

# Minutes 29 APRIL 2011



Minutes of Extra-Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 29 April 2011, commencing at 5.30 pm.

PRESENT: Councillors R. Westbury (Mayor); S. Dover (Deputy Mayor); G. Francis; K. Jordan; B. MacKenzie; J. Nell; S. O'Brien; S. Tucker, General Manager; Corporate Services Group Manager, Facilities and Services Group Manager; Acting Sustainable Planning Group Manager; Commercial Services Group Manager and Executive Officer.

151	<b>Councillor Ken Jordan</b> <b>Councillor Steve Tucker</b>	It was resolved that the apologies from Crs Caroline De Lyall, Peter Kafer, Geoff Dingle and Frank Ward be received and noted.
		<p>Cr Ken Jordan declared a less than significant pecuniary interest in Item 1, Rescission Motion. The nature of the interest is a friendship.</p> <p>Cr Jordan advised that no further action was required to manage the conflict as he had sought legal advice, it was in the community's interest and does not know the nature of the friend's interest.</p> <p>Cr Steve Tucker declared a less than significant pecuniary interest in Item 1, Rescission Motion. The nature of the interest is a friend and that Buildev support of a Club in Medowie.</p>

**MINUTES FOR EXTRA-ORDINARY MEETING – 29 APRIL 2011**

		Cr Tucker advised that no further action was required to manage the conflict as his involvement was in the public interest.
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# RESCISSION MOTIONS

# RESCISSION MOTION

ITEM NO. 1

FILE NO: 16-2010-291-1

## DEVELOPMENT APPLICATION FOR SUPERMARKET (WOOLWORTHS) AT NO. 39, 41, 43, 45 AND 47 FERODALE ROAD, MEDOWIE

COUNCILLOR: WARD, DINGLE & KAfer

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That Council rescind its decision of 19 April 2011 on Item 1 of the General Manager's Report, namely Development Application for Supermarket (Woolworths) at No. 39, 41, 43, 45 and 47 Ferodale Road, Medowie.

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### EXTRA-ORDINARY COUNCIL MEETING – 29 APRIL 2011

	<b>Councillor Bruce MacKenzie</b> <b>Councillor Ken Jordan</b>	That Council rescind its decision of 19 April 2011 on Item 1 of the General Manager's Report, namely Development Application for Supermarket (Woolworths) at No. 39, 41, 43, 45 and 47 Ferodale Road, Medowie.
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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: Nil.

Those against the Motion: Crs Glenys Francis, Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, John Nell, Sally Dover and Bruce MacKenzie.

The motion was lost.

### MATTER ARISING

<b>152</b>	<b>Councillor Glenys Francis</b> <b>Councillor John Nell</b>	It was resolved that Councillors be advised of any future amendments or matters of discussion on the Development Application for Supermarket (Woolworths) at No. 39, 41, 43, 45 and 47 Ferodale Road, Medowie.
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**ITEM NO. 1**

**FILE NO: 16-2010-291-1**

**DEVELOPMENT APPLICATION FOR SUPERMARKET (WOOLWORTHS) AT NO. 39, 41, 43, 45, AND 47 FERODALE ROAD, MEDOWIE**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) That Council consider the draft Conditions to be supplied under separate cover.

**ORDINARY COUNCIL MEETING – 19 APRIL 2011**

**RESOLUTION:**

	<b>Councillor John Nell Councillor Glenys Francis</b>	That Council approve the DA in accordance with the amended conditions of consent as detailed in the supplementary information on page 14.
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<b>141</b>	<b>Councillor Glenys Francis Councillor Peter Kafer</b>	It was resolved that Council move into Committee of the Whole.
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**AMENDMENT**

	<b>Councillor Steve Tucker Councillor</b>	That Council approve the development application for a supermarket (Woolworths) at No. 39,41,43,45 and 47 Ferodale Road, Medowie in accordance with the amended conditions of consent as detailed in the supplementary information on page 14 with the following amendments:-  19. A public art feature shall be designed for the elevation of the building along Peppertree Road. This feature shall provide visual interest for pedestrians and interpret or reflect the local setting and/or
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**MINUTES FOR EXTRA-ORDINARY MEETING – 29 APRIL 2011**

		<p>landscape character and/or the cultural setting of the Meadowie area. The feature shall be designed to ensure long-term durability and be resistant to vandalism. Details shall be approved by Council prior to issue of Occupation Certificate, and the applicant is advised to liaise with Council's Social Planning Team during design stages.</p> <p>28. Stormwater disposal and retention as submitted be approved and that the proponent to increase the capacity of the piping under Ferodale Road to Campvale swamp.</p> <p>32. The stormwater detention system shall be constructed and made operational prior to completion of any parking and manoeuvring areas within the site. No Construction Certificate(s) can be issued until a construction staging plan has been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority. A construction staging plan shall include measures necessary to capture and convey stormwater to the system during construction stages, as well as any measures required to provide compliance with this condition at each stage of construction.</p>
<p><b>142</b></p>	<p><b>Councillor Glenys Francis Councillor John Nell</b></p>	<p>It was resolved that Council out of Committee of the Whole into Open Council.</p>
<p><b>143</b></p>	<p><b>Councillor John Nell Councillor Glenys Francis</b></p>	<p>It was resolved that Council continue past 9.00pm to finalise the agenda items.</p>
<p><b>144</b></p>	<p><b>Councillor John Nell Councillor Glenys Francis</b></p>	<p>It was resolved that Council approve the development application for a</p>

		<p>supermarket (Woolworths) at No.39,41,43,45 and 47 Ferodale Road, Medowie in accordance with the amended conditions of consent as detailed in the supplementary information on page 14 and with the following amendments to conditions of consent No's. 19 and 33:-</p> <p>19. A public art feature shall be designed for the elevation of the building along Peppertree Road. This feature shall provide visual interest for pedestrians and interpret or reflect the local setting and/or landscape character and/or the cultural setting of the Medowie area. The feature shall be designed to ensure long-term durability and be resistant to vandalism. Details shall be approved by Council prior to issue of Occupation Certificate, and the applicant is advised to liaise with Council's Social Planning Team during design stages.</p> <p>33. The stormwater detention system shall be constructed and made operational prior to completion of any parking and manoeuvring areas within the site. No Construction Certificate(s) can be issued until a construction staging plan has been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority. A construction staging plan shall include measures necessary to capture and convey stormwater to the system during construction stages, as well as any measures required to provide compliance with this condition at each stage of construction.</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, Ken Jordan, Bruce MacKenzie, Steve Tucker, John Nell, Shirley O'Brien, Sally Dover and Bob Westbury.

Those against the Motion: Crs Peter Kafer, Geoff Dingle and Frank Ward.

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## **BACKGROUND**

***Council at its meeting of 12 April 2011 resolved the following:***

***It was resolved that Item 1 be deferred to the next Council Ordinary meeting to allow Council staff to assess the amendments tabled by Cr Steve Tucker.***

***Note: Supplementary Information will be provided to Councillors on Friday 15 April 2011 which will contain the revised conditions.***

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

*"It was resolved that Council:*

- 1) Indicate its support for the development application for a supermarket (Woolworths) at No 39, 41, 43, 45 and 47 Ferodale Road, Medowie and request the Sustainable Planning Group Manager to bring forward draft conditions in the event that Council resolve to give consent.*
- 2) Foreshadow the intention to include a condition to require the provision of public toilets."*

This was subject of a Rescission Motion "that Council indicate its support for the Development Application for the Woolworths Supermarket at Medowie and request the Group Manager Sustainable Planning to bring back draft conditions of consent to the next Ordinary Meeting of Council in the event that Council determines to give Development Consent to this application".

This was subject of a Rescission Motion considered at an Extra Ordinary Meeting of Council on Friday 25 March 2011. The Rescission Motion was defeated and therefore the above resolution has been actioned.

The report to the Ordinary Meeting of Council and the consequent resolution are **ATTACHMENT 2** to 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, POLICY AND RISK IMPLICATIONS**

Again, the legal implications would be potentially significant if an appeal is lodged by the Applicant to the Land and Environment Court because of any disagreement with the conditions contained in the formal development consent issued as a consequence of the Council Resolution at this meeting. It is also important that the conditions are framed appropriately to be legally defensible and appropriate to the implementation to the Development of the site.

The key policy implication of this Development Consent being issued is the need to review the Medowie Strategy in terms of the policies applicable to the Medowie Town Centre. There are also implications for the consistent approach of the Port Stephens Development Control Plan 2007 in so far as policies and provisions for retail and commercial centres are concerned.

Council should consider the inclusion of appropriate wording as a resolution to justify the departure from Council's adopted policy framework. For example, what immediate benefits have prevailed over the need for compliance with Council's planning framework.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

These are essentially covered in the original report to Council which is **ATTACHMENT 2** to this report. Many of the conditions are important to manage the Social, Economic and Environmental Implications in particular conditions to manage storm water, water quality and traffic impacts. The Voluntary Planning Agreement established with Buildev Development Pty Ltd covers a number of these issues, but the conditions additionally cover aspects of stormwater, water quality management, traffic management and Developer Contributions over and above the content of the Voluntary Planning Agreement.

## **CONSULTATION**

The draft conditions result from consultation with a number of Council professional staff and in particular the Coordinator of Development Engineering.

An offer has also been made to Buldev Pty Ltd for consultations to be conducted with them and their consultant representatives on the draft conditions – on the clear basis that the Manager Development Assessment and Environmental Health reserves the right to recommend the draft conditions to Council as he considers appropriate.

## **OPTIONS**

- 1) Council adopt the draft conditions to support a Resolution to grant Development Consent in the following terms:  
"Council resolves to grant Development Consent for the development of a Woolworths Supermarket at No's 39, 41, 43, 45, and 47 Ferodale Road, Medowie based upon the conditions contained in **ATTACHMENT 1** to this report." In addition, Council could resolve to specifically detail the reasons why this development application clearly differs from Council's adopted planning policy as suggested in the above report;
- 2) Council to determine to grant Development Consent in the same way as option 1 but with the modification of certain conditions as drafted in **ATTACHMENT 1**;
- 3) Council can defer the Resolution to grant development consent to enable further discussions within Council and / or with the applicants before the conditions are finalised in a formal Development Consent.

## **CONCLUSION:**

The draft conditions will be provided to Council under separate cover as **ATTACHMENT 1** and are submitted to Council to enable the actioning of Council's Resolution of 22 March 2011.

## **ATTACHMENTS**

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

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**

Attachment 1 was previously provided to Council on 12 April 2011. It has not been reproduced due to the volume of the attachment, however is available from the website or by request.

**ATTACHMENT 2**

Attachment 2 was previously provided to Council on 12 April 2011. It has not been reproduced due to the volume of the attachment, however is available from the website or by request.

There being no further business the meeting closed at 5.45pm.

*I certify that pages 1 to 12 of the Open Ordinary Minutes of Council 29 April 2011 were confirmed by Council at its meeting held on 10 May 2011.*

.....  
**Cr Bob Westbury**  
**MAYOR**