser noise contour. Although there are significant improvements the mapping indicates there are still areas affected by the proposed use of the Joint Strike Fighter at the Salt Ash Air Weapons. Additionally,

many properties will remain affected to a greater degree by the ongoing use of the Hornet and Hawk Aircraft as shown by the 2012 ANEF.

Importantly at its meeting on 23rd November 2010 Council resolved to "Note the 2025 Australian Noise Exposure Concept map dated 1st September 2010 as the revised basis for assessing development applications as part of its duty of care under section 79C of the Environmental Planning and Assessment Act 1979". As previously reported to Council this ANEC provides a clear direction from the Department of Defence that it is intending to reduce the area affected by the 2025 ANEF. It falls within the 'public' interest' consideration under s79C of the Act that Council has regard to the ANEC map. It does not however replace the promulgated 2025 ANEF with its related imposed obligations on Council.

2025 ANEC 1st September 2010 takes into account the reconfiguring of instrument approach systems and aircraft approaches at RAAF Base Williamtown in addition to the potential future reduction in use of the Salt Ash Air Weapons range shown in 2025 ANEC 17th May 2010. Under 2025 ANEC 1st September 2010 approximately 517 properties are no longer affected and 488 properties contracted from the 25-30 to the 20-25 noise contours. In terms of general locations Brandy Hill is no longer mapped as affected, parts of Nelsons Plains are no longer mapped as affected or impact is reduced, and parts of Raymond Terrace are no longer mapped as affected or impact is reduced.

The 2012 ANEF accounts for the ongoing operation of the Hornet and Hawk aircraft and will continue to remain relevant until such time as those aircraft are removed from service. The 2012 ANEF will remain particularly relevant where it identifies greater impact of the Hornet and Hawk aircraft in the vicinity of the Salt Ash Air Weapons Range compared to 2025 ANEF and the Joint Strike Fighter.

The draft Policy and draft DCP at this time are based upon a composite map comprising 2025 ANEC 1st September 2010 and 2012 ANEF.

FINANCIAL/RESOURCE IMPLICATIONS

There are significant financial implications for those landowners seeking to develop land and in terms of property devaluations, in areas affected by aircraft noise under 2025 ANEF. The financial impact of aircraft noise is not new in Port Stephens LGA. For example, there has been ongoing impact under 2012 ANEF. The additional impact of the new 2025 ANEF is that the noise impact footprint has significantly increased or altered from the previous 2012 ANEF.

The main financial implications for landowners affected by aircraft noise are the deprivation of development entitlements and the cost of attenuating new buildings to meet the indoor sound design levels set down by *Australian Standard 2021-2000 Acoustics – Aircraft Noise Intrusion – Building siting and construction* (AS 2021-2000). Indications are it can cost up to approximately \$40,000 to noise attenuate a new dwelling (note: there has been wide variation in estimated cost impacts). The loss or restriction of development entitlements due to aircraft noise would likely impact on land values and the community has indicated to Council that this has and is continuing to occur.

LEGAL, POLICY AND RISK IMPLICATIONS

There are legal, policy and risk implications for Council in considering aircraft noise. The NSW Court of Appeal decision makes it clear that Council should have applied AS 2021-2000 and the 2025 ANEF map when it considered and determined the 'Fisherman's Village' tourist development application at Swan Bay. Council owed the developers and prospective landowners a duty of care when it exercised its statutory functions as consent authority under the *Environmental Planning & Assessment Act 1979* (the Act) and it breached that duty because of an essential misunderstanding that the extent to which the Swan Bay site was affected by aircraft noise in 1993 was different to the predicted noise impacts for the period from 1993 to 2002 under ANEF 2002.

The recommended draft Policy and draft DCP seek to address the risk that Council might be similarly negligent in the future by ensuring that AS 2021-2000 (with 20212 ANEF and 2025 ANEF) is the primary policy basis and set of development standards by which aircraft noise impacts are considered, and does so in a manner that is consistent with directions issued pursuant to s117 of the Act.

Some land owners will be aggrieved by the proposed policy and DCP, as the requirement to comply with AS 2021-2000 will result in certain types of development as being 'unacceptable' or 'conditionally acceptable' where potentially expensive noise attenuation measures are implemented.

Implementing less robust approaches than the recommended policy and related amendments to the DCP may leave Council exposed to further negligence claims. Whilst Council had the benefit of an indemnity from Statewide Mutual for the Fisherman's Village proceedings, it is unlikely that similar indemnities would be available to Council where Council knowingly pursues a policy that results in further negligence claims.

It is proposed to consider the adoption of a revised policy position on land use decision making on aircraft noise to underpin decision making for rezoning and development applications. The principles that should underpin the policy are:

- Protecting the health, well being and comfort of living of residents and property owners – current and future,
- Consistency of implementation of the policy which is crucial to the policy's integrity,
- Equity to landowners and applicants affected – and potentially, in terms of ability defend any future legal proceedings.
- Strong consideration of natural justice – that is to give land owners newly affected or more adversely affected particular consideration in terms of applying the 'best practice means' to achieve the noise reduction rather than necessarily strictly meeting AS 2021-2000.

In all of this, the positive co-existence of Council, the RAAF and the Port Stephens community is paramount. The Joint Strike Fighter will lead to an increase of \$500 million investment with consequent job increases above the current 3,000 employees and wider positive economic multiplier effects.

As part of the aircraft noise planning policy 'package' it was proposed to introduce to the *Port Stephens Local Environmental Plan 2000* (LEP 2000) a clause to deal with aircraft noise in a general and consistent manner, whenever land is affected by aircraft noise. Introducing such a clause will avoid sole reliance on the DCP to control development, and will implement NSW State Planning Direction 3.5 *Development Near Licensed Aerodromes* (Direction 3.5).

The LEP 2000 currently contains no provision for addressing aircraft noise, with the exception of a specific provision relating to development within the DAREZ zone at Williamtown.

Compliance with Direction 3.5 is compulsory under section 117 of the Act and must be complied with in the preparation of planning proposals. It implements the ANEF and AS 2021-2000 system into a Council's local environmental plan.

It is proposed that Council set aside, for the time being, its planning proposal to implement Direction 3.5 into LEP 2000. The commitment to review 2025 ANEF mapping as part of the Environmental Impact Statement for the Joint Strike Fighter should lead to a revised 2025 ANEF with reduced impact on the community and less impact through a clause in LEP 2000.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

This and previous reports to Council have focused on Council's difficult role in balancing the substantial significant social, economic and environmental implications for the community and landowners affected by the promulgation of the 2025 ANEF. It is expected that the impending Environmental Impact Statement for the introduction of the Joint Strike Fighter will fully address these implications.

Over 3000 people are employed at the RAAF Base and \$500 - \$800 million of investment is planned with the introduction of the Joint Strike Fighter.

With regard to economic implications it should be noted that Council has previously resolved for assistance to be provided to affected landowners by the Federal Government in the form of noise amelioration and financial compensation.

CONSULTATION

Submissions on the draft DCP and Draft Policy

The draft DCP and draft Policy were placed on public exhibition on public exhibition from 17th June to 30th July 2010. The exhibition period was extended until the 27th August 2010 to allow additional time for submissions.

Affected landowners were notified on 17th June 2010 and again on 12th August 2010 regarding the additional time. Question and answer sheets were provided and Council staff available to respond to enquiries.

A total of approximately 218 (two-hundred and eighteen) submissions were received with the large majority from Raymond Terrace, Medowie and Fullerton Cove. Submissions were also received from residents at Seaham, Brandy Hill, Williamtown, Eagleton, Lemon Tree Passage, Salt Ash, Ferodale, Campvale and Swan Bay. Some submissions are considered as petitions or signed by multiple parties and submitted in a template format. Two submissions were received from consultants.

The general issues raised have been grouped and responded to as follows:

Policy and DCP require clarification

- Issue: The draft policy and draft DCP are not clear to the average person – many people have refused to make a submission until a concise DCP is exhibited.

Response: The draft DCP has been re-written to make it easier to understand given the complex nature of aircraft noise and the related planning framework e.g. AS 2021-2000, ANEF mapping, technical noise data, planning legislation.

- Issue: The draft policy is overly repetitive, vague and highlights details that are 'not known' with the need for more assessment, studies, investigations and framing before real policies can be agreed to.

Response: There is a limit to how much guidance and specific information can be provided in the draft Policy and draft DCP. Establishing how aircraft noise impacts a property and a proposed development necessarily involves research beyond what can be provided in a policy and DCP. Council will continue to work with the Department of Defence to improve communication on technical aircraft noise matters to the community.

- Issue: Uncertainty on whether existing houses can be rebuilt if burnt down or damaged etc.

Response: The draft DCP provides that replacement of a dwelling is acceptable within any noise contour. Aircraft noise attenuation would be required.

- Issue: Request for Council to enact a grandfathering clause that will enable residents to rebuild their existing residence to a standard consistent with their original DA approval.

Response: Council understands that a "grandfather" clause, which can be applied for example under Queensland planning legislation, is not accommodated by the NSW *Environmental Planning and Assessment Act 1979*.

- Issue: Residents will be seeking legal advice on a class action against Council for placing these policy restrictions on their land and notations on planning certificates.

Response: Council has a duty of care and statutory obligations under section 79C of the *Environmental Planning and Assessment Act 1979* when making development decisions on land known or predicted to be impacted by aircraft noise. The financial risk to Council of not being diligent in consideration of aircraft noise matters was made apparent in the NSW Court of Appeal decision in the Fisherman's Village, Swan Bay, proceedings. It follows that when Council is made aware of aircraft noise impacts through ANEF mapping it has a responsibility to notify that information on planning certificates.

- Issue: Do not agree with the DCP and believe it to be invalid as AS 2021-2000 is only a guideline and not a licence to impose development restrictions as proposed by Council.

Response: AS 2021-2000 is a fundamental component of the national and State recognised policy and legislative framework for planning in areas impacted by aircraft noise. The duty of care and statutory obligations of Council have already been discussed in this report. Council has had since at least 2003 a formal policy response based upon ANEF mapping and AS 2021-2000. Prior to that time Council still had an obligation to consider the AS and ANEF mapping where available.

- Issue: Council should rescind its draft policy and draft DCP and reopen the debate with the Department of Defence.

Response: Council and the community have reopened the debate with the Department of Defence since the promulgation of 2025 ANEF in October 2009. Council has been lobbying on behalf of the community for compensation and changes to ANEF mapping to reduce impacts on the community. These initiatives are referred to in this report and include but are not limited to the establishment of the Port Stephens Aircraft Noise Reference Panel and resolutions calling for compensation for affected landowners. It is understood that the Department of Defence has also reopened the debate with the community and is undergoing a renewed consultation and mapping process as part of the Environmental Impact Statement for the Joint Strike Fighter.

Status of ANEF maps and 149 planning certificates

- Issue: There is confusion over 2025 ANEF – majority of submissions state that 2025 ANEF is not promulgated and insist on its removal from planning certificates.

Response: 2025 ANEF was promulgated in October 2009 and Council has a responsibility to notify its existence on planning certificates.

- Issue: Call on the 2025 ANEF and 2025 ANEC to be revoked and the 2012 ANEF reinstated until a proper assessment of future aircraft noise has been finalised.

Response: Revoking the 2025 ANEF is a responsibility of the Commonwealth Government. This proposal may have merit given the impending EIS process that is likely to lead to a new ANEF with reduced impact compared to 2025 ANEF. One issue to consider in doing this is equity and fairness to people who

have bought and sold property in the interim based on 2025 ANEF. Related to this issue it should be noted that the Federal Labour Party made a commitment that if re-elected in 2010 it will "Review and replace the current 2025 ANEF with a new ANEF to be issued before the end of the year following revision to the ANEC and a period of further public consultation" (ALP website, 2 August 2010). Council does not have the authority to revoke ANEF mapping but may choose to lobby for this on the community's behalf.

Kings Hill

- Issue: It appears that 2025 ANEF has been promulgated to facilitate the approval and development of Kings Hill.

Response: 2025 ANEF was promulgated based upon the available aircraft noise data for the Joint Strike Fighter at the time – future aircraft noise impacts were integral to the investigation and consideration of rezoning land at Kings Hill.

- Issue: Kings Hill is considered to be a factor in the expansion of aircraft noise contours especially in Raymond Terrace.

Response: Kings Hill did not determine the location of noise contours in 2025 ANEF. Approximately 1/3 of the Kings Hill site is within the 20-25 noise contours.

- Issue: Call for Kings Hill to be put on hold until the aircraft noise issue is resolved.

Response: Kings Hill was rezoned for residential development in 2010 and it is not proposed to rezone the land to other uses.

Economic impacts

- Issue: Will Council or Defence provide compensation for loss of land value or reimbursement of costs for noise attenuation measures required.

Comment: The 2025 ANEF is a responsibility of the Commonwealth Government. Council will continue to seek a revised map that provides a better outcome for the community. Council has made representations to the Commonwealth Government for compensation. Council resolved at its meeting on 25th May 2010 to call upon the Commonwealth Government to:

- 1) *"To provide generous compensation to landholders whose properties have had their development potential reduced or removed because of current and/or future exposure to noise from military aircraft.*
- 2) *To pay for the noise attenuation required in the renovations of and additions to existing homes and in the construction of new homes, because of current and/or future exposure to noise from military aircraft."*

At this time no compensation has been offered to affected landowners by the Federal Government.

- Issue: Request Council to contact the Valuer-General to reassess land values,

Response: Landowners are able to request the Valuer-General to reassess land values.

- Issue: Request Council to reduce land rates,

Response: This matter should be considered separate to this report.

Consultation – additional consultation and Council support to protect owners

- Issue: Request Council and Defence to be involved in more direct community consultation.

Response: Council has established the Port Stephens Aircraft Noise Reference Panel that provides a direct line of communication between community group representatives, Council, the Department of Defence and RAAF. How the Panel operates is discussed in a separate section of this report.

- Issue: Council needs to take a more proactive and supportive approach to protect the existing rights of property owners,

Response: The 2025 ANEF is ultimately a responsibility of the Commonwealth Government. Council will continue to seek a revised 2025 ANEF map from the Department of Defence that provides a better outcome for the community.

ANEF contours and effect on land use zones

- Issue: Council should not be able to prohibit dwellings in residential zones,

Response: In certain areas of Port Stephens there is an inherent conflict between land that is zoned 2(a) Residential and subject to high areas of aircraft noise exposure where development is "unacceptable" under AS 2021-2000.

- Issue: Possibly rezone affected residential areas for other land uses.

Response: Rezoning requests would be assessed on their merits against the range of planning matters beyond and including aircraft noise.

Health – concerns about health impacts on affected residents

- Issue: Concerns about health impacts of affected residents,

Response: The health impacts of affected residents need to be comprehensively addressed in the upcoming EIS for the Joint Strike Fighter. The EIS will be assessed by the Australian Government – Department of Sustainability, Environment, Water, Population and Communities.

Other solutions

- Issue: Extend the runway, duplicate the runway, upgrade instrument landing systems, factor in natural noise buffers, different flight paths

Response: Defence and RAAF advised the Aircraft Noise Reference Panel at its meeting on 8th June 2011 that the impending EIS for the Joint Strike Fighter will investigate a range of different operating scenarios and include a range of relevant Aircraft Noise Exposure Concepts or ANECs (draft aircraft noise maps).

Port Stephens Aircraft Noise Reference Panel

Council established the Port Stephens Aircraft Noise Reference Panel (the Panel) by resolution in November 2010. The Panel was formed principally to review submissions on the draft policy and DCP and to report back to Council on the submissions and any subsequent recommendations. The panel comprises members from the SAFE EARS, Medowie East and West and the Save Our Castle community groups. It also includes Councillors and the Mayor, council planning staff and representatives from Department of Defence and the RAAF. A representative from the NSW Department of Planning and Infrastructure is also formally requested to attend.

The resolution of Council and the terms of reference for the Panel refer to its role being limited to reviewing submissions and making and recommendations back to Council on the draft policy and DCP. However the meetings have also evolved to provide a very useful mechanism for the community to provide direct feedback to the Department of Defence, RAAF and Council about the impact of aircraft noise mapping with a focus on economic social and health impacts. For this reason, the aircraft noise panel has merit to continue to meet on an as needs basis.

At the time of writing the Panel had met three times on 2nd February, 16th March and 8th June 2011 (a copy of the minutes from each meeting is at **Attachment 5** - provided under separate cover).

Comments on the draft policy and draft DCP were sought from the panel in accordance with Council's resolution. There are essentially two main criticisms. The first is that the DCP is confusing and a plain-english version is required and exhibited. The DCP has been re-written to address this criticism. The second criticism is a comprehensive rejection of 2025 ANEF and its social, economic and environmental impacts by the community. The Department of Defence and RAAF are very aware, particularly through the Panel, of the impact of 2025 ANEF on the community. The community rejection of 2025 ANEF is understandable and Council should continue to make representations on behalf of the community for a better outcome, however, ultimately the 2025 ANEF is a Federal Government responsibility and Council's powers are limited in influencing its form.

The 2025 ANEF has been in place since October 2009 and must be considered by Council in making development decisions. The intent of the draft DCP and policy is not to adopt the 2025 ANEF which is "in force" regardless of any Council DCP and policy. What the draft DCP and draft Policy do is provide additional detail, information and guidelines on how aircraft noise maps should be considered in

making development and rezoning decisions. Council has had a formal policy and or DCP in place since at least 2003 to respond to ANEF mapping and there have been a range of ANEF maps prior to and since that year.

Environmental Impact Statement for the Introduction of the Joint Strike Fighter

The Australian Government Department of Sustainability, Environment, Water, Population and Communities will be undertaking a formal assessment of the flying operations of the JSF by environmental impact statement in accordance with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

At the July 2011 meeting of the Port Stephens Aircraft Noise Reference Panel the Department of Defence and RAAF broadly outlined their intended timing and process for the EIS:

- Up to early July 2011 - RAAF will meet with representative groups and the community,
- August to September 2011 - a range of ANECs will be produced based on latest data and will be the subject of direct consultation with representative groups, and
- January to February 2012 - the EIS should be accepted or rejected by the Federal Minister for the Environment. At this same time as part of the EIS process a new ANEF will be promulgated.

It certainly could be asserted by Council that the 2025 ANEF map should not have been promulgated in October 2009 but should have been a draft map publicised for public comment as part of this draft EIS.

Until such time as the EIS process is complete and a revised 2025 ANEF promulgated it appears likely that 2025 ANEF of October 2009 will remain and the associated social and economic impacts will continue.

Federal Government Election Commitment

The Australian Labour Party made the following election commitments during the 2010 election campaign concerning aircraft noise:

- *Fully consider all options to reduce aircraft noise, including those being proposed by local residents, such as the extension or duplication of the runway at Williamtown airbase, with a view to shifting noise to the south-east, away from Raymond Terrace and Medowie*
- *Convene a Williamtown Aircraft Noise Strategic Taskforce of all Federal, State and local agencies, as well as local residents, to address ongoing issues surrounding the Williamtown RAAF base and development and planning in Port Stephens*
- *Review and replace the current 2025 ANEF with a new ANEF to be issued before the end of the year following revision to the ANEC and a period of further public consultation*

(source: ALP website, posted 2nd August 2010)

The 2011-2012 Federal budget relevantly makes the following provision for improving aircraft noise management:

The Government will address the issue of aircraft noise in Port Stephens through development of a long-term plan in conjunction with the implementation of the Joint Strike Fighter project at Royal Australian Airforce (RAAF) Base Williamtown.

A Williamtown Aircraft Noise Strategic Taskforce comprising Federal, State and local agencies and local residents will be convened to address ongoing issues surrounding the RAAF Base Williamtown and development and planning in Port Stephens. The Taskforce will consider all options to reduce aircraft noise, including those being proposed by local residents.

The cost of this measure will be met from within the existing resourcing of the Department of Defence.

This measure delivers on the Government's election commitment.

(Source: Federal Budget Part 2: Expense Measures – Defence)

It is apparent that the impending EIS for the Joint Strike Fighter will address all options for reducing aircraft noise however that process is yet to be undertaken.

The commitment by the Federal Government to convene a Williamtown Aircraft Noise Strategic Taskforce has not occurred. In any case, Council's own initiative to establish the Port Stephens Aircraft Noise Reference Panel appears to achieve the same outcome.

The commitment to review and replace the 2025 ANEF by the end of 2010 has not been carried through with the 2025 ANEF of October 2009 still in place. Despite this commitment and progress has been made to review the 2025 ANEF with subsequent ANEF maps released in May 2010 and September 2010 that show a potential reduction in noise footprint. The impending EIS for the Joint Strike Fighter at Williamtown also demonstrates a commitment to further investigate all options for altering the noise footprint from 2025 ANEF. Until that EIS process is complete and a revised 2025 ANEF promulgated – with a reduced noise footprint - it appears likely that 2025 ANEF of October 2009 will remain and the associated social and economic impacts will continue.

OPTIONS

- 1) Adopt the revised draft DCP and draft Policy;
- 2) Place the revised draft DCP and draft Policy on public exhibition;
- 3) Defer consideration of the draft DCP and draft Policy until 2025 ANEF has been comprehensively reviewed;
- 4) Defer a decision on the draft DCP amendment and draft Policy as part of intensifying political lobbying of the Commonwealth Government.

ATTACHMENTS

- 1) Revised Draft Port Stephens Development Control Plan 2007 Chapter B15 Aircraft Noise (under separate cover);
- 2) Revised Draft Port Stephens Aircraft Noise Policy 2010 (under separate cover);
- 3) Summary table of public submissions in response to the exhibition of the draft Policy and draft DCP;
- 4) Previous resolutions of Council;
- 5) Minutes of the Port Stephens Aircraft Noise Reference Panel (under separate cover);
- 6) Record of development applications determined with aircraft noise affected areas since the promulgation of the 2025 ANEF map of October 2009.

COUNCILLORS ROOM

- 1) Submission Summary Folder.

TABLED DOCUMENTS

Nil.

**ATTACHMENT 1
REVISED DRAFT PORT STEPHENS DEVELOPMENT CONTROL PLAN 2007 CHAPTER B15
AIRCRAFT NOISE**

(UNDER SEPARATE COVER)

**ATTACHMENT 2
REVISED DRAFT PORT STEPHENS AIRCRAFT NOISE POLICY 2010**

(UNDER SEPARATE COVER)

**ATTACHMENT 3
SUMMARY TABLE OF PUBLIC SUBMISSIONS IN RESPONSE TO THE EXHIBITION
OF THE DRAFT POLICY AND DRAFT DCP**

(UNDER SEPARATE COVER)

**ATTACHMENT 4
PREVIOUS RESOLUTIONS OF COUNCIL**

(UNDER SEPARATE COVER)

**ATTACHMENT 5
MINUTES OF THE PORT STEPHENS AIRCRAFT NOISE REFERENCE PANEL**

(UNDER SEPARATE COVER)

ATTACHMENT 6

RECORD OF DEVELOPMENT APPLICATIONS DETERMINED WITH AIRCRAFT NOISE AFFECTED AREAS SINCE THE PROMULGATION OF THE 2025 ANEF MAP OF OCTOBER 2009

Aircraft Noise Affected Development Applications called up to Council for determination

Meeting Date	DA Number	Address	Development	Recommendation	Resolution
	16-2009-890-1	29 Boyd Blvde Medowie	Dwelling		Approved in accordance with Recommendation
29/6/10	16-2010-102-1	2258 Nelson Bay Rd Williamtown	Dwelling	Refuse	Defer – site inspection
13/7/10	16-2010-102-1	2258 Nelson Bay Rd Williamtown	Dwelling	Refuse	Approve in principle – staff to provide conditions of consent
27/7/10	16-2010-102-1	2258 Nelson Bay Rd Williamtown	Dwelling	Refuse	Approved by Council
24/8/10	16-2010-840-1	3 Meehan Road Raymond Terrace	Dwelling	Refuse	Approved by Council
24/8/10	16-2009-768-2	4 Meehan Road Raymond Terrace (Section 96)	S96 - Dual Occ and 2 lot subdivision	Refuse	Approved by Council without attenuation
19/4/11	16-2010-638-1	4 Lavis Lane Williamtown	McDonalds	Refuse	Defer – for revised plans to be submitted
19/7/11	16-2010-638-1	4 Lavis Lane Williamtown	McDonalds	Refuse	Approved by Council

Aircraft Noise Affected Development Applications determined under delegated authority

Submission Date	DA Number	Address	Development	Outcome
2009				
9/4/09	16-2009-227-1	3 Wade Close, Medowie	Twenty Eight Lot Subdivision TT	Awaiting determination - also in court proceedings
13/10/09	16-2009-766	1A Acacia (25 Gwen Pde), Raymond Terrace	Alts and adds to S/S Dwelling	Approved with noise attenuation conditions
14/10/09	16-2009-768-1	4 Meehan Road, Raymond Terrace	Detach Dual Occupancy & Two Lot TT subdivision	Approved with noise attenuation conditions
14/10/09	16-2009-771-1	10 Elliott Close, Raymond Terrace	Two Storey Dwelling	Approved with noise attenuation conditions
15/10/09	16-2009-774-1	17 Oakmont Ave, Medowie	Single Storey Dwelling	Approved with noise attenuation conditions
4/11/09	16-2009-834-1	9 Kapalua Cres, Medowie	Single Storey Dwelling	Approved with noise attenuation conditions
6/11/09	16-2009-847-1	100 Dawson Rd, Raymond Terrace	Single Storey Dwelling	Approved with noise attenuation conditions.
11/11/09	16-2009-864-1	12A Rees James Road, Raymond Terrace	Single Storey Dwelling	Approved with noise attenuation conditions
14/12/09	16-2009-938-1	5 Kapalua Cres, Medowie	Single Storey Dwelling	Approved
2010				

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

8/1/10	16-2010-598-1	174 Moffats Road Swan Bay	Single storey dwelling	Refused
29/03/10	16-2010-213-1	19 Oakmont Avenue Medowie	Single Storey Dwelling	Approved
25/05/10	16-2010-343-1	4 Kapalua Crescent Medowie	Single Storey Dwelling	Approved
21/7/10	16-2010-480-1	194-204 Lemon Tree Passage Rd Salt Ash	Two Storey Dwelling	Approved
30/8/10	16-2010-589-1	214 Lemon Tree Passage Rd Salt Ash	Single Storey Dwelling	Approved
2/9/10	16-2010-598-1	174 Moffats Road Swan Bay	Single Storey Dwelling	Approved
20/9/10	16-2010-650-1	13 Kapalua Crescent Medowie	Single Storey Dwelling	Approved
20/9/10	16-2010-653-1	6 Kapalua Crescent Medowie	Single Storey Dwelling	Approved
20/9/10	16-2010-655-1	8 Kapalua Crescent Medowie	Single Storey Dwelling	Approved
20/9/10	16-2010-646-1	4 Carnoustie Way Medowie	Single Storey Dwelling	Approved
20/9/10	16-2010-654-1	7 Carnoustie Way Medowie	Single Storey Dwelling	Approved
20/9/10	16-2010-651-1	11 Carnoustie Way Medowie	Single Storey Dwelling	Approved
20/9/10	16-2010-649-1	9 Carnoustie Way Medowie	Single Storey Dwelling	Approved
20/9/10	16-2010-647-1	13 Carnoustie Way Medowie	Single Storey Dwelling	Approved
20/9/10	16-2010-648-1	19 Kapalua Crescent Medowie	Single Storey Dwelling	Approved
27/9/10	16-2010-676-1	7A David Drive Salt Ash	Single Storey Dwelling	Approved
2/11/10	16-2010-810-1	15 Fullerton Cove Fullerton Road	Glass enclosure to existing approved dwelling	Approved
19/11/10	16-2010-872-1	6A Rees James Rd Raymond Tce	Boundary Realignment	Approved
2011				
7/1/11	16-2011-158-1	Lot 17 DP 753200 Old Swan Bay Rd Ferodale	Single Storey Dwelling	Withdrawn
21/1/11	16-2011-37-1	15 Fullerton Cove Fullerton Road	Patio Cover/sunroom to existing dwelling	Approved
9/5/11	16-2011-319-1	1/38 Benjamin Lee Dve Raymond Terrace	Patio Cover to existing dwelling	Approved
12/5/11	16-2011-337-1	2 Halloran Way Raymond Terrace	2 Lot Subdivision	Refused under delegation
19/5/11	16-2011-349-1	4 Feeney Way Raymond Terrace	Dual occupancy and two lot subdivision	Under Assessment
10/6/11	16-2011-398-1	127 Richardson Rd Raymond Terrace	2 Lot Torrens Title Subdivision	Under Assessment
21/6/11	16-2011-415-1	64 Chris Ave Salt Ash	Additions	Under assessment
26/6/11	16-2011-430-1	8 & 10 Rees James Road Raymond Terrace	Subdivision - Seven (7) Lot Torrens Title	Insufficient information for assessment to proceed
30/6/11	16-2011-382-1	907 Richardson Road Campvale	Managers residence/dwelling to replace existing	Under Assessment

Cr Glenys Francis returned to the meeting at 6.10pm

ITEM NO. 2

FILE NO: PSC2009-07013

PLANNING PROPOSAL TO PERMIT A MEDICAL CENTRE AT 2 KEEL STREET, SALAMANDER BAY

**REPORT OF: BRUCE PETERSEN, MANAGER ENVIRONMENTAL AND DEVELOPMENT
PLANNING**

GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolve, subject to receipt of the relevant fee, to forward the Planning Proposal at **Attachment 1** to amend the *Port Stephens Local Environmental Plan 2000* under section 55 of the *Environmental Planning and Assessment Act 1979* to permit with consent a medical centre at 2 Keel Street Salamander Bay (Lot 1 in DP 880861) via an enabling clause.
- 2) Resolve to charge 50% (\$2,000) of the original fee (\$4,000) for reconsideration of the Planning Proposal.

COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

	<p>Councillor Sally Dover Councillor John Nell</p>	<p>That Council resolve, subject to receipt of the relevant fee, to forward the Planning Proposal at Attachment 1 to amend the <i>Port Stephens Local Environmental Plan 2000</i> under section 55 of the <i>Environmental Planning and Assessment Act 1979</i> to permit with consent a medical centre at 2 Keel Street Salamander Bay (Lot 1 in DP 880861) via an enabling clause.</p>
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In accordance with Section 375A of the Local Government Act, a division is required for this item.

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

Those against the motion: Crs Frank Ward.

ORDINARY COUNCIL MEETING – 23 AUGUST 2011

Cr Peter Kafer left the meeting at 6.12pm prior to voting.
Cr Peter Kafer returned to the meeting at 6.13pm prior to voting.

295	Councillor John Nell Councillor Ken Jordan	It was resolved that the Council Committee recommendation be adopted with payment of full fees being \$4,000 for the Planning Proposal.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

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

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

PROPOSAL DETAILS

Subject Land	2 Keel Street Salamander Bay (Lot 101 in DP 880861)
Owners	SK & SI Pty Ltd (submission by Environmental Planning Services Pty Ltd)
Current Zone	2(a) Residential (to be retained)
Proposed Amendment	Permit with consent a medical centre as a site-specific permissible use

BACKGROUND

The purpose of this report is to reconsider a planning proposal to amend the *Port Stephens Local Environmental Plan 2000* (the LEP) to permit with consent a medical centre on land zoned 2(a) Residential at 2 Keel Street Salamander Bay.

Council previously considered the planning proposal at its meeting on 9th February 2010 and did not support the recommendation, and instead resolved to:

- 1) *Not proceed with the Planning Proposal to permit a medical centre at 2 Keel Street, Salamander Bay.*
- 2) *That the applicant be directed to operate in accordance with the Council approval "professional consulting rooms" and all the conditions that were attached to the approval.*
- 3) *That the applicant be advised that if they wish to build a Medical Centre as indicated in the business paper the applicant can acquire a suitable site in the Commercial zone area in accordance with the Council's Plan.*

The existing premise was approved under the *Port Stephens Local Environmental Plan 1987* as "professional consulting rooms" by definition and is limited to three health care professionals and three associated employees (refer to DA 7-1998-60693).

For a "medical centre" to be permissible as requested on the subject land an amendment to the LEP is required.

Council has been requested by the applicant to reconsider the proposal to amend the LEP.

This report deals with whether it is appropriate to make a medical centre permissible on the subject land under the LEP. It does not seek to address compliance with the existing development consent nor assess the merits of any particular development application for the site, which is subject to a separate process.

If the LEP is amended to permit a medical centre on the subject land it will enable the applicant to lodge a development application for Council's consideration and determination. This report deals with whether the land use is appropriate and not the merits of the development which would be subject to a separate development assessment process.

The site and context

The site is located at the corner of Bagnalls Beach Road and Keel Street, Salamander Bay. To the north, east and south is residential development. Salamander Bay Shopping Centre and a variety of other businesses are located on the opposite side of Bagnalls Beach Road, on land zoned for commercial development.

Keel Street is residential in character and surrounding dwellings are predominantly single storey. The business operates from a building that has the appearance of a two storey dwelling.

The medical centre has previously provided the following advice concerning the operation of the business:

- 6 permanent employees and 1 casual;
- 4 permanent doctors and 1 part time; and
- Services include general medicine, pathology, childhood and adult immunisation, counselling, women's and men's health and aviation medicals.
(Port Stephens Medical Centre, 14 January 2010)

The proximity of the site to a major commercial centre and Bagnalls Beach Road presents an opportunity to provide ongoing medical services with relatively easy access to public and private transport and commercial services.

Vehicle access is provided to the site by a single entry and exit located on Keel Street. No access is provided from Bagnalls Beach Road. As the site is located at the

entrance to Keel Street there is little or no need for vehicles to travel beyond the medical centre along Keel Street.

The location of the site is shown in **Attachment 2 – Aerial Photograph**.

FINANCIAL/RESOURCE IMPLICATIONS

The proponent paid a Stage 1 lodgement rezoning fee of \$4,000 in September 2009, when Council resolved not to proceed with a planning proposal. The applicant has now lodged a separate request for Council to reconsider its resolution of February 2010. At the same time the applicant has asked Council to reduce its fee as the proposal relates to the reconsideration of an earlier proposal and remains substantially the same. Under the current Fees and Charges Schedule 2011-2012 Stage 1 lodgement attracts a rezoning fee of \$21,000. The proponent has requested that Council consider reducing the fee to be more reflective of the amount of work associated with the reconsideration of the matter. This request has merit given that the planning proposal has not altered in any substantial way.

Under the circumstances of this particular proposal applying a \$21,000 fee is not commensurate with the amount of additional work required. It is therefore recommended a nominal fee of \$2,000 (half the original fee) be applied as a service fee under current Fees and Charges Schedule 2011-2012 for reconsideration of the proposal.

LEGAL, POLICY AND RISK IMPLICATIONS

Strategic Planning for Medical Centres

Population growth and aging are important issues to consider and are discussed generally in the draft *Port Stephens Planning Strategy* (PSPS). The PSPS relevantly identifies that:

- Ageing of the population is a challenge,
- Port Stephens LGA has experienced continuing high population growth compared to the Hunter Statistical Division (annual growth rate 1.41% from 2001-2006) and a larger percentage of people aged over 60 years (22.9% compared to 21.2%),
- The Tomaree Peninsula is the second fastest growing Planning District (40% between 1996 and 2006), and
- Healthy communities are a NSW State Plan priority including: improving and maintaining access to quality healthcare in the face of increasing demand; improve survival rates and quality of life for people with potential fatal or chronic illness, promote healthy lifestyles; reduce potentially preventable hospital admissions; and improve outcomes in mental health.

There are other businesses throughout the Port Stephens local government area providing relatively small scale medical type services in the form of professional consulting rooms on sites similar to 2 Keel Street, Salamander Bay. That is, they are located on residential zoned land, on main transport routes, and are adjacent to commercial areas. Examples include the professional consulting rooms along

Adelaide Street in Raymond Terrace. This demonstrates that in some instances such sites service a demand for the provision of small scale medical services, and highlights a need to consider the broader merits of allowing small scale facilities. It is also particularly relevant given the indicative demand for medical services on the Tomaree Peninsula and in the Hunter Region generally.

State Environmental Planning Policy (Infrastructure) 2007

The proponent had intended to resolve the matter through the provisions of this SEPP, which permits a range of health services facilities (including medical centres) in a variety of zones, regardless of a prohibition in a council local environmental plan. A NSW Department of Planning review of the SEPP in 2010 recommended the inclusion of medical centres as a permissible use in the R2 Low Density Residential, the equivalent of the 2(a) Residential zone in the Port Stephens LEP 2000. However, the equivalent zone for this site R2 Low Density Residential does not allow medical centres. As a result the proponent cannot utilise the SEPP. The NSW Department of Planning has since provided written advice to a representative of Port Stephens Medical Centre encouraging them to seek reconsideration of the planning proposal by Council (**Attachment 3**).

Definitions

A "Medical centre" is defined under the LEP as "*a building or place used for the purpose of providing professional health services (such as preventative care, diagnosis, medical or surgical treatment or counselling) to out-patients only*".

"Professional consulting rooms" are defined under the *Port Stephens Local Environmental Plan 1987* as "*a room or number of rooms forming either the whole of or part, attached to or within the cartilage of a dwelling-house and used by not more than three legally qualified medical practitioners or by not more than three dentists within the meaning of the Dentists Act 1934, or by not more than three health care professionals, who practise therein the profession of medicine, dentistry or health care respectively, and if more than one, practise in partnership, and who employ not more than three employees in connection with that practice*".

The important difference between the two definitions is that a medical centre is not limited in scale. Professional consulting rooms are deliberately smaller in scale and generally compatible with the residential character of the 2(a) Residential zone. As such, medical centres are not permissible within the 2(a) Residential zone and usually permissible within commercial zones.

Amending the Port Stephens Local Environmental Plan 2000 - Enabling Clause

The most appropriate mechanism for permitting a medical centre on the subject land is a site-specific enabling clause. This will restrict commercial use of the site to a medical centre only and continue to prohibit other types of commercial use within the 2(a) Residential zone generally, which may have the potential for significantly greater adverse impacts on the residential amenity of an area.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Amending the LEP to permit a medical centre on the site will enable a development application to be submitted for a medical centre on the subject land within the 2(a) Residential zone. Any future proposal will need to demonstrate that the proposal meets the requirements of the Building Code of Australia and the matters for consideration under section 79C of the *Environmental Planning and Assessment Act 1979*.

CONSULTATION

Development Assessment and Environmental Health Section

Any development application for a medical centre on the subject land will be assessed on merit and using the development controls for commercial premises i.e. car parking requirements.

Coordinator, Social Planning

Advice from the previous report to Council on this matter is that access to health services and facilities need to expand in line with population growth to ensure the health needs of the existing and future population are met.

OPTIONS

- 1) Adopt the recommendation of this report and adopt the planning proposal at **Attachment 1** to amend to the LEP and insert an enabling clause allowing a 'medical centre' on the subject land;
- 2) Reject the recommendation of this report and not adopt the planning proposal, and require the use to comply with the existing approval as a 'professional consulting room'.

ATTACHMENTS

- 1) Planning Proposal – Under separate cover;
- 2) Aerial Photograph;
- 3) Letter from the NSW Department of Planning 21st March 2011.

COUNCILLORS ROOM

- 1) Planning Proposal.

TABLED DOCUMENTS

Nil.

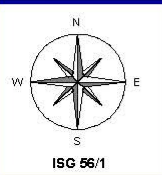
ATTACHMENT 1

PLANNING PROPOSAL

(UNDER SEPARATE COVER)

ATTACHMENT 2

Aerial Photograph



Port Stephens
C-O-U-N-C-I-L
... a community partnership

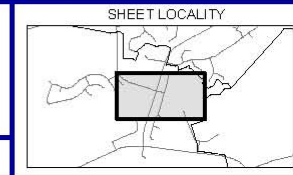
116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800255 Fax: (02) 49873612 Email: council@portstephens.nsw.gov.au

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SCALE 1:2800 PRINTED ON: 23.12.09



ATTACHMENT 3
LETTER - NSW DEPARTMENT OF PLANNING DATED 21 MARCH 2011



Mr Andrew Priestley
Andrew Priestley Associates
Level 2
88 George Street
The Rocks NSW 2000

11/02838

Dear Mr Priestley

I refer to your letter to the Director General regarding 2 Keel Street, Salamander Bay. The Director General has asked me to reply on his behalf.

In this case the Department of Planning accepts the Port Stephens Council's determination, under Clause 1.6 of SEPP (Exempt and Complying Development Codes), that the Standard Instrument R2 Low Density Residential Zone is equivalent to the Port Stephens LEP 2000 2(a) Residential "A" Zone, as being appropriate.

The Department appreciates the case that your clients have put forward about expansion of the site, however this would most appropriately be dealt with through a Planning Proposal to amend the Port Stephens LEP 2000, rather than by way of a site specific equivalent zone determination by the Director General.

I note that the Council has recently refused to support a Planning Proposal for amendment to the Port Stephens LEP to enable the proposed development. In this regard, I would encourage your clients to make further representations to the Council seeking reconsideration and an understanding of the reasons behind the Council's decision.

Should you have any questions in relation to this advice I have arranged for Mr Dylan Meade, Planning Officer at the Newcastle office of the Department of Planning to assist you. Dylan can be contacted on telephone number (02) 4904 2718.

Yours sincerely

Tom Gellibrand
Deputy Director General
Plan Making and Urban Renewal

Bridge St Office 23-33 Bridge St Sydney NSW 2000 GPO Box 39 Sydney NSW 2001 DX 22 Sydney
Telephone (02) 9228 6111 Facsimile (02) 9228 6191 Website planning.nsw.gov.au

ITEM NO. 3

FILE NO: PSC2005-4161

TEMPORARY SUSPENSION OF SECTION OF NELSON BAY ALCOHOL-FREE ZONE

REPORT OF: BRUCE PETERSEN – MANAGER ENVIRONMENTAL AND DEVELOPMENT
PLANNING

GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves the temporary suspension of a section of the Nelson Bay Alcohol-Free Zone on 4 November 2011 between 10.00am and 10.30pm, 5 November 2011 between 10.00 am and 10.30 pm and 6 November 2011 between 10.00 am and 8.00 pm in the area shown in heavy line in **Attachment 1** of this report, for the facilitation of the 11th *Annual Tastes at the Bay Food, Wine and Jazz Festival*.
-

COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

	Councillor John Nell Councillor Sally Dover	That the recommendation be adopted.
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MATTER ARISING

	Councillor Geoff Dingle Councillor John Nell	That Council be provided with statistics on Alcohol Free Zones particularly in Raymond Terrace.
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ORDINARY COUNCIL MEETING – 23 AUGUST 2011

296	Councillor Bruce MacKenzie Councillor John Nell	It was resolved that the recommendation be adopted.
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MATTER ARISING

297	Councillor Bruce MacKenzie Councillor John Nell	It was resolved that Council be provided with statistics on Alcohol Free Zones, particularly in Raymond Terrace.
------------	--	--

BACKGROUND

The purpose of this report is inform Council that a request has been received from Nelson Bay & District Business Chamber to temporarily suspend a specific area of the Nelson Bay Alcohol-Free Zone (AFZ) during this year's Annual Tastes of the Bay Food, Wine and Jazz Festival.

The area for which approval is sought is:

The d'Albora Marina foreshore area to Noakes Boat & Shipyard on the west side and to 'Cruise In' east of the Marina boundary on the foreshore; Apex Park;

The hours of suspension would be between 10.00am and 10.30pm on 4 November 2011, between 10.00am and 10.30pm on 5 November 2011 and between 10.00am and 8.00pm on 6 November 2011. At all other times the area would operate as an AFZ.

Nelson Bay & District Business Chamber and d'Albora Marinas have undertaken to employ security staff to patrol these areas during the suspension of the AFZ. These staff will also supervise the exiting of the areas at the end of the requested times to ensure that people are aware that AFZ conditions are to be observed. All staff and volunteers involved in the handling of alcohol will be required to have Responsible Service of Alcohol training.

As required, Council will inform the public of the proposed area and hours of the suspension by notice published in the local paper at least 7 days before the event.

FINANCIAL/RESOURCE IMPLICATIONS

Nil.

LEGAL, POLICY AND RISK IMPLICATIONS

Suspensions of AFZ are guided by Section 645 of the Department of Local Government's Ministerial Guidelines on AFZ, which state: -

A Council is not limited in the reasons for which it may suspend... an alcohol-free zone. A suspension would not usually be appropriate for any period longer than one month, and generally would be of a much shorter duration (eg. to accommodate a specific event).

SUSTAINABILITY IMPLICATIONS

Temporary suspension of the Nelson Bay AFZ will support the *Annual Tastes of the Bay Food, Wine and Jazz Festival* and there will be positive economic implications.

CONSULTATION

The local Police have been notified and support the proposal subject to the presence of security guards who will monitor the event for the duration of the suspension.

OPTIONS

- 1) To accept the recommendation;
- 2) To reject the recommendation.

ATTACHMENTS

- 1) Map identifying proposed area affected by the temporary suspension of the Nelson Bay AFZ.

COUNCILLORS ROOM

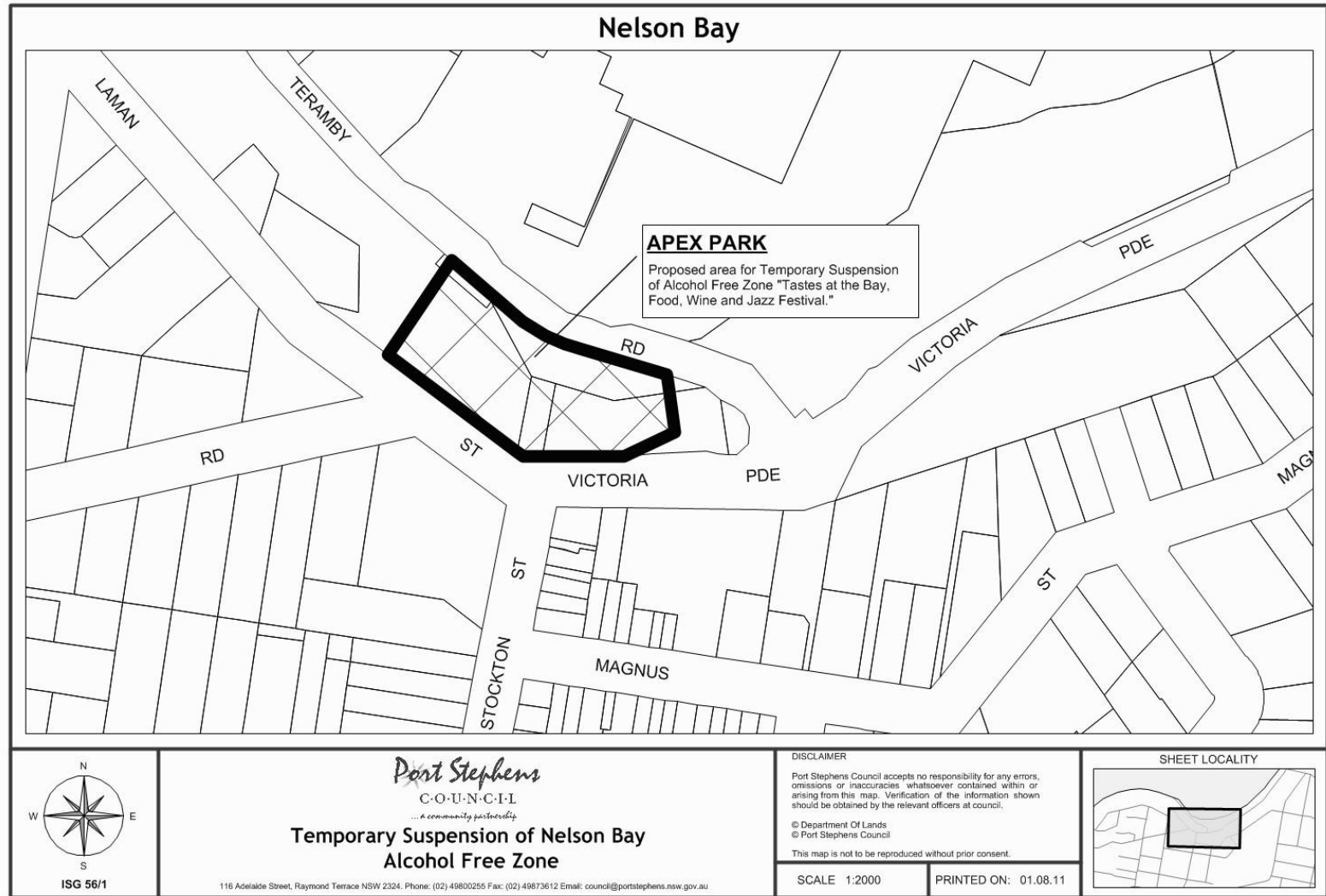
Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

MAP IDENTIFYING PROPOSED AREA AFFECTED BY THE TEMPORARY SUSPENSION OF THE NELSON BAY AFZ



ITEM NO. 4

FILE NO: PSC2011-02657

REPORT FOR PERIOD JANUARY TO JUNE 2011 AGAINST OPERATIONAL PLAN 2010-2011 AND DELIVERY PROGRAM 2010-2014

REPORT OF: WAYNE WALLIS – GROUP MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the six monthly report January to June 2011 against the Operational Plan 2010-2011 and the Delivery Program 2010-2014.

COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

	Councillor John Nell Councillor Shirley O'Brien	That the Report for Period January to June 2011 against Operational Plan 2010-2011 and Delivery Program 2010-2014, including the amendments contained in the Supplementary Information be adopted.
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ORDINARY COUNCIL MEETING – 23 AUGUST 2011

298	Councillor Bruce MacKenzie Councillor Ken Jordan	It was resolved that Council: 1) Adopt the Council Committee recommendation. 2) Future Six Monthly reports include safety performance results in the Key Result Area.
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BACKGROUND

The purpose of this report is to present a report on the progress of Council in achieving the objectives and actions outlined in the integrated plans for the period January 2011 to June 2011.

Previously reports were made to Council quarterly. The Local Government (Integrated Planning & Reporting) Act 2009 made changes to the Local Government Act 1993, Section 404(5) that requires the General Manager to make six monthly

reports to Council on progress against the integrated plans. The Act also required that Council continues to receive a quarterly budget review report.

The six monthly report fulfils the requirement of Section 16.1.1 of the Port Stephens Council Delivery Program 2010-2014: Monitor and report on the implementation of the plans and Resources Strategy through improved performance measurement systems and processes.

FINANCIAL/RESOURCE IMPLICATIONS

Moving to a six monthly format provides financial savings on production of a report and efficiencies in use of staff time. Council can at any time request additional reports.

LEGAL, POLICY AND RISK IMPLICATIONS

The Report for January to June 2011 complies with Section 404(5) of the Local Government Act 1993. There are no policy or risk implications.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Community Strategic Plan 2010-2022, the Delivery Program 2010-2014 and the Operational Plan 2010-2011 are structured under the four pillars of sustainability. The six monthly report addresses actions and outcomes of Council towards achievement of the four pillars of sustainability.

CONSULTATION

The Report January to June 2011 was constructed from information provided by all sections of the Council.

OPTIONS

- 1) Adopt the January to June 2011 report against the Delivery Program 2010-2014 and the Operational Plan 2010-2011;
- 2) Reject the January to June 2011 report against the Delivery Program 2010-2014 and the Operational Plan 2010-2011;
- 3) Amend the January to June 2011 report against the Delivery Program 2010-2014 and the Operational Plan 2010-2011.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) January – June 2011 report against the Delivery Program 2010-2014 and the Operational Plan 2010-2011.

ITEM NO. 5

FILE NO: PSC2011-00819

ALLOCATION OF WARD FUNDS – EAST AND WEST WARDS

REPORT OF: JASON LINNANE - GROUP MANAGER

GROUP: FACILITIES AND SERVICES GROUP

RECOMMENDATION IS THAT COUNCIL:

- 1) That Council places on public exhibition for a period of 28 days projects proposed for West and East Wards and financed through allocation from Ward funds (Attachment 1) in accordance with Section 4021(6) of the Local Government Act 1993.
 - 2) That Council staff initiate required project management processes for all projects that are included within Council's adopted Community Strategic Plan and Resource Strategy.
-

COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

	<p>Councillor John Nell Councillor Glenys Francis</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1) Place on public exhibition for a period of 28 days projects proposed for West and East Wards and financed through allocation from Ward funds (Attachment 1) in accordance with Section 4021(6) of the Local Government Act 1993. 2) That Council staff initiate required project management processes for all projects that are included within Council's adopted Community Strategic Plan and Resource Strategy. 3) That Council allocate funds towards the insurance costs to the Raymond Terrace Men's Shed from West Ward funds.
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ORDINARY COUNCIL MEETING – 23 AUGUST 2011

<p>300</p>	<p>Councillor John Nell Councillor Glenys Francis</p>	<p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1) Place on public exhibition for a period of 28 days projects proposed for West and East Wards and financed through allocation from Ward funds (Attachment 1) in accordance with Section 4021(6) of the Local Government Act 1993. 2) That Council staff initiate required project management processes for all projects that are included within Council's adopted Community Strategic Plan and Resource Strategy. 3) That Council allocate funds towards the insurance costs to the Raymond Terrace and Karuah Men's Shed from West Ward funds. 4) Defer the following cycleway projects: <ol style="list-style-type: none"> a) between Conroy Park, Corlette and Roy Wood Reserve, Corlette b) between Foreshore Drive, Corlette and Worimi Drive, Salamander Bay 4) Re-allocate Council funds from these two projects to Apex Park, Nelson Bay and; 5) That staff consult with the organisations who have provided grants to the cycleway projects to discuss future implementation.
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BACKGROUND

The purpose of this report is to have Council place on public exhibition those projects to be funded by the proposed allocation of both West and East Ward funds and to provide approval for staff to commence work on projects that are within the existing Community Strategic Plan.

Respective Councillors and senior staff from the Facilities and Services Group have met on three occasions over the last six months to plan the proposed allocation of these funds. The focus of these meetings has been to discuss the range of priorities that exists within the community and the need to link allocation, where possible, to

Council's Strategic Asset Management Plan and the strategic direction of the organisation as per the adopted Community Strategic Plan.

The total allocation of Ward funds is shown in Attachment 1.

It should be noted that approximately 92% of the total funds allocated is to be spent on existing assets. This is of strategic importance as it significantly assists Council in addressing the backlog of works that we currently have in respect to asset management.

Those proposed projects that are already part of the Resource Strategy which was adopted on 28 June 2011 do not require public exhibition. However, for the purposes of transparency with respect to expenditure associated with Ward funds and not previously included in public exhibition, it is recommended that we include all additional works (as well as those adopted in the Community Strategic Plan) so our community has an ability to provide feedback and also be assured of our committed approach to addressing strategic priorities.

FINANCIAL/RESOURCE IMPLICATIONS

The funds being allocated are available as per Council's Restricted Funds Policy.

The allocation being proposed is a significant positive measure in assisting Council in addressing its current asset backlog. Intervention at this point in time will reduce future costs as deterioration of the assets will occur over time which will add further costs to rehabilitation at that point.

LEGAL, POLICY AND RISK IMPLICATIONS

The proposed public exhibition is in accordance with Section 402(6) of the Local Government Act 1993.

The allocation and availability of the funds is in accordance with Council's Restricted Funds Policy.

The allocation of the overwhelming majority of funds is consistent with Council's adopted Community Strategic Plan, including specifically the Strategic Asset Management Plan. Furthermore, the completion of the works proposed will assist Council in addressing the deterioration of assets and as a result will reduce risks associated with the community's use of the assets and our ability to fund rehabilitation works in the future.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The completion of the works proposed will greatly enhance the public's use and enjoyment of the range of assets. Many of the works proposed are in areas that attract high utilisation for residents and also visitors to the area.

There are no environmental implications.

CONSULTATION

East Ward Councillors, West Ward Councillors, senior staff of the Facilities and Services Group, asset specialists within Facilities and Services Group and Corporate Strategic Planner.

OPTIONS

- 1) Adopt the recommendations;
- 2) Not adopt the recommendations and undertake further conversation between Councillors and senior staff.

ATTACHMENTS

- 1) List of proposed works and allocation of Wards Funds.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

EAST WARD	TOTAL ESTIMATE	WARD ALLOCATION	OTHER ALLOCATIONS
Bagnall Beach Rd- Footpath West side from Sandy Pt Rd to Helm Cl	\$32,500.00	\$32,500.00	\$0.00
Pt Stephens Dr- Shared Path from Kanimbla to Soldiers Pt Rd	\$29,000.00	\$29,000.00	\$0.00
Public Amenities Assets - Little Beach Public Amenities - Replace water service supply infrastructure such as external showers, pipes, fittings, etc to public amenities.	\$31,000.00	\$11,000.00	\$20,000.00
Bagnall Ave- Footpath from Ash St to Soldiers Pt Rd, north side	\$56,000.00	\$56,000.00	\$0.00
Missing link on Nelson Bay Rd from end of cycleway past pool (External route only)	\$80,000.00	\$80,000.00	\$0.00
Victoria Parade East pedestrian crossing to Fly Pt Reserve	\$15,000.00	\$15,000.00	\$0.00
Extend and install stairs at dutchies beach and bagnalls beach; Add concrete path from bagnalls beach walkway to shared path western walkway	\$20,000.00	\$20,000.00	\$0.00
Parks & Reserves Assets - Dutchies Beach - Twin unit bbq's at Dutchies East Foreshore + double shelter	\$16,000.00	\$16,000.00	\$0.00
Parks & Reserves Assets - Shoal Bay Foreshore - 2 single bbq's + 1 canopy.	\$15,500.00	\$15,500.00	\$0.00
Parks & Reserves Assets - Little Beach - 2 singles bbq's + 2 canopies	\$16,000.00	\$16,000.00	\$0.00
Parks & Reserves Assets - Fingal Bay Foreshore - 2 singles bbq's 1 canopy	\$15,500.00	\$15,500.00	\$0.00
Parks & Reserves Assets - Conroy Park - 2 single bbq's + 2 canopies	\$16,000.00	\$16,000.00	\$0.00
Nelson Bay- Gan Gan Lookout rehabilitation	\$150,000.00	\$75,000.00	\$75,000.00
Nelson Bay- Apex Park improvements	\$40,000.00	\$10,000.00	\$30,000.00
Surf Club Assets - Fingal Bay Surf Club - re construction of surf club	\$3,404,000.00	\$150,000.00	\$3,254,000.00
TOTAL	\$3,936,500.00	\$557,500.00	\$3,379,000.00

ATTACHMENT 1

WEST WARD	TOTAL ESTIMATE	WARD ALLOCATION	OTHER ALLOCATIONS
Raymond Terrace - Sturgeon St Seal unsealed shoulders	\$30,000.00	\$30,000.00	\$0.00
Raymond Terrace - The Hub Carpark	\$45,000.00	\$45,000.00	\$0.00
Parks & Reserves Assets - Seaham Park - New skatepark	\$90,000.00	\$26,000.00	\$64,000.00
Sports Assets - Brandon Park - wicket & surface improvements	\$60,000.00	\$20,000.00	\$40,000.00
Cemetery Assets - Raymond Terrace - steel pipe vehicle barrier fence	\$15,000.00	\$15,000.00	\$0.00
Cemetery Assets - Raymond Terrace - Pioneer Hill fencing	\$30,000.00	\$30,000.00	\$0.00
Sports Assets - Raymond Terrace Aquatic Club - removal of tower and relocation of power	\$35,000.00	\$30,000.00	\$0.00
Sports Assets - Raymond Terrace Tennis - Remove & replace umpire chairs	\$35,000.00	\$35,000.00	\$5,000
Sports Assets - Hinton - Cricket Nets	\$20,000.00	\$10,000.00	\$10,000.00
Sports Assets - Raymond Terrace - netball court drainage	\$50,000.00	\$35,000.00	\$15,000.00
Sports Assets - Raymond Terrace - King Park field drainage	\$100,000.00	\$50,000.00	\$50,000.00
Raymond Terrace - Playgrounds, foreshore, and picnic shelter	\$135,000.00	\$55,000.00	\$80,000.00
Parks & Reserves - Across West Ward Park Furniture and BBQs	\$20,000.00	\$20,000.00	\$0.00
Parks & Reserves - Seaham Park - picnic shelter	\$20,000.00	\$20,000.00	\$0.00
TOTAL	\$615,000.00	\$421,000.00	\$259,000.00

ITEM NO. 6

FILE NO: A2004-0511

LOCAL TRAFFIC COMMITTEE MEETING – 5 JULY 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 5th July 2011
-

COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

	Councillor Glenys Francis Councillor Bruce MacKenzie	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 23 AUGUST 2011

301	Councillor Peter Kafer Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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MATTER ARISING

302	Councillor Geoff Dingle Councillor Peter Kafer	It was resolved that Council conduct a community education program advising the community of the "Speed program" that is available from Council.
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BACKGROUND

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

FINANCIAL/RESOURCE IMPLICATIONS

Council has an annual budget of \$41 000 (\$25 000 grant from the RTA and General Revenue) to complete the installation of regulatory traffic controls (signs and markings) recommended by the Local Traffic Committee. The construction of traffic control devices and intersection improvements resulting from the Committee's

recommendations are not included in this funding and are listed within Council's "Forward Works Plan" for consideration in the annual budget process.

The recommendations contained within the local Traffic Committee minutes can be completed within the current Traffic Committee budget allocations and without additional impact on staff or the way Council's services are delivered.

LEGAL, POLICY AND RISK IMPLICATIONS

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

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

CONSULTATION

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

No additional consultation was undertaken for the items listed.

OPTIONS

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

ATTACHMENTS

- 1) Local Traffic Committee Meeting Minutes held on Tuesday, 5th July 2011.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**LOCAL TRAFFIC COMMITTEE MEETING
HELD ON TUESDAY 5TH JULY 2011
AT 9:30AM**

Present:

Cr Bob Westbury – Mayor, Cr Peter Kafer, Cr Geoff Dingle, Mr Joe Gleeson (Chairperson), Ms Lisa Lovegrove – Port Stephens Council

Apologies:

Ms Michelle Mexon representing Craig Baumann MP, Snr Const John Simmons - NSW Police, Mr Bill Butler – RTA Mr Andrew Fogg – Hunter Valley Buses, Mr Mark Newling - Port Stephens Coaches, Mr Graham Orr, Ms Michelle Page – Port Stephens Council

A. ADOPTION OF MINUTES OF MEETING HELD 7TH JUNE, 2011

The minutes of the previous Local Traffic Committee Meeting were adopted.

B. BUSINESS ARISING FROM PREVIOUS MEETING

C. LISTED MATTERS

D. INFORMAL MATTERS

E. GENERAL BUSINESS

**PORT STEPHENS
LOCAL TRAFFIC COMMITTEE AGENDA**

**INDEX OF LISTED MATTERS
TUESDAY 5TH JULY, 2011**

A. ADOPTION OF THE MINUTES OF 7TH JUNE, 2011

B. BUSINESS ARISING FROM PREVIOUS MEETING

C. LISTED MATTERS

**23_07/11 ADELAIDE STREET RAYMOND TERRACE - REQUEST FOR SIGNAGE TO
DETER U-TURNS AT THE BOURKE STREET INTERSECTION**

**24_07/11 ELKIN AVENUE HEATHERBRAE - COMPLAINT REGARDING LACK OF
DROP-OFF AND PICK-UP AREAS AT HUNTER RIVER HIGH SCHOOL**

**25_07/11 LAVERICK AVENUE TOMAGO - REQUEST FOR PARKING
RESTRICTIONS**

26_07/11 ROBINSON STREET ANNA BAY - REQUEST FOR SPEED HUMPS

**27_07/11 WORIMI DRIVE SALAMANDER BAY - REQUEST FOR PARKING
RESTRICTIONS BETWEEN THE ROUNDABOUT AND SANDY POINT
ROAD**

D. INFORMAL MATTERS

E. GENERAL BUSINESS

**609_07/11 GRAHAMSTOWN ROAD MEDOWIE – COMPLAINTS REGARDING THE
BUS STOP AND INTERSECTION OF WADE CLOSE**

**610_07/11 MOUNT HALL ROAD RAYMOND TERRACE – COMPLAINT
REGARDING CYCLIST AND SKATEBOARDERS DANGEROUS
BEHAVIOUR**

**611_07/11 WALLAWA ROAD NELSON BAY – REQUEST FOR INTERSECTION
TREATMENT AT GALOOLA DRIVE**

C. Listed Matters

Item: 23_07/11

ADELAIDE STREET RAYMOND TERRACE - REQUEST FOR SIGNAGE TO DETER U-TURNS AT THE BOURKE STREET INTERSECTION

Requested by: Lisa Lovegrove – Port Stephens Council

File:

Background:

A dangerous situation was witnessed where a vehicle had attempted a u-turn over the concrete median in the centre of Adelaide Street where the grass ends. The driver mounted the median then reversed into the travel lane and proceeded to u-turn. There are many u-turns performed at this location, with drivers proceeding to Defence Housing.

Comment:

The Traffic Inspection Committee noted that a similar situation occurs on Pacific Highway where RTA has installed 'No U-Turn' signs at Motto Lane.

Legislation, Standards, Guidelines and Delegation:

NSW Road Rules – Rule39 – Making a U-turn contrary to a no U-turn sign

RTA signs database – R2-5

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

Recommendation to the Committee:

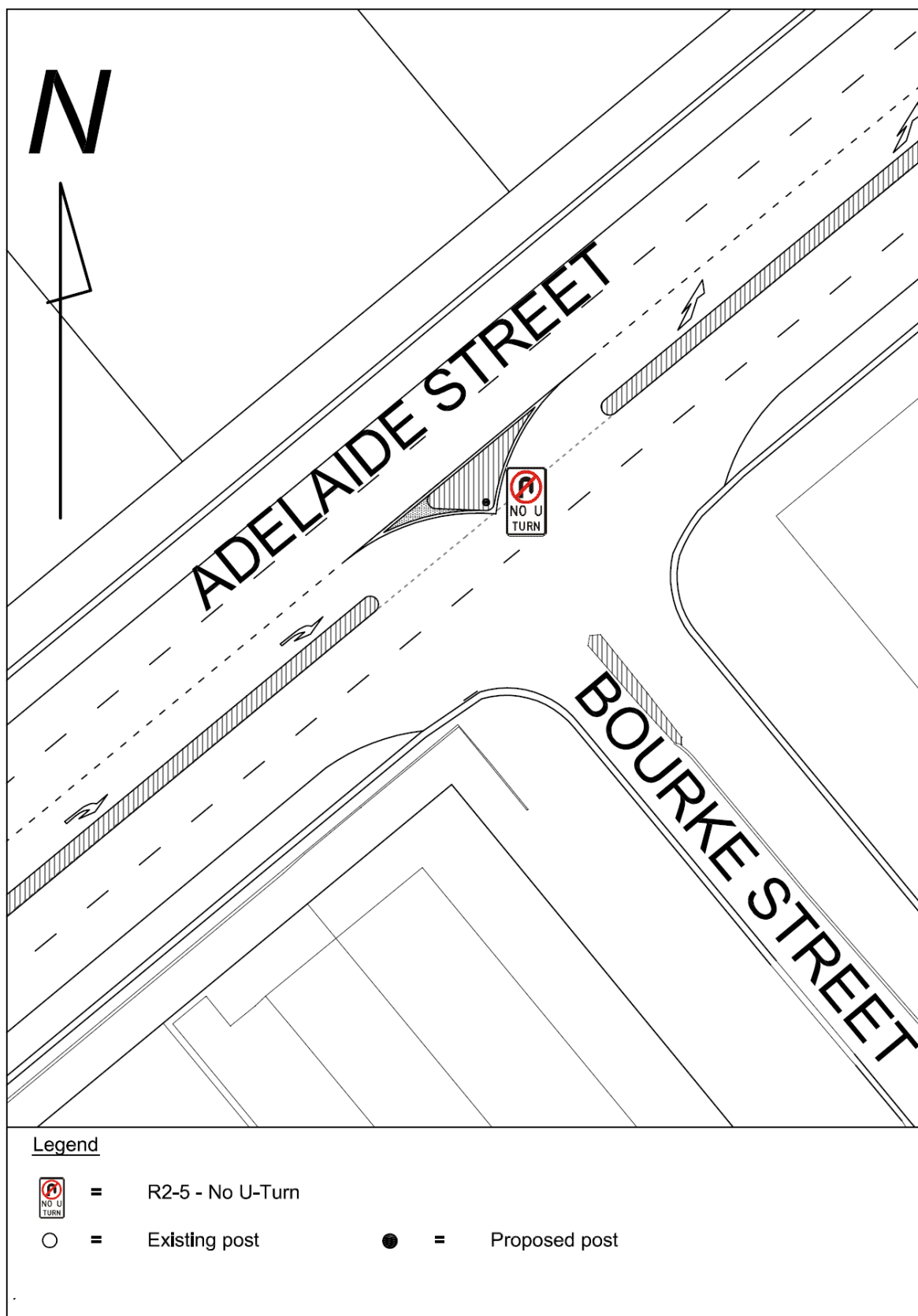
Install R2-5 'No U Turn' signs back-to-back on the seagull median in Adelaide Street Raymond Terrace, as shown on the attached sketch (Annexure A).

Discussion:

Several of the Traffic Committee members noted that they had witnessed drivers performing u-turns at this intersection.

Support for the recommendation:

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



Item: 24_07/11

ELKIN AVENUE HEATHERBRAE - COMPLAINT REGARDING LACK OF DROP-OFF AND PICK-UP AREAS AT HUNTER RIVER HIGH SCHOOL

Requested by: A resident
File: PSC2005-4189/042
Background:

A parent claims that recent parking changes at the school have made it unsafe for children arriving at school to be dropped off.

Comment:

The Traffic Inspection Committee noted that there are limited drop-off areas available and agreed with proposed a.m. drop off area in the bus loop area.

Legislation, Standards, Guidelines and Delegation:

NSW Road Rules – Rule168 – No Parking signs
RTA signs database – R5-41
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Recommendation to the Committee:

Install 'No Parking' (8.00-9.30am) in the North-West section of the bus loop area at Hunter River High School, as shown on the attached sketch (Annexure A).

Discussion:

Traffic Committee members noted that Elkin Avenue has been to Traffic Committee numerous times in recent years and called on Council Officers to take a holistic approach to the issues around the high school and for a deferral of this item to allow discussions with bus operators, residents and the high school, to develop a definitive treatment.

It was noted that the erection of fences and gates at the school had created some of the issues by making it more difficult to access the school. The Committee was told of the changing school environment where more students were now driving to school due to higher leaving age and leaving or arriving at school during the day to attend classes at other campuses or institutions.

An email was tabled from Busways objecting to the proposal on safety grounds, with concerns raised regarding the introduction of cars into the bus drop-off area. It was considered that bus operators need to be involved in any decision on this matter.

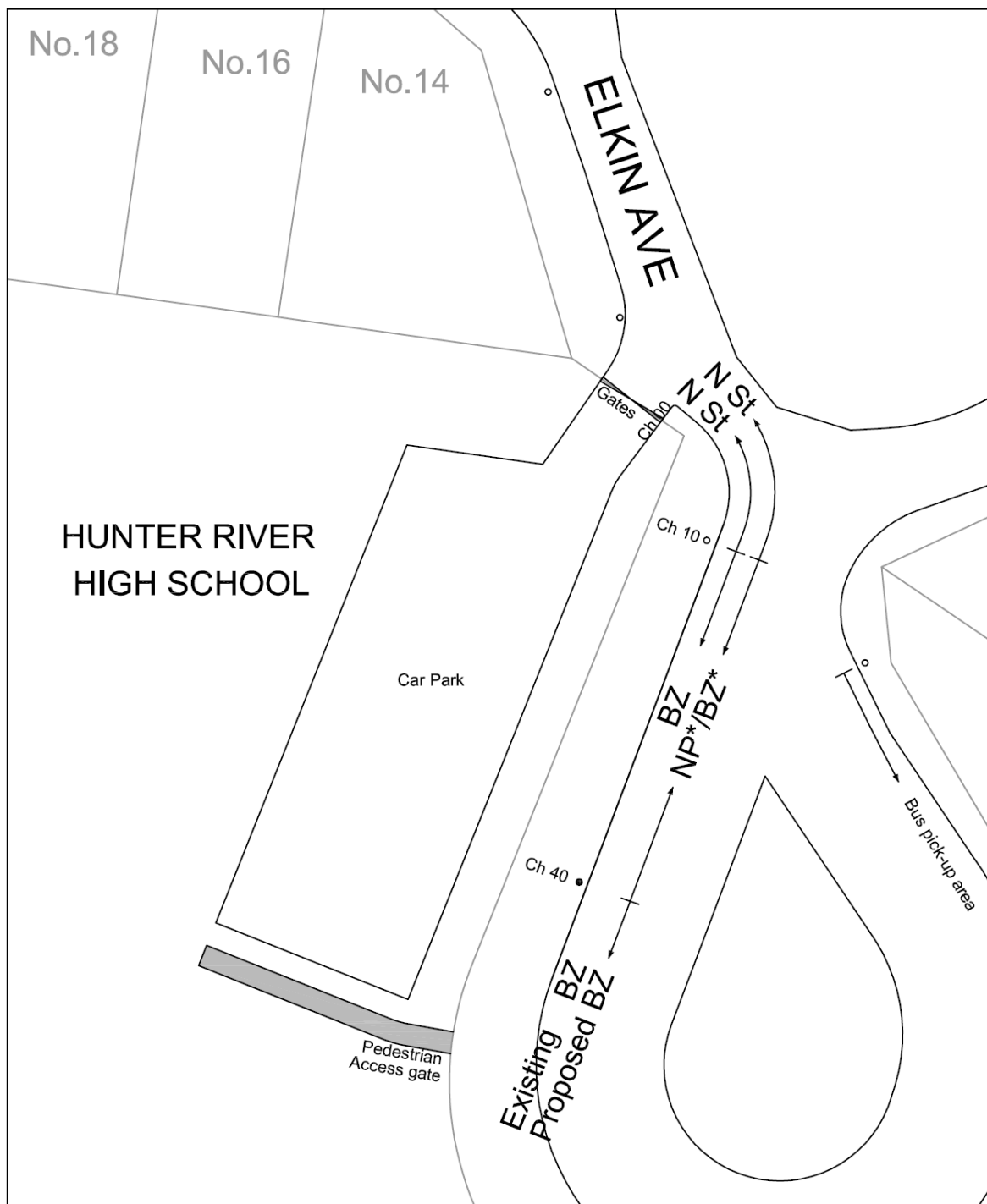
The Mayor, Cr Westbury, requested that a letter be written to the NSW Government requesting that the Heatherbrae by-pass be made a high priority. The removal of Pacific Highway traffic past the school would improve safety for school access and would allow other options in regard to access and parking at the school.

Committee's recommendation:

That this matter be deferred to allow proper assessment of all parking restrictions in the Elkin Avenue area and to allow proper consultation with all affected stakeholders before any further changes are considered.

Support for the recommendation:

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



Legend

- BZ = Bus Zone
- N St = No Stopping
- NP*/BZ* = No Parking - 8.00-9.30am School Days / Bus Zone 2.30-4.00pm School Days

Item: 25_07/11

LAVERICK AVENUE TOMAGO - REQUEST FOR PARKING RESTRICTIONS

Requested by: Mr Ian Turner - 18 Adams Street East Maitland NSW 2323

File: 138341-2011

Background:

Complaint about vehicles parking along Laverick Ave and Old Punt Rd restricting sight distance at the kink in the road near No.1 Laverick Ave.

Comment:

Painted lines have been installed by the adjacent business to deter employees from parking in hazardous locations which has been quite effective.

Legislation, Standards, Guidelines and Delegation:

NSW Road Rules – Rule 167 – No stopping signs,
Rule 169 - No stopping on a road with a yellow edge line
RTA signs database – R5-400
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Recommendation to the Committee:

Install 'No Stopping' restrictions and supplement with yellow lines in Laverick Avenue Tomago, as shown on the attached sketch (Annexure A).

Discussion:

Support for the recommendation:

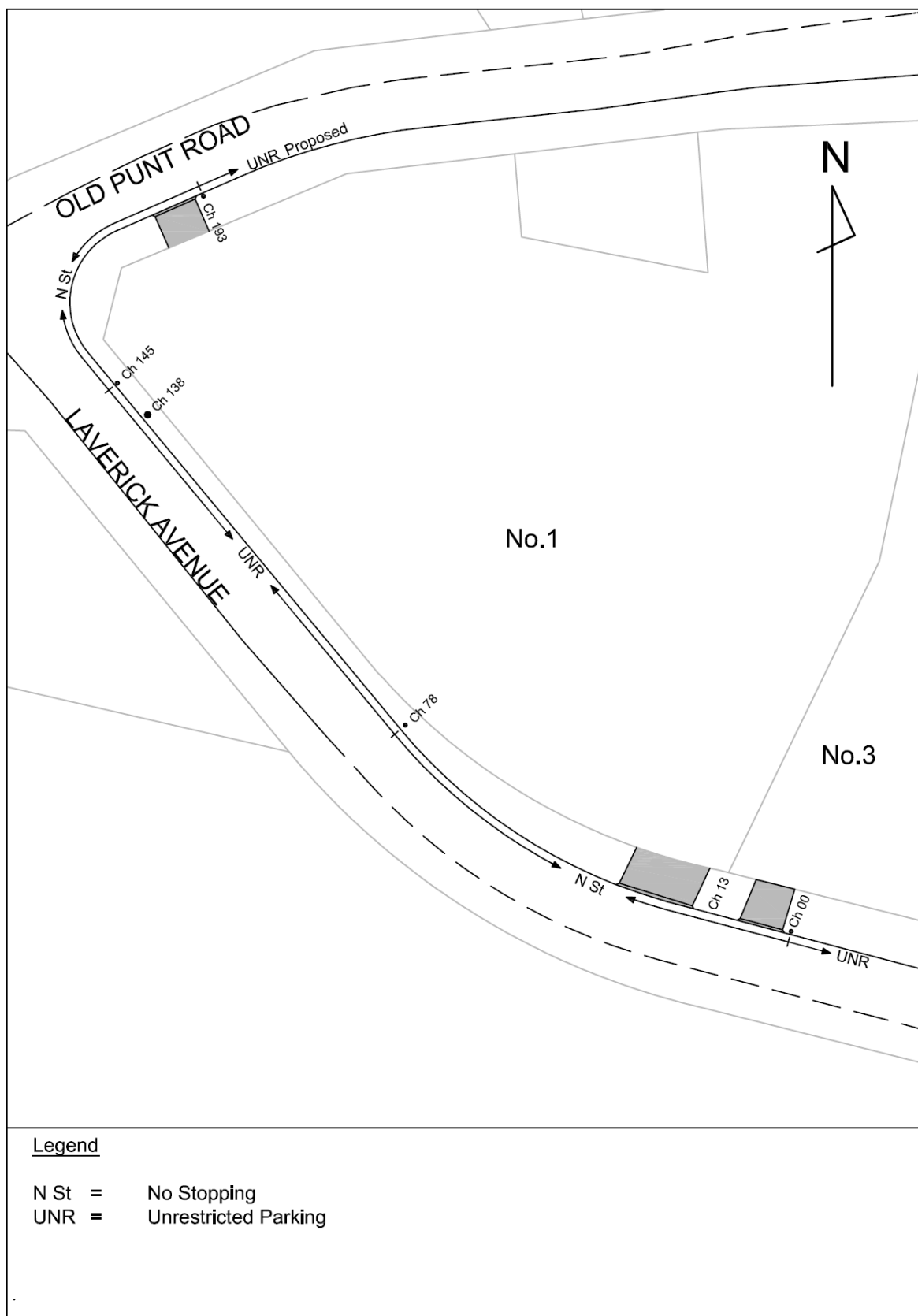
1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

PORT STEPHENS TRAFFIC COMMITTEE
Tuesday 5 July 2011

ITEM NO. 25_07/11
Street: Laverick Avenue

ANNEXURE A
Page 1 of 1



Item: 26_07/11

ROBINSON STREET ANNA BAY - REQUEST FOR SPEED HUMPS

Requested by: Mr John Cameron - 21A Robinson Street Anna Bay NSW 2316

File: PSC2011-01279/001

Background:

A petition with 76 signatories in support of the proposal has been submitted to Council. Mr Cameron has requested to address Traffic Committee on this issue and states: "The relatively straight sections of Robinson and Fitzroy streets are joined by a sweeping curve opposite Robinson Reserve. The road design coupled with the location opposite the skate board park encourages young (usually unskilled, 'p' plate) drivers to show off how fast they can go around this curve. These roads have a 50kph speed limit which is constantly being exceeded, often by up to 30kph. There have been several instances already where drivers of speeding cars have lost control and run off the road. Being so close to a childrens' playground, the skate park and the main access point to Birubi Beach, this dangerous situation cannot continue."

Comment:

Port Stephens Council installed traffic classifiers in Robinson Street in May 2011 which indicated a traffic volume (ADT) of 595 and 85th% speed of 58.7km/h. A traffic survey was also conducted in February 2009 which resulted in an ADT of 600 and 85th% speed of 56km/h. Heavy vehicle percentages were around 6-7% for both surveys. Council's accident database indicates 1 non-injury accident in most recent 5 year period with a vehicle hitting a parked car.

Austrroads - Guide to Traffic Management – Part 8 – Local Area Traffic Management has been developed to encourage a rational and orderly approach to Local Area Traffic Management (LATM) and to provide technical guidance for traffic practitioners. According to the guide, establishing when LATM action is necessary or desirable should be based on warrants or other objective measures of relative need, usually referring to traffic speeds, volumes and crash rates. With regard to Robinson/Fitzroy Streets it can be seen from the traffic data that speeding is an issue however traffic volumes are quite low and there has only been 1 reported traffic accident over the most recent 5 year period.

A points-based warrant applied to Robinson Street gives an assessment of a site with minor technical problems. While Port Stephens Council does not currently have a Forward Works Plan for traffic calming works, given the low points assessment for Robinson Street, it is very likely that there are many other sites within the LGA that would rate more highly in terms of priority. The recommended action response is to consider low cost, non-capital works solutions if appropriate.

The LATM warrant assessment for Robinson/Fitzroy Streets is attached as Annexure A.

Legislation, Standards, Guidelines and Delegation:

Austrroads – GTM Part 8 – Local area Traffic Management
Australian Standard -1742.13 Part 13: Local area traffic management

Recommendation to the Committee:

For discussion

Discussion:

Mr Cameron addressed the Committee regarding his request. He noted that the Council survey had been conducted at a quiet time of the year and stated that traffic would be expected to be at least double during the summer months. He also noted that Robinson/Fitzroy Streets are not a through-route but was very popular with young drivers who were keen to test their skills by speeding around the corner. The area contains a skate park, public reserve, the midden, caravan park and access to the beach which all attracted many young and vulnerable pedestrians.

The Committee members noted that the speeds and volume of traffic recorded in the survey were not excessive and would compare very favourably with many other roads in the LGA. The priority ranking assessment does not justify installation of speed humps in Robinson Street however the Committee members did support actions that will improve safety and reduce vehicle speeds.

Committee's Recommendation:

1. Install additional '50' reminder signs in the area.
2. Request a regular police presence to deter anti-social behaviour
3. Investigate line marking and delineation that will assist in lowering traffic speed around the bend
4. Develop a set of assessment criteria to allow listing of LATM projects on Council's Forward Works Plan. If funding does become available in future, Council will then have the necessary criteria to prioritise projects equitably.

Support for the recommendation:

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

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

PORT STEPHENS TRAFFIC COMMITTEE
 Tuesday 5 July 2011

ITEM NO. 26.07/11
 Street: Robinson Street

ANNEXURE A
 Page 1 of 1

Priority System for ranking LATM proposals

Traffic Parameter	Observed value	Points for a street or road		
		Local street	Local distributor	District distributor
Traffic Speed as 85 th % speed	50-54	3	0	0
	55-59	9	1	0
	60-64	15	6	1
	65-69	24	12	4
	70-74	33	18	7
	75-79	45	27	15
	Over 80	60	40	25
Traffic Volume (V/day)	1000-1499	4	0	0
	1500-1999	7	0	0
	2000-2499	10	2	0
	2500-2999	15	3	0
	3000-3999	20	4	0
	4000-4999	30	7	0
Rat-run Traffic As peak hour percent of 24 hour volume	10-11%	0	0	0
	11-12%	2	1	0
	Over 12%	4+2 per%	2+1%	0
Crash data	Points per crash			
	Per fatal crash	5	5	5
	Per Casualty crash	2	2	2
Per non-injury crash	0.5	0.5	0.5	
Heavy vehicles	Points per % Above 3%	4 × 2 (8)	1	0
Topography (add scores together)	Restricted sight	4	5	6
	Grade over 3%	3	2	1
	Long Straight	5	2	0
	Tight bend	3	2	3
Activity generators (add scores for all uses in the street)	Passive reserve	1	1	1
	Active playground	7	5	1
	Industrial	2	0	0
	Residential	2	2	1
	Primary School	10	8	8
	Secondary School	8	6	6
	Tertiary College	6	4	4
	Small retail	8	6	6
Large retail	10	8	8	

35.5

Action response table

Decision	Total Point score	Action response
Denoted as technical problem site	More than 50	Considered to be a site that has problems. Suitable solutions to be considered for funding and implementation
Denoted as minor technical problem	30 to 50 points	Consider low cost, non-capital works solutions (e.g. signing and linemarking) if appropriate. Review again after 2 years
Denoted as a site with low safety and amenity concerns	Under 30 points	No further action required

Item: 27_07/11

WORIMI DRIVE SALAMANDER BAY - REQUEST FOR PARKING RESTRICTIONS BETWEEN THE ROUNDABOUT AND SANDY POINT ROAD

Requested by: A resident

File: 138140-2011

Background:

The resident has raised safety concerns stating that when vehicles are parked on both sides of Worimi Drive, traffic flow is reduced to one direction at a time. He states that he has nearly been hit a number of times when having to stop to give way when turning in from Sandy Point Road.

Comment:

The road is relatively narrow at approximately 7.5m

Legislation, Standards, Guidelines and Delegation:

NSW Road Rules – Rule 167 – No stopping signs

RTA signs database – R5-400

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

Recommendation to the Committee:

Install 'No Stopping' on the southern side of Worimi Drive, Salamander Bay as shown on the attached sketch (Annexure A).

Discussion:

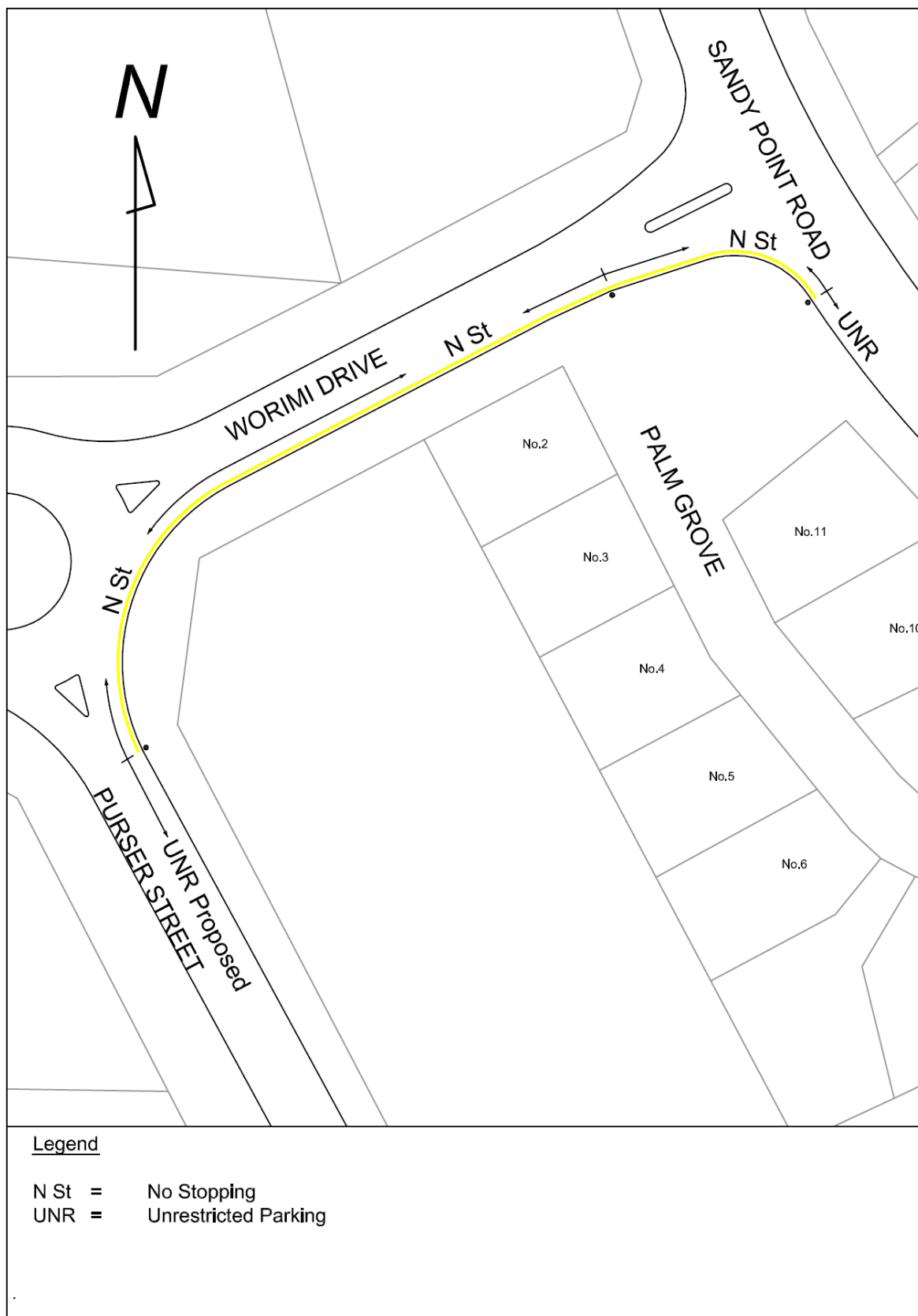
Committee members discussed whether a 'No Stopping' line would be a more economical option in this situation. The Committee members recommended reducing the number of signs and installing a 'No Stopping' line in addition.

Committee's recommendation:

Install 'No Stopping' signs and line on the southern side of Worimi Drive, Salamander Bay as shown on the amended sketch (Annexure A).

Support for the recommendation:

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



D. Informal Matters

Nil

E. General Business

Item: 609_07/11

GRAHAMSTOWN ROAD MEDOWIE – COMPLAINTS REGARDING THE BUS STOP AND INTERSECTION OF WADE CLOSE

Requested by: Cr Dingle

File:

Background:

Cr Dingle has received representations from residents in the area complaining about poor sight distance when turning out of Wade Close and of the lack of safety for buses pulling out of the bus stop at the Grahamstown sailing club.

Discussion:

The Traffic Committee noted that Council has investigated the issue of the bus stop previously and that the bus stop was moved from opposite Wade Close because of the hazards at that location. The entrance to the Grahamstown sailing club is now used as the bus stop because it does allow buses to pull off the road and gives bus passengers a safe connection to the shared pathway connecting Medowie and Raymond Terrace.

Committees Advice:

The Traffic Committee recommend that the issue of sight distance at Wade Close be investigated at the next Traffic Committee inspections.

Item: 610_07/11

MOUNT HALL ROAD RAYMOND TERRACE – COMPLAINTS REGARDING CYCLISTS AND SKATEBOARDS DANGEROUS BEHAVIOUR

Requested by: Cr Kafer

File:

Background:

Cr Kafer raised concerns regarding the widespread practice of young males riding/skating on the wrong side of the road, endangering themselves and other road users. It is common to see groups of young males, wearing no protective equipment riding down the steep parts of local roads, daring drivers to avoid them.

Discussion:

The Traffic Committee noted that there is a noticeable lack of helmets among many young riders. As well, the increased numbers of powered bikes on the roads is a concern.

Committees Advice:

Committee members noted that this is a behavioural problem and that there needs to be an education program undertaken through the schools and needs to involve Police and RTA.

Item: 611_07/11

WALLAWA ROAD NELSON BAY – REQUEST FOR INTERSECTION TREATMENT AT GALOOLA DRIVE

Requested by: Cr Westbury

File:

Background:

Cr Westbury raised concerns regarding the number of drivers cutting the corner at the intersection of Wallawa Road and Galoola Drive/Taree Street. He suggested that a small roundabout would slow traffic and improve safety at the intersection.

Discussion:

Committees Advice:

For investigation

ITEM NO. 7

FILE NO: PSC2009-01815

282, 282A, 282B & 398 CABBAGE TREE ROAD, WILLIAMTOWN

REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER

GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Call for Tenders for a royalty based lease to extract sand from Lot 1012 DP814078, Lot 11 DP629503, Lot 121 DP556403 & Lot 1 DP224587, being 282, 282A, 282B & 398 Cabbage Tree Road Williamtown within Area 1, Area 2, and Area 3 as per Attachment 3, at RL 4AHD and higher.
-

COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

	Councillor Sally Dover Councillor Shirley O'Brien	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 23 AUGUST 2011

303	Councillor Peter Kafer Councillor Shirley O'Brien	It was resolved that Council call for tenders for a royalty based lease to extract sand from Lot 1012 DP814078, Lot 11 DP629503, Lot 121 DP556403 & Lot 1 DP224587, being 282, 282A, 282B & 398 Cabbage Tree Road Williamtown within Area 1, Area 2, and partially Area 3 as per Attachment 3, at RL 4AHD and higher.
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MATTER ARISING

304	Councillor Bruce MacKenzie Councillor Peter Kafer	It was resolved that Council engage a suitably qualified person to undertake an Aboriginal Archaeological Study in Area 3.
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BACKGROUND

The purpose of this report is to seek Council's consent to call for tenders for a royalty based lease to extract sand from 282, 282A, 282B and 398 Cabbage Tree Road, Williamtown.

The subject land comprises four adjoining separately titled allotments and have a total land area of 176.2 hectares. The land is undeveloped and is zoned 1(a) Rural Agriculture "A". The land is situated on the northern side of Cabbage Tree Road approximately mid way between Nelson Bay Road and Masonite Road.

The four allotments were purchased from Rutile and Zircon Mines in March 2002 for a purchase price of \$630,000.

The land was previously utilised by an adjoining neighbour to agist cattle, a licence agreement was entered into by Council and the neighbour however this agreement has now expired.

Approaches have been made to Council by several interested parties to undertake sand extraction from the site. In some cases Council has provided a "Permit to Enter" to enable Sand Extraction companies to take some core samples of the sand onsite. Laboratory testing has identified the sand is of high grade silica sand (white sand) that is particularly suitable for glass manufacturing.

RPS Group Australia has recently been engaged by Council to conduct an intensive flora and fauna survey on the site and prepare an ecological report to present to Council through the Two Way Conversation process (conducted on 28th June 2011). The report identified various threatened species on the low lying areas of the site (below RL4 AHD). In considering the ecological constraints of the land three main areas for extraction have been identified. The areas are numbered 1, 2 and 3 (as shown in **ATTACHMENT 4**). All three areas are above RL 4AHD. Additionally areas 2 & 3 have been previously mined and disturbed.

Council's Facilities and Services section has provided the Commercial Property section with an estimate of the amounts of sand that may be contained on the sites, this has been estimated utilising a computer software package based on contour levels throughout the site. It has been estimated that the total sand available overall above the 4 metre contour is approximately 5,165,600 tonnes. With concessions for wildlife buffers and the provision of a wildlife corridor between areas 2 and 3, the total sand proposed for extraction above the 4 metre contour as per attachment 4 is approximately 4,608,100 tonnes.

In determining the approximate value of the sand extraction a broad range of \$3.00 to \$4.00 has been adopted as the Royalty Payment. The amount of sand that can be extracted from each area and the approximate value of the revenue to Council are as follows:

Area 1: 310,406 tonnes = approximately \$930,000 to \$1,100,000

Area 2: 2,440,614 tonnes = approximately \$7,320,000 to \$8,550,000

Area 3: 1,857,067 tonnes = approximately \$5,580,000 to \$6,500,000

The wildlife corridor between areas 2 and 3 is approximately 45,000m² and comprises a sand volume of 356,400 tonnes above the 4 metre contour, utilising the dollar amounts stated previously this equates to a value of between \$1,069,200 and \$1,247,400.

The tender documentation will call for the applicants to provide for remuneration details by way of a royalty per tonne of sand removed from the site. Port Stephens Council will remain the landowner and therefore will be able to structure the legal agreement between Council and the successful tender to protect the environmentally significant areas of the land.

The applicants will also be required to undertake all of their own "due diligence" and will be responsible for all approvals, compliance and operation of the site.

FINANCIAL/RESOURCE IMPLICATIONS

The opportunity to enter into lease agreement based on royalty payments for the extraction of sand is a unique opportunity for Council to receive a significant income for an extended period of time.

The determining factors in identifying the overall benefits to be realised by the extraction of sand from the sites are as follows:

- A significant financial benefit to Council with an income annually for an extended period of time.
- A resultant benefit to the community.
- Increased employment opportunities.
- The land remains in the ownership of Council.
- The site will be revegetated during the process of extraction and the land returned to Council on completion.

The site has been identified as having these natural resources present. The operation of removing the resource will be entirely at the expense of the preferred tenderer. There are no costs to Council other than the initial administration of the tender process and the legal documentation.

LEGAL, POLICY AND RISK IMPLICATIONS

The subject land is classified as Operational Land allowing Council to enter into a legal agreement to extract sand from the site.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

To further protect the ecosystem it is suggested that a corridor bisecting areas 2 and 3 be provided, this corridor would be approximately 45,000m² and would maintain a connection from the Hunter Water owned land to the west through Council's land.

CONSULTATION

- 1) Councillors;
- 2) RPS Group Australia;
- 3) Development Coordinator;
- 4) Natural Resources Coordinator;
- 5) Various Sand Extraction Companies.

OPTIONS

- 1) Accept the Recommendation;
- 2) Amend the Recommendation;
- 3) Reject the Recommendation.

ATTACHMENTS

- 1) Aerial View;
- 2) Area above RL4 AHD;
- 3) Proposed Extraction Areas and Constraints Plan;
- 4) Proposed areas for extraction.

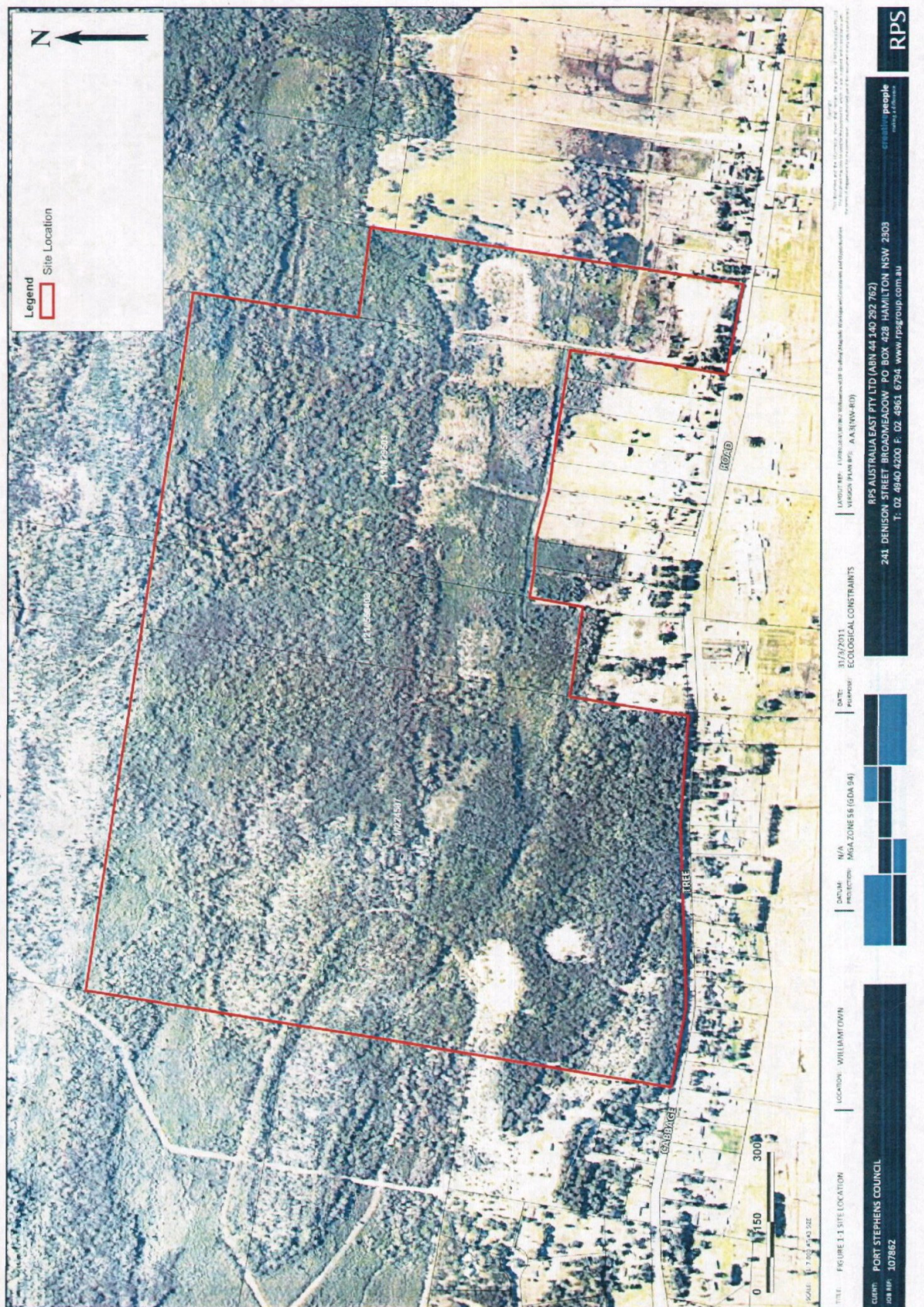
COUNCILLORS ROOM

Nil.

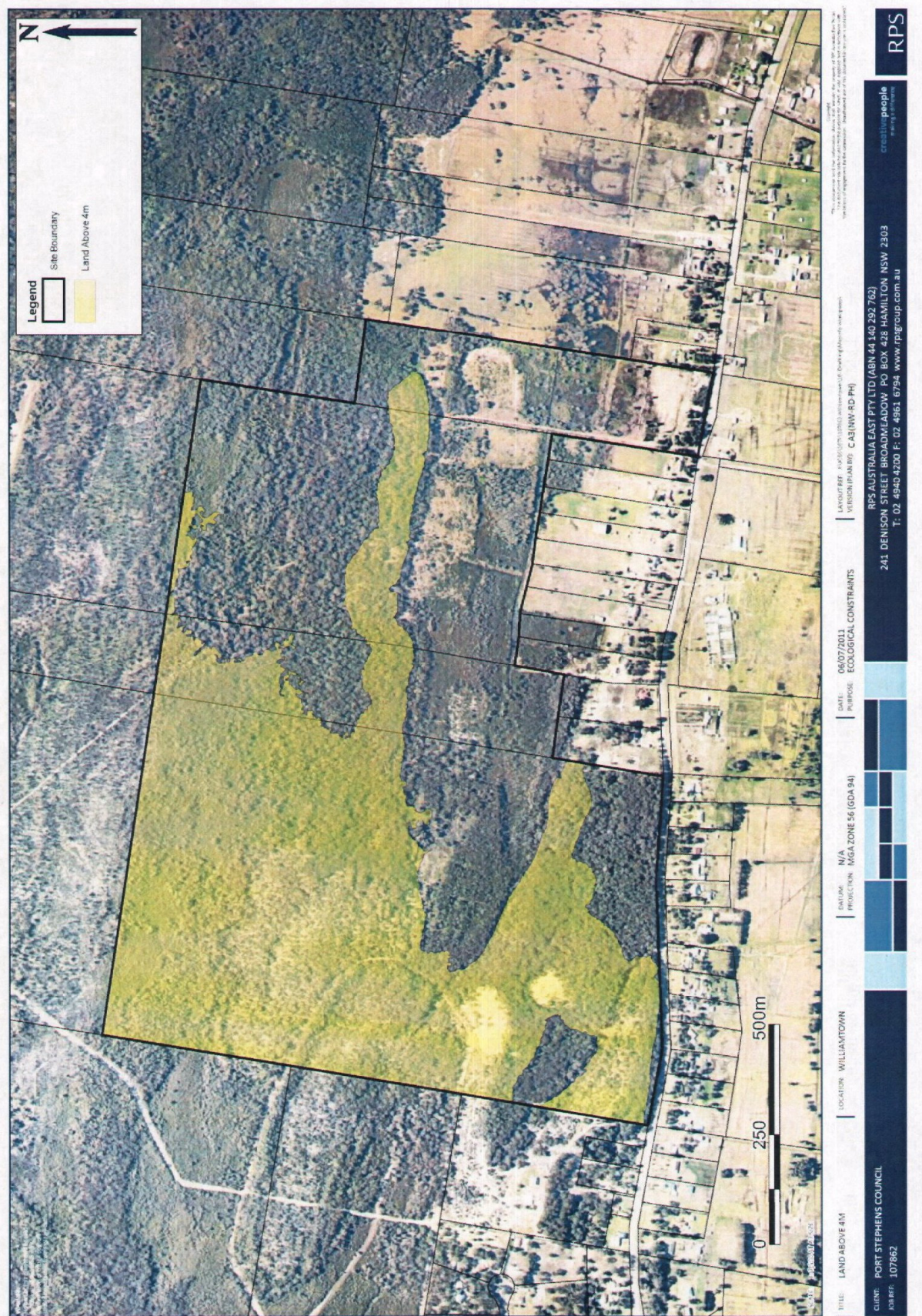
TABLED DOCUMENTS

Nil.

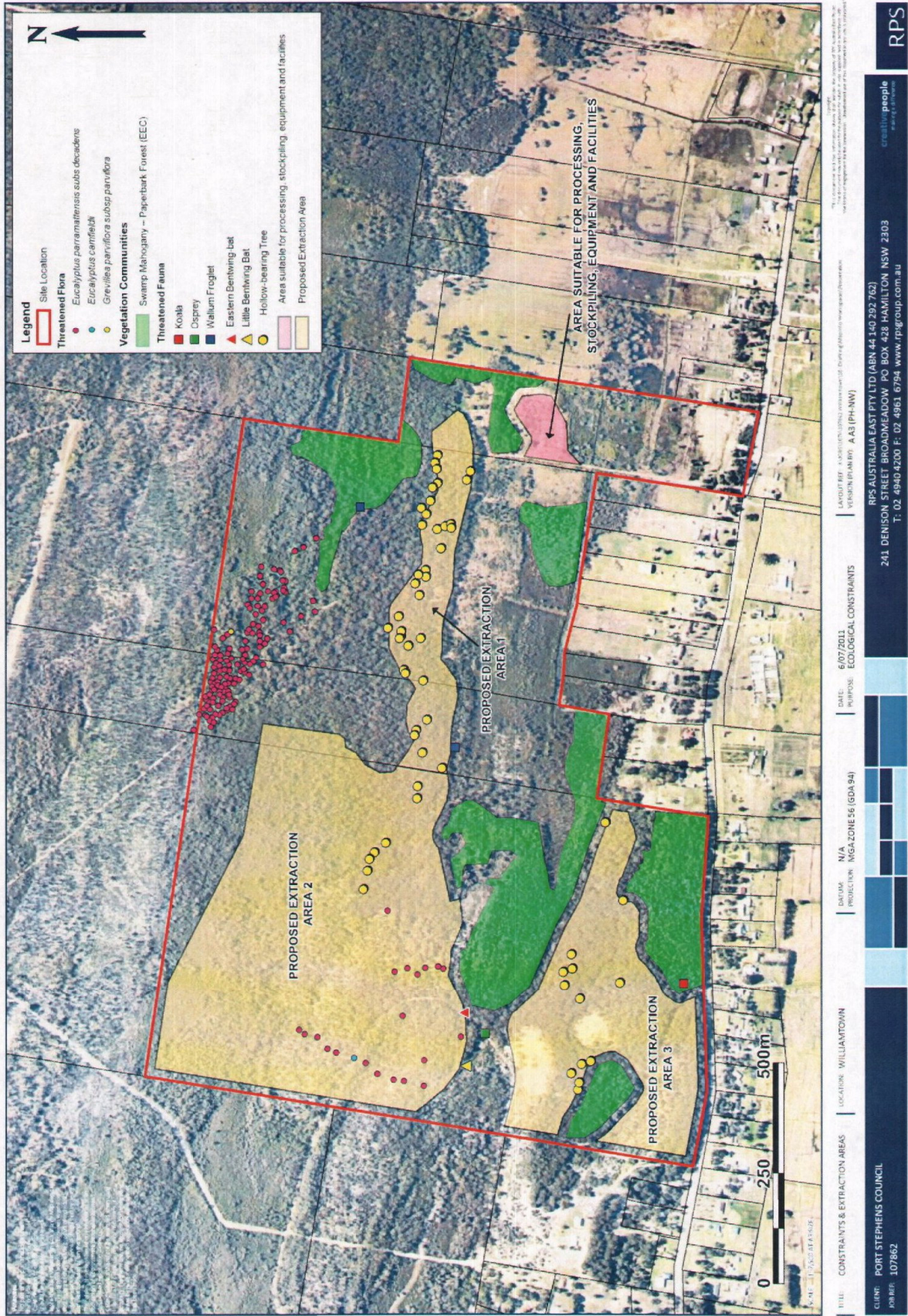
ATTACHMENT 1



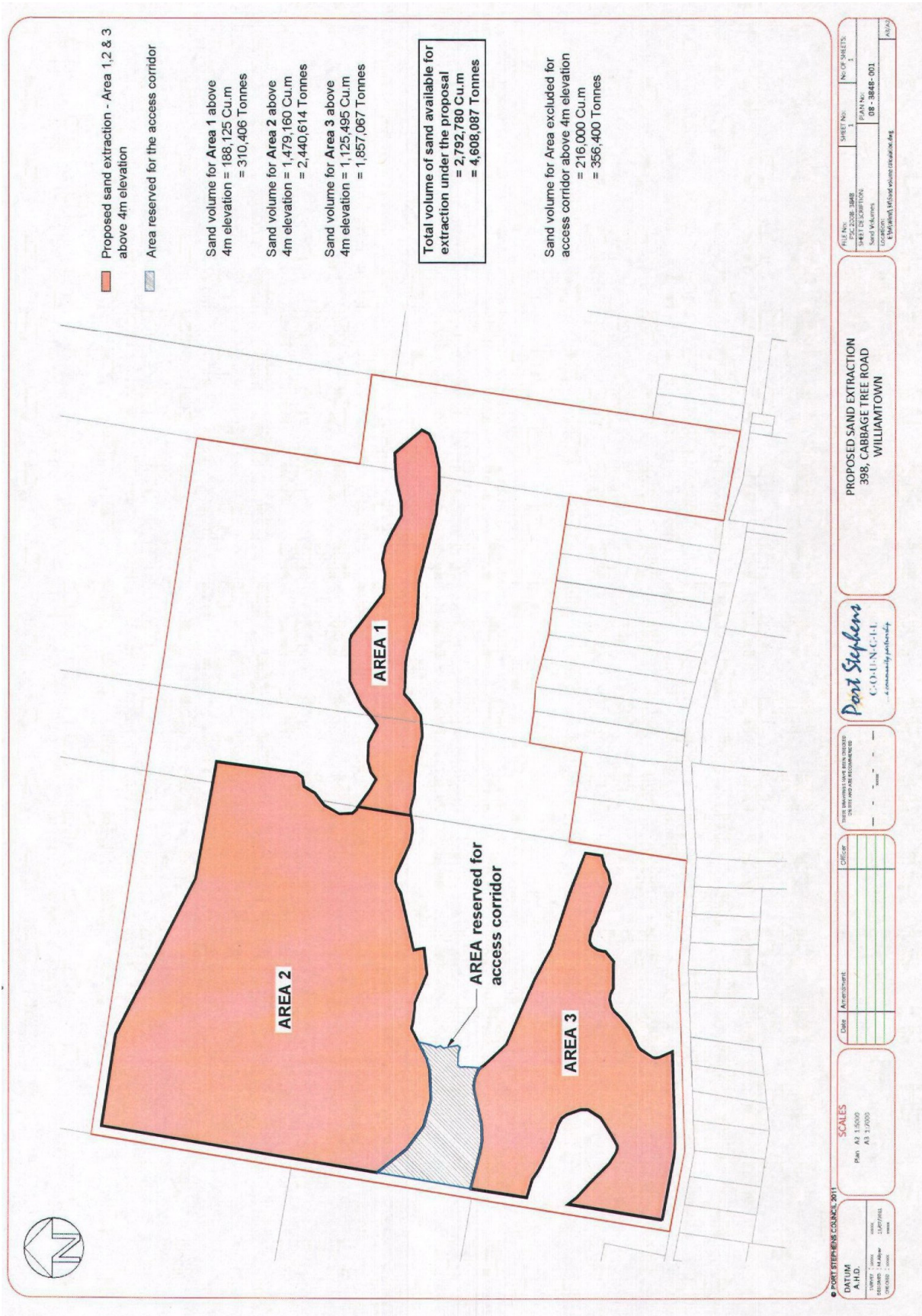
ATTACHMENT 2



ATTACHMENT 3



ATTACHMENT 4



MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

Cr Steve Tucker declared a pecuniary interest in Item 8 and left the meeting at 6.47pm.

Cr Glenys Francis declared a significant non-pecuniary interest in Item at and left the meeting at 6.47pm.

ITEM NO. 8

**FILE NOS: PSC2010-03662 AND
PSC2007-0089**

**RECOMMENDATION TO WRITE OFF OUTSTANDING RENTAL DEBTS -
HUNTER NEW ENGLAND LOCAL HEALTH NETWORK AND TERRACE
TENANTS & ASSOCIATES INCORPORATED**

REPORT OF: CARMEL FOSTER, COMMERCIAL PROPERTY MANAGER

GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolve to write off the outstanding rental debts of \$43,684.60 owed by Hunter New England Local Health Network ('HNELHN') and \$6,405.42 (exclusive of GST) owed by Terrace Tenants & Associates Incorporated.
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COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

	Councillor Bruce MacKenzie Councillor John Nell	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 23 AUGUST 2011

305	Councillor John Nell Councillor Geoff Dingle	It was resolved that the recommendation be adopted.
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Cr Glenys Francis returned to the meeting at 6.47pm.

BACKGROUND

The purpose of this report is to recommend that Council resolve to write off the outstanding rental debt owed by Hunter New England Health ('HNELHN') in respect of the informal occupancy of the premises known as Part lot 1 in DP 837299 57-59 Port Stephens Street Raymond Terrace NSW 2324. This report further recommends that Council also resolves to write off the outstanding rental debt of \$6,405.42 (exclusive of GST) owed by Terrace Tenants & Associates ('TTA') Incorporated in respect of leased occupancy of the premises known as Shops 3B and 4 Terrace Shopping Village, 42 William Street, Raymond Terrace NSW 2324.

HUNTER NEW ENGLAND LOCAL HEALTH NETWORK

HNELHN occupies the premises, which comprises a number of offices at the first floor of the Raymond Terrace Health and Community Care Centre (former Council chambers). HNELHN has been without a current lease agreement since the expiry of the original agreed Lease term in 1999. Initially, HNELHN were verbally informed that a new lease would be required and given an indication of the approximate cost of that lease.

Following Council seeking Legal advice and ensuing protracted negotiations in relation to this matter, the General Manager agreed to terms to enter into a new lease. A new lease has been signed with HNELHN (now Hunter New England Local Health Network) which expires on 31 December 2012 with an agreement to pay rent from 1 July 2011. The outstanding debt is to the order of \$43,684.60 (Excluding GST)..

TERRACE TENANTS & ASSOCIATES INCORPORATED

Terrace Tenants & Associates ('TTA') had occupied the premises under a formal lease from Jan 2006 in association with the Community Policing Project with the rental (\$15,000 per annum) agreed to be paid to the Property Section from west ward funds for a period of 2 (two) years.

Following expiry of the initial two year term, the Project was continued in its original format by TTA and Property agreed to a further lease with TTA. However, as the subsidy was then no longer in place, TTA endeavoured to pay the rental by letting each of the rooms as a meeting room on a casual basis to various groups.

Following the relocation of the YMCA leisure centre to the Terrace Shopping Village in August 2009 and associated acoustic issues which ensued, many of the groups regularly hiring the rooms on a casual basis made alternate arrangements as a result.

Since that time TTA had struggled to keep the monthly rental payments up to date and accordingly in September 2010, Commercial Property agreed to surrender of the lease.

The outstanding debt is to the order of \$6,405.42 (Excluding GST).

FINANCIAL/RESOURCE IMPLICATIONS

The writing off of the outstanding debts amounts to a financial loss to Council. A provision has been made for the full amount of these doubtful debts in the 2011 financial year therefore there will be no impact from this decision on Council's budgeted 2012 financial result.

LEGAL, POLICY AND RISK IMPLICATIONS

There are no future Legal or Policy Risk implications expected to arise from this recommendation.

SUSTAINABILITY IMPLICATIONS

There are no future Sustainability implications expected to arise from this recommendation.

CONSULTATION

- 1) Harris Wheeler Lawyers;
- 2) Group Manager Commercial Services;
- 3) General Manager.

OPTIONS

- 1) Accept the recommendation;
- 2) Reject the recommendation.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 9

FILE NO: A2004-0284

PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO COUNCILLORS

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Draft Payment of Expenses and Provision of Facilities to Councillors' Policy at **ATTACHMENT 1** for the purposes of public consultation;
- 2) Place the Draft Payment of Expenses and Provision of Facilities to Councillors' Policy, at **ATTACHMENT 1** on public exhibition for a period of 28 days.

 Cr Steve Tucker returned to the meeting at 6.50pm.

COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 23 AUGUST 2011

306	Councillor Ken Jordan Councillor Bruce MacKenzie	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to provide Council with the reviewed Councillors Reimbursement Policy in accordance with Section 252 of the Local Government Act 1993 and the Division of Local Government's Guideline.

Council last adopted the policy on 23 November 2011, after public consultation as required by legislation.

Council is required to submit a copy of the adopted Policy with the Division of Local Government by 30 November 2011.

1. Section 2.1.5 – additional section added
2. Section 2.2.2 – section reworded

3. Section 2.3.1 – replacement of the word "or"
4. Section 2.3.3 – replacement of the word "or"
5. Section 2.8.1 – increase from \$2,000 to \$3,500
6. Section 2.1.5 (b) – deletion of the words "by or"
7. Form 2 – deletion of "Start and Finish" columns.

Council's revised policy is shown at **ATTACHMENT 1**.

Council is required to give 28 days public notice of the Policy changes prior to the final adoption of the amended Policy and revoking the previous Policy.

FINANCIAL/RESOURCE IMPLICATIONS

Expenditure associated with this policy is included in the 2011-12 budget allocation, however the upper limits are not fully budgeted, given some Councillor do not reach these limits. Councillors will be advised should the upper budget limits be achieved.

LEGAL AND POLICY IMPLICATIONS

Under Section 252 and 253 of the Local Government Act, Council must adopt a policy concerning the payment of expenses incurred by Councillors in relation to discharging the functions of civic office. It is a requirement of the Local Government Act that Council adopt the policy after June 30 each year and lodge the adopted policy with the Department prior to November 30 each year and provide a copy to the Department of Local Government.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The policy allows Councillors to effectively carry out their responsibilities as members of the Council and as community representatives without suffering financial hardship.

CONSULTATION

- 1) General Manager;
- 2) Councillors.

OPTIONS

- 1) Adopt the recommendation;
- 2) Amend the draft policy.

ATTACHMENTS

- 1) Draft Payment of Expenses & Provision of Facilities to Councillors Policy.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



Payment of Expenses and Provision of Facilities to Councillors Policy

(Section 252, Local Government Act 1993)

Adopted 28 June 1994

Minute No 342

Amended 13 December 1994

Minute No. 691

Amended 14/11/95

Minute No. 562

Amended 10/9/96

Minute No. 528

Amended 23/12/97

Minute No. 1471

Amended 09/03/04

Minute No. 107

Amended 31/01/06

Minute No.398

Amended 27/11/06

Minute No. 758

Amended 25/03/08

Minute No. 069

Amended 16/12/08

Minute No. 398

Amended 24/11/09

Minute No.399

Amended 23/11/10

Minute No. 373

Part 1 – Introduction

1.1 Title, commencement and definitions of the Policy

- 1.1.1 The Policy shall be known as the "Councillors Payment of Expenses and Provision of Facilities".
- 1.1.2 The Policy is effective from 23 November 2010.
- 1.1.3 Definitions

In this Policy, unless otherwise stated:

- a) **Councillor** means a Councillor elected to Port Stephens Council, including the Mayor.
- b) **Official Business of Council** means:
- Meeting of Council;
 - Meetings of Committees of the Whole
 - Site inspection where resolved by Council;
 - Meetings of committees where Council has endorsed the Councillor's membership;
 - Civic receptions hosted or sponsored by Council;
 - Meetings or functions to which the Councillors attendance has been approved by the General Manager and/or the Mayor.
 - Functions or meetings where the invitation to attend arises only as a result of the Councillor's position as a Councillor.
- c) **Council Term** means period of elected Council (generally 4 years under the Local Government Act 1993).
- d) **Port Stephens Local Government Area** means the local government area of Port Stephens Council.
- e) **The Act** means the *Local Government Act 1993*.
- f) **The Regulations** means the *Local Government (General) Regulation 2005*.

1.2 Purpose of the Policy

- 1.2.1 The purpose of the policy is to ensure that Councillors receive adequate and reasonable expenses and facilities to enable them to carry out their civic duties. It ensures that these are provided in an accountable and transparent manner.

1.3 Objectives and scope of the Policy.

- 1.3.1 The objective of this Policy is to detail those Councillor expenses and facilities the cost of which shall be met by Council.
- 1.3.2 This Policy also aims to ensure compliance of the Port Stephens Council Code of Conduct.

1.4 Making, adoption and reporting of the Policy

- 1.4.1 This Policy is made under the *Local Government Act, 1993*, including Sections 248 to 254 and 731 and having regard to the provisions of the Division of Local Government Circular No. 09-36, 7 October 2009.
- 1.4.2 The Act requires that the Council must adopt a policy concerning the payment of expenses and the provision of facilities to the Mayor and Councillors.
- 1.4.3 This Policy is to be adopted by Council annually, within five months after the end of the year.
- 1.4.4 Prior to adoption public notice must be given and public submissions invited for 28 days. Council must then consider all submissions received and make any appropriate changes to the Policy.
- 1.4.5 Council need not give public notice of a proposed amendment if Council is of the opinion that the proposed amendments are not substantial. The term "not substantial" should be taken to mean minor changes to wording of the policy or changes to monetary provisions or rates that are less than 5% or changes to the standard of equipment and facilities to be provided. Public notice is required prior to each annual adoption of the policy even if there are no proposed changes.
- 1.4.6 Section 428 of the Act and Clause 271 of the Regulation requires Councils to include detailed information in their annual reports about the payments of expenses and facilities to Councillors.

1.5 Legislative provisions

- 1.5.1 The relevant legislative provisions are the *Local Government Act 1993* and the *Local Government (General) Regulations 2005*.

Local Government Act 1993

248 FIXING AND PAYMENT OF ANNUAL FEES FOR COUNCILLORS

- (1) *A council must pay each councillor an annual fee.*
- (2) *A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.*
- (3) *The annual fee so fixed must be the same for each councillor.*
- (4) *A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.*

248A ANNUAL FEES OR OTHER REMUNERATION NOT TO BE PAID DURING PERIOD OF SUSPENSION

A council must not at any time pay any fee or other remuneration, to which a councillor would otherwise be entitled as the holder of a civic office, in respect of any period during which:

- (a) the councillor is suspended from civic office under this Act, or*
- (b) the councillor's right to be paid any fee or other remuneration is suspended under this Act, unless another provision of this Act specifically authorises payment to be made, or specifically permits a person to authorise payment to be made, when the suspension is terminated.*

249 FIXING AND PAYMENT OF ANNUAL FEES FOR THE MAYOR

- (1) A council must pay the mayor an annual fee.*
- (2) The annual fee must be paid in addition to the fee paid to the mayor as a councillor.*
- (3) A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.*
- (4) A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.*
- (5) A council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.*

252 PAYMENT OF EXPENSES AND PROVISION OF FACILITIES

- (1) Within 5 months after the end of each year, a council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.*
- (2) The policy may provide for fees payable under this Division to be reduced by an amount representing the private benefit to the mayor or a councillor of a facility provided by the council to the mayor or councillor.*
- (3) A council must not pay any expenses incurred or to be incurred by, or provide any facilities to, the mayor, the deputy mayor (if there is one) or a councillor otherwise than in accordance with a policy under this section.*
- (4) A council may from time to time amend a policy under this section.*
- (5) A policy under this section must comply with the provisions of this Act, the regulations and any relevant guidelines issued under section 23A.*

253 REQUIREMENTS BEFORE POLICY CONCERNING EXPENSES AND FACILITIES CAN BE ADOPTED OR AMENDED

- (1) A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.*

- (2) *Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.*
- (3) *Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.*
- (4) *Within 28 days after adopting a policy or making an amendment to a policy for which public notice is required to be given under this section, a council is to forward to the Director-General:*
 - (a) *a copy of the policy or amendment together with details of all submissions received in accordance with subsection (1), and*
 - (b) *a statement setting out, for each submission, the council's response to the submission and the reasons for the council's response, and*
 - (c) *a copy of the notice given under subsection (1).*
- (5) *A council must comply with this section when proposing to adopt a policy each year in accordance with section 252 (1) even if the council proposes to adopt a policy that is the same as its existing policy.*

254 DECISION TO BE MADE IN OPEN MEETING

The council or a council committee all the members of which are councillors must not close to the public that part of its meeting at which a policy for the payment of expenses or provision of facilities is adopted or amended, or at which any proposal concerning those matters is discussed or considered.

254A CIRCUMSTANCES IN WHICH ANNUAL FEES MAY BE WITHHELD

- (1) *Despite this Division, a council may resolve that an annual fee will not be paid to a councillor or that a councillor will be paid a reduced annual fee determined by the council:*
 - (a) *for any period of not more than 3 months for which the councillor is absent, with or without leave, from an ordinary meeting or ordinary meetings of the council, or*
 - (b) *in any other circumstances prescribed by the regulations.*
- (2) *Despite this Division, if a councillor is absent, with or without leave of the council, from ordinary meetings of the council for any period of more than 3 months, the council must not pay any annual fee, or part of an annual fee, to that councillor that relates to the period of absence that is in excess of 3 months.*

428 ANNUAL REPORTS

- (1) *Within 5 months after the end of each year, a council must prepare a report (its "annual report") for that year reporting as to its achievements in implementing its delivery program and the effectiveness of the principal activities undertaken in achieving the objectives at which those principal activities are directed.*

Local Government (General) Regulations 2005

217 ADDITIONAL INFORMATION FOR INCLUSION IN ANNUAL REPORT

- (1) For the purposes of [section 428](#) (4) (b) of [the Act](#), an annual report of a council is to include the following information:

(a) *details (including the purpose) of overseas visits undertaken during the year by councillors, council staff or other persons while representing the council (including visits sponsored by other organisations),*

(a1) *details of the total cost during the year of the payment of the expenses of, and the provision of facilities to, councillors in relation to their civic functions (as paid by the council, reimbursed to the councillor or reconciled with the councillor), including separate details on the total cost of each of the following:*

(i) the provision during the year of dedicated office equipment allocated to councillors on a personal basis, such as laptop computers, mobile telephones and landline telephones and facsimile machines installed in councillors' homes (including equipment and line rental costs and internet access costs but not including call costs),

(ii) telephone calls made by councillors, including calls made from mobile telephones provided by the council and from landline telephones and facsimile services installed in councillors' homes,

(iii) the attendance of councillors at conferences and seminars,

(iv) the training of councillors and the provision of skill development for councillors,

(v) interstate visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,

(vi) overseas visits undertaken during the year by councillors while representing the council, including the cost of transport,

the cost of accommodation and other out-of-pocket travelling expenses,

(vii) the expenses of any spouse, partner (whether of the same or the opposite sex) or other person who accompanied a councillor in the performance of his or her civic functions, being expenses payable in accordance with the Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors for Local Councils in NSW prepared by the Director-General from time to time,

(viii) expenses involved in the provision of care for a child of, or an immediate family member of, a councillor, to allow the councillor to undertake his or her civic functions

403 Payment of expenses and provision of facilities

A policy under [section 252](#) of [the Act](#) must not include any provision enabling a council:

- (a) *to pay any councillor an allowance in the nature of a general expense allowance, or*
- (b) *to make a motor vehicle owned or leased by the council available for the exclusive or primary use or disposition of a particular councillor other than a mayor.*

404 CIRCUMSTANCES IN WHICH COUNCILLORS' ANNUAL FEES MAY BE REDUCED OR NOT PAID

For the purposes of [section 254A](#) of [the Act](#), a prescribed circumstance for the non-payment or reduction of a councillor's annual fee is the circumstance where both of the following conditions are satisfied:

- (a) *the payment of the annual fee adversely affects the councillor's entitlement to a pension, benefit or allowance under any legislation of the Commonwealth, a Territory or a State (including New South Wales),*
- (b) *the councillor agrees to the non-payment or reduction.*

1.6 Other Government policy provisions

- Division of Local Government Guidelines for the payment of expenses and the provision of facilities to Mayors and Councillors.
- Port Stephens Council Code of Conduct, as amended.
- Division of Local Government Model Code of Conduct – June 2008.
- ICAC Publications.

Part 2 – Payment of Expenses

2.1 General Provisions

- 2.1.1 Council will determine an annual allowance, to be paid monthly in arrears, in accordance with Section 248 - 251 of the Local Government Act and the determination of the Local Government Remuneration Tribunal.
- 2.1.2 This Policy is intended to cover most situations where a Councillor reasonably incurs expenses in discharging the functions of civic office. The annual fees paid to each Councillors is generally not intended to offset those costs.
- 2.1.3 All allowances and reimbursements of expenses made under this Policy shall be in respect to costs directly associated with the functions of civic office.
- 2.1.4 Councillors are not permitted to claim expenses in connection with political activities, including political fundraising as this is considered a personal interest.

2.2 Reimbursement and reconciliation of expenses processes

- 2.2.1 All claims for reimbursement must be made within three (3) months of incurring the expense and shall be subject to the General Manager or delegated officer discretion.
- 2.2.2 All claims shall be submitted to the General Manager or delegated officer on **FORM 1**.
- 2.2.3 All claims must be supplied with a tax invoice or receipt to support the claim. If a Councillor is not able to provide a tax invoice or receipt then a Statutory Declaration is to be provided.
- 2.2.4 Claims for travel under this Policy shall be lodged using travel **FORM 2**, include:
- Date
 - Place of departure and arrival
 - Distance travelled
 - Fare and parking fees paid
- 2.2.5 The kilometre rate payable to Councillors who travel in their own vehicle shall be the rate payable under the Local Government State Award.

Changes

Insert - 2.1.5 Councillors will not be provided with general expense allowance. A general expense allowance is a sum of money paid by a Council to a Councillor to expend on an item or a service that is not required to be receipted and/or otherwise reconciled according to a set procedure and within a specific timeframe.

Delete 2.2.2 and replace with "2.2.2 All claims shall be submitted to the General Manager and the delegated officer for assessment against the policy on **FORM 1**."

2.2.6 Where travel is outside the Hunter Councils Area, Council shall as appropriate meet or reimbursement the lesser amount of the following expenses:-

- a) The cost of an economy class air ticket and associated taxi transfers.
- b) The cost of a first class rail ticket and associated taxi transfers.
- c) Transportation expenses using a Councillor's own vehicle (calculated under clause 2.2.5).
- d) Transportation using a Council-owned vehicles, actual costs incurred.

2.2.7 Where possible Council will pay all expenses directly by account or through use of a corporate credit card. In some instance it maybe necessary for Councillors to pay unexpected costs and seek reimbursement.

2.2.8 Once expenses of attending conferences, seminars or training course have been finalised, an invoice shall be forwarded to Councillors for any expenses payable by them.

2.3 Approval and Dispute resolution

2.3.1 The Executive Assistant – Councillor Support shall assess all claims against this Policy and provide the assessed documentation to the General Manager **or** Executive Officer for approval.

2.3.2 Claims will be paid on a monthly basis, generally the first Friday of the month.

2.3.3 Should the General Manager **or** Executive Officer determine that a claim should not be paid, the Councillor should be advised in writing. Should the Councillor still believe that the claim should be paid, in part or full, it shall be considered that a dispute exists.

2.3.4 In the event of a dispute at any time regarding payment of a claim or anything else under this Policy, the parties to this dispute shall each provide a written report on the nature of the dispute. The General Manager shall submit such reports to the next open meeting of Council. The dispute shall then be determined by a resolution of Council having regard to the reports, this Policy, Act and any other relevant laws.

Changes

Delete "or" and replace with "and" as this is inconsistent with the DLG guidelines.

Delete "or" and replace with "and" as this is inconsistent with the DLG guidelines

2.3.5 The decision of Council pursuant to clause 2.3.4 shall be binding on all parties.

2.4 Payment in advance

2.4.1 Councillors may require advance payment for an anticipated expense associated with attendance at a conference, seminar and training course. The amount is **\$200** per Councillor per event.

2.4.2 In the event of a payment being made in advance, Councillors must full reconcile all expenses against the amount of the advance and submit the reconciliation to Council with **30 days** of the event.

2.5 Monetary Limits

2.5.1 Monetary limits set out in this Policy are the maximum amount payable in respect of any facility or expense. Any additional costs above the limit will be incurred by the Councillor. All monetary limits are exclusive of GST.

2.5.2 Monetary limits may only be waived by a resolution of Council in exceptional circumstances. Any waiver of a monetary limit will apply to a particular event or circumstance and will not constitute an amendment to this Policy.

Spouse and Partner Expenses

2.6.1 Accompanying person means a person who has a close relationship with a Councillor and/or provides carer support to the Councillor.

2.6.2 In limited circumstances, Council shall meet certain costs incurred by a Councillor on behalf of their spouse, partner or accompanying person which is properly and directly related to accompanying the Councillor when the Councillor is performing his or her official functions with the Port Stephens Local Government Area, including but not limited to costs associated with attendance at official Council functions that are of a formal or ceremonial nature. Each Councillor is entitled to a maximum of **\$500.00** per year of term, not including the NSW Local Government and Shires Association annual conference.

2.6.3 Costs and expense incurred by the Councillor on behalf of their spouse, partner or accompanying person shall be reimbursed if the cost or expense relates specifically to the ticket, meal and/or direct cost of attending the function.

2.6.4 In limited circumstances, Council shall meet certain costs incurred by the Mayor on behalf of their spouse, partner or accompanying person which is properly and directly related to accompanying the Mayor within the State of New South Wales or as resolved by Council when performing his or her official functions, including but not limited to costs associated with attendance at

official Council functions that are of a formal or ceremonial nature. Each Councillor is entitled to a maximum of **\$1000.00** per year of term, not including the NSW Local Government and Shires Association annual conference.

- 2.6.5 Council shall meet limited expenses of spouse, partner or accompanying person associated with attendance at the NSW Local Government and Shires Association annual conference. These expenses are limited to the costs of registration and the official conference dinner. Expenses such as travel expenses, any additional accommodation expenses and the cost of any accompanying persons program shall not be met by Council.
- 2.6.6 Costs associated with spouse, partner or accompanying person associated with attendance conferences other than the NSW Local Government and Shires Association annual conference, or any seminars or training shall not be met by Council.
- 2.6.7 In no circumstances will the peripheral expenses of spouse, partner or accompanying person, such as grooming, special clothing and transport be considered reimbursable expenses.

Specific Expenses for Councillors

2.7 Attendance at seminars, conferences, training and educational expenses

- 2.7.1 Council shall meet expenses incurred by Councillors in attending conferences and seminars or undertaking training and educational courses when the attendance is:
- a) To the NSW Local Government and Shires Associations' annual conference; or
 - b) Authorised by resolution of an open meeting of Council.
- 2.7.2 Councillors should generally have their attendance at a conference, seminar or participation in a training course authorised by Council in accordance with clause 2.7.1 (b).
- 2.7.3 Where it is impractical to have a Councillor's attendance or participation authorised by Council in accordance with clause 2.7.1 (b), Councillors wishing to claim expenses incurred due to their attendance or participation shall obtain the approval of the Mayor and the General Manager prior to attendance. Where the Mayor is seeking approval to claim his or her attendance or participation expenses under this clause, he or she shall obtain the approval of the Deputy Mayor and the General Manager.
- 2.7.4 Councillors shall submit their request for attendance in writing with the appropriate notice detailing the costs and benefits to the Councillor, to Council and the community.
- 2.7.5 In making its decision, the General Manager/Mayor or Council should consider:-

- a) The relevance of the seminar, conference, training or educational expenses to Council and the potential benefit that may result from attendance;
- b) The special interest of the Councillor/s wishing to attend;
- c) The total cost to Council of attendance relative to the Program budget;
- d) The fair and equitable division of opportunity for Councillors to attend conferences/seminars.

2.7.6 Councillors shall at the conclusion of their attendance at the seminar, conference, or training provide a written report to Council on the aspects of the seminar, conference or training. This report should be submitted to Council within one month of their attendance. Attendance at the NSW Local Government & Shires Association annual conference will not require a report to Council.

2.7.7 The General Manager's Office will make all arrangements for the attendance of Councillors and accompanying persons, where required at a conference, seminar or training.

2.8 Seminars, Conferences and Training Expenses

2.8.1 Council will meet the costs for attendance at approved conferences and seminars, training and educational courses to a maximum of **\$2,000.00** per Councillor per year of term, excluding the costs associated with attendance at the NSW Local Government and Shires Associations' annual conference:

- a) **Registration fees** – Council will meet the cost of the registration fee set by the organiser, including costs of related official lunches and dinners, and associated tours where they are relevant to the business and interests of Council.
- b) **Accommodation** – where a conference, seminar or training course is not located within the Port Stephens Local Government Area, Councillors shall where required be accommodated in the hotel where the event is being held or the nearest hotel to it that is of a similar standard, or as arranged by the conference organiser. Accommodation shall be provided at the rate of a double room. Any additional nights prior to or following the conference, seminar or training course Council will not be included in the expenses paid by

Changes

Delete \$2,000 and replace with \$3,500.

Council. **Note:** Movie hire and Mini Bar Facilities will be paid for by the Councillor.

- c) **Transportation** – Councillors attending a conference, seminar or training course shall travel by the most appropriate route, subject to any personal medical requirements. Any costs incurred in undertaking activities not related to attendance at the conference, seminar or training course shall not be included in any expenses paid by Council.
- d) **Educational Materials** – where a Councillor is participating in an approved training or educational course and specific reference materials are required (for example, prescribed text books), Council shall purchase such educational materials on the Councillor's behalf. At the completion of the relevant training or educational course, educational materials purchased pursuant to this clause shall be returned to Council and be available for the use of all Councillors in the Councillor's Room

2.8.2 Conferences, seminars and training held outside the Port Stephens Local Government Area, Council shall as appropriate (having regard to availability, time/cost effectiveness of the transport options) meet or reimburse the lesser amount of the following transportation expenses:

- a) The cost of an economy class air ticket and associated taxi transfers.
- b) The cost of a first-class rail ticket and associated taxi transfers.
- c) Transportation expenses by a Councillor with the Councillor's own vehicle (refer to clause 2.2.5).

2.8.3. If a Council-owned vehicle utilised that cost will be determined by way of actual costs incurred.

2.9 Meals

2.9.1 Council shall meet the cost of breakfast, lunch and dinner for Councillors attending a conference, seminar or training course where any such meal is not provided by the organiser. Council shall also meet the reasonable cost of drinks accompanying the meals.

2.9.2 Costs payable by Council under clauses 2.9.1 and 2.9.2 shall be capped at a maximum of **\$100.00** per Councillor per day inclusive. Councillors will be paid actual costs if under **\$100.00** per day.

2.9.3 Council shall meet the reasonable cost of Councillors' meals where due to their attendance to Official Business of Council the Councillor is reasonably unable to partake of a meal at their residence and so incurs additional expense.

2.9.4 Costs payable by Council under clause 2.9.3 shall be capped at a maximum of **\$50.00** per Councillor per day or actual costs, whichever is less.

2.10 Local Travel Arrangements and Associated Expenses

- 2.10.1 Travelling expenses shall be reimbursed to Councillors for travel by public transport or private vehicle on Official Business of Council in the Hunter Councils area, to a maximum amount of **\$6,000.00** per Councillor per year of term.
- 2.10.2 Councillors may, where available, use Council owned vehicles to attend to Official Business of Council.
- 2.10.3 Council shall meet the cost of parking fees and road tolls but not the cost of traffic or parking fines, which shall remain the sole responsibility of the Councillor.
- 2.10.4 Claims for reimbursement under this clause 2.10 shall be made in accordance with clause 2.2.

2.11 Travel outside the HROC Area including Interstate and Overseas Travel

- 2.11.1 Payment of any travel expenses to a Councillor, incurred on Council related business outside of the Hunter Councils area and not otherwise addressed in clause 2.8 requires approval by resolution of Council in an open meeting.
- 2.11.2 Approval for payment of travel expenses under clause 2.11.1 may be granted subject to any conditions Council so determines, and Council shall meet only those expenses that Council so determines.

2.12 Communication Device Costs and Expenses

- 2.12.1 Council shall reimburse Councillors to a maximum of **\$3,000.00** per term for the purchase of a personal computer/laptop, multifunction device, peripherals and Microsoft office software.
- 2.12.2 Council shall not purchase the equipment in item 2.12.1 on a Councillors behalf.
- 2.12.3 Council shall reimburse Councillors for all maintenance and repairs which are to be arranged by individual Councillors.
- 2.12.4 Council shall reimburse Councillors for all consumables such as ink cartridges and reasonable supply of paper for official Council business.
- 2.12.5 Council shall reimburse Councillors for their communication device costs (including mobile phone, landline rental, landline telephone and facsimile) incurred in attending to Council business to a maximum cost of **\$200.00** per Councillor per month of term. All communication device costs incurred above this maximum are at the Councillors own expense.
- 2.12.6 If a Councillor so elects, Council will provide the Councillor with a mobile phone instead of paying a contribution towards the Councillor's expenses on

their existing mobile phone, however the maximum amount of mobile phone expenses incurred by Council must not exceed the amount set out in clause 2.12.5. All communication device costs incurred above this maximum must be reimbursed to Council by the Councillor. Councillors are encourage to purchase their own mobile phone and seek reimbursement under clause 2.12.5.

2.12.7 If a Councillor does not have a telephone line or internet connection at their home, Council shall meet the installation costs.

2.12.8 Council shall meet the cost of providing and maintaining an internet connection at the residence of the Councillor to a maximum of **\$60.00** per Councillor per month of term. Any internet costs incurred above this maximum are at the Councillors own expense.

2.12.9 Upon a Councillor ceasing to hold office, that Councillor must return to Council any items provided to him or her under this clause. Generally Council does not provide such equipment as Councillors are required to by such equipment under 2.12 and seek reimbursement.

2.13 Care and Other Related Expenses.

2.13.1 In this clause, "relative" shall have the same meaning as set out in the Dictionary in the Act, being at the date of this policy:

"Relative, in relation to a person, means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse;*
- (b) the spouse or de facto partner of the person or of a person referred to in paragraph (a)."*

2.13.2 Where a Councillor has responsibilities for the care and support of any relative, Council shall reimburse the actual cost incurred by the Councillor to engage professional care for the relative whenever considered necessary by the Councillor (acting reasonably) in order for the Councillor to discharge the functions of civic office.

2.13.3 The total amount paid to a Councillor under this clause 2.13 shall not exceed **\$2,000.00** per year of term.

2.13.4 Claims for reimbursement under this clause 2.13 shall be made in accordance with clause 2.2.

2.14 Insurance Expenses

Councillors shall receive the benefit of insurance cover for:

- 2.14.1 Personal Accident - Personal Accident insurance covers personal injury which is caused by violent, accidental external and visible means that solely and independently of any other cause results in a Councillor's death or disablement. The cover applies anywhere in the world during and while travelling to and from Council business. The capital benefit for the death of a Councillor is \$500,000. The cover does not include medical expenses.
- 2.14.2 Professional Indemnity - Professional Indemnity insurance covers Council where Council becomes legally liable to pay compensation for financial loss as a result of any negligent act, error or omission in the conduct of Council's business activities arising from a breach of professional duty. Cover is subject to any limitations or conditions set out in the NSW Local Government (Jardine) Mutual Liability Scheme wording.
- 2.14.3 Public Liability - Public Liability insurance covers Council's legal liability to pay compensation to third parties arising in connection with the business activities of Council. Matters arising from Councillors' performance of civic duties or exercise of their functions as Councillors are covered subject to any limitations or conditions set out in the NSW Local Government (Jardine) Mutual Liability Scheme policy wording.

2.14.4 Councillors' & Officers' Liability - Councillors' & Officers' Liability insurance protects Councillors and officers from the costs incurred in defending themselves against legal actions that arise from honest mistakes in the management of Council. It covers Councillors for personal liabilities as a result of wrongful acts subject to any limitations or conditions set out in the policy of insurance.

Full details of the abovementioned insurance policies are available in Council's Insurance Handbook held by the Risk Management Co-ordinator.

2.15 Legal Expenses

2.15.1 Councillors shall receive legal expenses, in the event of:

- (a) An enquiry, investigation or hearing by any of:
- The Independent Commission Against Corruption;
 - The Office of the Ombudsman;
 - Division of Local Government;
 - The Police;
 - The Director of Public Prosecutions;
 - The Local Government Pecuniary Interest Tribunal; or
 - Council's Conduct Review Committee/Reviewer.

into the conduct of a Councillor; or

- (b) Legal proceedings being taken **by or** against a Councillor, arising out of or in connection with the Councillor's performance of his or her civic duties or exercise of his or her functions as a Councillor (with the exception of defamation proceedings), Council shall reimburse such a Councillor, after the conclusion of the enquiry, investigation, hearing or proceeding, for all legal expenses properly and reasonably incurred, given the nature of the enquiry, investigation, hearing

Changes

Delete the wording "by or". This is inconsistent with the DLG guidelines.

or proceeding, on a solicitor/client basis,
PROVIDED THAT:

The amount of such reimbursement shall be reduced by the amount of any monies that may be or are recouped by the Councillor on any basis.

The Councillor's performance or exercise of the civic duty or function was in the opinion of Council bona fide and/or proper (Section 731 of the Act).

The amount of such reimbursement be limited to the extent that only fees charged at a rate equivalent to the hourly rate then being charged by Council's Hunter based Solicitors will be paid ie. any portion of the expenses representing any hourly charge rate higher than the hourly rate charge rate of Council's Hunter based Solicitors will not be reimbursed.

- (c) Defamation proceedings or other proceedings arising from the making of a public statement, where a Councillor is a defendant or anticipated defendant in such proceedings.

Note: Council may not meet the costs of any action in defamation taken by a Councillor as plaintiff in any circumstances (DLG Circular 00/22).

To ensure that indemnity or reimbursement in respect of costs of defending an action in defamation or other action is only available in circumstances where the person to be indemnified or reimbursed was acting properly when making the statement complained of, the threshold criteria for the application of the indemnity or reimbursement will apply.

- (d) Council may indemnify or reimburse the reasonable legal expenses of a councillor for proceedings before the Local Government Pecuniary Interest Tribunal or an investigative body PROVIDED the subject of the proceedings arises from the performance in good faith of a function under the Act and the Tribunal or investigative body makes a finding substantially favourable to the Councillor.
- (e) Legal expenses incurred in relation to proceedings arising out of the performance by a councillor of his or her functions under the Act should be distinguished from expenses incurred in relation to proceedings arising merely from something which a councillor has done during his or her term of office. An example of the latter is expenses arising from an investigation as to whether a councillor acted corruptly by using knowledge of a proposed rezoning for private gain.
- (d) In addition, legal costs will only be provided where the investigative or review body makes a finding that is not substantially unfavourable to the councillor. This may include circumstances in which a matter does not proceed to a finding. In relation to a councillor's conduct, a finding by an investigative or review body that an inadvertent minor technical breach

has occurred may not necessarily be considered a substantially unfavourable outcome.

2.15.2 Council shall not meet any Councillor's costs of any enquiry, investigation or hearing initiated at the request of, or to any legal proceedings taken by, Council itself.

POLICY

General

Where proceedings have been foreshadowed or commenced against any of the Mayor and Councillors arising from a public statement or statements made or acts done by any of them and, in the opinion of Council's appointed solicitor the following "Three Criteria" are satisfied through the required procedure set out below namely:

- (a) The statement was made or the act was done in relation to discharging the functions of civic office;
- (b) The Councillor concerned was acting in good faith; and
- (c) The statement or the act in question was reasonable in the circumstances and not made or done maliciously or frivolously and, in the case of a statement, was not made with knowledge of its falsity or with recklessness as to whether it was true or false,

then Council will indemnify or reimburse the Councillor for:

- (a) all legal expenses properly and reasonably incurred, given the nature of the legal services provided; and
- (b) any other fees, expense, liability or cost incurred (including without limitation any order for the payment of damages, interest and/or costs or any other order for the payment of money made against the Councillor),

In responding to or defending such proceeding **PROVIDED THAT** the amount of such indemnity or reimbursement shall be reduced by the amount of any monies that may be or are recouped by the Councillor on any basis.

Engagement of Legal Representatives – Required Procedure

1. The Councillor must, as soon as practicable after they become aware that a claim may be forthcoming or aware that they may have made a statement or action which may give rise to a claim, notify either the General Manager, Public Officer or Mayor that there is a possibility of a claim against the Councillor. This notification must:

- i. be in written form;

- ii. include all details including any correspondence from the alleged injured party concerning the possible claim; and
 - iii. Include the Councillor's comments on whether the Councillor considers that the Three Criteria are satisfied.
2. The Councillor must not respond to any allegations made or accept any liability in respect to any allegations made unless authorised to do so by council or its solicitor or the insurer or its solicitor. The Councillor must at all times without undue delay keep Council fully informed of any oral or written communications made to the Councillor by the alleged injured party or the injured party's agents or legal representative in respect of the claim.
3. The General Manager must immediately upon becoming aware that a claim may be forthcoming or aware that a statement has been made which may give rise to a claim, notify and forward to Council's insurer any information relating to the matter with a view to obtaining the Insurer's acceptance and carriage of the claim should the three criteria be satisfied.
4.
 - i. If proceedings are threatened (and not commenced), the General Manager must without undue delay inform Council's appointed Solicitor and Council's insurer of the notification. The Council's solicitor at Council's cost must form a view as to whether the Three Criteria are satisfied, and must notify the General Manager who will in turn notify the Councillor concerned in written form of that view.
 - ii. If the Council's solicitor considers that the Three Criteria are satisfied, the General Manager will either instruct Council's solicitors or if Council's Insurers have accepted the matter as a possible claim then it will represent the Councillor concerned.
5. If Council's solicitor forms the view that the Three Criteria are not satisfied under clause (4); the Councillor may request a review of that advice from an independent legal practitioner as agreed in advance between the Councillor concerned and the General Manager and failing agreement as nominated by the President for the time being of the Law Society of NSW or the President of the NSW Bar Association.
6. If the proceedings are commenced and the Three Criteria are satisfied then the following procedure must be followed:
 - In the case that the claim is accepted by Council's insurer it will have carriage of the matter subject to consultation with the General Manager and the Councillor will be required to abide by any reasonable instruction of the insurer or its nominated lawyer.
 - If the Insurer does not accept the claim as it is of the opinion that the matter is outside the policy then the General Manager in consultation with Council's solicitor will nominate a legal practitioner that they consider should represent the Councillor. If the Councillor considers that such

- representation is appropriate then the procedures in clause 7 must be followed. If Council's solicitors are not of the same opinion as the insurers the General Manager in consultation with Council's solicitors will take whatever action is necessary (without unduly holding up the defamation proceedings) to have the question determined.
- If the Councillor considers that the legal practitioner nominated is not appropriate then the Councillor concerned and the General Manager must attempt to reach agreement on an alternative legal practitioner, and failing agreement the legal practitioner must be as nominated by the President for the time being of the Law Society of NSW or the President of the NSW Bar Association.
7. If Council's insurers have not accepted the claim the General Manager must contact the proposed legal practitioner and must require that an agreement be entered into between the legal practitioner and the Council which will include such terms and conditions as the General Manager sees fit including:
- i. Terms and conditions as to costs and disbursements including procedures for costs estimates to be given at appropriate times; and
 - ii. Accounts being considered and approved by the General Manager prior to payment; and
 - iii. All instructions provided to the legal representatives by the Councillor concerned to be subject to the concurrence of the General Manager.
8. Notwithstanding the provisions of paragraph 5.1 (ii) and 5 above, once proceedings have actually been commenced then the procedures set out in paragraph 5 above must be followed. (Note: The General Manager should regularly review Council's insurance policies with respect to the application of them to the Council's possible liability pursuant to this policy.)

Exclusion from Policy

This policy will not apply to any defamation or other action brought by any Councillor or Council employee against any Councillor, arising from the making of a statement by any of the latter of and concerning any of the former, unless in addition to the Three Criteria set out above:

- i. the statement complained of is made to a person or body in circumstances where it is likely to be subject to qualified privilege or absolute privilege (including without limitation statements made in good faith to the Police or Director of Public Prosecutions, the Department of Local Government, statements made ancillary to, and in giving evidence to, a Court or Tribunal or other body conducting any inquiry, investigation or hearing, statements made to the Office of the Ombudsman and statements made to any Parliamentary Committee) (but in such circumstances the policy will only apply to the extent of the publication of the statement in these circumstances, and not to any other publication of the statement); or
- ii. The statement:

- is made at a meeting of Council, a briefing of Councillors or a meeting of a Committee of Council in respect of an item on the agenda for that meeting or briefing; and
- is in accordance with the Local Government (General) Regulations 2005 and Council's Code of Meeting Practice current at the time the statement was alleged to have been made; and
- Does not breach any other law.

Part 3 Provision of Facilities

3.1 Provision of Facilities Generally

3.1.1 Unless otherwise stated, where a facility may be provided by Council in accordance with this Policy and a Councillor chooses to accept the facility, it shall be provided by Council with all establishment, routine maintenance, operating, training, replacement and insurance costs being met by Council, subject to any limits specified and adequate funds being allocated and available in Council's adopted Management Plan.

3.1.2 All facilities provided shall be of adequate capacity and functionality to allow the role of Councillor to be fully undertaken.

3.2 Private Use of Equipment and Facilities

3.2.1 Councillors shall not generally obtain private benefit from the provision of equipment and facilities. This includes benefits such as a travel bonus or other benefit arising from a loyalty scheme. However, incidental personal use of Council equipment and facilities may occur from time to time. No entitlement under this Policy shall be treated as being a private benefit that requires a reduction in the Mayoral fee or the Councillors fee.

3.2.2 If a Councillor does obtain a private benefit for the use of a facility provided by Council being more than incidental use, the Councillor shall be invoiced for the amount of the private benefit with repayment to be in accordance with Council's normal terms.

3.2.3 The value of a private benefit to be invoiced under this clause 3.2 shall be determined by the General Manager or, at the request of the Councillor in receipt of the private benefit, the General Manager, or any two Councillors, by resolution of an open meeting of Council.

3.2.4 Equipment, facilities and services provided under this Policy shall not be used to produce election material or for any other political purposes.

3.3 Councillors' Room

3.3.1 Councillors shall be provided with equipment and facilities at the Raymond Terrace Administration Building. Equipment provided under this clause remains the property of Council.

3.3.2 The Councillors' Room furnished for use by all Councillors shall be provided with:

- a) A telephone, computer with internet access, multifunction device and computer peripherals for use by all Councillors.
- b) A library including Council policies, relevant legislation, reports on Development Applications and other relevant documents.

3.3.3 Light refreshments such as biscuits, health bars and beverages.

3.4 Administration Support, Stationery, Postage & Business Cards

3.4.1 Council shall provide the support services of Councillor Support Executive Assistant with suitable experience and skills to support Councillors.

3.4.2 Council shall post all correspondence for Councillors relative to the discharge of the functions of civic office.

3.4.3 Council shall provide appropriate letterhead stationery, business cards and Christmas cards for use by Councillors.

3.4.4 Correspondence by Councillors relative to the discharge of the functions of civic office is considered official correspondence of Council where the matter is referred to the General Manager for attention. The correspondence shall be attached to the appropriate Council file for registration, attention and reply.

3.4.5 Under no circumstances shall Councillors use the administration services, staff or other facilities provided in association with Local, State or Federal Government Elections.

3.4.6 Under no circumstances shall Councillors use the administration services or other facilities provided for the initiation of circular type letters without prior authority of the Council being obtained.

3.4.7 Council shall provide Councillors with official name badges indicating the wearer holds the office of Councillor, to wear at Civic functions.

3.5 Meals

3.5.1 Councillors will be provided with meals and refreshments following Committee and Council meetings and at other times considered appropriate by the Mayor and General Manager. The standard of the meal will be determined by the Mayor and/or the General Manager.

3.5.2 Light refreshments such as biscuits, health bars and beverages will be provided in the Councillors Room.

3.6 Transport Facilities

- 3.6.1 Four designated car parking spaces shall be provided for Councillors in the Council car park at the Council administration building, to be shared amongst Councillors.
- 3.6.2 Councillors will be reimbursed for all transport costs (taxi, use of private vehicle, etc) in accordance with clause 2.2 for their attendance at official Council functions. This includes deputising for the Mayor.

3.7 Corporate Uniform

- 3.7.1 Councillors may choose from a selection of Corporate Uniform provided by Council's approved supplier. Council will contribute a subsidy to 35% of the initial cost to a maximum of \$220 per annum. A sundry debtor account will then be forwarded to the Councillor for payment of the balance. Alternatively, a deduction can be made from the Councillor's monthly allowance.

3.8 Superannuation

- 3.8.1 Councillors may elect to contribute all or part of their Councillor Allowance into an approved Superannuation Scheme by completing **FORM 3**.

3.9 Health & Wellbeing Initiative

- 3.9.1 Councillors shall be able to access a Health Initiative program which includes gym membership at local facilities. The program requires a minimum six (6) month membership with a payment to be made in advance for three (3) months – non refundable.
- 3.9.2 Councillors shall investigate any taxation implications for individual councillors as a result of the membership.
- 3.9.3 Further details can be obtained through Council's Recreation Services Section at Council.

3.10 Provision of Safety equipment

- 3.10.1 Councillors shall be provided with the following Protective Apparel:
- hard hat;
 - safety vest;
 - safety footwear;
 - safety glasses and;
 - hearing protection

to accord with the NSW Occupational Health & Safety Act, for on-site inspections.

Provision of Additional Expenses, Equipment and Facilities for the Mayor

3.11 Additional Expenses, Equipment and Facilities

3.11.1 The Mayor is paid an additional annual fee. The fee is the amount fixed by Council under Division 5 of Part 2 of Chapter 9 of the Act in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

3.11.2 This Policy is intended to cover most situations where the Mayor reasonably incurs additional expenses in discharging the functions of Mayoral office. The annual fee paid to the Mayor is generally not intended to offset those costs.

3.12 Equipment and Facilities

3.12.1 The Mayor shall be provided with additional equipment and facilities. Equipment provided under this clause remains the property of Council.

3.12.2 The following facilities and equipment shall be provided to the Mayor:

3.12.3 A furnished office with computer, printer, internet access, phone, facsimile and computer peripherals.

3.12.4 Office refreshments.

3.12.5 Mayoral letterhead.

3.12.6 A corporate credit card, to be used only to pay expenses allowed under this policy.

3.12.7 A mobile phone for the use of the Mayor in discharge of their formal duties, the cost of which shall be fully met by Council.

3.12.8 All items provided to the Mayor under this clause 3.12 must be returned to Council when the Mayor ceases to hold office.

3.13 Mayor's Staff

3.13.1 Council shall provide the services of the Councillor Support Executive Assistant with suitable experience and skills to support the Mayor.

3.13.2 The Councillor Support Executive Assistant shall provide support to the Deputy Mayor in the absence of the Mayor.

3.14 Mayoral Motor Vehicle

3.14.1 The Mayor shall be provided with:

3.14.2 A fully maintained motor vehicle, of a standard appropriate to the Office of the Mayor for the use of discharging function of the Mayor.

3.14.3 A fuel card, to be used for official Council business.

3.14.4 A car parking space at the Raymond Terrace Administration Building.

3.14.5 All items provided to the Mayor under this clause 3.14 must be returned to Council when the Mayor ceases to hold office.

Part 4 Other Matters

4.1 Acquisition and Return of Facilities and Equipment by Councillors

4.1.1 Upon ceasing to hold office a Councillor may purchase any Council equipment held by the Councillor at the market value of the equipment at the time of ceasing to hold office as approved by the General Manager.

4.2 Status of the Policy

4.2.1 This Policy replaces the previous version of the Policy adopted by Council on 24 November 2009.

4.2.2 This Policy shall only be amended by resolution of Council.



COUNCILLORS' EXPENSES CLAIM FORM

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



Form 1

COUNCILLOR.....

MONTH.....

DATE	PURPOSE	\$	POLICY LIMITS	Klms TRAVELLED	TOTAL CLAIM \$ (Office Use Only)
	Phone Call Claim (receipts required)		\$200/month (for landline rental and calls, facsimile, mobile phone calls and rental/plan)		
	Line Rental (receipts required)				
	Fax Expenses (receipts/documentation required)				
	Mobile Claim (receipts required)				
	Internet Claim (receipts required)		\$60.00/month		
	Travel (log required)		\$6,000/year		
	Conference/Seminars (receipts required)		\$2,000/year		
	Partner Expenses (receipts required)		\$500/year for Councillor & \$1,000/year for Mayor		
	Computer/laptop, multifunction devices, peripherals and software (receipts required)		\$3,000/term of Council		
TOTAL					

***PAYMENT WILL ONLY BE MADE WHERE RECEIPTS AND VEHICLE LOG IS PROVIDED.**

Signature of Claimant..... Date.....

Councillors – Please note that ALL Councillor's reimbursement claims will be paid the **first Friday** of each month. Therefore Councillors are required to lodge their claims with the Executive Assistant Councillor Support at the end of each month at the **Ordinary Council meeting** for payment the following week.



**COUNCILLORS' MOTOR VEHICLE LOG
BOOK CLAIM FORM**

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



Form 2

COUNCILLORMONTH.....YEAR.....

DATE	PURPOSE	START	FINISH	TOTAL KILOMETRES
TOTAL				

Signature of Claimant Date



COUNCILLORS' REMUNERATION
SACRIFICE ELECTION FORM –
SUPERANNUATION

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



Form 3

Councillor Name: _____

Date to commence arrangement _____

Annual Remuneration _____

Annual Sacrifice Amount _____

Your Superannuation Fund Details:

Fund Name _____

Membership No (if applicable) _____

Account Name _____

Super Fund ABN (if applicable) _____

Superannuation Product
Identification Number (if applicable) _____

DECLARATION OF COUNCILLOR

I, _____ hereby certify that I have not relied on information or advice gathered through sources or resources from Port Stephens Council to make the decision to enter into a sacrifice arrangement.

I certify that I have obtained independent financial advice or made the decision based on my own investigation in relation to this sacrifice election.

I understand that at all times it remains my responsibility as a Councillor to notify Finance in writing of any change to the benefits sacrificed.

I have attached:

- A letter from the trustee stating that this is a complying fund and (for a self managed superannuation fund) a copy of documentation from the Tax Office confirming the fund is regulated
- Written evidence from the fund that they will accept contributions from Council, and
- Details about how Council can make contributions to this fund

Signed: _____

Councillor

Date: _____

Signed: _____

Finance Officer

Date: _____

ITEM NO. 10

FILE NO: 1190-001

REQUEST FOR FINANCIAL ASSISTANCE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-
 - a) Over the Top Expedition – Rapid Response – Mayoral Funds – Donation towards the Expedition’s mission to raise money for continued research into Prostate Cancer research - \$500.00;
 - b) Nelson Bay Town Management – East Ward Requisition for Funds – Refund of DA fee paid in relation to Nelson Bay Markets - \$398.00;
 - c) Nelson Bay Town Management – East Ward Requisition for Funds – Refund of DA fee paid in relation to Festivals in Nelson Bay - \$398.00;
 - d) Port Stephens Council's Picnic Day Committee – Mayoral Funds – Donation towards the cost of Christmas presents for children attending on the day - \$500.00.

COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

	Councillor Bruce MacKenzie Councillor Sally Dover	That the recommendation be adopted.
--	--	-------------------------------------

ORDINARY COUNCIL MEETING – 23 AUGUST 2011

307	Councillor Bruce MacKenzie Councillor Steve Tucker	It was resolved that the recommendation be adopted.
------------	---	---

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:

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

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

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

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

EAST WARD – Councillors Westbury, Dover, Nell, Ward

Nelson Bay Town Management	Refund of DA fee paid in relation to Nelson Bay Market	\$398.00
Nelson Bay Town Management	Refund of DA fee paid in relation to Festivals in Nelson Bay	\$398.00

MAYORAL FUNDS

Over the Top Expedition	Funding towards Expedition's mission to raise money for continued research into Prostate Cancer Research	\$500.00
Port Stephens Council's Picnic Day Committee	Donation towards the cost of Christmas presents for children attending on the day	\$500.00

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. 11

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 16 August 2011.

No:	Report Title	Page:
1	NSW REGIONAL RELOCATION LEGISLATION	
2	2011 JOINT MEETING ABORIGINAL STRATEGIC COMMITTEE, COUNCILLORS AND SENIOR MANAGEMENT OF COUNCIL	
3	PERFORMANCE MONITORING – DEVELOPMENT ASSESSMENT DATA	

COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That the recommendation be adopted.
--	--	-------------------------------------

ORDINARY COUNCIL MEETING – 23 AUGUST 2011

308	Councillor John Nell Councillor Shirley O'Brien	It was resolved that the recommendation be adopted.
------------	--	---

COUNCIL COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

NSW REGIONAL RELOCATION LEGISLATION

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

FILE: PSC2005-3811

BACKGROUND

A letter has been received from the NSW Department of Enterprise Small Business and Regional Development regarding the NSW Regional Relocation Legislation 2011.

A relocation grant of \$7000 will be made available to individuals or families who relocate from Metropolitan areas of NSW to Regional NSW. (The definition of the "Metropolitan Area" NSW is included in the attached letter).

This Council therefore is in Regional NSW and could be an area to which individuals or families who benefit from this grant relocate to.

The letter of 1 July 2011 gave Council the option of opting out of this scheme if concerned about local population pressures. It was considered by the General Manager and Group Manager Sustainable Planning that Council would clearly not wish to opt out of this scheme and therefore no response was made to the NSW Department and the effect of this is that the Department will work on the basis that this Council wishes to be included in the coverage of the scheme.

ATTACHMENTS

- 1) Letter – NSW Department of Enterprise Small Business and Regional Development.

ATTACHMENT 1
LETTER – NSW DEPARTMENT OF ENTERPRISE SMALL BUSINESS AND REGIONAL
DEVELOPMENT



Trade & Investment,
Regional Infrastructure
& Services

Mr Peter Gesling
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324
council@portstephens.nsw.gov.au

Dear Mr Gesling

With the passing of the Regional Relocation Bill 2011, a grant of \$7,000 will be made available from July 1, 2011 to individuals or families who relocate from the metropolitan area of NSW to Regional NSW. The grant will be administered by the Office of State Revenue and will be dependent on an eligible applicant selling a house in the metropolitan area (as their principal place of residence) and buying a house in regional NSW (where the value of the property does not exceed \$600,000).

For the purposes of the Relocation Grant the "metropolitan area" of NSW is defined as including Sydney and the surrounding local government areas of Wollondilly, Blue Mountains, Hawkesbury, Gosford and Wyong, and the Wollongong and Newcastle Council areas.

Local Councils in regional NSW have the choice of opting out of this scheme if concerned about local population pressures. The Department of Trade and Investment, Regional Infrastructure and Services is seeking your advice on whether you wish to opt out of the scheme. We have also written to relevant Regional Organisations of Councils alerting them to the availability of the scheme.

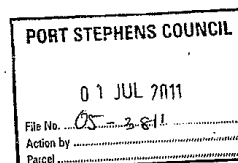
The Department will also be interested in discussing with each Regional Organisation of Councils and individual councils any plans they are considering to promote their locations as places to live and work. The Department would be keen to pursue opportunities to co-ordinate those marketing efforts in line with the availability of the Relocation Grant

Your advice on whether you wish to opt out of the scheme is sought as soon as possible. Should a reply not be received by July 15, 2011 we will work on the basis that your Council wishes to be included in the coverage of the Scheme. Should Council change its position at a later date this can of course be accommodated.

Please do not hesitate to contact me if you have any questions (telephone number 02 9338 6710) or Monica Stadtmiller (telephone number 02 9338 6721).

Yours sincerely

Michael Cullen
Executive Director
Enterprise, Small Business & Regional Development



NSW Department of Trade and Investment, Regional Infrastructure and Services
GPO Box 5477, Sydney NSW 2011 Australia
Tel: 02 9338 6719 Fax: 02 9338 6726
www.industry.nsw.gov.au

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INFORMATION ITEM NO. 2

**2011 JOINT MEETING ABORIGINAL STRATEGIC COMMITTEE,
COUNCILLORS AND SENIOR MANAGEMENT OF COUNCIL**

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

GROUP: SUSTAINABLE PLANNING

FILE: PSC2005-0629

BACKGROUND

The purpose of this report is to present to Council the minutes of the Aboriginal Strategic Committee joint meeting held 21 July 2011.

The role of Council's Aboriginal Strategic Committee is:

- 1) To advise Council in relation to issues of concern between Council and the Aboriginal community,
- 2) To promote a positive public image with respect to issues for Aboriginal people in Port Stephens,
- 3) To provide a consultative mechanism with respect to development issues,
- 4) To improve relations between the Aboriginal and non Aboriginal community of Port Stephens,
- 5) To exchange information between the Aboriginal community and Council on issues affecting Aboriginal people,
- 6) To promote mutual awareness and respect for the cultures of both Aboriginal and non Aboriginal communities, and
- 7) To promote an increased awareness of the needs of Aboriginal communities and to assist with the development of programs to address those needs where possible and appropriate.

ATTACHMENTS

- 1) Minutes of Aboriginal Strategic Committee joint meeting held on 21 July 2011.

ATTACHMENT 1



Aboriginal Strategic Committee
Joint Meeting



MINUTES

Minutes of meeting held on 21 July 2011 at Port Stephens Council

Chair: Cr John Nell

Minute taker: Paul Procter

Present:

Cr John Nell	Port Stephens Council
Jason Linnane	Port Stephens Council
Paul Procter	Port Stephens Council
Tony Wickham	Port Stephens Council
Steve Bernasconi	Port Stephens Council
Matthew Brown	Port Stephens Council
Kristy Murphy	Port Stephens Council
Bev Manton	NSW State Aboriginal Land Council
Kevin Manton	Karuah Local Aboriginal Land Council
Fiona Manton	Karuah Local Aboriginal Land Council
David Feeney	Karuah Local Aboriginal Land Council
Sharon Feeney	Karuah Local Aboriginal Land Council
Priscilla Mason	Karuah Local Aboriginal Land Council
Andrew Smith	Worimi Local Aboriginal Land Council
Leigh Ridgeway	Worimi Local Aboriginal Land Council
Cliff Johnson	Guest Speaker
Gabriella Johnson	(Guest Speaker's partner)

Apologies:

Cr Bob Westbury	Port Stephens Council
Cr Sally Dover	Port Stephens Council
Cr Steve Tucker	Port Stephens Council
Cr Caroline DeLyal	Port Stephens Council
Cr Shirley O'Brien	Port Stephens Council
Cr Glenys Francis	Port Stephens Council
Cr Frank Ward	Port Stephens Council
Peter Gesling	Port Stephens Council
David Broyd	Port Stephens Council
Colleen Perry	Karuah Local Aboriginal Land Council
Elaine Larkins	Worimi Local Aboriginal Land Council
Grace Kinsella	Worimi Local Aboriginal Land Council
Neville Lilly	Worimi Local Aboriginal Land Council
Val Merrick	Worimi Local Aboriginal Land Council
John Ridgeway	Worimi Local Aboriginal Land Council

Meeting opened at 6:45pm

1. WELCOME TO COUNTRY (Bev Manton, Chairperson NSW Aboriginal Land Council)

Bev Manton Chairperson NSW Aboriginal Land Council brought the Welcome to Country. She acknowledged Elders past and present and gave an overview of the boundaries of the Worimi Nation. She made special mention of the wonderful sharing of heritage displayed throughout NSW and across Australia during the recent NAIDOC Week celebrations.

2. WELCOME (Cr Nell)

Cr Nell on behalf of Council welcomed the Elders and members of the Worimi and Karuah Local Aboriginal Land Councils along with fellow Councillors and members of staff to the joint meeting of Council's Aboriginal Strategic Committee.

Thanks were extended to Bev Manton, Chairperson of NSW Aboriginal Land Council for attending and for the address she would be bringing later in the meeting. Cr Nell wished her all the best for the upcoming 2011 NSW Aboriginal Land Council election and commended her on the work she has done throughout her term for Aboriginal people regionally and throughout NSW.

Cr Nell also congratulated Worimi Local Aboriginal Land Council on being awarded by NSW Aboriginal Land Council as the highest standard of performance of any Local Aboriginal Land Council in NSW. Cr Nell also asked Worimi Local Aboriginal Land Council to pass onto Worimi Elder John Ridgeway Council's congratulations on recently being awarded an OAM.

3. GUEST SPEAKER

Cr Nell introduced guest speaker Cliff Johnson and his wife. Cliff retired earlier this year after working for Council for more than 40 years. Cliff is highly valued by Council and the community. He is held in high regard especially in relation to the wonderful rapport he has with the Port Stephens Worimi community which spans several decades.

Guest Speaker Address (Mr Cliff Johnson):

Cliff Johnson acknowledged Elders and thanked Council for the invitation for him and his wife to attend the meeting. Cliff went on to share his memories and reflections of over 40 years working in Port Stephens and with the local Aboriginal community.

He shared fond stories from his childhood growing up in Karuah and spoke of the close friendships he forged and still enjoys to this day with many wonderful people from the Worimi community. Despite leaving Karuah to work in Sydney after finishing school before returning home to Port Stephens where he worked the remainder of his working life and has maintained many of these childhood friendships to this day.

4. ADDRESS BY KARUAH LOCAL ABORIGINAL LAND COUNCIL (CEO – Mr David Feeney)

Karuah Local Aboriginal Land Council CEO acknowledged Elders and land we meet on. He wished Bev Manton all the best for the upcoming NSW Aboriginal Land Council elections coming up in August 2011. He also acknowledged Worimi Local Aboriginal Land Council CEO for the work they have undertaken together and also plan to do in the future. He expressed thanks to Council Council's Social Planning Co-ordinator and Councillors and other

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

staff on Council's Aboriginal Strategic Committee and Cliff Johnson for their support and hope it continues. He acknowledges his Board, Chairperson and his wife for their support.

He went on to speak of the highlights of the past year including: -

- Achievements of local community members who have attained certified qualifications (eg; graduate in teaching)
- Re-alignment by KLALC Board of how housing is managed which has derived significant improvements and benefits to the community
- Achievements of their green team on the conservation works they have undertaken along with the efforts of their cultural officers
- Ongoing efforts in promoting cultural awareness and heritage in the community

5. ADDRESS CHAIRPERSON NSW ABORIGINAL LAND COUNCIL (Mrs Bev Manton)

Bev gave an overview of the NSW Aboriginal Land Council (NSWALC) major achievements and activities including: -

- NSWALC has operated independently of government since 1998
- There are 119 Local Aboriginal Land Councils (LALC) throughout NSW
- There are 9 regions in NSW
- On 9 Aug 2011 NSWALC election will be held which is facilitated by the Australian Electoral Commission
- LALCs are all self regulated
- One of NSWALC focuses is to build the capacity of Aboriginal communities across the State. As part of this goal they have trained over 1200 people in governance during last few years
- Each LALC now has a 10 year Community & Business Plan and are responsible for electing their own Boards. Size of Board membership is based on size of each LALC
- NSWALC has a Statutory Investment Fund which it relies upon to help fund various projects and programs
- In 2008 NSWALC in partnership with the State Government provided significant funding (matched dollar for dollar) for a water and sewerage program to enable Aboriginal communities to have access to sewerage and healthy drinking water.
- Recent Acts of Legislation they have campaigned for and which have been introduced include recognition of Aboriginal / Cultural Fishing Rights
- NSWALC Education Fund, a \$30 million investment fund going towards scholarships, school books, primary/tertiary fees, laptops, excursions
- Books Behind Bars Program, books are sent to correctional centres to help get inmates on path to education. To date over 500 books have been donated to this program
- NSWALC has special speaking rights at the UN
- Support NAIDOC Events, Sorry Day Events, and the Yabun Festival

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

- Money Mentor Network Program, culturally appropriate financial literacy program in partnership with NAB
- Tracker Magazine, contemporary Aboriginal magazine.

6. ADDRESS BY WORIMI LOCAL ABORIGINAL LAND COUNCIL (CEO – Andrew Smith)

WLALC CEO acknowledged the Traditional land owners, Elders past and present, Board members and all representatives present. He past on his apologies for low attendance of Worimi representatives due to mix up at their end. In light of this WLALC CEO would welcome opportunity for another joint meeting if possible and would welcome Cliff Johnson to speak again and could include screening of Worimi Conservation Lands DVD.

WLALC is now in a financially sustainable position and moving forwards with a range of current activities such as their sand dune adventures operation and other future plans. Achievements over last 12 months have included: -

- Running cultural awareness course;
- Now have a green team and thanked Council for support provided through Aboriginal Projects Fund;
- Commended Council on process and work undertaken to date on proposed future planning of Birbui Point Surf Club and emphasis placed on maintaining cultural integrity of the site;
- Completed running Certificate 2 course in Kattang language and now looking at running a Certificate 3 course;
- Commended KLALC on receiving an award from NSWALC for Salt Water / Fresh Water Festival.

7. GENERAL BUSINESS

Aboriginal Projects Fund

Council's Community Development Officer mentioned that Council's Aboriginal Projects Fund is currently open for grant applications as previously advertised and applications close soon.

Appreciation to Council

Worimi members Leigh Ridgeway praised Council's Social Planning Co-ordinator for all of their efforts and work over the years and commended him on how he has gone about working with the Local Aboriginal Land Councils over the years stating that he is highly regarded and the relationship is really valued.

8. CLOSE

There being no further business Cr Nell thanked everyone for attending the meeting and for the various presentations made.

Meeting closed at 8:35pm

INFORMATION ITEM NO. 3

PERFORMANCE MONITORING – DEVELOPMENT ASSESSMENT DATA

REPORT: MATTHEW BROWN – MANAGER DEVELOPMENT ASSESSMENT AND ENVIRONMENTAL HEALTH
GROUP: SUSTAINABLE PLANNING

BACKGROUND

The purpose of this report is provide Council with the preliminary data in regards to the Performance Monitoring Development Assessment Data as required to be reported annually to the Department of Planning and Infrastructure (DoPI).

The initial figures show some favourable results, however it should be noted that the final report that has been endorsed and compiled by DoPI will be released later this year.

A media release is **Attachment 1**.

ATTACHMENT 1

Port Stephens more than matches planning standards

Port Stephens Council have continued to process a higher volume of development applications (DA's) per staff member than the state average, whilst remaining well under the time frames set by the Department of Planning and Infrastructure.

Initial statistics collated by the Council show that approximately 1142 development applications have been submitted in 2010/2011 year. A total of 1070 determinations have been made including more than 1042 approvals with an average turn-around time of 30 days.

Matthew Brown, Manager Development Assessment and Environmental Health explains that in previous years Council has continually shown a significantly high number of applications processed per staff member, and this year looks set to be the same.

"This last year our development staff, on average, have processed more than 130 DA's per person and the state average for last year was 63, this highlights the hard work of our staff," he said.

"In addition to that, the total approved DA's amounted to more than \$163 million in local investment. This really shows Council's commitment to development in Port Stephens and is a positive sign as we rebuild from the global financial crisis."

"Certainly there will be some applications that take longer to resolve due to the challenging environmental context within the Port Stephens coastal community, but it is pleasing to see that the majority of applications are processed very promptly."

These initial statistics will be sent to the Department of Planning for a formal report to be released later in the year.

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

Port Stephens Council initial development application statistics show:

DA's received between 01/07/2010 to 30/06/2011	1142
DA's determined between 01/07/2010 to 30/06/2011	1070
DA's approved	1042
Value of DA's approved	\$163,580,000 (approx)
Total staff (EFT) for processing DA's	8
Average (net mean) processing time	30 days

Certificates issued	Total issued by council	Total issued by private certifiers and lodged with council
Construction certificates	606	257
Occupation Certificates (interim & final):	397	241
Subdivision Certificates	36	4
Strata Certificates	8	2

GENERAL MANAGER'S REPORT

PETER GESLING
GENERAL MANAGER

ITEM NO. 1

FILE NO: A2004-0169

REVIEW OF THE MAYOR AND GENERAL MANAGER'S DELEGATIONS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Delegate the functions as shown in the reviewed delegation for the General Manager shown in **ATTACHMENT 1**.
 - 2) Delegate the functions as shown in the reviewed delegation for the Mayor shown in **ATTACHMENT 2**.
 - 3) The General Manager's delegations also apply to the role of Acting General Manager.
 - 4) Approve the affixing of the Common Seal to the Mayor's, General Manager's and Acting General Manager's delegations.
-

309	Councillor Bruce MacKenzie Councillor John Nell	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to review the delegations of the Mayor and General Manager.

The changes to the delegations are shown at **ATTACHMENTS 1 and 2**.

It should be noted that the General Manager's delegations will also apply to the role of Acting General Manager.

FINANCIAL/RESOURCE IMPLICATIONS

All financial implications are allowed for in the 2011-12 budget.

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to have appropriate delegations for the roles of Mayor and General Manager in accordance with the Local Government Act 1993. Without such delegations Council is at risk of breaching the law and individuals operating outside their limits of responsibility.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

Nil.

OPTIONS

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

ATTACHMENTS

- 1) General Manager;
- 2) Mayor.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



INSTRUMENT OF DELEGATION TO THE GENERAL MANAGER

Review Date: 20 June 2000
27 July 2004
25 November 2008

STATUTORY FUNCTIONS

The functions of the General Manager are defined in Section 335 of the Local Government Act 1993 as:

335 (1) General responsibilities

The General Manager is generally responsible for the efficient and effective operation of the Council's organisation and for ensuring the implementation, without undue delay, of decisions of the Council.

(2) Particular functions

The General Manager has the following particular functions:

- the day to day management of the Council;
- to exercise such of the functions of the Council as are delegated by the Council to the General Manager;
- to appoint staff in accordance with an organisation structure and resources approved by Council;
- to direct and dismiss staff;
- to implement the Council's equal employment opportunity management plan.

(3) Further functions

The General Manager has such other functions as may be conferred or imposed on the General Manager by or under this or any other Act.

Section 337 of the Act provides that the General Manager may appoint or dismiss senior staff only after consultation with the Council.

Section 378 of the Local Government Act, 1993, further provides that:

27 The General Manager may delegate any of the functions of the General Manager, other than this power of delegation;

2. The General Manager may sub-delegate a function delegated to the General Manager by the Council to any person or body (including another employee of the Council).

Local Government (General) Regulation, 2005 – Clause 209

Particular Responsibilities of the General Manager.

1. The General Manager of a Council must ensure that:-
 - a) the provisions of the Act, the regulations and any other written law relating to Council's financial obligations or the keeping of accounts by Council are complied with; and
 - b) effective measures are taken to secure the effective, efficient and economical management of financial operations within each division of the Council's administration; and
 - c) authorising and recording procedures are established to provide effective control over the Council's assets, liabilities, revenue and expenditure and secure the accuracy of the accounting records, including a proper division of accounting responsibilities among the Council's staff; and
 - d) lines of authority and the responsibilities of members of the Council's staff for related tasks are clearly defined.

The General Manager is also the Responsible Accounting Officer of Council for the purposes of the Regulation unless the General Manager designates a member of staff to be so.

Delegations.

Pursuant to Section 377 of the Local Government Act, 1993, Port Stephens Council hereby delegates the following powers, authorities, duties or functions to the person holding the position of General Manager of Port Stephens Council. These delegations are to be exercised according to:

- the requirements of the Local Government Act, 1993, and Regulations thereunder ;
- the requirements of any other relevant Act, law or regulation;
- any expressed resolution or policy of Port Stephens Council.

Specifically, Council hereby delegates, in accordance with Section 377(1) of the Local Government Act 1993, relating to affixing the Council corporate seal the following:-

To affix the corporate seal of Port Stephens Council to all documents necessary for Port Stephens Council to enter into or be a party to any property or commercial transaction, provided that the transaction has already been authorised by specific resolution of Council.

Pursuant to Clause 14 of the Local Government (Rates and Charges) Regulation, Council delegates the function of writing off rates and charges by the General Manager, to the fixed amount stated in the Council resolution.

These delegations revoke all previous delegations to the General Manager and recognise that certain functions are conferred on the General Manager by the Local Government Act 1993.

Changes

Delete - Pursuant to Clause 14 of the Local Government (Rates and Charges) Regulation.

Insert - Pursuant to Part 5 of the Local Government (General) Regulation 2005

1. All powers and functions of Council under the Local Government Act. 1993, and regulations thereunder except:
 - those powers and functions under Section 377 of the Act which cannot be delegated being:-
 - the appointment of a general manager
 - the making of a rate
 - a determination under section 549 as to the levying of a rate
 - the making of a charge
 - the fixing of a fee
 - the borrowing of money
 - the voting of money for expenditure on its works, services or operations
 - the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment)
 - the acceptance of tenders which are required under this Act to be invited by the council
 - the adoption of a management plan
 - the adoption of a financial statement included in an annual financial report
 - a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6
 - the fixing of an amount or rate for the carrying out by the council of work on private land
 - the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work
 - the review of a determination made by the council , and not by a delegate of the council , of an application for approval or an application that may be reviewed under section 82A of the Environmental Planning and Assessment Act 1979
 - the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194
 - a decision under section 356 to contribute money or otherwise grant financial assistance to persons
 - the power of the council under section 455 in relation to attendance at meetings
 - the making of an application, or the giving of a notice , to the Governor or Minister
 - this power of delegation

- any function under this or any other Act that is expressly required to be exercised by resolution of Council

In addition the following functions of Council are excluded from this delegation:

- Adoption of a plan of management for community land;
- The granting of a lease or licence or other estate over community land except where the lease or licence is for a period of less than five (5) years and is consistent with an adopted Plan of Management for the relevant community land;
- Consent to the carrying out of development on community land prescribed by section 47E(1) of the Local Government Act 1993, except developments exempted under Section 47E(2) of the Local Government Act 1993;
- Adoption, amendment or revocation of a local approvals and orders policies;
- Abolition, alteration and naming of Wards (s210 LGA);
- Initiate a proposal to amalgamate or alter boundaries under s218E of the Local Government Act;
- The fixing of annual fees for Councillors and Mayor;
- The determination of the organisation structure and senior staff positions;
- Adoption and amendment of a Code of Meeting Practice (s362/3 LGA)
- Adoption or amendment to Council's Code of Conduct (s440 LGA)
- Sell land for unpaid rates and charges (s713 LGA)
- Any variation to approved expenditure votes except the authority to transfer votes up to a maximum of **\$5,000** between Budget components and programs.

Changes

Delete – \$5,000.

Insert - \$10,000

Note: This change is due to changes of the Budget Control & Authorisation Policy previously adopted by Council.

2. Powers and Legislative Responsibilities

Authority to exercise all of the functions **conferred or imposed on, or delegated to** the Council pursuant to any law, Act including all by-laws, Ordinances and Regulations or instrument of delegation including but not limited to:

A New Tax System (Goods And Services Tax) Act 1999 (Cth)

Anti-Discrimination Act 1977

Coastal Protection Act 1979

Community Land Development Act 1989

Community Land Management Act 1989

Companion Animals Act, 1997

Contaminated Land Management Act, 1997

Crimes Act 1900

Crown Lands Act 1989

Disability Discrimination Act 1992 (Cth)
Disability Services Act 1993
Dividing Fences Act 1991
Dog Act 1966
Dog Regulation 1981
Drainage Act 1939
Environmental Planning & Assessment Act, 1979
Environmental Planning & Assessment Model Provisions 1980
Environmental Planning and Assessment Regulation 1980
Fair Trading Act 1987
Food Act 1989
Food (General) Regulation 1992
Food Production (Safety) Act 1998
Freedom of Information Act 1989
Geographical Names Act 1966
Heritage Act 1977
Impounding Act 1993
Independent Commission Against Corruption Act 1988
Interstate Road Transport Act 1985
Land Acquisition (Just Terms Compensation) Act 1991
Library Act 1939
Local Government Act 1993 and Regulations
Motor Accident Act 1988
Motor Traffic Regulations 1935
National Parks & Wildlife Act 1974
Native Vegetation Conservation Act 1997
Noxious Weeds Act 1974
Noxious Weeds Regulation 1993
Occupational Health & Safety Act, 1988
Ombudsman Act 1974
Ombudsman Amendment (Child Protection And Community Services) Act 1998
Privacy and Personal Information Protection Act 1998
Police Offences Act 1993
Protected Disclosures Act 1994
Protection of the Environment Operations Act 1997
Public Health Act 1991
Public Health Regulation 1991
Public Works Act 1912
Recreation Vehicles (General) Regulation, 1985
Recreation Vehicles Act 1983
Rivers and Foreshores Improvement Act 1948
Roads Act 1993
Rural Fire Act, 1997
Rural Lands Protection Act 1989
State Emergency and Rescue Management Act 1989
State Emergency Services Act and Regulations 1989
State Records Act 1998
Strata Title Act 1973
Summary Offences Act 1988

Changes

Delete – Freedom of Information Act 1989.

Insert – Government Information (Public Access) Act 2009.

Changes

Delete – Protected Disclosures Act 1994.

Insert – Public Interest Disclosures Act 1994.

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

Swimming Pools Act 1992
Threatened Species Conservation Act 1995
Trade Practices Act 1974 (Cth)
Traffic Act 1909
Transport Administration Act 1988
Unclaimed Money Act 1977
Valuation Act 1916
Valuation Regulation 1991
Waste Minimisation and Management Act 1995
Waste Minimisation and Management Regulation 1996
Workers Compensation Act 1987

The delegation to the General Managers is effective from the date of this Instrument of Delegation as authorised by Council.

The common seal of the Port Stephens
Council

Was hereto affixed pursuant to a Resolution of the

Mayor

Council at its meeting of ***** Min *****.

Councillor

ATTACHMENT 2



INSTRUMENT OF DELEGATION TO THE MAYOR

Review Date: 26 June 2001
27 July 2004
25 November 2008

STATUTORY FUNCTIONS

The functions of the Mayor are defined in Section 226 of the Local Government Act 1993 as:

The role of the Mayor is:

- to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council
- to exercise such other functions of the council as the council determines
- to preside at meetings of the council
- to carry out the civic and ceremonial functions of the mayoral office.

Delegations.

Pursuant to Section 377 of the Local Government Act, 1993, Port Stephens Council hereby delegates the following powers, authorities, duties or functions to the person holding the position of Mayor of Port Stephens Council. These delegations are to be exercised according to:

- the requirements of the Local Government Act, 1993, and Regulations thereunder ;
 - the requirements of any other relevant Act, law or regulation;
 - any expressed resolution or policy of Port Stephens Council.
-
- To approve expenditure from the Mayor's Office Component of Council's approved Budget;
 - To authorise the attendance of Councillors at seminars and conferences in accordance with budgetary limitations and Council's Policy on Councillors Reimbursement;

- To determine who should represent Council at civic, ceremonial and social functions where the Mayor is unable to attend and Council has not determined its representative(s)
- To approve use of the Council Chambers and Councillors Rooms by other persons
- To represent Council to the community generally and to be its spokesperson in accordance with Council's policies and decisions;
- **In concurrence with the General Manager, to declare a person a "vexatious complainant" in accordance with Council's Complaints Policy ;**
- To approve or refuse public access applications in accordance with Council's policy and Code of Meeting Practice.
- In the cases of emergency, where it is not practical to wait for the next scheduled meeting of Council, to exercise such functions of the Council as is necessary in the situation, except those functions listed under Section 377 of the Local Government Act 1993 and those regulatory functions under Chapter 7 of the Act. This delegation applies only to those functions properly held by the Council and does not extend to the statutory functions of the General Manager under Section 335 of the Local Government Act 1993.
- To make community awards on the recommendation of the Port Stephens Community Awards Panel and after appropriate consultation with all Councillors.

Specifically, Council hereby delegates, in accordance with Section 377(1) of the Local Government Act 1993, relating to affixing the Council corporate seal the following:-

To affix the corporate seal of Port Stephens Council to all documents necessary for Port Stephens Council to enter into or be a party to any property or commercial transaction, provided that the transaction has already been authorised by specific resolution of Council.

These delegations revoke all previous delegations to the Mayor.

Changes

Delete – In concurrence with the General Manager to declare a person a "vexatious complainant" in accordance with Council's Complaints Policy.

Note: This is an operational issue to be determined by the General Manager in line with Council's policy.

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

The delegation to the Mayor is effective from the date of this Instrument of Delegation as authorised by Council.

The common seal of the Port Stephens
Council

Was hereto affixed pursuant to a Resolution Councillor _____
of the

Council at its meeting of *****Min ***. Councillor _____

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217

78 BROWN STREET, RAYMOND TERRACE

COUNCILLOR: FRANCIS

THAT COUNCIL:

- 1) Liaise with the Department of Housing regarding the laneway leading to Brown Street from Richardson Road, Raymond Terrace. This laneway has been of concern to many of the residents in the Brown Street area since the opening of the 24 hour service station. It is constantly the source of complaints re littering and rubbish and the fences of the neighbours have been damaged.
-

ORDINARY COUNCIL MEETING – 23 AUGUST 2011

310	Councillor Glenys Francis Councillor Caroline De Lyall	It was resolved that Council liaise with the Department of Housing regarding the laneway leading to Brown Street from Richardson Road, Raymond Terrace. This laneway has been of concern to many of the residents in the Brown Street area since the opening of the 24 hour service station. It is constantly the source of complaints re littering and rubbish and the fences of the neighbours have been damaged.
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NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217

EMERGENCY FORESHORE REPAIRS AT CONROY PARK

COUNCILLOR: NELL, DOVER, WESTBURY, WARD

THAT COUNCIL:

- 1) Carry out emergency foreshore repairs at Conroy Park, Corlette, as part of the Foreshore Reserve is about the fall in the water.
-

ORDINARY COUNCIL MEETING – 23 AUGUST 2011

311	Councillor John Nell Councillor Steve Tucker	It was resolved that Council carry out emergency foreshore repairs at Conroy Park, Corlette, as part of the Foreshore Reserve is about to fall in the water.
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BACKGROUND REPORT OF: JOHN MARETICH – CIVIL ASSETS MANAGER, FACILITIES AND SERVICES

BACKGROUND

At present there are no funds allocated for emergency foreshore repairs at Conroy Park Corlette in the 2011/2012 budget. In order to carry out the works in the immediate future a review of the existing 2011/2012 Capital Works Program would be required and funds reallocated and job re-prioritised accordingly. Alternatively these works could be placed in the future work programs.

Staff are currently seeking external funding sources for a site specific foreshore erosion study and remediation works for Conroy Park Corlette.

It should be noted that the Coastal Protection Act as of February 2011 specifies where emergency repairs can be undertaken; however this Act does not include specific the sites within Port Stephens. Therefore the only instrument that Council may use at present to undertake erosion works is through the Part 5 Assessment - Review of Environmental Effects from the Environmental and Planning and Assessment Act.

Though the legalities of using a Part 5 Assessment for emergency works is being checked.

Any proposed works would have to be reviewed by NSW Department of Primary Industries (Fisheries and Aquaculture), NSW Marine Parks Authority and NSW Crown lands and the scope of works would be dependent on their review.

NOTICE OF MOTION

ITEM NO. 3

FILE NO: A2004-0217

OPTIONS AND POSSIBLE FUNDING SOURCES FOR FORESHORE RESTORATION AT 3-7 SOLDIERS POINT ROAD, SOLDIERS POINT

COUNCILLOR: NELL, DOVER, WESTBURY, WARD

THAT COUNCIL:

- 1) Prepare a report on options available and possible funding sources for foreshore restoration at 3 – 7 Soldiers Point Road, Soldiers Point.



ORDINARY COUNCIL MEETING – 23 AUGUST 2011

	<p>Councillor Steve Tucker Councillor John Nell</p>	<p>That Council prepare a report on options available and possible funding sources for foreshore restoration along Soldiers Point Road, Soldiers Point.</p>
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The motion on being put was lost.

**BACKGROUND REPORT OF: JOHN MARETICH – CIVIL ASSETS MANAGER,
FACILITIES AND SERVICES**

BACKGROUND

At present there are no funds allocated for these restoration works in the 2011/2012 Budget.

Without forecasting the recommendations of a future report, it appears that the initial funding options include:

- 1) Deletion of some existing projects in the Capital Works Program and the reallocation of the funds for these erosion works;
- 2) Inclusion of these works for funding in future Capital Works Programs;
- 3) Seeking of Grants;
- 4) Cost sharing agreements with the parties who have an interest in the remediation works;
- 5) Combination of the above.

It should be noted that the Coastal Protection Act as of February 2011 specifies where emergency repairs can be undertaken; however this Act does not include specific the sites within Port Stephens. Therefore the only instrument that Council may use at present to undertake erosion works is through the Part 5 Assessment - Review of Environmental Effects from the Environmental and Planning and Assessment Act.

Though the legalities of using a Part 5 Assessment for emergency works is being checked.

Any proposed works would have to be reviewed by NSW Department of Primary Industries (Fisheries and Aquaculture), NSW Marine Parks Authority and NSW Crown lands and the scope of works would be dependent on their review.

NOTICE OF MOTION

ITEM NO. 4

FILE NO: A2004-0217

STOCKPILING OF WASTE ROAD BASE MATERIAL

COUNCILLOR: MACKENZIE, KAHER, O'BRIEN, TUCKER, JORDAN

THAT COUNCIL:

- 1) Request the Mayor write to the Member for Port Stephens, Mr Craig Baumann, requesting that he broker a meeting with the Minister for Environment and Heritage, the Hon. Robyn Parker MP, concerning Council's issues with the stockpiling of waste road base material.
-

ORDINARY COUNCIL MEETING – 23 AUGUST 2011

312	Councillor Bruce MacKenzie Councillor Steve Tucker	It was resolved that Council request the Mayor write to the Member for Port Stephens, Mr Craig Baumann, requesting that he broker a meeting with the Minister for Environment and Heritage, the Hon. Robyn Parker MP, concerning Council's issues with the stockpiling of waste road base material.
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BACKGROUND REPORT OF: PETER MURRAY – OPERATIONS MANAGER, FACILITIES AND SERVICES

BACKGROUND

- 1) Amendments to the Protection of the Environment Operations Act and related Regulation have resulted in the reuse opportunities for material salvaged from road works being curtailed.
- 2) These restrictions have resulted in the only legal disposal option available in many situations being the haulage and disposal at licensed landfill facilities at a cost of approximately \$180 tonne. Of this charge, \$78.60 per tonne is currently paid to the NSW State Government as a Waste Levy.
- 3) These restrictions and disposal costs have resulted in many Councils' preferring to stockpile these materials at roadside sites knowing that future legal reuse opportunities are limited and therefore the storage of the material is likely to be

MINUTES FOR ORDINARY MEETING – 23 AUGUST 2011

long term. This approach also unfortunately frequently attracts the illegal and unsightly dumping of household wastes by others at these sites.

- 4) The Roads & Traffic Authority has been successful in largely avoiding this issue by gaining an exemption under Part 6 of the Waste Regulation which allows the Authority to reuse material salvaged from road works that pose low environmental risk at other road work sites. Port Stephens Council, like many other Councils have made similar applications without success to date.

There being no further business the meeting closed at 7.17pm.

I certify that pages 1 to 144 of the Open Ordinary Minutes of Council 23 August 2011 were confirmed by Council at its meeting held on 13 September 2011.

.....
Cr Bob Westbury
MAYOR