

Minutes 10 MAY 2011



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 10 May 2011, commencing at 5.30pm.

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

153	Councillor Ken Jordan Councillor Peter Kafer	It was resolved that the apology from Cr Tucker be received and noted.
154	Councillor Bruce MacKenzie Councillor Glenys Francis	It was resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 19 April 2011 and Extra-Ordinary Council meeting of Port Stephens Council held on 29 April 2011 be confirmed.

MINUTES FOR ORDINARY MEETING – 10 MAY 2011

		<p>Cr Glenys Francis declared a less than significant non-pecuniary conflict of interest in Item 6. The nature of the interest being that Cr Francis resides in Raymond Terrace.</p> <p>Cr Francis stated that she lives in Raymond Terrace and the outcome of this item may benefit or affect 12,000 residents and herself.</p>
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INDEX

SUBJECT	PAGE NO
COUNCIL COMMITTEE RECOMMENDATIONS	4
1. DEVELOPMENT APPLICATION FOR DRIVEWAY, ASSOCIATED RETAINING WALLS AND STORMWATER DRAINAGE AT NO. 40 TINGARA ROAD NELSON BAY	5
2. LOCAL TRAFFIC COMMITTEE MEETING – 5 APRIL 2011	25
3. ACQUISITION OF EASEMENT TO DRAIN WATER AT 661 MEDOWIE ROAD MEDOWIE 46	
4. REVIEW OF POLICY – CASH INVESTMENT POLICY	51
5. QUARTERLY BUDGET REVIEW AS AT 31 MARCH 2011	64
6. TRANSFER AND DEDICATION AS ROAD – LOT 1 DP1146105 AT RAYMOND TERRACE ..	
.....	72
7. INFORMATION PAPERS	75
COUNCIL COMMITTEE INFORMATION PAPERS	76
1. CASH AND INVESTMENTS HELD AT 31 MARCH 2011	77
GENERAL MANAGER'S REPORT	82
1. CODE OF CONDUCT INVESTIGATION – CR BRUCE MACKENZIE	83
2. CODE OF CONDUCT INVESTIGATION – CR FRANK WARD.....	91
3. INFORMATION PAPERS	98
GENERAL MANAGERS INFORMATION PAPERS.....	99
1. PETITION FOR SHOAL BAY WHARF	100
2. LOCAL BUSINESS PETITION FOR SHOAL BAY WHARF	103
3. GENERAL MANAGERS PERFORMANCE REVIEW	106

**COUNCIL
COMMITTEE
RECOMMENDATIONS**

ITEM NO. 1

FILE NO: 16-2010-501-1

DEVELOPMENT APPLICATION FOR DRIVEWAY, ASSOCIATED RETAINING WALLS AND STORMWATER DRAINAGE AT NO. 40 TINGARA ROAD NELSON BAY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) That Council consider the draft Conditions that are contained in Attachment 1 of this report.

COUNCIL COMMITTEE MEETING – 3 MAY 2011

RECOMMENDATION:

	<p>Councillor John Nell Councillor Sally Dover</p>	<p>That Council grant consent to the development application for driveway, associated retaining walls and stormwater drainage at No. 40 Tingara Road, Nelson Bay in accordance with the conditions in Attachment 1.</p>
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In accordance with Section 375A of the Local Government Act 1993, a division is required for this item.

Those for the motion: Crs Ken Jordan, John Nell, Caroline De Lyall, Peter Kafer, Glenys Francis, Geoff Dingle, Frank Ward, Sally Dover and Bob Westbury.

Those against the motion: Crs Bruce MacKenzie and Shirley O'Brien.

ORDINARY COUNCIL MEETING – 10 MAY 2011

155	<p>Councillor Bruce MacKenzie Councillor John Nell</p>	<p>It was resolved that Council grant consent to the development application for driveway, associated retaining walls and stormwater drainage at No. 40 Tingara Road, Nelson Bay in accordance with the conditions contained in the Supplementary Information dated 6 May 2011 with amendments to Condition 6 as</p>
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MINUTES FOR ORDINARY MEETING – 10 MAY 2011

		follows – "That construction workers be permitted to use the existing toilet facilities contained on the property."
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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, John Nell, Caroline De Lyall, Peter Kafer, Glenys Francis, Geoff Dingle, Frank Ward, Sally Dover, Bruce MacKenzie, Shirley O'Brien and Bob Westbury

Those against the Motion: Nil.

BACKGROUND

At the Ordinary Meeting on 22 March 2011 Council resolved as follows:

It was resolved that Council indicate its support for the development application for driveway, associated retaining walls and stormwater drainage at No. 40 Tingara Road, Nelson Bay and request the Sustainable Planning Group Manager to bring forward draft conditions in the event that Council resolve to give consent.

The report to the Ordinary Meeting of Council and the consequent resolution are contained within Attachment 2 of this report.

FINANCIAL/RESOURCE IMPLICATIONS

The main implication is the potential of the applicant to lodge an appeal in the Land and Environment Court in relation to any condition that is contained in the formal development consent issued as a consequence of the Council Resolution resulting from this report.

LEGAL AND POLICY IMPLICATIONS

The development application is inconsistent with Council's Policy.

Should the development application be refused, the applicant may appeal to the Land and Environment Court.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Approval of the driveway as proposed is likely to result in safety implications to both the occupants of the allotment and users of the street. No adverse economic implications have been identified. No adverse environmental implications have been identified.

CONSULTATION

The draft conditions result from consultation with a number of Council professional staff including Planning and Development Engineering.

OPTIONS

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

ATTACHMENTS

- 1) Draft Conditions
- 2) Original Report and Council Resolution of 22nd March 2011.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**ATTACHMENT 1
DRAFT CONDITIONS OF CONSENT**

Standard conditions

1. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If council is not appointed as the principal certifying authority then council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to council of intentions to start works approved by this application.
2. Works shall not commence until such time as a Construction Certificate, where necessary, has been issued for the works approved by this application.
3. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in schedule 3, except as modified by the conditions of this development consent or as noted in red by council on the approved plans.
4. Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the protection of the Environment Operations Act 1997.
5. The development application has not been assessed against the provisions of the Building Code of Australia. A section 96 application under the Environmental Planning & Assessment Act 1979 will be required if design amendments are necessary to comply with the provisions of the Building Code of Australia.

Engineering conditions

6. In areas that are disturbed for site filling, all available topsoil shall be stockpiled and re-used at the completion of the earthworks. The topsoil shall be spread evenly and lightly rolled. All disturbed areas shall be stabilised within 14 days of completion of the filling operations with grass cover by either turfing or seeding.

Standard building conditions

7. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

8. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from council.
9. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-
 - * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * no construction work to take place on Sunday or public holidays.When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the background by more than 10db(a). All possible steps should be taken to silence construction site equipment.
10. It is the responsibility of the applicant to erect a pca sign (where council is the pca, the sign is available from council's administration building at Raymond terrace or the Tomaree library at salamander bay free of charge). The applicant is to ensure the pca sign remains in position for the duration of works.

Conditions relating to issue of Construction Certificate

Engineering

11. Details are to be provided by a suitably qualified engineer with practical experience in surface texture and/or slip/skid resistance recommending suitable treatments for the surface of the driveway (where over 25% in gradient) to increase slip resistance of vehicles for wet and dry weather condition. Those recommendations are to be implemented into the construction plans and constructed as part of the development. Details are to be approved by the principal certifying authority or council prior to issue of a construction certificate
12. The vehicle driveway along the full length of the right of carriageway / battleaxe handle shall be constructed as follows:
 - i) a minimum trafficable width of 3 meters
 - ii) the constructed driveway (trafficable width) shall have an offset of 300mm or greater from obstructions higher than 150mm.
 - iii) concrete consisting of a minimum thickness of 125mm on a compacted sub base and reinforced with a minimum of f72 mesh fabric, or

Full details, shall be approved by an accredited certifier or council prior to issue of the construction certificate.

13. Grated drains are to be provided at the property alignment across the full width of the proposed driveway. Details are to be approved prior to issue of the construction certificate.
14. The extension of the public road within the road reserve is subject to a roads act approval. Details shall be approved by the roads authority prior to issue of the construction certificate for works within the site.
15. Submission of works-as-executed plans and report prepared and certified by a suitability qualified engineer confirming all driveway and manoeuvring areas (levels, grades, location) are built in accordance with conditions of consent and the approved plan.

Minor variations in height can be certified providing they are clearly identified in the report and the engineer certifies that drainage flow paths are not compromised and vehicles will not bottom out.

The documents shall be submitted to, and accepted by the certifying authority, prior to issue of the occupation certificate.

16. All works as listed as conditions of development consent, which are located in public roads are subject to approval under section 138 of the roads act 1993. Engineering details in accordance with council's subdivision and development code, of such works shall be submitted with a roads act application form and then approved by council prior to approval to commence these works and prior to issue of the construction certificates.

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

- A) traffic control plans in accordance with the roads and traffic authority – traffic control at worksites manual;
 - B) payment of fees and bonds (same principle certifying authority fees, inspection fees and maintenance bonds as relevant to subdivisions);
 - C) contractors public liability insurances to a minimum value of \$10 million dollars.
17. The following fees and/or bonds are to be paid as part of this consent:
 - A) subdivision construction certificate/plan approval fee, prior to approval of construction certificate or plans.
 - B) pca/inspection fee, prior to approval of construction certificate or plans.

- C) long service levy, prior to issue of construction certificate (verification of payment is required if paid directly to long service board)
- D) maintenance bond, prior to release of subdivision certificate.
- E) street tree bond/contribution, prior to release of subdivision.

The rates are as listed in council's fees and charges. Contact council's subdivision engineer prior to payment.

18. Works associated with the approved plans and specifications located within the existing road reserve shall not commence until:

- i) a Roads Act Approval has been issued, and
- ii) all conditions of the Roads Act Approval have been complied with to council's satisfaction.

19. All civil engineering works associated with the roads act approval shall be carried out to the satisfaction of council (with a letter of practical completion issued) prior to issue of the subdivision certificate or occupation certificate.

All works associated with the Roads Act Approval shall be at no cost to council.

20. Works associated with the Roads Act Approval are subject to:

- A. Inspection by council;
- B. Testing by a registered NATA Laboratory; and
- C. Approval by council at each construction stage

As determined by council.

General advices

- A) access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- B) this approval relates to development consent only and does not infer any approval to commence excavations or building works upon the land. A construction certificate should be obtained prior to works commencing.
- C) should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work shall cease and the national parks and wildlife service shall be consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the national parks and wildlife act 1974.
- D) the developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or

indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

Schedule 3 – approved plans and documentation

- Statement of environmental effects prepared by Emma Pinniger dated 17/03/10
- Stamped plans prepared by HSS Structural and Civil Engineers, dwg: 187e/10
 - access and driveway plan, sheet: 1, rev: 2, dated 8/11/2010
 - centreline long section 1, sheet: 2, rev: 1, dated 30/06/2010
 - centreline long sections 2 & 3 and cross sections, sheet: 3, rev: 2, dated 8/11/2010

ATTACHMENT 2
ORIGINAL REPORT AND COUNCIL RESOLUTION OF MARCH 22ND 2011

ORDINARY COUNCIL - 22 MARCH 2011

ITEM NO. 2

FILE NO: 16-2010-501-1

DEVELOPMENT APPLICATION FOR DRIVEWAY, ASSOCIATED
RETAINING WALLS AND STORMWATER DRAINAGE AT NO. 40
TINGARA ROAD NELSON BAY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Development Application 16-2010-501-1 for the following reasons.
 - The Development is inconsistent with the requirements of Australian Standard AS 2890.1 – Parking Facilities, Off Street Car parking.
 - The development is inconsistent with Councils standard drawing s105A – Standard Vehicular Crossing Driveway Profiles.
 - It is considered that B85 vehicles will experience difficulties in negotiating proposed driveway gradient.
 - Vehicles may not hold on grade if pavement is wet. Sufficient details to demonstrate vehicles can come to a stop on the grade during wet conditions have not been provided.
 - The proposed gradient cannot be easily negotiated on foot.
 - The safety of the occupants and those using the street was not considered by the application.
 - A vehicle with a high centre of gravity could tip when reversing from the flat section behind the house to the graded section of the driveway. Sufficient details to demonstrate the appropriateness of this access have not been provided.
 - The development is inconsistent with Section B6 and C5 of Development Control Plan 2007 in terms of depth of cutting on site.

COUNCIL COMMITTEE MEETING – 15 MARCH 2011

RECOMMENDATION:

	Councillor Sally Dover Councillor Shirley O'Brien	That Item 2 be deferred to the Ordinary meeting of Council with conditions of consent to approve the development application to be provided.
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ORDINARY COUNCIL - 22 MARCH 2011

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

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

Those against the motion: Nil.

**ORDINARY COUNCIL MEETING – 22 MARCH 2011
RESOLUTION:**

COUNCIL COMMITTEE – 15 MARCH 2011

ITEM NO. 2

FILE NO: 16-2010-501-1

**DEVELOPMENT APPLICATION FOR DRIVEWAY, ASSOCIATED
RETAINING WALLS AND STORMWATER DRAINAGE AT NO. 40
TINGARA ROAD NELSON BAY**

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

RECOMMENDATION IS THAT COUNCIL:

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 - The proposed gradient cannot be easily negotiated on foot.
 - The safety of the occupants and those using the street was not considered by the application.
 - A vehicle with a high centre of gravity could tip when reversing from the flat section behind the house to the graded section of the driveway. Sufficient details to demonstrate the appropriateness of this access have not been provided.
 - The development is inconsistent with Section B6 and C5 of Development Control Plan 2007 in terms of depth of cutting on site.

This item was deferred from the Ordinary Council Meeting of 8 February 2011 (ATTACHMENT 3) to allow for a Councillor site inspection and for further information to be provided in respect to the potential of future subdivision (ATTACHMENT 4).

COUNCIL COMMITTEE – 15 MARCH 2011

BACKGROUND

The purpose of this report is to present a development application to Council for determination as requested by Councillor Mackenzie for the reason, "for Council to make a decision".

The development application seeks consent for the construction of a driveway, associated retaining walls and stormwater drainage.

The site is zoned 2(a) – Residential, with development for a driveway ancillary to a residential dwelling permissible within the zone subject to consent.

The development site is located within an existing residential area and is contained within the Hill Tops Area of the Nelson Bay West planning precinct.

The site has a frontage to Tingara Road and currently contains a single residential dwelling with associated parking adjacent to Tingara Road. The site is bound by vacant residential land to the sides and vegetated open space to the rear. The site is heavily vegetated and steeply sloping having a rise of approximately 25m over the 60m depth of the allotment.

The key issues associated with this proposal are;

- Non compliance with Councils Standard Drawing S105A,
- Non Compliance with Australian Standard AS2890.1 – Parking Facilities, Off Street Car parking,
- Steep site grades,

An assessment of these issues is provided within the attachments.

The development application was submitted to Council on the 29th July 2010 with the notification period extending until the 1st September 2010. Additional detail and justification was sought from the applicant in August 2010, with the amended plans subject to this report being submitted to Council on the 9th November 2010.

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL AND POLICY IMPLICATIONS

The development application is inconsistent with Council's Policy.

Should the development application be refused, the applicant may appeal to the Land and Environment Court.

COUNCIL COMMITTEE – 15 MARCH 2011

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Approval of the driveway as proposed is likely to result in safety implications to both the occupants of the allotment and users of the street.

No adverse economic implications have been identified.

No adverse environmental implications have been identified.

CONSULTATION

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

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan.
- 2) Assessment.
- 3) Council Report – 8 February 2011
- 4) Councillors Memorandum – Future Subdivision potential

COUNCILLORS ROOM

Plans

-Accessway/Driveway Plan, prepared by HSS Structural and Civil Engineers Sheet: 1, Issue: 2, dated: 8/11/2010, Dwg: 187E/10

-Centreline Long Section 1, prepared by HSS Structural and Civil Engineers Sheet: 2, Issue: 1, dated: 30/06/2010, Dwg: 187E/10.

-Centreline Long Sections 2 & 3 and Cross Sections, prepared by HSS Structural and Civil Engineers Sheet: 3, Issue: 2, dated: 8/11/2010, Dwg: 187E/10.

Statement of Environmental Effects

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



COUNCIL COMMITTEE – 15 MARCH 2011

**ATTACHMENT 2
ASSESSMENT**

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

THE PROPOSAL

The development application seeks consent for the construction of a driveway, associated retaining walls and stormwater drainage.

THE APPLICATION

Owner	Mr R A & Mrs K A Napier
Applicant	Le Mottee Group Pty Ltd
Detail Submitted	Driveway Plans, Statement of Environmental Effects

THE LAND

Property Description	Lot 639 DP 9165
Address	40 Tingara Road, Nelson Bay
Area	1151m ²
Dimensions	Generally rectangular in shape, 24.385m frontage, 15.24m width at the rear. Depth of the block ranging from 57.56m to 59.35m
Characteristics	Steeply sloping block having a rise of approximately 25m over the 60m depth of the allotment.

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	2(a) – Residential A Zone
Relevant Clauses	16 – Residential Zonings
Development Control Plan	B3 – Traffic and Parking C5 – Nelson Bay West
State Environmental Planning Policies	71

COUNCIL COMMITTEE – 15 MARCH 2011

State Environmental Planning Policy No 71 – Land and Coastal Protection

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

The development for the purposes of a driveway, retaining walls and drainage has been considered against the requirements of clauses 7 and 8 and it is considered that the development is consistent with these requirements and the objectives of SEPP71.

Port Stephens Local Environmental Plan 2000

The development site is zoned 2(a) – Residential and development for the purposes of a driveway ancillary to a residential dwelling is permissible in the zone with the consent of Council.

Port Stephens Development Control Plan 2007

Section B3 – Traffic and Parking

The development is considered to be inconsistent with the following clauses.

B3.C11 – Driveways must be constructed in accordance with Council's standard drawings and approved by council under the Roads Act.

The development has grades of up to 42%. Australian Standard AS2890.1 allows for grades of up to 20% while Council's standard drawing S105A allows for a maximum 25% grade.

The development as proposed exceeds these requirements for maximum grade. The applicant has not demonstrated that the proposed driveway will be able to be negotiated by an 85th percentile vehicle.

B3.C20 – When the access driveway length exceeds 30m sight distance is reduced, or the road frontage is to a collector or distributor road the driveway width must be increased to 5.5m for the 6m inside the property boundary.

The driveway exceeds 30m in length, however does not provide the required increase in trafficable width during the first 6m.

Section B6 – Single and Dual Occupancy Dwellings

B6.C39 – Earthworks for cut and fill must not alter natural ground level by more than 1m at any point.

Cross Section 2, at the top of the access way indicates levels of cut up to 2.81m in depth. The extent of earthworks proposed is excessive and inconsistent with the DCP.

B6.C41 – The height of any retaining wall must not exceed 1.5m

COUNCIL COMMITTEE – 15 MARCH 2011

The development has cuts of up to 2.81m and as such is inconsistent with the requirements of B6.C41.

B6.C43 – Within 2m of the site boundary the height of a retaining wall must not exceed 750mm.

The areas of 2.81m cut are located within 2m of the site boundary. The development has not demonstrated it is consistent with this requirement.

C5 – Nelson Bay West

C5.4.4 – Fencing and Retaining Walls

- *The maximum height of any cut or fill at the site boundary shall be 600mm where the development is 1300mm or less from the boundary. This may extend to 900mm where the setback is proposed at a greater distance.*
- *Terracing and Retaining walls are not to be more than 1.2m in height.*

The development has cuts of up to 2.81m and as such is inconsistent with the requirements of section C5.4.4

2. Likely Impact of the Development

Approval of the application as proposed would result in the construction of a driveway that is far in excess of the maximum grades permissible under Australian Standard 2890.1 and Council's Standard Drawing S105A.

Details have not been submitted to demonstrate that an 85th percentile vehicle is capable of negotiating the drive.

3. Suitability of the Site

It is considered that due to the excessive site grades, the site is unsuitable for the construction of a driveway to give access to the rear of the dwelling.

4. Submissions

Nil

5. Public Interest

It is not considered to be in the public interest to approve this application.

COUNCIL COMMITTEE – 15 MARCH 2011

ATTACHMENT 3

COUNCIL COMMITTEE MEETING – 1 FEBRUARY 2011

RECOMMENDATION:

	<p>Councillor John Nell Councillor Glenys Francis</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Defer the report to allow for a site inspection by Councillors. 2. Further information be provided by Sustainable Planning Group Manager with respect to the potential for future subdivision.
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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: Peter Kafer, Glenys Francis, Caroline De Lyall, Bob Westbury, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Ken Jordan.

Those against the Motion: Nil.

ORDINARY COUNCIL MEETING – 8 FEBRUARY 2011

<p>003</p>	<p>Councillor John Nell Councillor Bruce MacKenzie</p>	<p>It was resolved that the Council Committee recommendation be adopted.</p>
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

ATTACHMENT 4



116 Adelaide Street, Raymond Terrace NSW 2324
PO Box 42, Raymond Terrace NSW 2324
DX 21406 | ABN 16 744 377 876



Councillor Memorandum

To: Councillors
From: Matthew Brown – Manager Development Assessment and Environmental Health
Date: 3 March, 2011
File No: 16-2010-501-1
Subject: Subdivision Potential of 40 Tingara Road, Nelson Bay

Background

The subject application was presented to Councils Ordinary Meeting on 8 February 2011 with a recommendation for approval. Council resolved to;

2. Further information be provided by Sustainable Planning Group Manager with respect to the potential for future subdivision.

Subdivision Potential

Port Stephens Local Environmental Plan 2000

The following clauses of the Port Stephens Local Environmental Plan 2000 (LEP) apply to the subject allotment in respect to subdivision.

Clause 16 – Residential Zones

The subject site is zoned 2(a) – Residential under the provisions of Clause 16. Clause 16 of the LEP states that Subdivision of 2(a) land is permissible with development consent.

Clause 17 – Subdivision in Residential Zones

The subject site is located within the "Hill Tops" precinct of the Nelson Bay West Planning Area which has specific controls for development. Clause 17 of the LEP sets the parameters for subdivision in residential zones and states;

(3) Consent for the subdivision of land in the Hill Tops precinct of the Nelson Bay (West) Area to create an allotment with an area of less than 600m² that is, in the opinion of the consent authority, intended to be used for the purpose of residential housing, is to be granted only if consent has been granted for the erection of a dwelling on that allotment.

The subject allotment contains a site area of 1151m². Subdivision of this subject allotment is permissible, however should an allotment be created under 600m² an application for a dwelling would be required on the proposed allotment. This would constitute a Dual Occupancy Development.

COUNCIL COMMITTEE – 15 MARCH 2011

Clause 19 – Dwelling Houses, dual occupancy housing and urban housing

Clause 19 sets the controls for Dual Occupancy Development in the 2(a) zone. In the "Hill Tops" precinct, development for the purposes of Dual Occupancy Housing is prohibited.

Port Stephens Development Control Plan 2007

The following clauses of the Port Stephens Development Control Plan 2007 (DCP) apply to the subject site in respect to subdivision.

Clause B1.C7 – Any application to subdivide a lot with a slope greater than 25% must be accompanied by an application for the proposed dwelling or dwellings unless it can be demonstrated that access and building envelopes can be achieved on areas of less than 25% slope.

The development site is generally steeper than 25% and it is considered that dwelling plans and access would be required to be demonstrated in an area of less than 25% slope. Significant cut/fill would be required to achieve this at the rear of the subject site.

Recommendation

Subdivision of the subject allotment is permissible under the provisions of the LEP providing any proposed allotment is greater than 600m².

However, should the slope of the site be determined to be greater than 25%, then the application would be required to include a dwelling. In this instance the application would then be considered a Dual Occupancy which is prohibited on the site.

ITEM NO. 2

FILE NO: A2004-0511

LOCAL TRAFFIC COMMITTEE MEETING – 5 APRIL 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 April 2011

COUNCIL COMMITTEE MEETING – 3 MAY 2011

RECOMMENDATION:

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

	<p>Councillor John Nell Councillor Shirley O'Brien</p>	<p>That Option 3 be adopted with respect to Item 603_04/11 and the construction be similar to those at Foreshore Drive.</p>
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The amendment was lost.

Cr Nell recorded his vote against the recommendation.

MATTER ARISING

	<p>Councillor John Nell Councillor Bruce MacKenzie</p>	<p>That Council refer the matter of extending the concrete median strip towards the roundabout at Bunnings on Port Stephens Drive to the Local Traffic Committee for consideration.</p>
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ORDINARY COUNCIL MEETING – 10 MAY 2011

<p>156</p>	<p>Councillor Ken Jordan Councillor Peter Kafer</p>	<p>It was resolved that the recommendation be adopted.</p>
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AMENDMENT

	Councillor John Nell Councillor Bruce MacKenzie	That Option 3 be adopted with respect to Item 603_04/11 and the construction be similar to those at Foreshore Drive.
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The amendment was lost.

Cr Nell recorded his vote against the recommendation.

MATTER ARISING

157	Councillor Ken Jordan Councillor Peter Kafer	It was resolved that Council refer the matter of extending the concrete median strip towards the roundabout at Bunnings on Port Stephens Drive to the Local Traffic Committee for consideration.
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The meeting was adjourned at 5.40pm due to the emergency evacuation alarm be activated. All persons present at the meeting were evacuated to the assembly point.

The meeting re-commenced at 5.55pm with all those present prior to the evacuation being in attendance.

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.

Additional consultation was undertaken for agenda items C.3 – Anna Bay Public School and C.4 – NSW Police.

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.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

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

Present:

Mr Craig Baumann MP, Cr Peter Kafer, Cr Geoff Dingle, Snr Const John Simmons NSW Police, Mr Terry Fogg – Port Stephens Coaches, Mr Joe Gleeson (Chairperson), Mr Graham Orr – Port Stephens Council

Apologies:

Cr Bob Westbury – Mayor, Mr Bill Butler – RTA, Ms Lisa Lovegrove, Ms Michelle Page – Port Stephens Council

A. ADOPTION OF MINUTES OF MEETING HELD 1ST MARCH, 2011

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 APRIL, 2011**

- A. ADOPTION OF THE MINUTES OF 1ST MARCH, 2011
- B. BUSINESS ARISING FROM PREVIOUS MEETING
- C. LISTED MATTERS
- 11_04/11 AVENUE OF THE ALLIES TANILBA BAY – REQUEST FOR BETTER SIGNAGE AT THE INTERSECTION OF KING ALBERT AVENUE, DIGGERS DRIVE AND AVENUE OF THE ALLIES
- 12_04/11 VICTORIA PARADE NELSON BAY – INSTALLATION OF RESIDENT PARKING AT THE EASTERN END OF THE VICTORIA PARADE TICKET PARKING AREA
- 13_03/11 OLD MAIN ROAD ANNA BAY - INSTALLATION OF A DROP-OFF ZONE AT ANNA BAY PUBLIC SCHOOL
- 14_04/11 WILLIAM STREET RAYMOND TERRACE - ALTERATIONS TO PARKING RESTRICTIONS AT THE NEW POLICE STATION
- D. INFORMAL MATTERS
- E. GENERAL BUSINESS
- 603_04/11 WALLAWA ROAD NELSON BAY – COUNCILLOR RESOLUTION REGARDING THE SPEED CUSHIONS IN WALLAWA ROAD
- 604_04/11 FERODALE ROAD MEDOWIE – COMPLAINT REGARDING THE NEED FOR INFRASTRUCTURE TO BE PROVIDED AT NEW BUS STOPS
- 605_04/11 MEDOWIE ROAD MEDOWIE – INVESTIGATION OF PARK AND RIDE POSSIBILITIES AT THE RICHARDSON ROAD ROUNDABOUT

C. Listed Matters

Item: 11_04/11

AVENUE OF THE ALLIES TANILBA BAY – REQUEST FOR BETTER SIGNAGE AT THE INTERSECTION OF KING ALBERT AVENUE, DIGGERS DRIVE AND AVENUE OF THE ALLIES

Requested by: Ms Fran Corner

File: 134893-2011

Background:

The intersection of the above streets is complex due to the nature of the subdivision design. The hexagonal design can be confusing for drivers with priorities unclear. Council has long-term plans to construct a roundabout at this intersection which would address the issues but currently there are no funds available and priority is low.

Comment:

The Traffic Inspection Committee noted that the intersection is poorly designed with multiple roads converging and that the current configuration is the only workable solution.

Police advise no accidents that they are aware of and Council's accident database also shows no reported accidents, at this location.

Legislation, Standards, Guidelines and Delegation:

NSW Road Rules – Rule 67 - Stopping and giving way at a stop sign or stop line

RTA signs database – R1-1

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

Recommendation to the Committee:

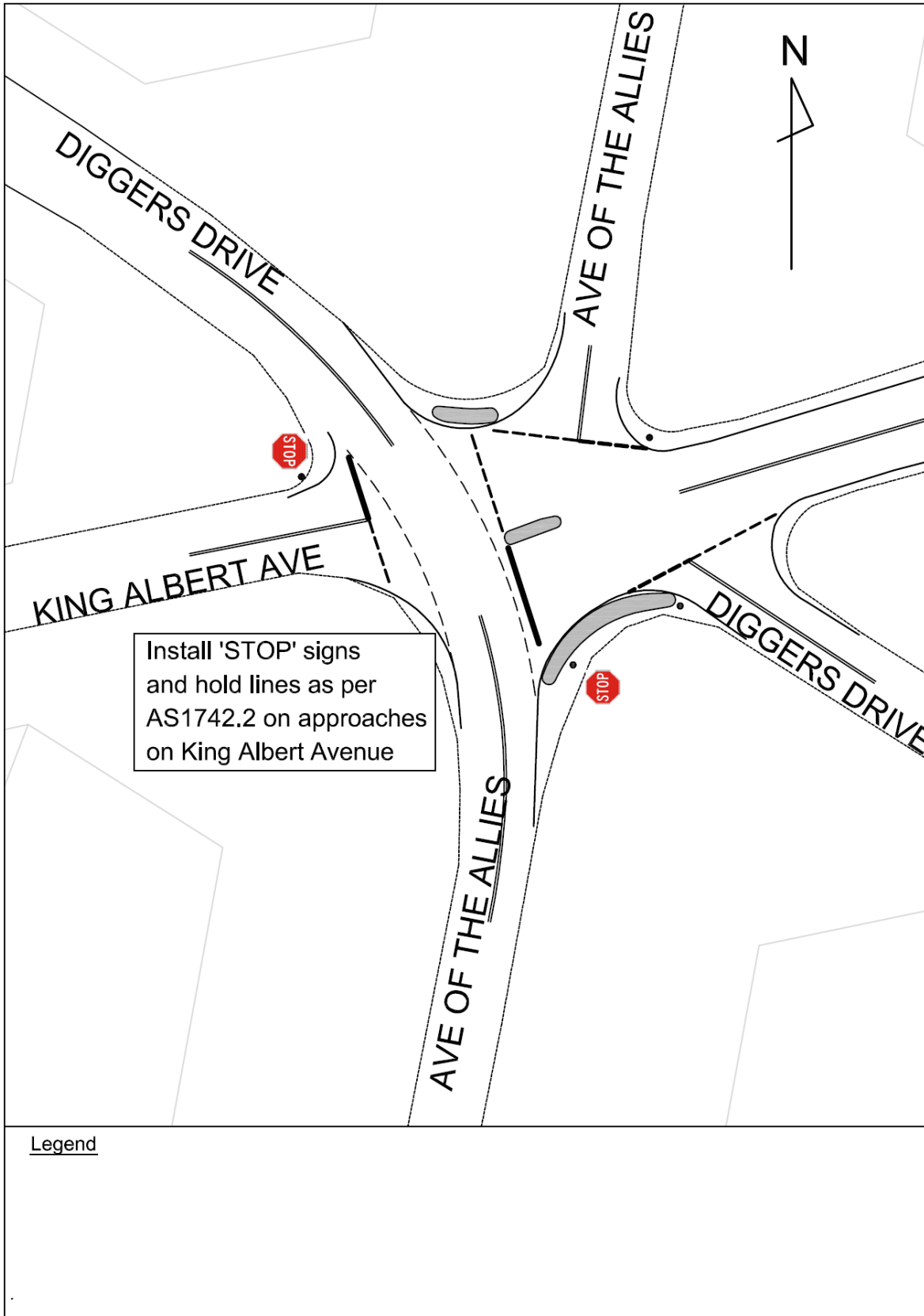
Change the existing 'Give Way' restrictions on the King Albert Avenue legs to 'Stop' and install linemarking as shown on the attached sketch, Annexure A.

Discussion:

The intersection meets the warrant for installation of 'Stop' signs as detailed in AS1742.2, clause 2.5.5(b)

Support for the recommendation:

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



Item: 12_04/11

VICTORIA PARADE NELSON BAY – INSTALLATION OF RESIDENT PARKING AT THE EASTERN END OF THE VICTORIA PARADE TICKET PARKING AREA

Requested by: Port Stephens Council

File:

Background:

The existing resident parking area is located on the southern side of Victoria Parade and not adjacent to the properties of current permit holders. The section of parking on the eastern end of Victoria Parade is not generally in high demand and is directly opposite the properties of the majority of permit holders.

Comment:

Legislation, Standards, Guidelines and Delegation:

NSW Road Rules – Rule 207-3, (6), (e) – Meaning of certain information on or with permissive parking signs

AS 1742.11 (Parking Controls)

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

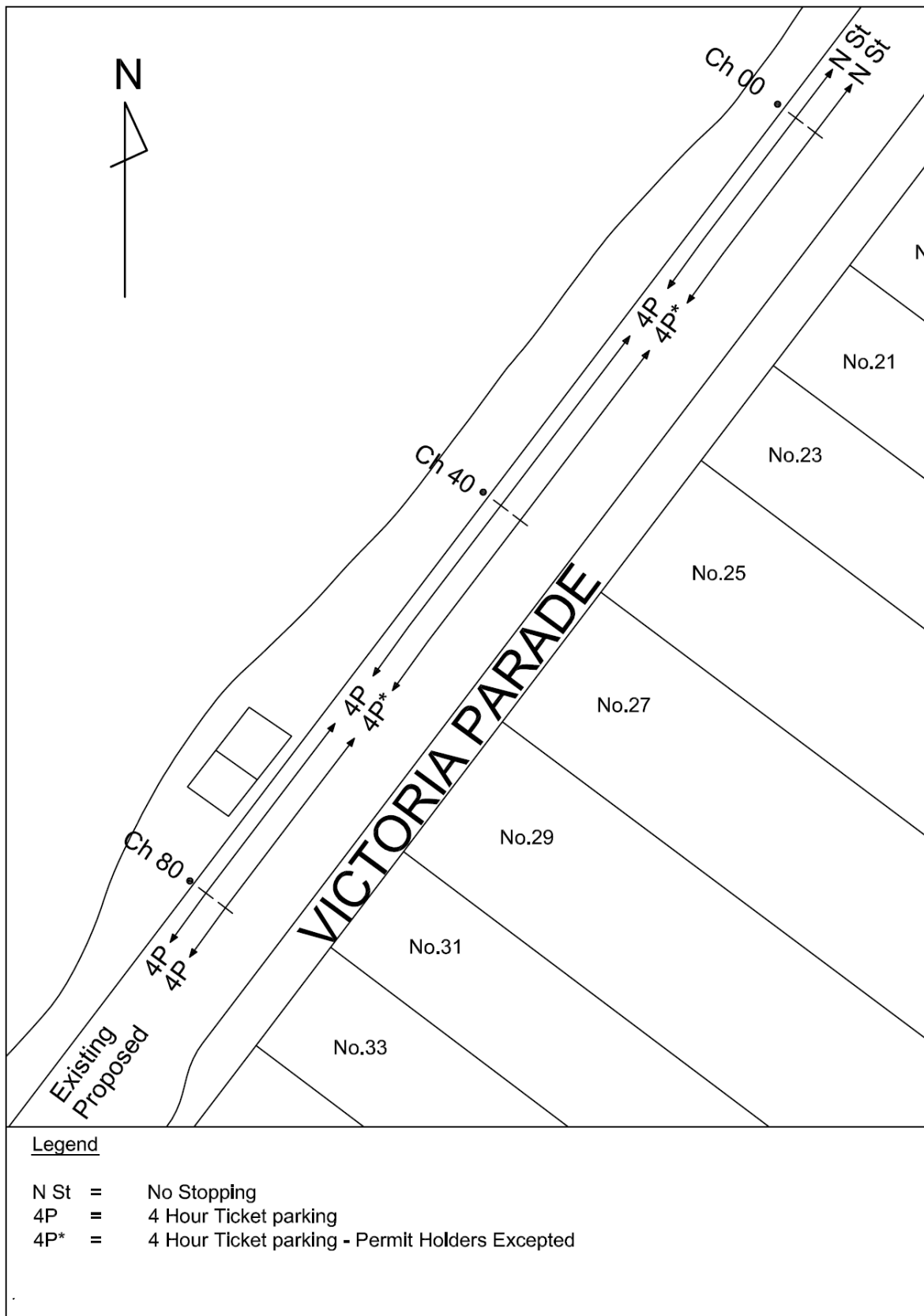
Recommendation to the Committee:

Install 'Permit Holders Excepted' on the existing ticket parking signs in Victoria Parade, 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	



Item: 13_04/11

OLD MAIN ROAD ANNA BAY - INSTALLATION OF A DROP-OFF ZONE AT ANNA BAY PUBLIC SCHOOL

Requested by: Lisa Lovegrove - PSC

File: PSC2005-4189/039

Background:

The principal of Anna Bay Public School has requested installation of a drop-off zone and associated parking restrictions adjacent to the school entrance on Old Main Road, Anna Bay.

Comment:

Port Stephens Council has recently sealed Old Main Road at the rear of the school and as a result more parents are now using this access to the school.

Legislation, Standards, Guidelines and Delegation:

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

RTA signs database – R5-400, R5-41

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

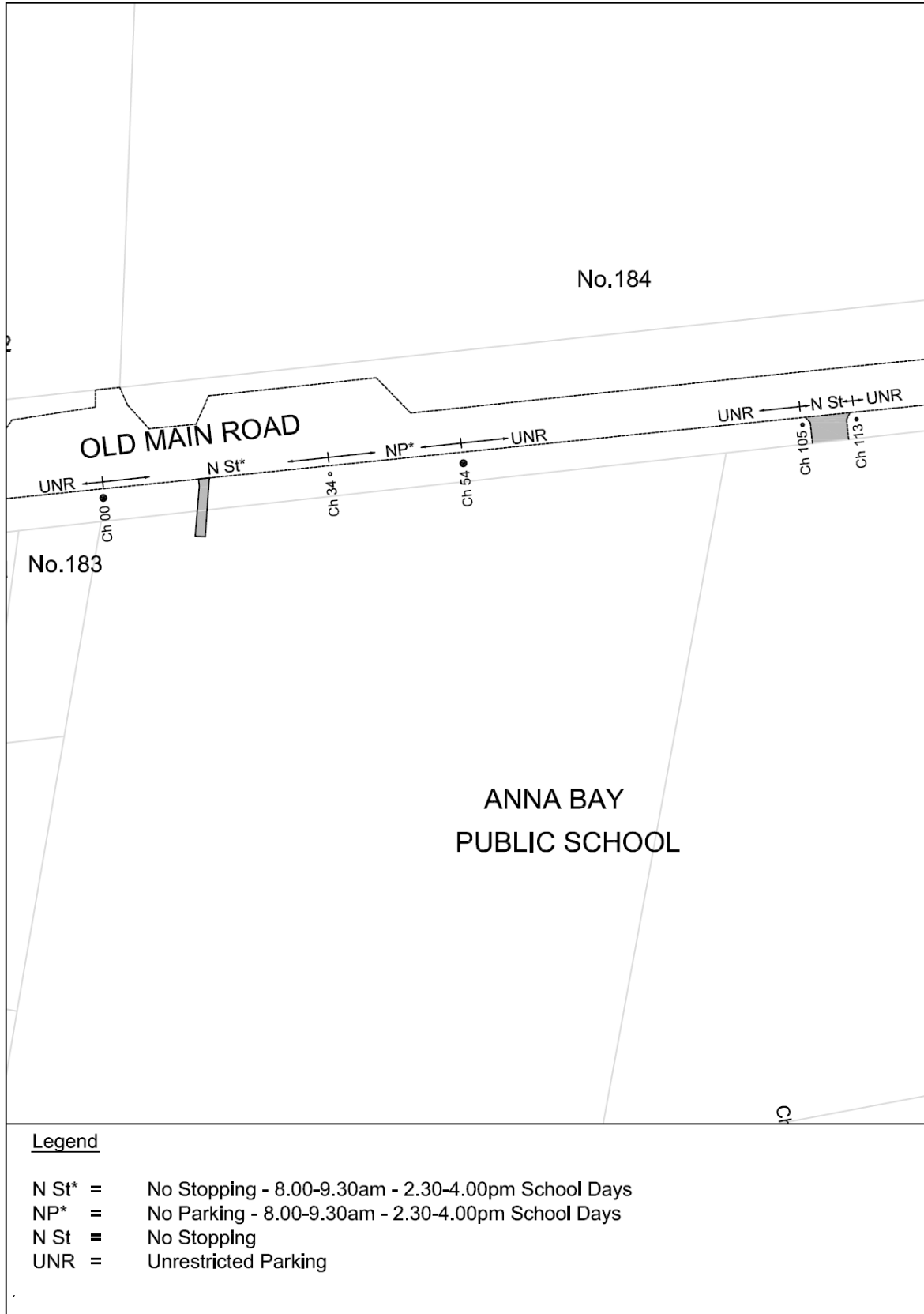
Recommendation to the Committee:

Approve installation of part-time 'No Parking' restrictions and 'No Stopping' restrictions in Old Main Road, Anna Bay, 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	



Item: 14_04/11

WILLIAM STREET RAYMOND TERRACE - ALTERATIONS TO PARKING RESTRICTIONS AT THE NEW POLICE STATION

Requested by: NSW Police

File:

Background:

The new Police Station is nearing completion and provision is required to ensure that parking is available for operational Police vehicles on-street.

Comment:

Most Police vehicles will park off-street beneath the new station however some vehicles are required to be parked on-street for emergency response. In addition, it is proposed to take this opportunity to rearrange on-street parking to maximise the parking available.

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

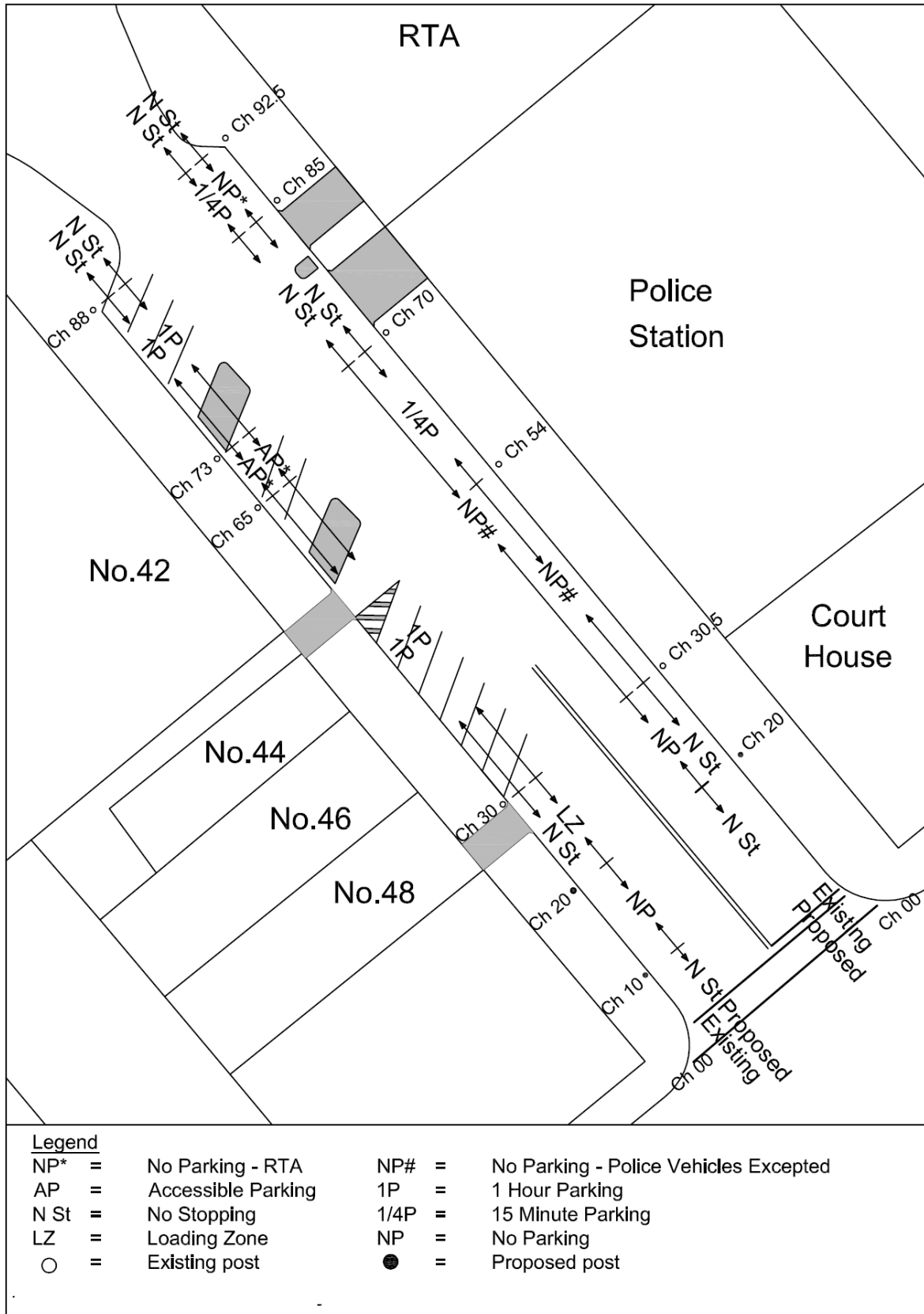
Recommendation to the Committee:

Install parking restrictions at the new Police Station in William Street Raymond Terrace, as shown on the attached sketch, Annexure A.

Discussion:

Support for the recommendation:

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



D. Informal Items

E. General Business

Item: 603_04/11

WALLAWA ROAD NELSON BAY – COUNCILLOR RESOLUTION REGARDING THE SPEED CUSHIONS IN WALLAWA ROAD

Requested by: Port Stephens Councillors

File: Council Minute 060 - 2011

Background:

Port Stephens Councillors passed the following resolution at the ordinary Council meeting held 8th March 2011: *It was resolved that Council refer the matter of replacing the temporary speed humps in Wallawa Road to the Local Traffic Committee along with the geotechnical report that is being prepared.*

The Port Stephens Local Traffic Committee meeting held November 2010, recommended that the speed cushions were to remain indefinitely in Wallawa Road. The results from the speed and volume surveys indicating reductions in the speed and volume of traffic using Wallawa Road and the absence of any reported traffic accidents in the last 12 months justifies the speed cushions remaining. The Committee also recommended that Council improve the central delineation to overcome the issue of vehicles being able to avoid the speed cushions by driving along the centre of the road.

Comment:

The Committee recommendation to improve the delineation has proven difficult with different attempts failing so far. Flexible bollards were trialled initially but were vandalised and removed using power tools. Another attempt using flexible 'Keep Left' markers was also vandalised almost immediately by drivers targeting them so that they were made unsafe and had to be removed.

The difficulties in gaining acceptance of the speed cushions by a minority of drivers has led for calls from Councillors to replace the speed cushions with full-width speed humps similar to those in Foreshore Drive. This would overcome the issue of drivers avoiding the speed cushions by driving down the centre of the road but there are other risks that should be considered prior to any permanent installation.

An assessment of the options and associated risks is attached for information.

Recommendation to the Committee:

For discussion

Discussion:

The geotechnical advice received by Council stated that full-width speed humps would be unlikely to result in excessive vibrations that would result in property damage being experienced in properties along Wallawa Road. This does not mean that there will be no noise or vibrations but that property damage is unlikely.

Committee members questioned the impact that full-width speed humps would have on buses. The existing speed cushions are the preferred treatment for bus routes with minimal impact on buses and their passengers. Full-width speed humps would certainly slow buses but would impact on passengers and would increase noise and vibration impacts on residents.

Port Stephens Coaches advise that bus services have been reduced substantially in Wallawa Road as part of the recent bus service review and in response to resident complaints. With the opening of Spinnaker Way through Vantage Estate, some services now turn into Bagnall Beach Road and Government Road rather than continuing along Spinnaker Way into Wallawa Road. The number of public route services in Wallawa Road is now 6 on week days and 2 on weekends, with the number of services in Wallawa Road effectively being halved.

Committee members approved the risk assessment document supplied and recommended that option 1 be adopted by Council.

Committee' s recommendation:

That option 1 be adopted, that being:

Retain the existing speed cushions with the addition of suitable vandal-proof treatment to deter drivers from avoiding the speed cushions by driving along the centre of the road.

Annexure A

Identification of the risks associated with the options available:

Option 1 – Retain existing speed cushions

This option entails leaving the speed cushions as they are with the addition of a suitable vandal proof treatment to prevent drivers avoiding them by driving down the middle of the road.

Risks:

Customer dissatisfaction – residents have complained to Councillors and council staff about the ineffectiveness of the speed cushions and the risk of traffic accidents caused by people driving down the middle of the road. No complaints have been received in recent months by Council however this may be because residents are waiting for action by Council.

Safety – Safety was raised as a primary issue by the resident's action group when the speed cushions were first proposed. The concerns raised by residents of head-on vehicle crashes occurring at the speed cushions is overstated with good sight distance available at all speed cushions meaning that any head-on crash would be a deliberate decision by drivers.

Option 2 – Remove the existing speed cushions

This option entails removing the speed cushions and returning the road to the former conditions

Risks:

Customer dissatisfaction – Resident complaints led initially to the trial installation of speed cushions in Wallawa Road. Removing the speed cushions and returning the street to the former conditions would be seen by some residents as Council giving up on improving traffic conditions in Wallawa Road. Some residents would be happy to see the speed cushions removed as significant numbers of residents have opposed them from the start.

Safety – Safety was raised as the driving issue by the resident's action group when the speed cushions were first proposed. Council accident records do not support this as a major concern however traffic volumes and speeds measured in Wallawa Road prior to the installation of speed cushions were above the normal target range for a local street such as Wallawa Road.

Option 3 – Installation of full-width speed humps

This option entails removing the speed cushions and replacing them with full-width speed humps similar to those installed in Foreshore Drive, Corlette.

Risks:

Customer dissatisfaction – A significant number of respondents to Council's surveys have opposed traffic calming and a more severe type of treatment such as full-width speed humps may lead to complaints from road users as occurred initially in Sergeant Baker Drive.

Safety – Installation of full-width speed humps may lead to drivers attempting to avoid the speed humps by driving onto the footpath and increasing risk to pedestrians and residents. The observed driver behaviour in Wallawa Road has shown that a percentage of drivers will use any means to avoid the existing speed cushions including driving down the middle of the road and vandalising the centre treatments to allow this. The layback kerb in Wallawa Road would allow vehicles to easily mount the footpath unless fencing or barriers are provided to prevent this. This in turn will increase costs significantly and will impact on resident's property access.

Increased noise and vibration – Residents have complained to Council that they are experiencing vibrations in their properties from the speed cushions. It is expected that full-width speed humps will increase the potential for vibration as speed humps are a

much more severe treatment that cannot be easily avoided by motorists. A geotechnical engineer has been consulted on this issue and has advised that there is unlikely to be any significant impact to properties caused by installing speed humps. This does not mean that there will be no additional vibrations experienced by residents however damage to property is unlikely to occur.

Summary

Using the Port Stephens Council risk assessment matrix risk levels of all the nominated options can be reduced to an acceptable level. (see attached risk assessment, Annexure B).

Installation of full-width speed humps will reduce the speed and volume of vehicles using Wallawa Road. The question is whether the impacts of the current traffic in Wallawa Road warrant this. No funding is available in the current financial year for such works however could be programmed for next years capital works program if supported by Council. The estimated cost of installation of full-width speed humps and associated fencing is \$28 000.

Item: 604_04/11

FERODALE ROAD MEDOWIE – COMPLAINT REGARDING THE NEED FOR INFRASTRUCTURE TO BE PROVIDED AT NEW BUS STOPS

Requested by: Mr Craig Baumann MP

File:

Background:

Mr Baumann raised the issue of the lack of infrastructure facilities at the new bus stops in Medowie. This is particularly relevant at the bus stops along Ferodale Road with bus passengers having to sit in the gutter at some locations due to lack of seating and shelters.

Discussion:

Cr Dingle noted that the new bus stops need to be added to Council's Forward Works Plan and prioritised for upgrade works. Council officers advised the Traffic Committee that the bus service review of last year which resulted in significant changes to bus routes has led to increased burdens on Council's in terms of the required infrastructure.

Committee' s recommendation:

Council needs to revise the Forward Works Plan to include the new bus stops that have been installed by bus companies as a result of the bus service review.

Item: 605_04/11

MEDOWIE ROAD MEDOWIE – INVESTIGATION OF PARK AND RIDE POSSIBILITIES AT THE RICHARDSON ROAD ROUNDABOUT

Requested by: Cr Geoff Dingle

File:

Background:

Cr Dingle raised the need for Council to investigate park and ride possibilities at the intersection of Medowie Road and Richardson Road. There are significant areas adjacent to the roundabout that have potential to be used for vehicle parking or transport interchange areas.

Discussion:

Council officers advised that this is part of the Council Plan. There are several areas that have been identified including existing road-side areas at Salt Ash and Anna Bay that could serve different purposes according to the needs of the areas.

Councillor Dingle advised that he is keen to progress this project and there is a need to carry out preliminary investigation that will allow further progression of plans for these areas.

Committee' s recommendation:

This matter is to be included in the next available Traffic Committee inspections to allow progression of this issue.

RISK ASSESSMENT TREATMENT PLAN

ASSESSMENT TEAM:		PROCESS OR SITE								
Joe Gleeson, Traffic Engineer		Wallawa Road Nelson Bay Assessment of treatment options for traffic calming								
		DATE OF ASSESSMENT 25 th March 2011								
Item	ACTIVITY or FACTOR Inputs – Site – Activity – Output	RISK ASSESSMENT				Residual Risk Table 2	FREQUENCY When is it to be done	Responsible Officer (s)		
		HAZARDS & ASPECTS – Table 1 What can happen & how	Initial Risks Table 2		Control Treatment Required (Implementation of risk control measures MUST be in accordance with the hierarchy of control, refer to Table 3)					
		L	C	L	C	L	C			
1	Option 1 – Retain existing speed cushions	1	4	C-		1	3	D+	As soon as possible	
		4	1	C-						
2	Option 2 – Remove the existing speed cushions	4	1	C-						
		4	2	C+		3	2	C-		
3	Option 3 – Installation of full-width speed humps	3	4	B+		2	3	C-	When and if full-width speed humps are installed	
		3	2	C-						
		4	2	C+		4	1	C-	When installing speed humps	
Initial & Date:										

RISK CLASSIFICATION AND RESPONSE TABLE

RISK RATING	ACTION	RESPONSIBILITY FOR ACTION
EXTREME A+ and A-	ACT IMMEDIATELY Extreme risk – Immediate action required. The proposed task or process activity MUST NOT proceed. Steps must be taken to lower the risk level to as low as reasonably practicable (ALARP) using the hierarchy of risk controls.	Group Manager
VERY HIGH B+ and B-	ACT IMMEDIATELY Very High risk – Immediate action required. The proposed task or process activity MUST NOT proceed. The proposed activity can only proceed, provided that: 1. The risk level has been reduced to as low as reasonably practicable (ALARP) using the hierarchy of risk controls. 2. The risk controls must include those identified in legislation, Australian Standards and Codes of Practice etc. 3. The Risk Treatment Plan (RTP) has been reviewed and approved by the Section Manager. 4. The Section Manager must review and document the effectiveness of the implemented risk controls.	Section Manager
HIGH C+	ACT IMMEDIATELY The proposed activity can only proceed, provided that: 1. The risk level has been reduced to as low as reasonably practicable (ALARP) using the hierarchy of risk controls. 2. The risk controls must include those identified in legislation, Australian Standards and Codes of Practice etc. 3. The Risk Treatment Plan (RTP) has been reviewed and approved by the Supervisor/Coordinator. 4. The Supervisor/Coordinator must review and document the effectiveness of the implemented risk controls.	Supervisor/ Coordinator
MODERATE RISK MEDIUM C-	ACTION WITHIN NEXT MONTH The proposed activity can only proceed, provided that: 1. The risk level has been reduced to as low as reasonably practicable (ALARP) using the hierarchy of risk controls. 2. Being managed through documented routine procedures which include the hierarchy of controls.	Team Leader
LOW AND VERY LOW D+ or D-	DEAL WITH WHEN POSSIBLE Manage through documented routine procedures which include the hierarchy of controls.	Team Leader

Table 1 - HAZARD GUIDEWORDS

SAFETY HAZARDS		BUSINESS HAZARDS	ENVIRONMENTAL HAZARDS
a) Manual handling		a) Community rejection	a) Detrimental effect on environmental factor identified in the REF
b) Plant and equipment – operation, maintenance, storage and inspection		b) Political rejection	b) Environmentally sensitive areas – acid sulphate soils, Koala habitat
c) Working at heights		c) Financial viability/sustainability for construction, maintenance and/or operation	c) Site access – erosion, noise, traffic conflict, dust and pedestrian thoroughfare and property access
d) Confined spaces – entrapment, contaminated atmosphere		d) Non-conformance to Council, Community or Government planning requirements	d) Erosion and sedimentation in and outside the site
e) OHS training, SWMS training, each step of work process		e) Not viable to Council/Community	e) Detrimental effect on adjacent water way quality
f) Vehicle and plant movement – paths, work area, adjacent workers		f) Not Technically viable	f) Air quality – dust and emissions from site, stockpiles and vehicle movement
g) Hazardous substances and dangerous goods – storage, transport, handling, application, combination and disposal		g) Possible Liabilities	g) Fire – on site materials, equipment, facilities – adjacent lands and structures
h) Electrical work – electrics on site, contact, severance, connections – electrical equipment, storage, operation, maintenance		h) Security hazards – damage, criminal activity	h) Noise – operations noise, variations to existing levels caused by work – long term, short term
i) Body stressing – lifting (see ‘a’), repetition of movements such as bending, pulling, pushing, turning, twisting or working in confined or unchangeable positions			i) Ground vibration and air blast – affect on adjacent structures and activities
j) Blasting – air and ground blast/vibration, sound, dust, ejection			j) Vegetation – damage, destruction, removal
k) Traffic – past site, through site, crossing, entering, speed, proximity			k) Fauna – damage, destruction, removal of food trees and access
l) Underground and overhead utilities – contact, damage to/by			l) Herbicides and contaminants – transport, handling, use, storage, spillage, removal, disposal
m) Other activities identified from experience or notified warning			m) Indigenous Heritage – alteration, damage, destruction
n) Excavation			n) Non-Indigenous Heritage – alteration damage destruction
o) Hot work			o) Contaminated ground – primarily acid sulphate soils and hydrocarbons
p) Working near water – risk of drowning			
q) Ergonomics			
r) Psychosocial – stress, fatigue etc			
s) Violence/Aggression – potential protestors, public			
t) Slips/Trips/Falls			
u) Working in isolation – Sun exposure causing sunburn/ heat stroke, snake/spider bites, communication, Conflict with person exhibiting anti social behaviour			

RISK ASSESSMENT MATRIX		Likelihood	L1	L2	L3	L4	L5	L6
ALARP – As Low As Reasonably Practicable			RARE	UNLIKLEY	POSSIBLE	LIKLEY	ALMOST CERTAIN	FREQUENT
Consequences			Will not happen	Likely to occur in less than 1 in 10 projects of this kind	Likely to occur in between 1 in 10 and 1 in 4 projects of this kind	Likely to occur in between 1 in 4 and 1 in 2 projects of this kind	Likely to occur more than 1 in 2 projects of this kind	Likely to occur within the project life
C6	Multiple fatalities or extensive long term injuries		B-	B+	A-	A+	A+	A+
C5	Individual fatality or serious long term injury		C+	B-	B+	A-	A+	A+
C4	Serious injury to an individual or group		C-	C+	B-	B+	A-	A+
C3	Significant injury involving medical treatment or hospitalisation and lost time		D+	C-	C+	B-	B+	A-
C2	Minor medical treatment with or without potential for lost time		D-	D+	C-	C+	B-	B+
C1	Minor injury not requiring treatment		D-	D-	D+	C-	C+	B-

TREATMENT HIERARCHY

The treatment hierarchy provides a graded set of objects for treatments. The preferred Solution is number one (1) to last resort number six (6)



1. **ELIMINATE**
Remove risk from the process by eliminating the step in the process – i.e. do not do it.
2. **SUBSTITUTE**
Reduce risk by changing process, materials or equipment to something that does the job more safely – i.e. change from a hazardous substance to a non-hazardous substance.
3. **ISOLATE**
Put in place physical preventive mechanisms – i.e. signs, alarms, lights, ventilation, guards and barriers etc.
4. **ENGINEER**
Minimise the risk by engineering means i.e. use a mechanical lifting device rather than manual handling techniques.
5. **ADMINISTRATE**
Develop and implement safe work procedures – i.e. Work Method Statements, training, direction, and supervision.
6. **PPE**
Accept the initial hazards and protect personnel by using personal protective equipment to reduce the risk – i.e. Safety glasses etc.

VERSION CONTROL

Version	Change from Previous	Date	Comment
1.0	First release	December 2010	
1.0	Changes to safety hazard description in Table 1	January 2011	L Miller
1.0	Formatting changes document size minimised to 3 pages	January 2011	L Miller

ITEM NO. 3

FILE NO: PSC2009-01623

ACQUISITION OF EASEMENT TO DRAIN WATER AT 661 MEDOWIE ROAD MEDOWIE

REPORT OF: PETER AVIS - PROJECT SERVICES, MANAGER
 GROUP: PROJECT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Consents to the creation of an easement to drain water 6 metres wide over Lot 202A DP 19739 at 661 Medowie Road Medowie.
 - 2) Finalises and registers the Transfer Granting Easement over the property in item 1 above.
-

COUNCIL COMMITTEE MEETING – 3 MAY 2011

RECOMMENDATION:

	Councillor Councillor	This item was withdrawn at the commencement of the Council Committee meeting.
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ORDINARY COUNCIL MEETING – 10 MAY 2011

158	Councillor Bruce MacKenzie Councillor Peter Kafer	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to recommend Council consents to the creation of a 6 metre wide easement to drain water over the subject property and registers the Transfer Granting Easement in favour of Council.

The subject property is located about 1km south from the intersection of Medowie Road and Ferodale Road, Medowie (see Attachment 2 – Locality Sketch). The proposed 6m easement to drain water runs along the southern boundary of the property from Medowie Road to the Campvale Drain which runs along the rear boundary of the property (see **Attachment 1** – Plan).

The drain through the subject property has existed for many years and is very close to the existing residence. This drain is not located within a Council easement. The land close to the residence experiences inundation in times of medium to heavy rain.

The relocation of the existing drain to the 6 metre Council easement was negotiated to include access rights for maintenance of the drain within the 6 metre easement and in conjunction with the owner agreeing to an easement over the Campvale Drain at no cost to Council.

Benefits for Council in the construction of the new drain within the 6 metre easement are the shortening of the length of flow for stormwater to reach the Campvale Drain thus reducing the inundation of properties in times of medium to heavy rain and that this new drain will provide works that align with the Medowie Drainage Strategy.

FINANCIAL/RESOURCE IMPLICATIONS

The property owner has agreed to the creation of a 6 metre easement together with the amount of compensation. As a result, consent for the easement over the Campvale Drain at the rear of the property has been agreed to by the property owner at no cost to Council.

Administration and compensation costs are required and have been funded in the Facilities and Services budgets for the financial years 2010-2011 and 2011-2012. The total cost of compensation and administration is approximately \$40,000. Construction of the open drain within the 6 metre easement will cost approximately \$80,000 and has also been budgeted for.

LEGAL, POLICY AND RISK IMPLICATIONS

The acquisition of the easement will reduce the risk of building damage to the subject property, negates the need for DA approval for construction works and allows the construction works to be lawfully performed

Action necessary for this matter fall under the Local Government Act 1993, Roads Act 1993, Land Acquisition (Just Terms Compensation) Act 1991, Conveyancing Act 1919 and the Real Property Act 1900. There are no Council Policies Involved. There are no risk implications as the owner has signed agreements and the Transfers Granting Easements to the acquisitions and the compensation.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no social or economic implications. The environmental implications (tree removal and endangered species assessments) have been investigated and a report prepared permitting the construction works within the easement.

CONSULTATION

Consultation has involved the property owner, consultants and Council's Staff.

OPTIONS

- 1) Adopt recommendation
- 2) Reject recommendation.

ATTACHMENTS

- 1) Proposed Easement Plan.

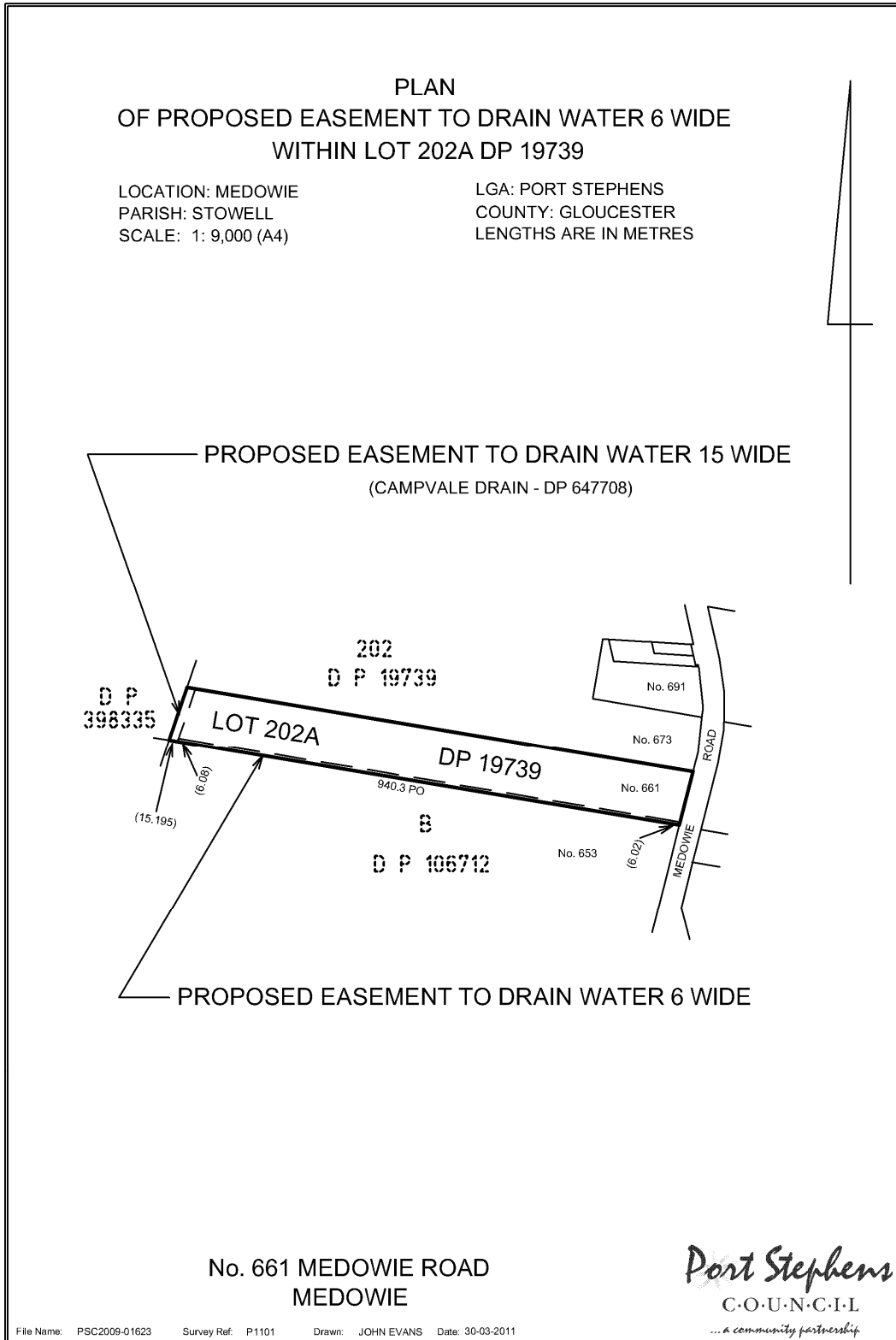
COUNCILLORS ROOM

Nil.

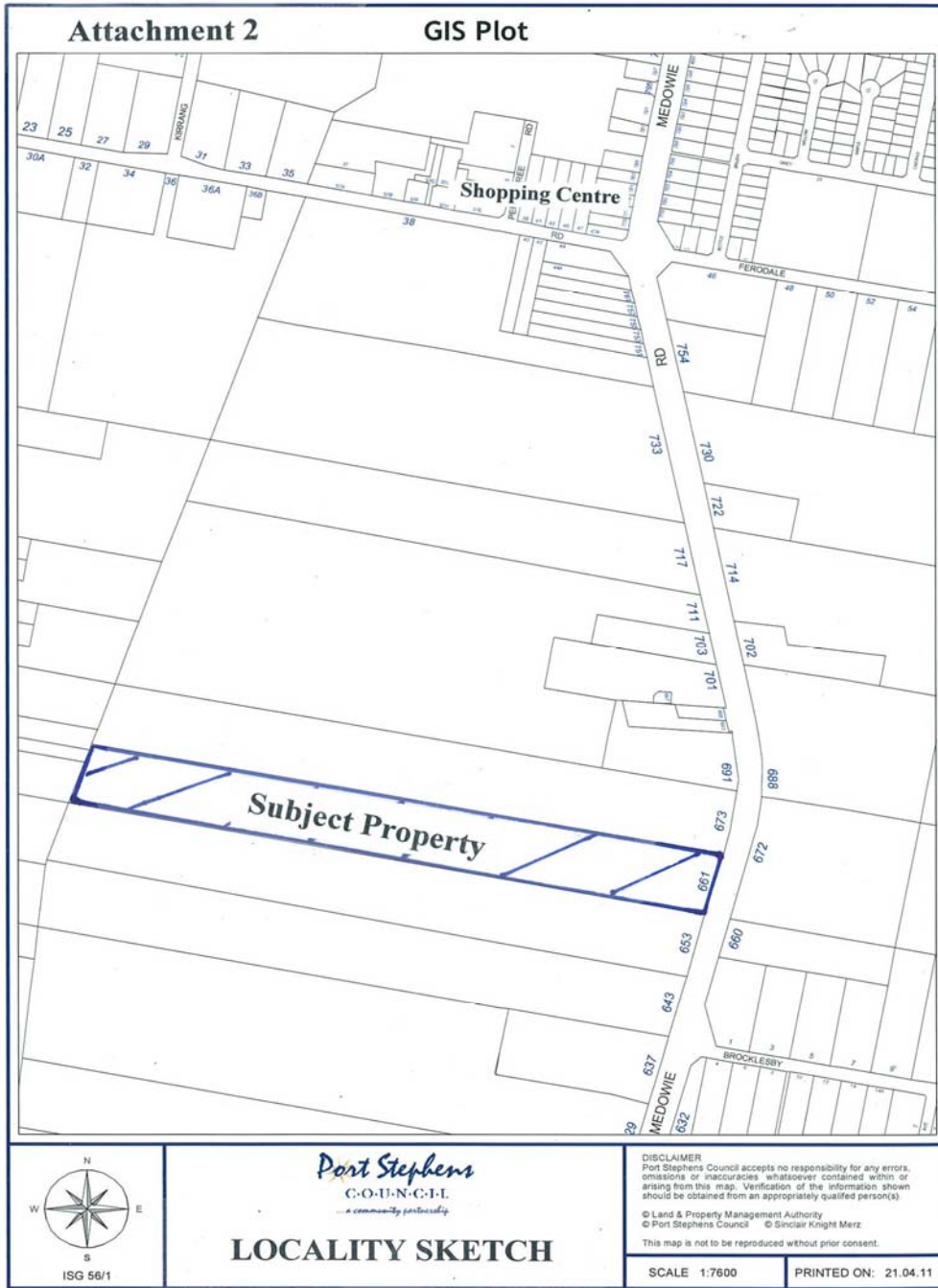
TABLED DOCUMENTS

Nil.

ATTACHMENT 1



ATTACHMENT 2



ITEM NO. 4

FILE NO: A2004-0230

REVIEW OF POLICY – CASH INVESTMENT POLICY

REPORT OF: DAMIEN JENKINS - FINANCIAL SERVICES, MANAGER
 GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) That Council revoke the Cash Investment Policy dated 14 December 2010 Min. No.403.
 - 2) That Council adopt the Cash Investment Policy as shown in **ATTACHMENT 1**.
-

COUNCIL COMMITTEE MEETING – 3 MAY 2011
RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 10 MAY 2011

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

The purpose of this report is to update the Cash Investment Policy following the gazettal of a revised Investment Order issued by the Minister for Local Government in February 2011.

The changes to the Investment Order are:

- The removal of the ability to invest in the mortgage of land,
- The removal of the ability to invest with Local Government Financial Services Pty Ltd,
- The addition of key considerations in the order including a requirement for Councils to adopt an investment policy in accordance with the Investment Order.

Council needs to make a minor amendment to its policy so that it complies with the Investment Order.

FINANCIAL/RESOURCE IMPLICATIONS

Council is responsible for the prudent management of community assets including surplus cash not immediately required for continuous operations.

A cash investment policy assists in ensuring the security of invested funds and achieving a return on funds acceptable to the organisation.

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to remove the reference to Local Government Financial Services Pty Ltd as an authorised investment, from its current policy. Council has no investments with Local Government Financial Services Pty Ltd and so there are no implications arising from this change.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The policy ensures Council can access monies as required to fund its operations for the provision of services that benefit the entire community.

CONSULTATION

Financial Services staff
Division of Local Government

OPTIONS

- 1) Accept recommendation
- 2) Amend recommendation.

ATTACHMENTS

- 1) Proposed Cash Investment Policy (noting the removal of dot point 4 at section 4.2)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



PROPOSED POLICY

Adopted: 20/12/2005
Minute No: 382
Amended: 14/12/2010
Minute No: 403
Amended:
Minute No:

FILE NO: A2004-0230
TITLE: CASH INVESTMENT POLICY
REPORT OF: FINANCIAL SERVICES MANAGER

BACKGROUND

This policy has been revised following the issue of Investment Policy Guidelines by the Director General of the Division of Local Government.

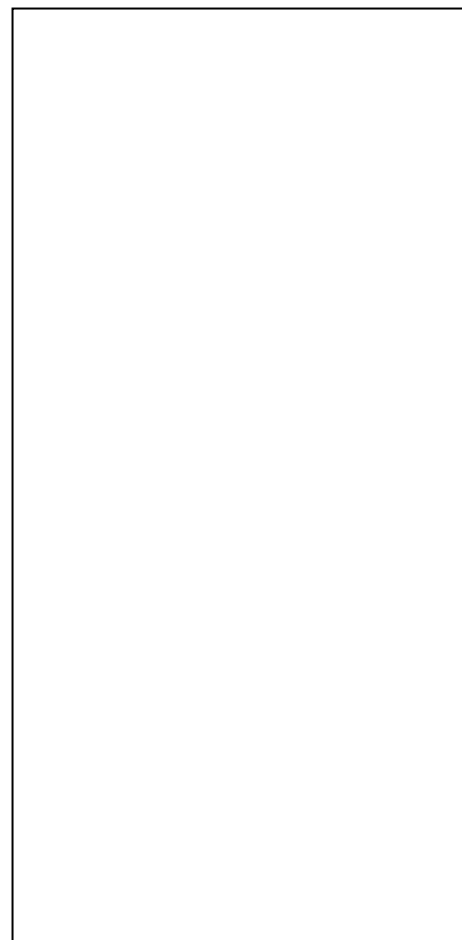
OBJECTIVE

The purpose of this policy is to guide Council's cash investment process and specifically:

- establish Council's investment philosophy,
- establish investment risk management guidelines,
- prescribe requirements to be followed in investing surplus funds that are not immediately required for any other purpose,
- identify the duties of those involved in the investment process,
- prescribe internal control procedures, investment monitoring and reporting procedures.

PRINCIPLES

1. Council has an obligation under its charter as the custodian and trustee of public assets to effectively account for and manage the assets for which it is responsible.
2. All investments are to be made in accordance with:



- Local Government Act 1993 – s 625 How may Councils invest?
- Local Government Act 1993 – Ministerial Investment Order under s 625(2) as made from time to time
- The Trustee Act 1925 – s 14 including powers of investment, duties of trustee in respect of power of investment and matters to which trustee is to have regard when exercising power of investment
- Local Government (General) Regulation 2005 – cl 212 Reports on Council investments
- Review of NSW Local Government Investments Report (Cole Inquiry Report, April 2008)
- Investment Policy Guidelines – Issued by the Director General of the Division of Local Government under s 23A Local Government Act 1993
- Local Government Code of Accounting Practice and Financial Reporting

POLICY STATEMENT

1. Investment Philosophy and Objectives

- 1.1. Investments are to be allocated to ensure there is sufficient liquidity to meet reasonably anticipated cash flow requirements, as and when they fall due, without incurring the risk of significant costs due to the unanticipated sale of an investment.
- 1.2. Preservation of capital and the real value of surplus funds is the principal objective of the investment portfolio.
- 1.3. Investments are expected to achieve a market average rate of return consistent with Council's risk tolerance. One dollar invested today is expected to earn interest so that it will increase in value to more than one dollar in the future, "the time value of money".

2. Cash Flow

- 2.1. Council is to plan for future cash flow requirements in its long term financial plan and annual budget.
- 2.2. Cash flow is to be monitored daily.
- 2.3. Council is to have an overdraft facility to be used to meet unforeseen commitments, with the aim of avoiding use of this facility as the interest rate is likely to exceed the interest rate Council receives on its investments.
- 2.4. When appropriate to do so, daily surplus funds are to be automatically swept into an interest bearing bank account to maximise interest earnings.
- 2.5. Surplus funds that are forecast not to be required for in excess of 30 days are to be identified and invested.

3. Risk Management Criteria

- 3.1. Placement and retention of investments are to be assessed according to the following criteria:
 - Preservation of Capital – the requirement for preventing losses in Council’s investment portfolio’s total value (considering the time value of money)
 - Diversification – setting limits to the amounts invested with individual financial institutions or government authorities to reduce credit risk
 - Credit risk – the risk that a financial institution or government authority fails to pay the interest or repay the principal invested
 - Market risk – the risk that the fair value or future cash flows of an investment will fluctuate due to market prices
 - Liquidity risk – the risk Council is unable to redeem the investment at a fair price within a timely period
 - Maturity risk – the risk relating to the length of term to maturity. The larger the

term the greater the length of exposure and risk of market volatility and interest rate changes.

- 3.2 Financial instruments detailing investments must clearly show they are held in Council's name.

4. Authorised Investments

- 4.1. All investments must be denominated in Australian Dollars (AUD).

- 4.2. Authorised investments are limited to those forms included in the Ministerial Investment Order, presently:

- Local, State or Commonwealth Government bonds, debentures or securities
- Interest bearing deposits, debentures or bonds issued by an authorised deposit taking institution (ADI) regulated by Australian Prudential Regulation Authority, (ie a bank, building society or credit union granted authority by APRA to carry on a banking business in Australia – a full list of ADI's is available on the APRA website www.apra.gov.au)
- Investments with NSW Treasury Corporation or Hourglass Investment facility
- Deposits with the Local Government Financial Services Pty Ltd

"Delete" – Deposits with the Local Government Financial Services Pty Ltd.

5. Grandfathered Investments

- 5.1. New investments must comply with the most recent Ministerial Investment Order.
- 5.2. Council holds existing investments that do not comply with the most recent Ministerial Investment Order, but complied with the Ministerial Investment Order in force at the time the investments were made. Under the provisions of the most recent Ministerial Investment Order changes to the Investment Order were grandfathered.
- 5.3. Council may hold to maturity, redeem or sell these investments which include Collateralised Debt Obligations (CDO's), derivative based instruments, and subordinated debt.

6. Prohibited Investments

- 6.1. This investment policy prohibits any investment carried out for speculative purposes including, but not limited to:
 - Derivative based instruments
 - Principal only investments or securities that provide potentially nil or negative cash flow and
 - Stand alone securities issued that have underlying futures, options forward contracts or swaps of any kind.
- 6.2. This policy also prohibits the use of leveraging (borrowing to invest) of an instrument. However, nothing in this previous paragraph will limit the grandfathering clause pertaining to already purchased investments.

7. Quotations on Investments

- 7.1. Not less than three (3) quotations shall be obtained from authorised institutions whenever an investment is proposed.
- 7.2. The best quote for the day shall be accepted after allowing for administrative costs and also allowing for the diversification limits of this policy.

8. Term to Maturity

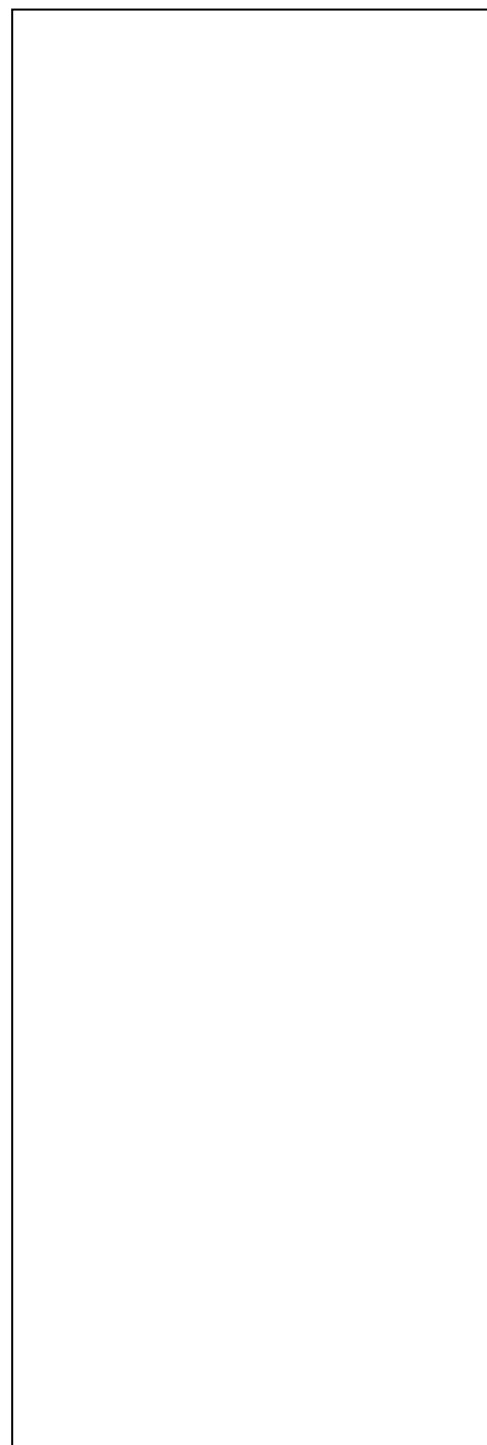
- 8.1. The term to maturity of any of Council’s direct investments must not exceed ten (10) years.
- 8.2. When the term to maturity exceeds one (1) year, Council must ensure that a secondary market exists for the investment to enable the disposal of the investment prior to maturity if necessary.
- 8.3. To control liquidity risk Council’s investment portfolio should be limited to the following term to maturity thresholds.

TERM	MINIMUM PERCENTAGE	MAXIMUM PERCENTAGE
< 1 year	30%	100%
> 1 year	0%	70%
> 3 years	0%	40%
> 5 years	0%	30%

The maturity thresholds above are to be assessed at the time of making a new investment.

9. Diversification

- 9.1. Funds invested through any one broker shall be limited to a maximum of 25% of Council’s total portfolio.
- 9.2. Funds invested in financial products that have an explicit government guarantee shall be limited to a maximum of 50% of Council’s total portfolio.



- 9.3. Funds invested in unrated ADI's shall be limited to 20% of Council's total portfolio (subject to clause 9.5).
- 9.4. Deposits with any one financial institution shall be limited to 10% of Council's total portfolio.
- 9.5. While ever the Australian Government Financial Claims Scheme continues to operate, investments shall be made with ADI's covered under the scheme and subject to the scheme limits to ensure Council funds are guaranteed.
- 9.6. The Diversification benchmarks above shall be assessed at the time of making a new investment. If, during subsequent reporting periods the diversification limits are breached, then the Revenue Coordinator, in consultation with the Financial Services Manager will assess the portfolio and decide whether an investment shall be divested. If the decision is made to divest an investment then this will be done as soon as practicable.

10. Reporting

- 10.1. A monthly report shall be provided to Council, detailing the investment portfolio including individual amounts invested, broker name, financial institution name, maturity date, interest rate, percentage exposure within the total portfolio and current market value. The report is to include a certificate as to whether or not the investments have been made in accordance with the Act, regulations and Council's investment policy.
- 10.2. Current market values are to be sought monthly for Council's grandfathered investments such as CDO's. Due to the timing of the provision of such valuations the most recent valuations will be presented in the monthly report to Council which might not include valuations received after the business paper cycle is closed.

10.3. For audit purposes certificates must be obtained from banks and investment brokers confirming the amounts of investments held on Council's behalf and their current market value as at 30 June each year.

11. Performance Benchmarks

11.1. Council seeks to gain a return on investment at least equal to the following measures.

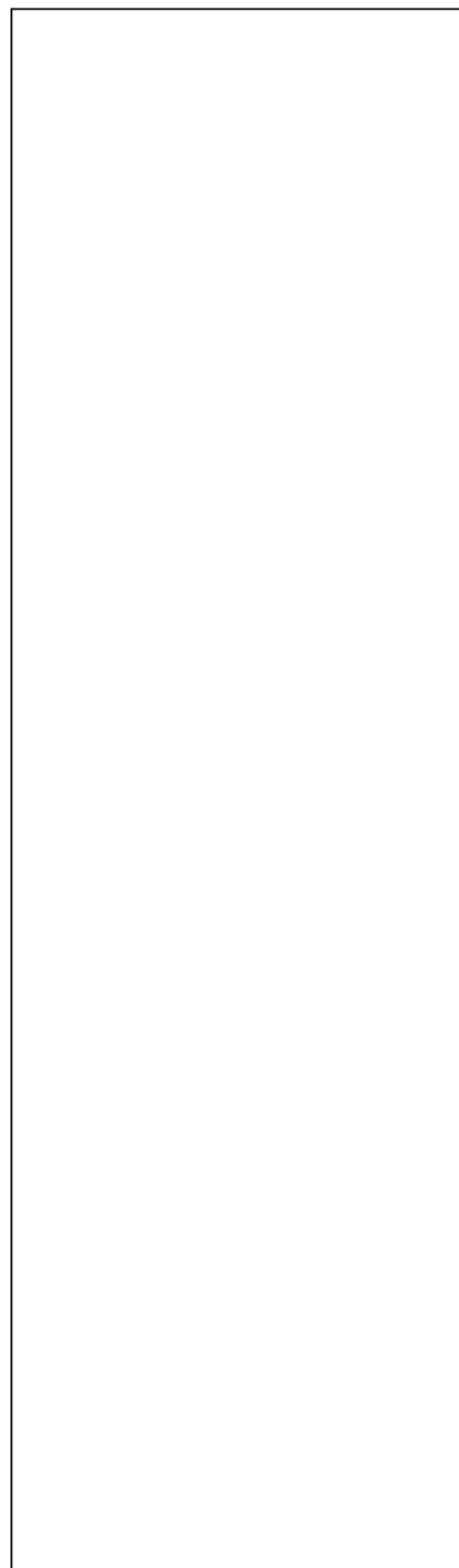
Investment	Performance Benchmark
Cash	RBA Cash Rate
Term Deposits	Australian Term Deposit index as published daily
Enhanced Investments	90 day BBSW

12. Duties and Responsibilities of Council Officers

12.1. The General Manager is responsible for ensuring that Council's decisions with respect to this investment policy are implemented. The General Manager has delegations to staff in place to make investments in accordance with this policy.

12.2. CI 212 of the Local Government (General) Regulation 2005 requires the Responsible Accounting Officer to provide a monthly written report to Council on its investments. The Responsible Accounting Officer is responsible for keeping Council's accounting records, ensuring they are kept up to date and in an accessible form. The General Manager is the Responsible Accounting Officer in Port Stephens Council and delegations to staff are in place to keep accounting records and report as required.

12.3. Council officers involved in investing funds are required to have



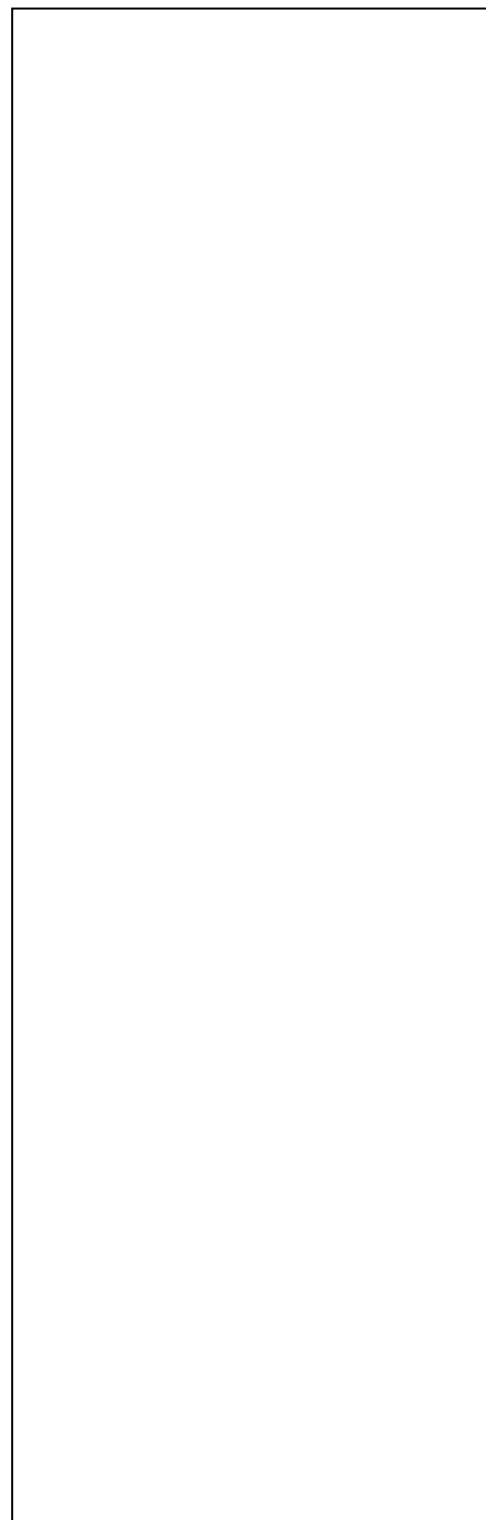
appropriate skills to undertake the investment function, have delegations in place and read and comply with this investment policy.

12.4. Council officers involved in investing funds should act with the duty of care, skill, prudence and diligence that a prudent person would exercise when investing and managing their own funds and have regard to the requirements under the Trustee Act 1925.

12.5. Council officers involved in investing funds must not engage in activities that would conflict with the proper implementation and management of Council's investments.

12.6. The Revenue Coordinator, or other delegated Council officer is required to:

- Monitor cash flow on a daily basis and estimate cash requirements
- Ensure proposed investment products comply with this investment policy
- Recommend investment of funds in accordance with the requirements of this policy
- Reconcile principal invested on at least a monthly basis
- Estimate and account for receipt of all interest due on investments
- Ensure financial instruments, investment certificates and related documents are kept in safe custody
- Obtain monthly valuations of grandfathered securities
- Prepare a monthly report for Council to the satisfaction of



the Responsible Accounting Officer

- Cause the investment register to be updated on Council's website monthly
- Store all relevant documents, interest advices, market valuations in TRIM.

12.7. To ensure adequate internal controls and separation of duties the Financial Services Manager is to authorise investment transactions. If the Financial Services Manager is absent investment transactions are to be authorised by the Acting Financial Services Manager or Group Manager Commercial Services or General Manager.

13. Investment Advisor

13.1. When ensuring a proposed investment product complies with this investment policy it may be necessary to obtain independent financial advice.

13.2. Before considering independent financial advice Council must ensure the financial advisor is licensed by the Australian Securities and Investment Commission. The advisor must confirm that they do not have any conflicts of interest in relation to the investment products being considered.

13.3. When recommending or reviewing investments any independent financial adviser must provide written confirmation that they are not receiving any commissions or other benefits in relation to the investments being recommended or reviewed.

13.4. Council is to undertake separate reference checks before relying on information provided by an advisor.

RELATED POLICIES

Restricted Funds Policy

Property Investment and Development Policy
Business Development Funding Policy.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Nil.

ECONOMIC IMPLICATIONS

Nil.

ENVIRONMENTAL IMPLICATIONS

Nil.

RELEVANT LEGISLATIVE PROVISIONS

- Local Government Act 1993 – s 625
- Local Government Act 1993 – s 625 Investment Order (of the Minister) as made from time to time
- The Trustee Act 1925 – s 14 - Powers of Investment.
- Local Government (General) Regulation 2005 – cl 212
- Local Government Act 1993 s 23A Investment Policy Guidelines issued by the Director General of the Division of Local Government
- Banking Act 1959 – Division 2AA Financial Claims Scheme.

IMPLEMENTATION RESPONSIBILITY

Revenue Coordinator.

REVIEW DATE

12 months after adoption.

ITEM NO. 5

FILE NO: A2004-0242

QUARTERLY BUDGET REVIEW AS AT 31 MARCH 2011

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Notes the estimated Statement of Cash Position to 31/03/2011 as detailed in ATTACHMENT 1 to this report.
- 2) Notes the estimated Statement of Restricted Funds Movements to 31/03/2011 as detailed in ATTACHMENT 2 to this report.
- 3) Approve the discretionary changes to the adopted recurrent budget, (totalling \$275,572 a positive effect on revenue) as detailed under separate cover as TABLE 1 of DOCUMENT 1 to this report and vote the necessary funds to meet the expenditure.
- 4) Approve the discretionary changes to the adopted capital budget, (totalling \$70,000 a negative effect on revenue) as detailed under separate cover as TABLE 2 of DOCUMENT 1 to this report and vote the necessary funds to meet the expenditure.
- 5) Notes the identified issues, which may have a future budgetary impact, as identified under separate cover as TABLE 3 of DOCUMENT 1 to this report.
- 6) Notes the estimated surplus/(deficit) from ordinary activities before capital amounts of \$2,419,035.
- 7) Notes the Quarterly Budget Review comparing Budgets to Actuals as tabled under a separate cover as DOCUMENT 2 to this report.

COUNCIL COMMITTEE MEETING – 3 MAY 2011

RECOMMENDATION:

	Councillor Bob Westbury Councillor Glenys Francis	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 10 MAY 2011

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

The purpose of this report is to amend the Budget by bringing to Council's attention the proposals and issues that have an impact on the 2010/2011 Budget.

Council adopted its Integrated Strategic Plan 2010/2014 (Council Minute 164) on the 8th June, 2010 this included budget estimates for the 2010/2011 financial year.

The major changes to the Recurrent Budget in this forecast, detailed in Table 1 of Document 1 are:

- Decreased expenditure of \$197,572 due to a decrease in Insurance Premiums (item 1).
- Increased income of \$819,350 for insurance settlement in Fingal Bay Surf Club (item 2).
- Decreased income of \$416,000 and decreased expenditure of \$416,000 for internal interest on loans for reporting purposes only (item 4).
- Decreased expenditure of \$146,429 for interest savings on the loan for 528 Hunter Street, Newcastle (item 5).
- Increased income of \$994,000 and increased expenditure of \$920,000 for greater than forecast major contract work (item 27).
- Increased internal income of \$260,341 for overhead recovery allocation due to restructure of Operations components (items 29 and 36).
- Decreased income of \$2,012,362 and decreased expenditure of \$1,529,000 for lower than forecast private works (items 30 and 35).

The major transfers to the Recurrent Budget in this forecast, detailed in Table 1 of Document 1 are:

- Increased transfer of \$819,350 to Restricted Cash (item 2).
- Decreased transfer of \$146,429 from the Business Development Restricted Fund (item 5).
- Increased transfer of \$140,886 from Restricted Cash (item 35).

The major changes to the Capital Budget in this forecast, detailed in Table 2 of Document 1 are:

- Decreased expenditure of \$332,260 for 6 Masonite Road, Heatherbrae as the land has been sold (item 3).
- Decreased expenditure of \$1,842,986 for 360 Soldiers Point Road, Salamander Bay due to no further development being undertaken until the residential market for vacant land improves (item 6).
- Decreased expenditure of \$3,875,000 for 155 Salamander Way, Salamander Bay due to delayed DA approval (item 8).
- Decreased income of \$260,000 and decreased expenditure of \$233,000 for a Kerb and Gutter project on Lemon Tree Passage Road that has been deferred (item 15).
- Increased income of \$235,000 for extra works to improve ride quality on James Paterson Street (item 18).

MINUTES FOR ORDINARY MEETING – 10 MAY 2011

- Increased income of \$622,000 and increased expenditure of \$622,000 for road works on The Bucketts Way (item 22).
- Increased income of \$322,000 and increased expenditure of \$322,000 for road works on Masonite Road, Heatherbrae (item 23).
- Increased income of \$117,000 and increased expenditure of \$117,000 for a playground at Fingal Bay (item 26).
- Decreased income of \$750,000 and decreased expenditure of \$1,210,400 for the Shoal Bay Wharf upgrade as the works will take place next financial year (item 43).

The major transfers to the Capital Budget in this forecast, detailed in Table 2 of Document 1 are:

- Decreased transfer of \$332,260 from the Business Development Restricted Fund (item 3).
- Decreased transfer of \$1,842,986 from the Business Development Restricted Fund (item 6).
- Decreased transfer of \$3,875,000 from the Business Development Restricted Fund (item 8).
- Decreased transfer of \$460,400 from Section 94 (item 43).

This report also foreshadows impacts on Council's future financial position.

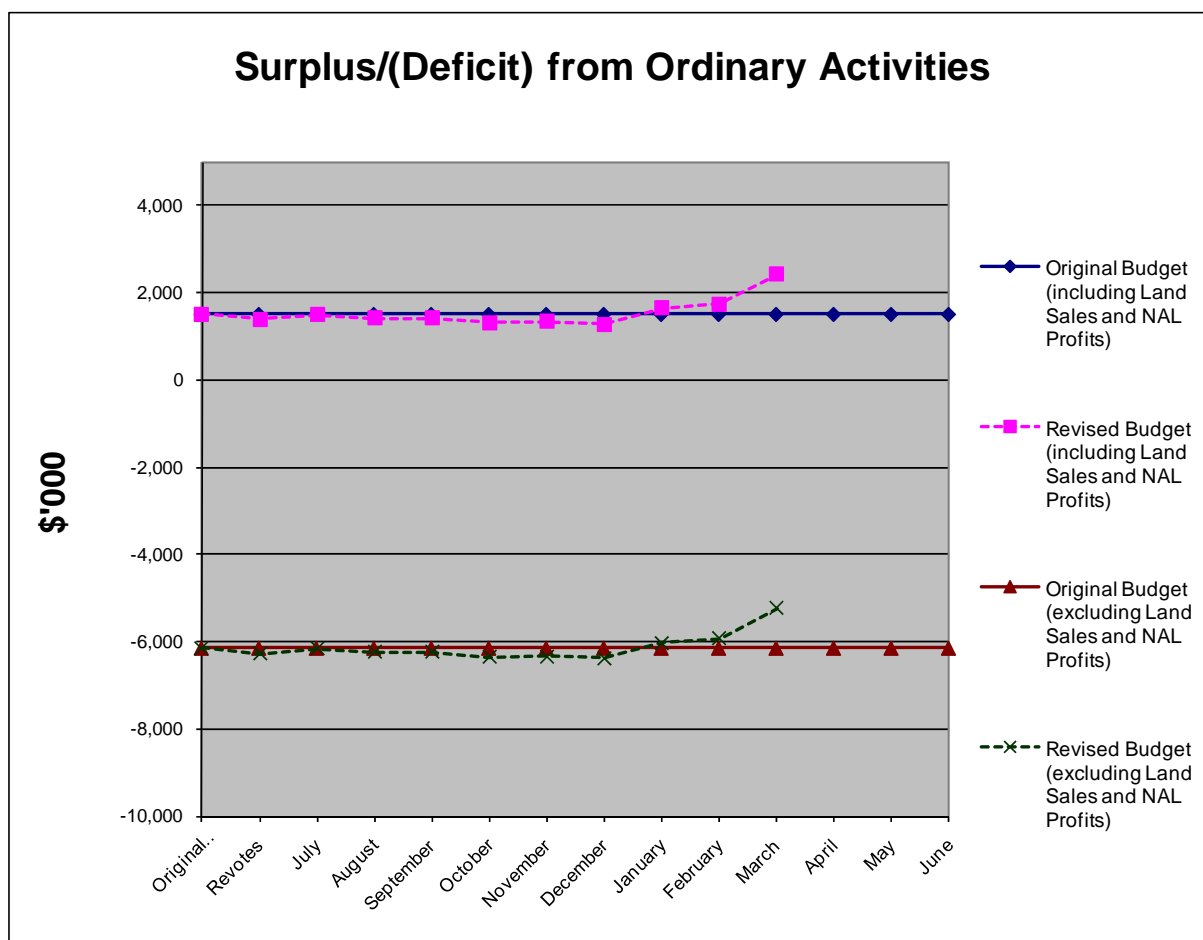
FINANCIAL/RESOURCE IMPLICATIONS

Council's Original 2010/2011 Budget estimate is a \$1,146,765 cash deficit after internal transfers, repayment of Capital lease and before depreciation of \$16.0 million. TABLE 1 of Document 1 of this report details the changes in this review. The net cash result of these changes is a projected cash deficit of \$888,388 (Ref N of Attachment 1), after 2011 revotes and carry forwards are taken into account and are shown in the table below;

IMPACT OF QUARTERLY BUDGET REVIEW ON COUNCIL'S ADOPTED BUDGET				
	Recurrent	Capital	Total	Ref
Document 1 Table 1	\$275,572	\$0	\$275,572	
Document 1 Table 2	\$0	(\$70,000)	(\$70,000)	
Previous Quarterly Budget Reviews	(\$59,770)	(\$32,000)	(\$91,770)	
Original Budget after transfers and before Revenue Loans and Depreciation	(\$60,108)	(\$263,700)	(\$323,808)	
Repayment of Capital Lease, Loans and Debtors		(\$328,452)	(\$328,452)	
Loan Funds to Revenue				
Net Available Surplus/(Deficit) Funds	\$155,694	(\$694,152)	(\$538,458)	
Revotes and Carry Forwards from previous year	(\$71,021)	(\$278,909)	(\$349,930)	
Revised 2010/2011 Cash Surplus (after transfers and before Depreciation)	\$84,673	(\$973,061)	(\$888,388)	N

PROJECTED FINANCIAL RESULT FOR 2010/2011

	Ref	After March Review	Original Budget
Total Operating Revenue	A	\$92,277,906	\$89,224,886
Less Total Operating Expenditure	B	(\$73,858,871)	(\$71,711,869)
Less Total Depreciation and Provisions Transferred	C	(\$16,000,000)	(\$16,000,000)
	D=B+C	(\$89,858,871)	(\$87,711,869)
Surplus/(Deficit) From Ordinary Activities Before Capital Amounts	E=A+D	\$2,419,035	\$1,513,017
Net Operating movement for March Review		\$1,133,543	
Total Budgeted Land Sales Profits	F	(\$4,000,000)	(\$4,000,000)
Total Budgeted Newcastle Airport (NAL) Profits	G	(\$3,663,000)	(\$3,663,000)
Surplus/(Deficit) From Ordinary Activities without Land Sale Profits, NAL Profits and Before Capital amounts	H=E-F-G	(\$5,243,965)	(\$6,149,983)



LEGAL, POLICY AND RISK IMPLICATIONS

The Local Government (General) Regulation 2005 Clause 203 requires that a Budget Review Statement be submitted to Council no later than two months after the end of each quarter and that all expenditure must be authorised and voted by Council before it is incurred. This report is submitted so that Council can review the impact of all issues, which will affect the Budget.

The General Manager has the delegated authority to approve changes up to \$10,000 within a Group.

The March Quarterly Budget Review Statement indicates that Council's financial position (excluding land sale profits) hasn't changed significantly. Council's financial position needs to be monitored closely with particular regard to those issues contained in TABLE 2 of Document 1. Long-term financial projections will also be reviewed.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council's Budget is fundamental for operational sustainability and to the provision of facilities and services to the community.

CONSULTATION

Executive Group
Section Managers.

OPTIONS

- 1) That Council accepts the discretionary changes to the adopted budget.
- 2) That Council rejects some or all of the discretionary changes to the adopted budget.

ATTACHMENTS

- 1) Attachment 1 - Estimated Statement of Cash Position to 31/03/2011.
- 2) Attachment 2 - Estimated Statement of Restricted Funds Movements to 31/03/2011.

COUNCILLORS ROOM

- 1) Document 2 of 2010-2011 Quarterly Budget Review for March 2011, comparing Budgets to Actuals.

TABLED DOCUMENTS

- 1) Document 1 of 2010-2011 Quarterly Budget Review for March 2011.
Table 1 - Discretionary Changes to the adopted Recurrent Budget.
Table 2 - Discretionary Changes to the adopted Capital Budget.
Table 3 - Identified issues, which may have a future budgetary impact.

ATTACHMENT 1

ESTIMATED STATEMENT OF RESTRICTED FUNDS MOVEMENTS TO 30/06/2011			
March 2011 Budget Forecast			
	Ref	March 2011 Budget Forecast	2011 Original Budget Forecast
Total Operating Revenue	A	\$92,277,906	\$89,224,886
Less Total Operating Expenditure	B	(\$73,858,871)	(\$71,711,869)
Less Total Depreciation and Provisions Transferred	C	(\$16,000,000)	(\$16,000,000)
	D=B+C	(\$89,858,871)	(\$87,711,869)
Surplus/(Deficit) From Ordinary Activities Before Capital Amounts	E=A+D	\$2,419,035	\$1,513,017
Add Back: Depreciation and Provisions Transferred	C	\$16,000,000	\$16,000,000
Less Councils Share of Newcastle Airport Profit	W	(\$3,663,000)	(\$3,663,000)
Cash Surplus From Operations	F=A+B+W	\$14,756,035	\$13,850,017
Transferred to Restricted Funds	G	\$14,671,362	\$13,910,125
Cash Surplus / (Deficit) From Operations After Transfers	H=F-G	\$84,673	(\$60,108)
Total Capital Income	I	\$11,671,895	\$9,984,500
Total Capital Expenditure	J	(\$26,510,750)	(\$29,678,903)
Surplus/(Deficit) From Capital Works	K=I+J	(\$14,838,855)	(\$19,694,403)
Transferred from Restricted Funds	L	(\$14,194,246)	(\$19,430,703)
Cash Surplus / (Deficit) From Capital Works After Transfers	M=K-L	(\$644,609)	(\$263,700)
Total Cash Surplus / (Deficit) After Transfers	N=H+M+X	(\$888,388)	(\$1,146,765)
RECONCILIATION OF CASH POSITION			
Estimated Cash Position as at 01/07/2010	O	\$16,702,326	\$16,702,326
Estimated Cash Position as at 30/06/2011	P	\$15,341,863	\$14,385,447
Increase/(Decrease) in Cash Balance	Q=P-O	(\$1,360,463)	(\$2,316,879)
Represented By:			
Opening Restricted Funds Balance	R	\$29,742,794	\$27,284,292
Closing Restricted Funds Balance	S	\$29,270,719	\$26,114,178
Increase/(Decrease) in Restricted Funds Balance	T=S-R	(\$472,075)	(\$1,170,114)
Balance sheet movements for Revenue	X	(\$328,452)	(\$822,957)
Total Cash Surplus/ (Deficit) from Operations & Capital	N=Q-T	(\$888,388)	(\$1,146,765)
Principal of Loan Funds Repaid From Reserves	U	(\$8,465,064)	(\$3,165,409)
Increase/(Decrease) in Cash Balance	Q=T+N	(\$1,360,463)	(\$2,316,879)

ATTACHMENT 2

ESTIMATED STATEMENT OF RESTRICTED FUNDS MOVEMENTS TO 30/06/2011					
March 2011 Budget Forecast					
RESTRICTED FUNDS	Balance as at 30/06/2010	Recurrent Budget	Capital Budget	Balance Sheet Movements	Estimated balance as at 30/06/2011
SECTION 94	\$11,271,700	\$395,690	\$933,714		\$12,601,104
DOMESTIC WASTE MANAGEMENT	\$1,225,137	\$1,620,917	(\$1,853,214)	(\$460,635)	\$532,205
Sub Total. Externally Restricted	\$12,496,837	\$2,016,607	(\$919,500)	(\$460,635)	\$13,133,309
BUSINESS DEVELOPMENT RESTRICTED FUND	(\$2,781,222)	\$2,744,933	(\$2,391,940)	\$924,896	(\$1,503,333)
INVESTMENT PROPERTIES DEPRECIATION FUND (INVESTMENT PROPERTIES SINKING FUND)	\$2,747,036	\$1,138,312	(\$17,150)		\$3,868,198
ASSET REHABILITATION RESERVE	(\$93,823)	\$497,500	(\$521,400)		(\$117,723)
FLEET MANAGEMENT (PLANT)	\$4,585,894	\$2,354,597	(\$3,241,003)	\$515,873	\$4,215,361
OTHER WASTE SERVICES	\$3,443,742	(\$15,000)	\$0		\$3,428,742
QUARRY DEVELOPMENT	\$742,167	(\$2,201)	\$0		\$739,966
BUSINESS OPERATIONS RESTRICTED FUND	(\$6,605,613)	\$2,032,993	(\$3,132,199)	(\$1,785,992)	(\$9,490,811)
EMPLOYEE LEAVE ENTITLEMENTS	\$6,542,838	\$0	\$0		\$6,542,838
BEACH VEHICLE PERMITS	(\$53,569)	\$53,569	\$0		\$0
DRAINAGE	\$337,053	\$871,280	(\$1,080,000)	(\$143,333)	(\$15,000)
INTERNAL LOAN	(\$150,203)	\$150,203	\$0		\$0
SUSTAINABLE ENERGY & WATER RESTRICTED FUND	\$0	\$225,000	\$0		\$225,000
TRANSPORT LEVY	\$48,774	\$400,000	(\$490,000)		(\$41,226)
ENVIRONMENTAL LEVY	\$271,413	(\$269,678)	\$0		\$1,735
ADMINISTRATION BUILDING SINKING FUND	\$1,090,192	\$400,803	(\$1,234,864)		\$256,131
DEPOT SINKING FUND	\$1,110,811	\$341,444	(\$60,000)		\$1,392,255
RTA BYPASS ROADS MTCE RESTRICTED FUND	\$1,846,180	\$0	(\$250,000)		\$1,596,180
RESTRICTED CASH ESTIMATED BALANCE	\$3,532,020	\$264,478	(\$786,134)	\$0	\$3,010,364
COUNCILLOR WARD FUNDS	(\$4,604)	\$1,185,000	(\$39,241)		\$1,141,155
INFORMATION TECHNOLOGY STRATEGY	\$322,325	\$6,815	(\$30,815)		\$298,325
PROVISION FOR LOCAL GOVT ELECTION	\$98,839	\$49,640	\$0		\$148,479
PARKING METER RESERVE	\$215,707	\$225,067	\$0		\$440,774
Sub Total. Internally Restricted	\$17,245,957	\$12,654,755	(\$13,274,746)	(\$488,556)	\$16,137,410
RESTRICTED FUNDS TOTAL	\$29,742,794	\$14,671,362	(\$14,194,246)	(\$949,191)	\$29,270,719
* Balance Sheet Movements are the repayments of the Principals on Loans and the funds from Loans received and the proceeds for land and fleet sales					

ITEM NO. 6

FILE NO: PSC2010-03601

TRANSFER AND DEDICATION AS ROAD – LOT 1 DP1146105 AT RAYMOND TERRACE

REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY, MANAGER

GROUP: COMMERCIAL PROPERTY GROUP

RECOMMENDATION IS THAT COUNCIL:

- 1) Accepts transfer of Lot 1 DP1146105 from the two Tenant in Common owners, under section 570 Local Government Act 1993.
- 2) Makes application to the Minister for Local Government for consent and approval of the Governor for compulsory acquisition of Lot 1 DP1146105 excluding all mines or deposits of minerals, or if unsuccessful:
- 3) Authorises affixing of Councils Seal and Signatures to the transfer of Lot 1 DP1146105 into Councils ownership.
- 4) Following acquisition, by either of the above methods declare the subject land public road under section 10 Roads Act 1993 by notification in the Government Gazette.

COUNCIL COMMITTEE MEETING – 3 MAY 2011

RECOMMENDATION:

	<p>Councillor Glenys Francis Councillor Geoff Dingle</p>	<p>That the recommendation be adopted.</p>
--	---	--

ORDINARY COUNCIL MEETING – 10 MAY 2011

<p>161</p>	<p>Councillor Bruce MacKenzie Councillor Caroline De Lyall</p>	<p>It was resolved that the recommendation be adopted.</p>
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BACKGROUND

The purpose of this report is to recommend acquisition of Lot 1 DP1146105 and on completion of that action declare it public road.

The parcel situated at the southern intersection of Rees James Road and Adelaide Street, Raymond Terrace is a very narrow residue sliver of land remaining after road acquisitions that commenced in the 1960's. See attachment 1 for the location. Both executors are in contact with each other and agree with the recommendations by the most appropriate method.

Facilities and Services Group have indicated the acquisition and dedication of the land will allow an improved intersection of the roads to be constructed in the future.

FINANCIAL/RESOURCE IMPLICATIONS

The financial implications are of a minor nature as there will be no outlay for the purchase price as agreed with the owners. The necessary actions to finalise the matter fall within staff normal processes and therefore will not be an extra burden. The outstanding rates will be waived under section 570 Local Government Act.

LEGAL, POLICY AND RISK IMPLICATIONS

The transfer process is carried out under the Conveyancing Act 1919 so there will not be any implications. There are, however, responsibilities for the executors to ensure the transfer is satisfactorily finalised. If the compulsory acquisition process is used the Land Acquisition (Just Terms Compensation) Act 1991 must be complied with. The dedication as public road is carried out under the Roads Act 1993. There should be no implication.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There should be no implications as the recommendations relate to transfer of the land parcel.

CONSULTATION

Has been with the executors of the wills of the owners, Councils Assets Engineer, Principal Property Advisor and Property Officer.

OPTIONS

Accept recommendations
Reject recommendation
Amend recommendation.

ATTACHMENTS

1) Location Plan.

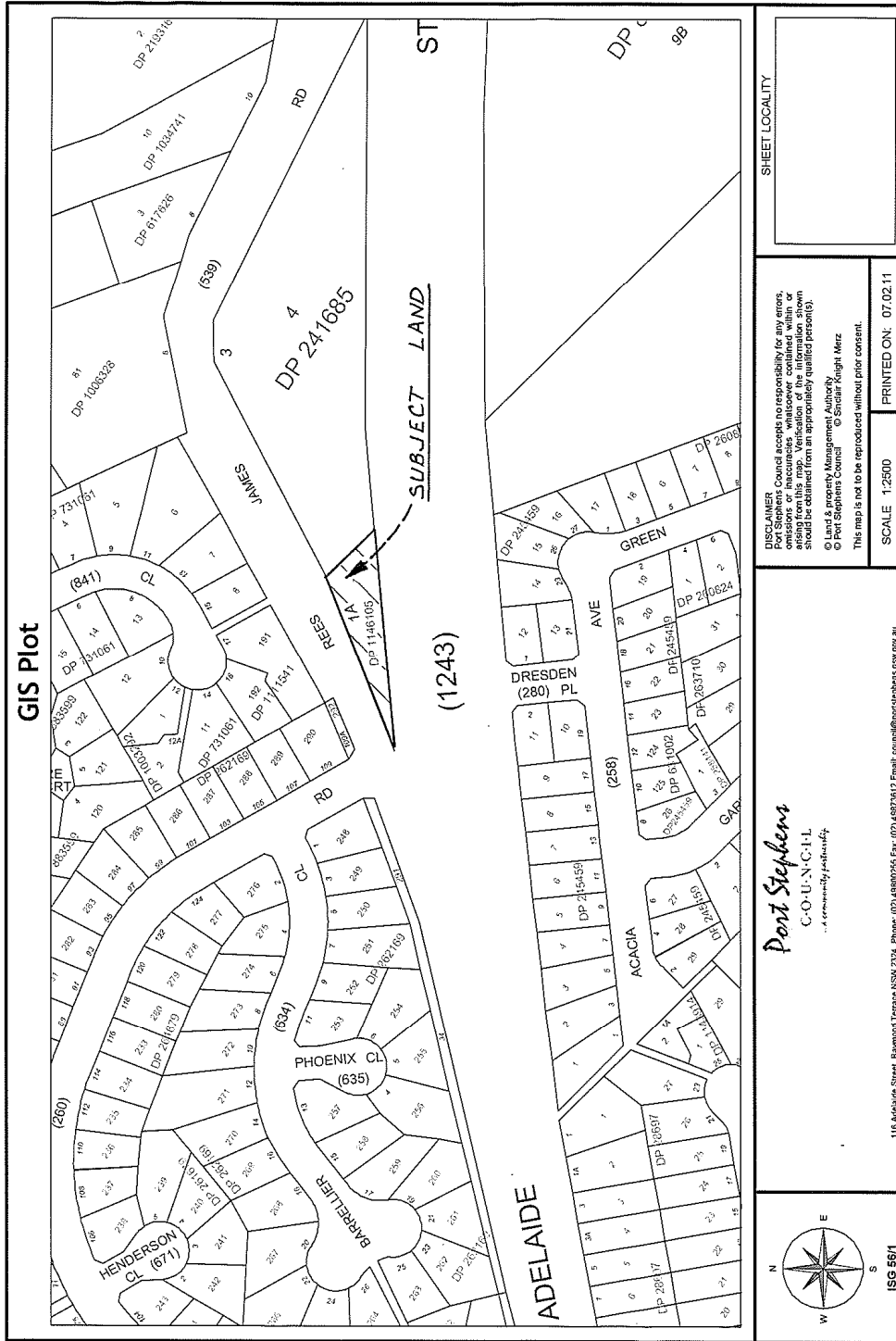
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



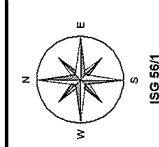
SHEET LOCALITY

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

116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 4980295 Fax: (02) 4973912 Email: council@portstephens.nsw.gov.au



ITEM NO. 7

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 3 May 2011.

No:	Report Title	Page:
1	CASH AND INVESTMENTS	

COUNCIL COMMITTEE MEETING – 3 MAY 2011 RECOMMENDATION:

	Councillor Bob Westbury Councillor Shirley O'Brien	That the recommendation be adopted.
--	---	-------------------------------------

ORDINARY COUNCIL MEETING – 10 MAY 2011

162	Councillor Ken Jordan Councillor Caroline De Lyall	It was resolved that the recommendation be adopted.
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COUNCIL COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

CASH AND INVESTMENTS HELD AT 31 MARCH 2011

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

FILE: PSC2006-6531

BACKGROUND

The purpose of this report is to present Council's schedule of cash and investments held at 31 March 2011.

ATTACHMENTS

- 1) Cash and investments held at 31 March 2011
- 2) Monthly cash and investments balance March 2010 – March 2011
- 3) Monthly Australian term deposit index March 2010 – March 2011.

ATTACHMENT 1

CASH & INVESTMENTS HELD AS AT 31 MARCH 2011											
INVESTED WITH	INV. TYPE	CURRENT RATING	MATURITY DATE	AMOUNT INVESTED	% of Total Portfolio	Current Int Rate	Market Value January	Market Value February	Market Value March	Current Mark to Market Exposure	
GRANGE SECURITIES											
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	NR	20-Mar-12	\$1,000,000	3.84%	6.34%	\$855,000	\$855,000	\$865,000	-\$135,000	
NEXUS BONDS LTD "TOPAZ AA"	Floating Rate CDO		23-Jun-15	\$412,500	1.58%	0.00%	\$274,313	\$274,560	\$278,438	-\$134,062	
HELIUM CAPITAL LTD "ESPERANCE AA+" *	Floating Rate CDO	NR	20-Mar-13	\$1,000,000	3.84%	0.00%	\$0	\$0	\$0	-\$1,000,000	
HOME BUILDING SOCIETY	Floating Rate Sub Debt	NR	25-Jul-11	\$500,000	1.92%	5.97%	\$478,235	\$478,235	\$485,275	-\$14,725	
GRANGE SECURITIES "KAKADU AA"	Floating Rate CDO	CCC	20-Mar-14	\$1,000,000	3.84%	6.24%	\$369,000	\$369,000	\$468,900	-\$531,100	
GRANGE SECURITIES "COOLANGATTA AA" *	Floating Rate CDO	NR	20-Sep-14	\$1,000,000	3.84%	0.00%	\$0	\$0	\$0	-\$1,000,000	
TOTAL GRANGE SECURITIES				\$4,912,500	18.87%		\$1,976,548	\$1,976,795	\$2,097,613	-\$2,814,887	
ABN AMRO MORGANS											
GLOBAL PROTECTED PROPERTY NOTES VII	Property Linked Note	A+	20-Sep-11	\$1,000,000	3.84%	0.00%	\$935,700.00	\$940,800	\$944,800	-\$55,200	
TOTAL ABN AMRO MORGANS				\$1,000,000	3.84%		\$935,700	\$940,800	\$944,800	-\$55,200	
ANZ INVESTMENTS											
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	B	30-Dec-11	\$1,000,000	3.84%	0.00%	\$849,800	\$849,800	\$889,200	-\$110,800	
ANZ ZERO COUPON BOND	Zero Coupon Bond	AA	1-Jun-17	\$1,017,876	3.91%	0.00%	\$640,163	\$640,163	\$671,595	-\$346,281	
TOTAL ANZ INVESTMENTS				\$2,017,876	7.75%		\$1,489,963	\$1,489,963	\$1,560,795	-\$457,081	
RIM SECURITIES											
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO		8-Oct-11	\$2,000,000	7.68%	0.00%	\$1,835,000	\$1,850,000	\$1,865,000	-\$135,000	
ELDERS RURAL BANK (2011)	Floating Rate Sub Debt		5-Apr-11	\$1,000,000	3.84%	5.62%	\$991,470	\$995,230	\$995,230	-\$4,770	
COMMUNITY CPS CREDIT UNION	Term Deposit	N/R	9-May-11	\$1,000,000	3.84%	6.15%	\$1,000,000	\$1,000,000	\$1,000,000	\$0	
SUNCORP METWAY	Term Deposit	withdrawn					\$1,000,000	\$1,000,000			
QUEENSLAND COUNTRY CREDIT UNION	Term Deposit	N/R	1-Jun-11	\$1,000,000	3.84%	6.07%			\$1,000,000	\$0	
TOTAL RIM SECURITIES				\$5,000,000	19.21%		\$4,826,470	\$4,845,230	\$4,860,230	-\$139,770	
WESTPAC INVESTMENT BANK											
MACKAY PERMANENT BUILDING SOCIETY	Floating Rate Sub Debt		21-Nov-11	\$500,000	1.92%	6.00%	\$489,990	\$490,845	\$491,685	-\$8,315	
TOTAL WESTPAC INV. BANK				\$500,000	1.92%		\$489,990	\$490,845	\$491,685	-\$8,315	
CURVE SECURITIES											
RAILWAYS CREDIT UNION	Term Deposit	withdrawn					\$1,000,000	\$1,000,000			
BANK OF CYPRUS AUSTRALIA LIMITED	Term Deposit	N/R	30-May-11	\$1,000,000	3.84%	6.16%	\$1,000,000		\$1,000,000		
QANTAS STAFF CREDIT UNION	Term Deposit	N/R	6-Jun-11	\$1,000,000	3.84%	5.90%	\$1,000,000	\$1,000,000	\$1,000,000	\$0	
TOTAL CURVE SECURITIES				\$2,000,000	7.68%		\$3,000,000.00	\$2,000,000	\$2,000,000	\$0	
LONGREACH CAPITAL MARKETS											
LONGREACH SERIES 16 PROPERTY LINKED NOTE	Property Linked Note	A+	7-Mar-12	\$500,000	1.92%	0.00%	\$469,050	\$472,300	\$477,440	-\$22,560	
LONGREACH SERIES 19 GLOBAL PROPERTY LINKED NOTE	Property Linked Note	A+	7-Sep-12	\$500,000	1.92%	0.00%	\$449,500	\$453,000	\$456,050	-\$43,950	
TOTAL LONGREACH CAPITAL				\$1,000,000	3.84%		\$918,550	\$925,300	\$933,490	-\$66,510	

MINUTES FOR ORDINARY MEETING – 10 MAY 2011

ATTACHMENT 1

COMMONWEALTH BANK										
EQUITY LINKED DEPOSIT	Equity Linked Note	AA	20-Sep-11	\$500,000	1.92%	3.00%	\$489,850	\$490,200	\$490,150	-\$9,850
EQUITY LINKED DEPOSIT ELN SERIES 2	Equity Linked Note	AA	05-Nov-12	\$500,000	1.92%	3.00%	\$474,550	\$480,150	\$478,950	-\$21,050
BENDIGO BANK SUBORDINATED DEBT	Floating Rate Sub Debt	BBB	09-Nov-12	\$500,000	1.92%	6.13%	\$473,580	\$491,365	\$492,500	-\$7,500
BANK OF QUEENSLAND BOND	Bond	BBB+	16-Mar-12	\$1,000,000	3.84%	5.35%	\$1,000,000	\$1,000,000	\$1,000,000	\$0
COMMONWEALTH BANK	Term Deposit	AA	21-Apr-11	\$1,000,000	3.84%	5.72%			\$1,000,000	
TOTAL COMMONWEALTH BANK				\$3,500,000	13.44%		\$2,437,980	\$2,461,715	\$3,461,600	-\$38,400
FIG SECURITIES										
TELSTRA LINKED DEPOSIT NOTE	Principal Protected Note		30-Nov-14	\$500,000	1.92%	5.97%	\$459,805	\$484,285	\$484,285	-\$15,715
ING BANK AUSTRALIA LIMITED	Term Deposit	withdrawn					\$1,000,000	\$1,000,000		\$0
TOTAL FIG SECURITIES				\$500,000	1.92%		\$1,459,805	\$1,484,285	\$484,285	-\$15,715
MAITLAND MUTUAL										
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt	N/R	30-Jun-13	\$500,000	1.92%	6.54%	\$500,000	\$500,000	\$500,000	\$0
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt	N/R	31-Dec-14	\$500,000	1.92%	6.54%	\$500,000	\$500,000	\$500,000	\$0
TOTAL M'LAND MUTUAL				\$1,000,000	3.84%		\$1,000,000	\$1,000,000	\$1,000,000	\$0
FARQUHARSON SECURITIES										
QUEENSLAND POLICE CREDIT UNION	Term Deposit	N/R	19-May-11	\$1,000,000	3.84%	5.87%			\$1,000,000	\$0
NEW ENGLAND CREDIT UNION	Term Deposit	N/R	11-Apr-11	\$1,000,000	3.84%	5.97%		\$1,000,000	\$1,000,000	\$0
TEACHERS CREDIT UNION	Term Deposit	N/R	20-Jun-11	\$1,000,000	3.84%	6.07%			\$1,000,000	\$0
TOTAL FARQUHARSON SECURITIES				\$3,000,000	11.52%		\$0	\$1,000,000	\$3,000,000	\$0
TOTAL INVESTMENTS				\$24,430,376	93.84%		\$18,535,006	\$18,614,933	\$20,834,498	-\$3,595,878
AVERAGE RATE OF RETURN ON INVESTMENTS						3.81%				
CASH AT BANK				\$1,604,206	6.16%	4.70%	\$1,689,512	\$4,988,333	\$1,604,206	\$0
AVERAGE RATE OF RETURN ON INVESTMENTS + CASH						3.86%				
TOTAL CASH & INVESTMENTS				\$26,034,582	100.00%		\$20,224,518	\$23,603,266	\$22,438,704	-\$3,595,878
BBSW FOR PREVIOUS 3 MONTHS						4.98%				

* Lehman Brothers is the swap counterparty to these transactions and as such the deals are in the process of being unwound. No valuation information is available.

CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER

I, Peter Gesling, being the Responsible Accounting Officer of Council, hereby certify that the Investments have been made in accordance with the Local Government Act 1993, the Regulations and Council's investment policy.

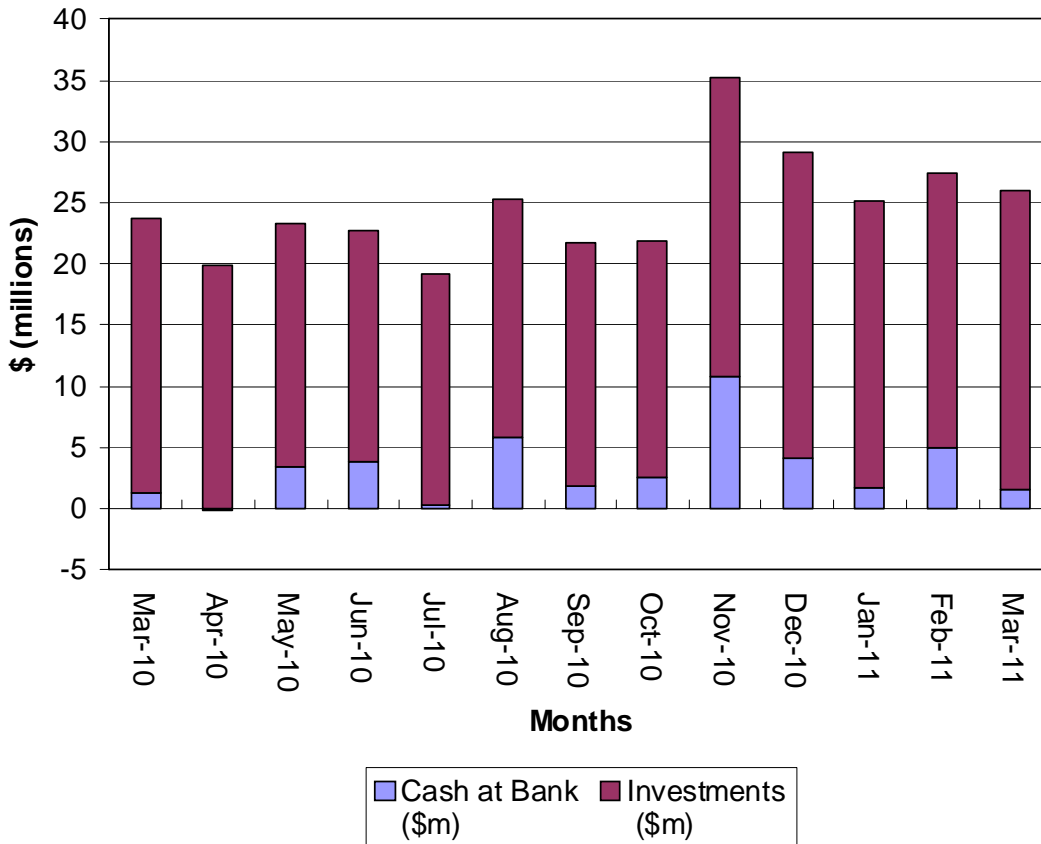
P GESLING

ATTACHMENT 2

Cash and Investments Held

Date	Cash at Bank (\$m)	Investments (\$m)	Total Funds (\$m)
Mar-10	1.311	22.380	23.691
Apr-10	0.206	19.880	19.675
May-10	3.425	19.880	23.305
Jun-10	3.847	18.880	22.728
Jul-10	0.285	18.880	19.165
Aug-10	5.888	19.380	25.268
Sep-10	1.879	19.880	21.759
Oct-10	2.512	19.380	21.892
Nov-10	10.822	24.380	35.202
Dec-10	4.175	24.930	29.106
Jan-11	1.690	23.430	25.120
Feb-11	4.988	22.430	27.419
Mar-11	1.604	24.430	26.035

Cash and Invested Funds for the Period ended 31/03/2011

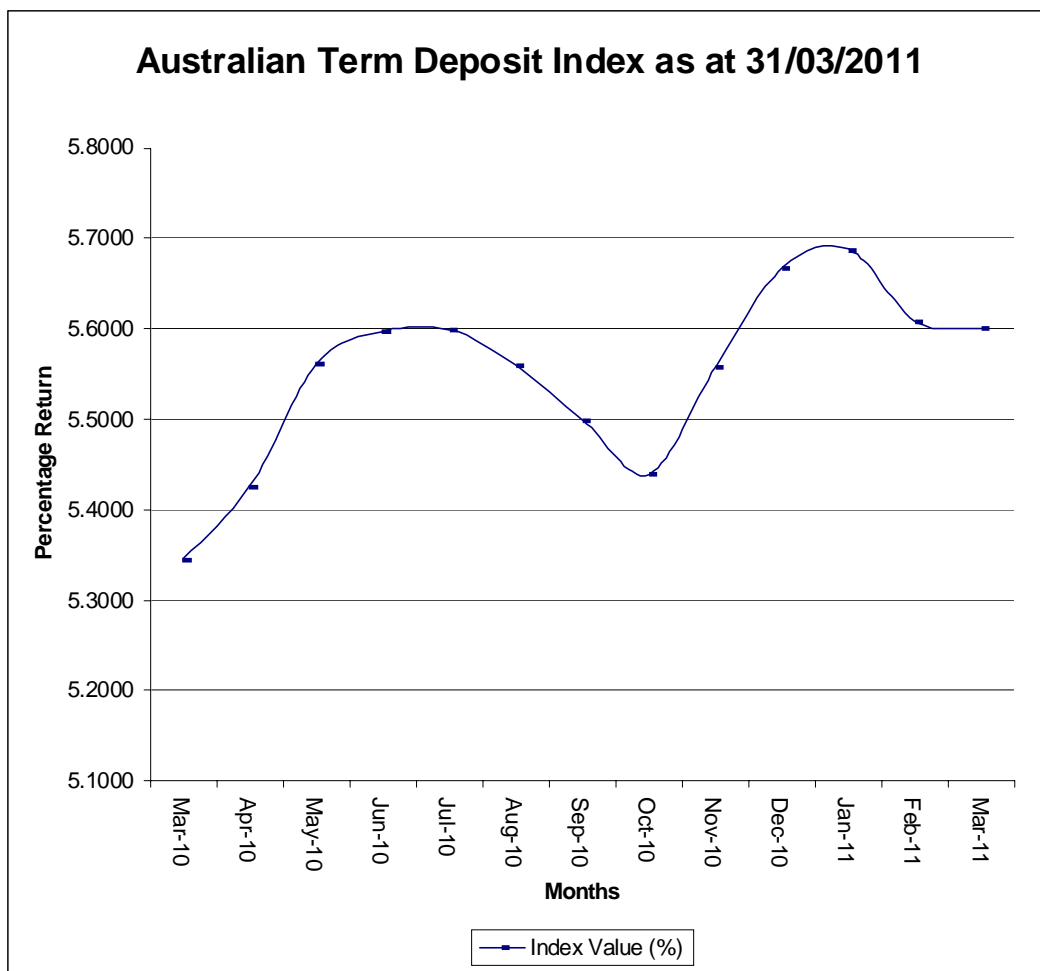


ATTACHMENT 3

Australian Term Deposit Accumulation Index

Date	Index Value (%)
Mar-10	5.3452
Apr-10	5.4259
May-10	5.5615
Jun-10	5.5974
Jul-10	5.5992
Aug-10	5.5587
Sep-10	5.4991
Oct-10	5.4396
Nov-10	5.5583
Dec-10	5.6675
Jan-11	5.6877
Feb-11	5.6079
Mar-11	5.6

Australian Term Deposit Index as at 31/03/2011



GENERAL MANAGER'S REPORT

PETER GESLING
GENERAL MANAGER

ITEM NO. 1

FILE NO: PSC2010-04238

CODE OF CONDUCT INVESTIGATION – CR BRUCE MACKENZIE

REPORT OF: PETER GESLING –GENERAL MANAGER

GROUP: GENERAL MANAGER’S OFFICE

RECOMMENDATION IS THAT COUNCIL:

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

ORDINARY COUNCIL MEETING – 10 MAY 2011

163	Councillor John Nell Councillor Shirley O'Brien	It was resolved that Council receive and note the report and that no further action be taken.
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BACKGROUND

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

The matter involved the non disclosure of a potential conflict of interest by Cr MacKenzie in a matter that was determined by the elected Council at its meeting on 8 June 2010. The conflict of interest is alleged to involve Cr MacKenzie voting on a development matter that involved a person with whom he had a relationship.

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

FINANCIAL/RESOURCE IMPLICATIONS

The 2010/11 budget does not provide for investigations under the Code of Conduct however additional funds will only be sought from Council if the costs associated with the investigation cannot be provided for within the existing budget.

The cost of this investigation was \$4,000, however the cost was reduce by 40% due to delay in finalising the investigation by the sole reviewer. The final costs being \$2,400 (incl. GST).

LEGAL, POLICY AND RISK IMPLICATIONS

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

General Manager
Kath Roach – SINC Solutions (Sole Reviewer)
Councillor Bruce MacKenzie

OPTIONS

Adopt the recommendation of the Sole Reviewer's report.
Amend the recommendation of the Sole Reviewer's report.
Reject the recommendation of the Sole Reviewer's report.

ATTACHMENTS

- 1) Sole Reviewer's report.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

PORT STEPHENS COUNCIL
Report to Ordinary Council Meeting

Page 1

SUBJECT: REPORT OF THE CONDUCT REVIEW COMMITTEE
- SOLE REVIEWER
REPORT BY: CONDUCT REVIEW COMMITTEE – SOLE REVIEWER
CONTACT: KATH ROACH, SINC SOLUTIONS PTY LTD

PURPOSE

The following report has been prepared under the provisions of Part 3, Section 12 - Complaint Handling Procedures and Sanctions of Port Stephens Council's Code of Conduct adopted 25 November 2008.

RECOMMENDATIONS

It is recommended that:

1. Council receive and note the contents of this report, in particular that Councillor MacKenzie did not breach the Port Stephens Council Code of Conduct.

BACKGROUND

Person Subject of Complaint	Councillor Bruce MacKenzie
Description of Complaint	It is alleged that Councillor MacKenzie has a conflict of interests in a matter that was determined by the Elected Council at its meeting on 8 June 2010 and 13 July 2010. The non-pecuniary conflict of interests is alleged to involve Councillor MacKenzie voting on a development matter that involved a person with whom he had a relationship.
Date of Alleged Breach	8 June 2010 and 13 July 2010
Date of Complaints	13 July 2010 and 27 July 2010
Relevant Code of Conduct	Port Stephen's Council Code of Conduct (adopted 25 November 2008).
Sole Reviewer	Ms Kath Roach Managing Director, SINC Solutions Pty Ltd

Complaint against Councillor Bruce MacKenzie

The first letter of complaint was received by the General Manager, Mr Peter Gesling, on 13 July 2010 regarding an alleged failure to identify and manage a conflict of interests by the then Mayor, Councillor MacKenzie in relation to a matter being considered by the Elected Council on 8 June 2010.

The matter was subsequently deferred pending a site inspection by Councillors and staff. A second letter of complaint was received by the General Manager, Mr Peter Gesling on 27 July 2010 regarding an alleged failure to identify and manage a conflict of interests by the then Mayor, Councillor MacKenzie in relation to the same matter previously considered on 13 July 2010 and subsequently determined by the Elected Council on 27 July 2010.

The General Manager assessed the complaints in accordance with the provisions of the Code of Conduct. Following a review of all available information, on 12 August 2010, the General Manager wrote to the then Mayor, Councillor MacKenzie requesting detailed information in relation to the complaints.

On 24 August 2010, the General Manager was provided with additional information from a solicitor representing the then Mayor, Councillor MacKenzie. On 17 September 2010, the General Manager referred the matter for review. The matter was reviewed under the relevant provisions of Council's Code of Conduct.

The complaint alleged that the then Mayor, Councillor MacKenzie had a relationship with the applicant of a Development Application (DA 16-2010-102-1) of a property located at 2258 Nelson Bay Road, Williamstown, Mr Neville Moxey.

The complaint alleged that the Mayor had purchased land from Mr Moxey at an earlier time and as such, this raised concerns regarding a potentially serious, non-pecuniary conflict of interests which the then Mayor, Councillor MacKenzie failed to declare.

The complaint states that the then Mayor, Councillor MacKenzie purchased land on the Stockton Bight Track, Williamstown, to allow him access to roads which would assist him in avoiding payment of a significant amount of funds by using an alternative route for transportation as part of his business.

FACTUAL BACKGROUND OF THE INCIDENT:

1. On 8 June 2010 the then Mayor, Councillor MacKenzie tabled a Mayoral Minute (item 5) entitled "Moxey – Nelson Bay Road – DA 16-2010-102". The recommendation of this Mayoral Minute was to "Support the construction of a residential property in the ANEF 2025 noise effected area. On receipt of reply from RTA the General Manager under delegated authority approve the DA 16-2010-102."
2. The Council resolution stated: "It was resolved that the matter be deferred to the Ordinary Council meeting on 29 June 2010."
3. The following Councillors voted for the Motion: Councillors Glenys Francis, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Councillor MacKenzie. No Councillors voted against the motion.
4. On 3 July 2010 a site inspection was completed by Councillors and relevant staff.
5. On 13 July 2010 a Report (item 3) was tabled at the Council Committee Meeting in relation to Development Application DA16-2010-102. The Council staff recommended that the Development Application be refused. The Committee recommendation was as follows.

That Council:-

1. Approve Development Application 16-2010-102-1 for the construction of a single storey brick veneer dwelling at LOT: 7, DP 224476, 2258 Nelson Bay Road, Williamstown, in principle and;
2. That staff provide draft conditions of consent for consideration by Council at the Council Committee meeting of 27 July 2010.

6. On 13 July 2010 a Report (item 3) was tabled at the Ordinary Council Meeting in relation to Development Application DA16-2010-102. The Council Resolution stated: *"It was resolved that the recommendation be adopted."*
7. The following Councillors voted for the Motion: Councillors Ken Jordan, Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Councillor MacKenzie. The following Councillors voted against the Motion: Crs Peter Kafer, Caroline De Lyall, Geoff Dingle and Frank Ward. The minutes record that Councillor Glenys Francis returned to the meeting at 8.15pm following voting on the matter.
8. On 24 August 2010 Mr Neville Moxey made a statutory declaration. As part of that declaration Mr Moxey stated:
 - That in 2009 he decided to sell the property on the Stockton Bight Track, Williamtown and contacted a real estate agent, Mr Tony Bowe to discuss the possible sale;
 - An inspection by the agent was completed;
 - The agent indicated that there may be some problems regarding access and getting electricity connected if a prospective purchaser wanted to build a property;
 - The agent suggested that a contract of sale be prepared and that the agent would then commence marketing the property;
 - The agent advised that he had read in the newspaper about a deal involving Councillor MacKenzie and the Worimi in relation to sand mining rights and he suggested that he could approach Councillor MacKenzie to find out if he was interested in purchasing the property. He agreed for the agent to do this.
 - The agent subsequently advised that Councillor MacKenzie had made an offer which was rejected.
 - A counter offer was made by Councillor MacKenzie which was accepted.
 - He had known Councillor MacKenzie for at least 60 years however he had no business dealings with him in the past.
9. On 20 August 2010, Mr Anthony Bowe made a statutory declaration. As part of that declaration, Mr Bowe stated:
 - He is a Licensed Auctioneer, Stock & Station Agent and Real Estate Agent;
 - In 2009 he was contacted by Mr Neville Moxey in relation to the possible sale of his property on Stockton Bight Track, Williamtown.
 - He inspected the property and then attended Port Stephens Council to check about possible problems which might arise regarding access and the electricity connection should an application be made for the erection of a property. Council advised that the road would need to be improved for services such as waste collection and electricity supply if a house was erected.
 - He advised Mr Moxey of this and advised that the cost associated with this would be high.
 - He had read in a newspaper about Councillor MacKenzie and the deal that had been made with the Worimi in relation to sand mining rights. He suggested to Mr Moxey that he approach Councillor MacKenzie to see if he was interested in purchasing the property to which Mr Moxey agreed.
 - He contacted Councillor MacKenzie who advised that he was not aware that there were individual blocks on the property of Mr Moxey's and he took Councillor MacKenzie and Robert MacKenzie to inspect the property.
 - Councillor MacKenzie asked him what Mr Moxey wanted for the property and he advised him to make an offer which Councillor MacKenzie did. He took the offer to Mr Moxey who rejected it.

- He advised Councillor MacKenzie of this and he then made a counter offer which was accepted by Mr Moxey.
10. On 24 August 2010 the then Mayor, Councillor MacKenzie made a statutory declaration. As part of that declaration, the then Mayor, Councillor MacKenzie stated:
- He was a Director of B & RB MacKenzie FT Pty Ltd which is the registered proprietor of the subject property on Stockton Bight Track, Williamstown.
 - In 2009 he was approached by Mr Tony Bowe to ascertain whether he was interested in purchasing the property;
 - He advised Mr Bowe that he was unaware that there were individual blocks on Mr Moxey's land.
 - He and his son Robert and inspected the property with Mr Bowe. Mr Bowe asked if he was interested in purchasing the property and I questioned how much Mr Moxey wanted for the property. Mr Bowe advised me to make an offer.
 - He advised Mr Bowe that he would think about it and subsequently made an offer which was rejected by Mr Moxey.
 - He made a counter offer and this was accepted by Mr Moxey and contracts were then exchanged.
 - He had known Mr Moxey for approximately 60 years however; he had not had any contact with Mr Moxey for at least 10 years prior to the purchase of the property.
11. The Port Stephens Council Code of Conduct states at section 7.1 and 7.16 the following:
- 7.1 *"A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty."*
- 7.16 *As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:*
-
- b) *other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship...*
12. The alleged private interest in this matter relates to the relationship between the then Mayor, Councillor MacKenzie and Mr Moxey.
13. Councillor MacKenzie's public duty relates to his role in the decision making at the Council Meeting on 8 June 2010 Council Meeting and the Council Committee Meeting and subsequent Council Meeting on 13 July 2010.
14. There are two key elements of section 7.1 of the Port Stephens Council Code of Conduct applicable being "perception" and "could be influenced".
15. The Code of Conduct requires that the private interest could provide a level of influence in Councillor MacKenzie's decision making on the development application. There was no level of influence displayed by Councillor MacKenzie throughout the investigation.
16. There is perception of Councillor MacKenzie's private interest which is evident through the lodgement of a complaint.
17. The relationship between Mr Moxey and Councillor MacKenzie does not meet the definition of "closeness" which is required for a significant, non-pecuniary conflict of interests to apply.

PORT STEPHENS COUNCIL
Report to Ordinary Council Meeting

Page 5

ISSUE FOR DETERMINATION:

Did the inactions of the then Mayor, Councillor MacKenzie in not identifying or managing a conflict of interests in relation to his relationship with Mr Neville Moxey at the Ordinary Council Meetings of 8 June and 13 July 2010 breach the provisions of section 7 of the Port Stephens Council Code of Conduct?

FINDINGS OF MATERIAL FACT:

1. Councillor MacKenzie does not have a pecuniary conflict of interests in this matter.
2. Councillor MacKenzie does not have a significant, non-pecuniary conflict of interests in this matter.
3. Councillor MacKenzie does have a perceived non-pecuniary, less than significant conflict of interests in this matter. However, the Code of Conduct requires that the private interest could provide a level of influence in Councillor MacKenzie's decision making on the Development Application. There was no level of private influence evident by Councillor MacKenzie in this matter.

REASONS FOR FINDINGS OF MATERIAL FACT:

1. The various statutory declarations indicate that the purchase of the property occurred in 2009 and that the agent, Mr Bowe, was the person who initiated and facilitated the sale between Mr Moxey and Councillor MacKenzie.
2. Mr Moxey and Councillor MacKenzie's statutory declaration both indicate that they have known each other for over 60 years.
3. Councillor MacKenzie's statutory declaration states that prior to the purchase of the property in 2009, he had not had contact with Mr Moxey for over 10 years.
4. Mr Bowe was an independent third party engaged by Mr Moxey to undertake negotiations for the sale of the land.
5. In this capacity, Mr Bowe identified and then approached Councillor MacKenzie to determine his interest in the purchase of the land.
6. The Code of Conduct requires for a relationship to be considered "*significant*" under the provisions of a non-pecuniary conflict of interests, the relationship must meet the "*closeness*" test. This test is not met by the relationship between Mr Moxey and Councillor MacKenzie.

CONSIDERATION ISSUES

1. The Guidelines for the Model Code of Conduct released by the Division of Local Government (DLG) in 2008 include a further requirement in determining the test for "*closeness*" of a significant conflict of interests. The further requirement involves the "*strength*" of the relationship. There is no evidence of "*strength*" in the relationship between Mr Moxey and Councillor MacKenzie.

RECOMMENDATION:

The Conduct Review Committee – Sole Reviewer is obligated to report to Council on the outcomes of the investigation into the alleged breaches of the Port Stephens Council Code of Conduct by Councillor MacKenzie. The following details those outcomes.

It is recommended that:

1. Council receive and note the contents of this report, in particular that Councillor MacKenzie did not breach the Port Stephens Council Code of Conduct.

REASONS FOR RECOMMENDATIONS:

In making the above recommendations, as required by the provisions of section 14.9 of the Port Stephens Council Code of Conduct, regard has been given to the following:

1. The relationship between Mr Moxey and Councillor MacKenzie does not meet the definition of a significant conflict of interests merely because of the purchase of a property in 2009 by Councillor MacKenzie from Mr Moxey.
2. It should be noted that the reason for the purchase of the property is not relevant in determining this conduct matter.

SIGNED:



Kath Roach
Managing Director
SINC Solutions Pty Ltd

11 April 2011

ITEM NO. 2

FILE NO: PSC2010-04194

CODE OF CONDUCT INVESTIGATION – CR FRANK WARD

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

RECOMMENDATION IS THAT COUNCIL:

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

ORDINARY COUNCIL MEETING – 10 MAY 2011

164	Councillor John Nell Councillor Shirley O'Brien	It was resolved that Council receive and note the report and that no further action be taken.
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BACKGROUND

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

The matter involved the non disclosure of a potential conflict of interest by Cr Ward in a matter that was determined by the elected Council at its meeting on 13 October 2009. The conflict of interest is alleged to involve Cr Ward voting on a development matter that involved the same organisation that is the owner of the retirement village where Cr Ward resides.

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

FINANCIAL/RESOURCE IMPLICATIONS

The 2010/11 budget does not provide for investigations under the Code of Conduct however additional funds will only be sought from Council if the costs associated with the investigation cannot be provided for within the existing budget.

The cost of this investigation was \$10,000, however the cost was reduced by 40% due to delay in finalising the investigation by the sole reviewer. The final costs being \$6,000 (incl. GST).

LEGAL, POLICY AND RISK IMPLICATIONS

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

General Manager
Kath Roach – SINC Solutions (Sole Reviewer)
Councillor Frank Ward.

OPTIONS

Adopt the recommendation of the Sole Reviewer's report.
Amend the recommendation of the Sole Reviewer's report.
Reject the recommendation of the Sole Reviewer's report.

ATTACHMENTS

- 1) Sole Reviewer's report.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

PORT STEPHENS COUNCIL
Report to Ordinary Council Meeting

Page 1

SUBJECT: REPORT OF THE CONDUCT REVIEW COMMITTEE
- SOLE REVIEWER
REPORT BY: CONDUCT REVIEW COMMITTEE – SOLE REVIEWER
CONTACT: KATH ROACH, SINC SOLUTIONS PTY LTD

PURPOSE

The following report has been prepared under the provisions of Part 3, Section 12 - Complaint Handling Procedures and Sanctions of Port Stephens Council's Code of Conduct adopted 25 November 2008.

RECOMMENDATIONS

It is recommended that:

1. Council receive and note the contents of this report, in particular that Councillor Ward did not breach the Port Stephens Council Code of Conduct.
2. As Councillor Nell and Councillor Dover were not the subject of this complaint investigation that no action should be taken against these Councillors in relation to this matter.

BACKGROUND

Person Subject of Complaint	Councillor Frank Ward
Description of Complaint	It is alleged that Councillor Ward has a conflict of interests in a matter that was determined by the Elected Council at its meeting on 13 October 2009. The conflict of interests is alleged to involve Councillor Ward voting on a development matter that involved the same organisation that is the owner of the retirement village where Councillor Ward resides.
Date of Alleged Breach	13 October 2009
Date of Complaint	7 July 2010
Relevant Code of Conduct	Port Stephen's Council Code of Conduct (adopted 25 November 2008).
Sole Reviewer	Ms Kath Roach Managing Director, SINC Solutions Pty Ltd

Complaint against Councillor Frank Ward

A letter of complaint was received by the General Manager, Mr Peter Gesling, on 7 July 2010 regarding an alleged failure to identify and manage a conflict of interests by Councillor Ward in relation to a matter determined by the Elected Council on 13 October 2009. The General Manager assessed the complaint in accordance with the provisions of the Code of Conduct. Following a review of all available information, on 18 August 2010, the General Manager referred the matter for review in accordance with the specification being granted on 24 August 2010. The matter was reviewed under the relevant provisions of Council's Code of Conduct.

PORT STEPHENS COUNCIL
Report to Ordinary Council Meeting

Page 2

The complainant alleged the following points:

1. That Councillor Ward failed to declare a conflict of interests in relation to his association with Port Stephens Veteran and Citizens Aged Care (PSVCAC); and
2. That Councillor Ward by his inaction to declare a conflict of interests at the Council Meeting on 13 October 2010 is involved in conduct that is detrimental to Council's charter and is considered to be improper and unethical conduct.

FACTUAL BACKGROUND OF THE INCIDENT:

1. On 13 October 2009 an Ordinary meeting of Port Stephens Council was held.
2. Item 2 on the Agenda related to a Section 96 Application to Modify Development Consent for Urban Housing at No. 60 Diemars Road, Salamander Bay.
3. The applicant and owner of the site was Port Stephens Veterans and Citizens Aged Care Ltd.
4. The section 96 application for modification of consent sought to remove a development consent condition being consent condition number 11.
5. The recommendation of the Council staff was for refusal of the section 96 modification application and the staff report was of the opinion that condition 11 should continue to be imposed.
6. The Council Committee Meeting of 13 October 2009 recommended the section 96 application for modification of consent should be approved.
7. The Ordinary Council Meeting of 13 October 2009 resolved to adopt the Council Committee Recommendation and as such, the application was approved.
8. Councillors Francis, Jordan, Tucker, O'Brien, Nell, Ward, Westbury, Dover and MacKenzie voted in favour of the motion. No Councillors voted against the motion. It is noted that 3 Councillors were absent at the time of this determination.
9. Councillor Ward is a resident at Harbourside Haven (Shoal Bay) which is owned and managed by Port Stephens Veteran & Citizens Aged Care Ltd.
10. Port Stephens Veteran & Citizens Aged Care Ltd own both the Shoal Bay site and the Salamander Bay site amongst other sites.
11. Port Stephens Veteran & Citizens Aged Care Ltd own a number of self-care villas; aged care facilities and undertake community services including the provision of day respite centres.
12. Councillor Ward has no landholdings within the Port Stephens LGA and is under a leasehold arrangement with Port Stephens Veteran & Citizens Aged Care Ltd at the Shoal Bay site.
13. Councillor Ward is a member of the Port Stephens Veteran & Citizens Aged Care Ltd. Councillor Nell is also a member of the same organisation.
14. Councillor Dover has a very minor private interest regarding the Port Stephens Veteran & Citizens Aged Care Ltd. This interest is of a personal and private nature and as such whilst it has been provided to this investigation it will not be incorporated into this report given its nature.
15. The Memorandum and Articles of Association for the Port Stephens Veteran & Citizens Aged Care Ltd states that the organisation was established in 1981 and is a not-for-profit organisation.
16. The Memorandum and Articles of Association for the Port Stephens Veteran & Citizens Aged Care Ltd states that the organisation has a membership comprising 100 members (this number can be varied by the Board) who each pay an annual subscription of \$2.00.

PORT STEPHENS COUNCIL
Report to Ordinary Council Meeting

Page 3

17. The website of the Port Stephens Veterans & Citizens Aged Care Ltd (www.harboursidehaven.com.au) state that the "Board are a volunteer Board made up of local people, committed to providing community lifestyle that is affordable and individualized care".
18. The organisation is governed by a Board of Directors which is fully detailed in the Memorandum and Articles of Association.
19. The membership of the organisation is not listed on the website. Further, no Councillors are listed as being on the Advocacy Groups or Residents' Associations at any location.
20. The Port Stephens Council Code of Conduct states at section 7.1 the following:
"A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty."
21. The alleged private interest in this matter relates to the ownership of the property where Councillor Ward resides and his membership of the not-for-profit organisation.
22. Councillor Ward's public duty relates to his role in the decision making at the Council Committee Meeting and subsequent Council Meeting on 13 October 2009.
23. Councillor Nell's private interest relates to his membership of the not-for-profit organisation.
24. Councillor Dover's private interest relates to personal and private information.
25. There are two key elements of section 7.1 of the Port Stephens Council Code of Conduct applicable being "perception" and "could be influenced".
26. The Code of Conduct requires that the private interest could provide a level of influence in Councillor Ward's decision making on the section 96 modification application. There was no level of influence displayed by Councillor Ward throughout the investigation.
27. There is perception of Councillor Ward's private interest which is evident through the lodgement of a complaint.

NAME OF PERSONS INTERVIEWED:

Councillor Frank Ward (with support person present)

A letter dated 20 October 2010 was provided to all Councillors requesting information on this matter. Written and or verbal information was provided to the investigation by three Councillors: the Mayor, Councillor Westbury; Councillor Nell; and Councillor Dover between 20 October 2010 and 5 November 2010 in response to this letter. Conversations were held where required with the relevant Councillors.

ISSUE FOR DETERMINATION:

Did the inactions of Councillor Ward in not identifying or managing a conflict of interests in relation to his association with Port Stephens Veteran and Citizens Aged Care at the Ordinary Council Meeting of 13 October 2009 breach the provisions of section 7 of the Port Stephens Council Code of Conduct?

FINDINGS OF MATERIAL FACT:

1. Councillor Ward does not have a pecuniary conflict of interests in this matter.
2. Councillor Ward does not have a significant, non-pecuniary conflict of interests in this matter.
3. Councillor Ward does have a perceived non-pecuniary, less than significant conflict of interests in this matter. However, the Code of Conduct requires that the private interest could provide a level of influence in Councillor Ward's decision making on the section 96 Modification Application. There was no level of private influence displayed by Councillor Ward throughout the investigation.

REASONS FOR FINDINGS OF MATERIAL FACT:

1. The Port Stephens Veteran & Citizens Aged Care Ltd is a not-for-profit organisation and there is no private financial benefit for any Councillor associated with the organisation. This includes Councillors who reside or are on waiting lists to reside at any of the organisation's facilities. Councillors' leaseholds are not associated with or dependent upon any decisions taken by Councillors of Port Stephens Council.

CONSIDERATION ISSUES

1. This matter was first raised by letter with the General Manager some 10 months after the Council decision had occurred.
2. Whilst Councillor Ward was the only named Councillor in the letter of complaint, the issue affects at least two other Councillors.
3. Councillor Ward made key documents available to the sole conduct reviewer throughout the course of the investigation.
4. Councillor Nell and Councillor Dover responded to the request for information from all Councillors and provided information to the review.
5. The Guidelines for the Model Code of Conduct released by the Division of Local Government (DLG) in 2008 provide a case example regarding club membership whereby the Councillor is not an active member in the club and is not involved with the management of the club. The case study provides further information that the councillor may merely enjoy the facilities of the club as a privilege of membership. This is the closest example provided by DLG, however, it relates to a 'local registered club'. Councillor Ward's circumstances are significantly different. In Councillor Ward's circumstances, the membership is a not-for-profit organisation and there are no privileges associated with membership or residency.
6. Given the perception issues raised by this complaint, all Councillors with a private association with the Port Stephens Veteran & Citizens Aged Care Ltd should give consideration to identifying and managing conflicts of interests in accordance with the Port Stephens Council Code of Conduct, should any future matters by the not-for-profit organisation go before Council.

RECOMMENDATIONS:

The Conduct Review Committee – Sole Reviewer is obligated to report to Council on the outcomes of the investigation into the alleged breaches of the Port Stephens Council Code of Conduct by Councillor Ward. The following details those outcomes.

It is recommended that:

1. Council receive and note the contents of this report, in particular that Councillor Ward did not breach the Port Stephens Council Code of Conduct.
2. As Councillor Nell and Councillor Dover were not the subject of this complaint investigation that no action should be taken against these Councillors in relation to this matter.

REASONS FOR RECOMMENDATIONS:

In making the above recommendations, as required by the provisions of section 14.9 of the Port Stephens Council Code of Conduct, regard has been given to the following:

1. The Port Stephens Veteran & Citizens Aged Care Ltd is a not-for-profit organisation and there is no private benefit for any Councillor associated with the organisation.
2. There was no level of private influence displayed by Councillor Ward throughout the investigation.

SIGNED:



Kath Roach
Managing Director
SINC Solutions Pty Ltd

8 April 2011

ITEM NO. 3

INFORMATION PAPERS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER
GROUP: GENERAL MANAGERS OFFICE

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 19 April 2011.

No:	Report Title	Page:
1	PETITION FOR SHOAL BAY WHARF	
2	LOCAL BUSINESS PETITION FOR SHOAL BAY WHARF	
3	GENERAL MANAGERS PERFORMANCE REVIEW	

ORDINARY COUNCIL MEETING – 10 MAY 2011

165	Councillor John Nell Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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MATTER ARISING

166	Councillor John Nell Councillor Sally Dover	It was resolved that Council be provided with a report on the replacement of the Shoal Bay Wharf, including options and associated costs.
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GENERAL MANAGERS INFORMATION PAPERS



INFORMATION ITEM NO. 1

PETITION FOR SHOAL BAY WHARF

REPORT OF: PETER GESLING – GENERAL MANAGER

GROUP: GENERAL MANAGERS OFFICE

FILE: PSC2011-00149

BACKGROUND

The purpose of this report is to advise Councillors that a Petition has been received by the General Manager from Shoal Bay Community Association Inc. protesting about the closure of the Shoal Bay Wharf.

The petition contains more than 3,000 signatures.

ATTACHMENTS

- 1) Letter from Shoal Bay Community Association Inc. including Petition.

ATTACHMENT 1



The General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

8 April 2011

Dear Mr Gesling

Petition for Shoal Bay Wharf

The Shoal Bay Community Association, acting in the interests of residents and businesses in Shoal Bay, would like to protest about the closure of Shoal Bay Wharf.

We understand Council's concern for public safety, but it needs to be emphasised that the wharf:

1. is an historical focal point for Shoal Bay, having been in use for 60 years
2. is part and parcel of Shoal Bay's charm and visitor interest.
3. has been a picturesque highlight for walks – now it will become degraded and unsightly
4. was used as meeting place for visitors and residents
5. was frequently used by wedding parties for photos
6. was used by children for their first fishing experience
7. has been a regular fishing spot for visitors and locals
8. was a boating facility
9. has been and could be a handy ambulance pickup point for sea rescues
10. is a key feature in promotional literature.

Accordingly, we have taken up the attached petition in which more than 3,000 people, including 12 Shoal Bay business operators, call for **the wharf to be rebuilt**. The petition was begun on 3 March 2011.

We ask that you give serious consideration to this call, and look forward to further engagement with you and Council.

Yours sincerely



Petition to Port Stephens Council

We the undersigned would like to express our concern that Council has closed the **historic Shoal Bay wharf** (for reasons of safety) without any assurance that it will repair or replace it.

The wharf is intrinsic to what makes Shoal Bay such a desirable precinct for visitors and residents.

We call on Port Stephens Council to assure us that it intends to rebuild the wharf and to advise a firm timetable for doing so.

Name	Address	Signature
------	---------	-----------

*132 pages of approximately 26 signatures on each page.
Approximate total of 3432 signatures.*

INFORMATION ITEM NO. 2

LOCAL BUSINESS PETITION FOR SHOAL BAY WHARF

REPORT OF: PETER GESLING – GENERAL MANAGER
GROUP: GENERAL MANAGERS OFFICE

FILE: PSC2011-00149

BACKGROUND

The purpose of this report is to advise Councillors that a Petition has been received by the General Manager from Shoal Bay Community Association Inc. protesting about the closure of the Shoal Bay Wharf.

The petition contains 12 Shoal Bay Business operators.

ATTACHMENTS

- 1) Letter from Shoal Bay Community Association Inc. Including Business Operators Petition.

ATTACHMENT 1



The General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

8 April 2011

Dear Mr Gesling

Local Business Petition for Shoal Bay Wharf

The Shoal Bay Community Association, acting in the interests of residents and businesses in Shoal Bay, would like to protest about the closure of Shoal Bay Wharf.

We understand Council's concern for public safety, but it needs to be emphasised that the wharf:

1. is an historical focal point for Shoal Bay, having been in use for 60 years
2. is part and parcel of Shoal Bay's charm and visitor interest
3. has been a picturesque highlight for walks – now it will become degraded and unsightly
4. was used as meeting place for visitors and residents
5. was frequently used by wedding parties for photos
6. was used by children for their first fishing experience
7. has been a regular fishing spot for visitors and locals
8. was a boating facility
9. has been and could be a handy ambulance pickup point for sea rescues
10. is a key feature in promotional literature.

Accordingly, we have taken up the attached petition in which more than 3,000 people, including 12 Shoal Bay business operators, call for **the wharf to be rebuilt**. The petition was begun on 3 March 2011.

We ask that you give serious consideration to this call, and look forward to further engagement with you and Council.

Yours sincerely

OCEAN BEACH BED AND BREAKFAST



16 Ocean Beach Road Shoal Bay
Telephone: 02 4981 3662
Email: stay@oceanbeachbnb.com.au

Petition to Port Stephens Council

The undersigned operate a business in Shoal Bay. Our viability depends heavily on the flow of visitors who come here to experience this area's unique charm.

A key element of that charm is the Shoal Bay Wharf, which for 60 years has been part and parcel of the landscape and on Port Stephens Council's list of public facilities. It features in both Tourism Australia and Port Stephens Tourism brochures.

We are gravely concerned that Council has closed the Wharf with no firm plan to repair or rebuild it. Left to deteriorate it will be a blight on an otherwise picturesque landscape and will turn visitors off.

We call on Port Stephens Council as a matter of urgency to assure us that the wharf will be rebuilt and to advise when that will happen.

12 of these received with signatures.

INFORMATION ITEM NO. 3

GENERAL MANAGERS PERFORMANCE REVIEW

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

FILE: PSC2005-01318

BACKGROUND

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

Council has established a Performance Feedback process for the General Manager that aligns with the Department of Local Government guidelines. This includes:

- 1) Establishment of a Performance Feedback Committee to review the General Manager's performance against the agreed Individual Work and Development Plan (IWDP). This Committee normally meets in February and August each year and provides a report to Council.
- 2) Undertaking an assessment of the statutory quarterly performance report against the Council Plan. This is done in the first week of November, February, May and August.

A further element is available to Council, that any concern should be raised when it occurs. It should include written notification to the Mayor and General Manager. After assessment, the General Manager will respond to the council to ensure a review in the bi-annual meeting of the Performance Feedback Committee.

This review included a discussion with all Councillors at Council on Tuesday 15 February 2011 nominating Councillors Bob Westbury, Geoff Dingle and John Nell as the sub-committee meeting to meet with John Pala and Peter Gesling on 22 March 2011. The meeting was held and the notes from that meeting are attached for the half-yearly assessment.

FINANCIAL/RESOURCE IMPLICATIONS

Included in operating budget.

LEGAL, POLICY AND RISK IMPLICATIONS

Council's charter requires it:

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

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

OPTIONS

- 1) Accept the recommendation.

ATTACHMENTS

- 1) GM Performance Plan Review – File note of John Pala dated 27 September 2010
- 2) GM Performance Plan Review – File note of John Pala dated 22 March 2011.

TABLED DOCUMENTS

- 1) Individual Work and Development Plan (IWDP) for 1 July 2009/ 30 June 2010.
- 2) Memo to All Councillors dated 11 February 2011 including:-
 - a) Quarterly reports for December and September 2010.
 - b) Individual Work and Development Plan (IWDP) 1 July 2010/ 30 June 2011.
 - c) Systems View (Level 1).
 - d) Exerts from a recent 360 degree report completed as part of the Griffiths Leadership Program.

ATTACHMENT 1

File Note
Port Stephen Council
Performance Management meeting for General Manager
Sub-committee meeting

Date: 27 September 2010

Attendees

General Manager: Peter Gesling
Councillors: Bob Westbury (Mayor), Geoff Dingle, Peter Kafer
Facilitator: John Pala (Palaris)

General Items

General review of the General Managers performance plan. In general, there were no major issues identified on the performance plan.

(i) Community

General discussion relating to community consultation and issues discussed. Some examples of good staff performance as well as opportunities for improvement canvassed.

Actions

Review current community consultation process and develop guidelines for how the process is undertaken. The review is to include input from senior staff and councillors – P. Gesling

(ii) Staff

Concerns raised in regard to issues of staff conflict and of low level of involvement in professional associations.

Actions

- Investigate options to promote involvement in staff professional associations
- Encourage engagements through individual learning and development plans
- Encourage and foster the production of professional and independent reports
- Promote CAT system as a means of lifting the profile and acknowledge staff and provide wider group recognition
- Schedule workshops on a Tuesday/ Thursday afternoon to facilitate input from councillors. Suggest meetings should deal on a single issue as a way of bring effective focus- avoid using weekend times where possible.
- Some example topics maybe – Structure & organisation, LEP, Budget, OH&S

(iii) Front line Supervisors

Focus of improvement is to be driven through line Managers and in particular through Front Line Supervisors.

Peter Gesling is responsible for the above nominated actions

ATTACHMENT 2

File Note
Port Stephen Council
Performance Management meeting for General Manager
Sub-committee meeting

Date: 22 March 2011

Attendees

General Manager: Peter Gesling
Councillors: Bob Westbury (Mayor), Geoff Dingle, John Nell
Facilitator: John Pala (Palaris)

General Items

At a full council meeting held on 15 February 2011 the key items flagged for consideration in the performance review process included:

- General OH&S performance
- Project Management process
- These matters were referred to the sub- committee

(i) Project Management Process

General concerns flagged about a number of aspects of certain projects. The GM tabled a new tracking report for projects which provides; the type of project, user group & benefit from using project management process. The project plan now includes a communication plan which includes communication with councillors (action completed from the last sub-committee meeting)

Actions

- a. Formulate a plan for a project sign-off against a check list before a project commences. This plan to also include an agreement for project handover- so this happens smoothly
- b. Projects to have cost and schedule tracking reports which should raise a **flag** if 'off track' and a **tick** if 'on track'
- c. Councillors to only get reports for community type projects

(ii) OH&S

Have now engaged DuPont to provide training on the safety observation system which should result in a more consistent approach across the organisation.

A number of specific initiatives including; return to work process, front line supervisor responsibility, etc. have been adopted

Actions

- a. Consider targets for safety observations across the organisation
- b. Develop options for OH&S succession planning from with the organisation

(iii) Community

A number of issues regarding the RAAF base were discussed. Council is work with defence to review ANEF. Council is also engaging with Australian Standards on the issue of applicability of the noise testing process.

Actions

- a. Council to participate in the EIS process
- b. It is critical that council sty engaged with defence
- c. Continue input into the National airport committee process

(iv) Waste material issue

Some discussion regarding the dumping of road- base waste is dumped

Actions

- a. A tighter regime on waste material to be developed; in particular some policy which defines how this material should be generally handled, what should be dumped, what quantities and how it should be stored.

(v) Communications strategy- funding

A communications strategy to be developed; targeting the public domain which increases awareness of council funding issues.

MINUTES FOR ORDINARY MEETING – 10 MAY 2011

There being no further business the meeting closed at 6.25pm.

I certify that pages 1 to 111 of the Open Ordinary Minutes of Council 10 May 2011 were confirmed by Council at its meeting held on 24 May 2011.

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Cr Bob Westbury
MAYOR