

MINUTES 11 DECEMBER 2012



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 11 December 2012, commencing at 5.57pm.

PRESENT: Mayor B MacKenzie; Councillors G. Dingle; C. Doohan; S. Dover; K. Jordan; P. Kafer; P. Le Mottee; J. Morello; J Nell; S. Tucker; General Manager; Corporate Services Group Manager; Facilities and Services Group Manager; Development Services Group Manager and Executive Officer.

	No apologies were received.

327	Councillor Ken Jordan Councillor John Nell
	It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 27 November 2012 be confirmed.

	Cr Paul Le Mottee declared a pecuniary conflict interest in Item 1. The nature of the interest is that Cr Le Mottee represented the applicant with a previous application

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SUBJECT

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COUNCIL REPORTS

	Councillor Steve Tucker Councillor John Nell
328	It was resolved that Item 18, 9 and 13 be brought forward and dealt with in the Ordinary Council meeting prior to moving into Committee of the Whole.

ITEM NO. 18

FILE NO: PSC2011-02748

COUNCIL MEETING WEBCASTING - IMPLEMENTATION STATUS REPORT

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note the report.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

MOTION

329	Councillor Steve Tucker Councillor Ken Jordan
	It was resolved that Council immediately cease broadcasting Council meetings via the internet.

A division was called.

Those for the Motion: Crs Bruce Mackenzie, Paul Le Mottee, Ken Jordan, Chris Doohan, Steve Tucker, John Morello and Sally Dover.

Those against the Motion: Crs Peter Kafer, Geoff Dingle and John Nell.

BACKGROUND

The purpose of this report is to provide Council with a status report on the implementation of the webcasting of Council meetings.

Council commenced webcasting Council meetings "live" via the internet on the 27th March 2012.

The statistics shown at **ATTACHMENT 1** provide details of the number of people accessing the "live" broadcast during a Council meeting and also the number of viewers accessing the archived recording.

FINANCIAL/RESOURCE IMPLICATIONS

The costs associated with the "live" broadcast have increased as a result of the change in the Council meeting cycle. Council resolved to hold two Ordinary Council meeting at its meeting in September 2012.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No	\$9,900	These costs are not included in the existing budget as this service was introduced after the 2012/13 draft budget was finalised. It is anticipated that these costs will be able to be covered by saving from the changes to Council meeting cycle.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

As Council is aware a number of Councils across Australia are moving towards broadcasting meetings of Council. This however does come with an element of legal risk. Any person speaking at a meeting would need to ensure that they do not breach the privacy legislation and also defamation is a factor. As Council would appreciate, generally speaking once the files are available on the internet they can be difficult to completely remove should there be a breach of legislation. Councillors do not have parliamentary privilege, unlike Federal and State members of Parliament.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a legal risk that needs to be considered with broadcasting Council meeting "live" via the internet. Council maybe liable for any breaches of legislation such as the Privacy & Personal Information Protection Act 1998 and also any defamatory	High	Councillors have been previously advised of the legal risk associated with broadcasting "live" meetings.	Yes

comments or statements made during the meeting.			
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SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The provision of broadcasting via the internet does allow members of the community who are not allowed to attend the meeting, or who reside a distance from the Council Chambers, to view the proceedings. This does provide for greater level of openness and transparency.

CONSULTATION

Nil.

OPTIONS

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

ATTACHMENTS

- 1) Viewer statistics

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

The table below provides the statistics of the number of "live" viewers and the number of viewers in the archived state.

Meeting date	Number of views in "live" state	Number of views in archived state
27.3.2012	Data not available due to technology problems from an external supplier	26
24.4.2012	Data not available due to technology problems from an external supplier	40
29.5.2012	Data not available due to technology problems from an external supplier	51
26.6.2012	Data not available due to technology problems from an external supplier	105
24.7.12	No broadcast due to technology problems from an external provider	No broadcast due to technology problems from an external provider
August	No meetings due to the local government election	No meetings due to the local government election
25.9.2012	90	88
9.10.2012	23	146
23.10.2012	40	94
27.11.2012	72	13

Note: Council should be mindful that the number of views can be increased by the same individual accessing the recordings from different computers. (ie. if a person has 3 computers and the same person accessed the recording from each computer it would be counted as 3 views).

ITEM NO. 9

FILE NO: PSC2005-3705

**REDEVELOPMENT OF BIRUBI POINT SURF LIFE SAVING CLUB BUILDING
- UPDATE**

**REPORT OF: STEVEN BERNASCONI – COMMUNITY AND RECREATION SERVICES
MANAGER**

GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Acknowledge that there is a funding shortfall for the redevelopment of Birubi Point Surf Life Saving Club building estimated at \$1,685,000.
- 2) Develop a funding strategy by March 2013 that fully funds the redevelopment of the Birubi Point Surf Life Saving Club building.
- 3) Prepare and submit a development application for the Birubi Point Surf Life Saving Club building as soon as practicable.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

MOTION

330	<p>Councillor Sally Dover Councillor John Nell</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1. Acknowledge that there is a funding shortfall for the redevelopment of Birubi Point Surf Life Saving Club building estimated at \$1,685,000. 2. Develop a funding strategy by March 2013 that fully funds the redevelopment of the Birubi Point Surf Life Saving Club building. 3. Prepare and submit a development application for the Birubi Point Surf Life Saving Club building without delay based on EJE Architecture's proposal which is acceptable to all parties.
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The motion on being put was carried.

AMENDMENT

	<p>Councillor Geoff Dingle Councillor Peter Kafer</p> <p>That Council:</p> <ol style="list-style-type: none"> 1. Acknowledge that there is a funding shortfall for the redevelopment of Birubi Point Surf Life Saving Club building estimated at \$1,685,000.
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	<ol style="list-style-type: none">2. Develop a funding strategy by March 2013 that fully funds the redevelopment of the Birubi Point Surf Life Saving Club building.3. Prepare and submit a development application for the Birubi Point Surf Life Saving Club building as soon as practicable.
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The amendment on being put was lost.

BACKGROUND

The purpose of this report is to provide requested detail on the proposed redevelopment of Birubi Point Surf Life Saving Club building and to advise of alternative project delivery methods.

Council was presented with a report on 26 June 2012 on the current state of the Birubi Point SLSC redevelopment project (refer to **TABLED DOCUMENT 1**). At this meeting Council confirmed it would proceed with planning for the complete redevelopment of the site within the known funding strategy at that time. Councillors also requested at this meeting that a further report be submitted that provides more detail on the project costing and alternative designs to the redevelopment if the current funding model was not likely to cover the full cost of the project.

The result of this further work shows that the estimated value of work for a single level development is between \$5,900,000 and \$4,500,000.

The \$5,900,000 estimate is based on a 1200 square metre floor plan designed by Council staff. This design was the original design that was agreed to by the Project Management Consultation Team on 27 March 2012.

The \$4,500,000 detailed estimate is based on a 920 square metre floor plan designed by EJE Architecture as arranged by the Club (refer to **COUNCILLORS ROOM**). This is a new design that was initiated by the Club and was presented and endorsed by the Project Management Consultation Team on 29 November 2012. This new design is a reduced scope of works, but is considered to have strong civic and cultural design appeal and fits needs of the Club.

FINANCIAL/RESOURCE IMPLICATIONS

The EJE Architecture design (refer to **COUNCILLORS ROOM**) is the new consensus design. Therefore the financial implications for this proposal are shown in Table 1 below.

Source of Funds	Confirmed Yes/No	Funding (\$)	Comment
Existing budget	n/a	Nil	
Reserve Funds	n/a	Nil	
Other – 2010 Federal Government Election promise	Yes	\$2,200,000	Confirmed.
Section 94	Yes	\$600,000	Tomaree Peninsula (SD98)
External Grants	Yes	\$15,000	Dept. Primary Industries. Confirmed
TOTAL	Yes	\$2,815,000	
Short fall	No	\$1,685,000	Once DA is approved external grants can be actively pursued.

LEGAL, POLICY AND RISK IMPLICATIONS

Adopting the recommendations will result in Council moving quickly to prepare development application plans and reports and to complete all cultural impact reports prior to lodgement of the DA.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
Financial risk if grants are not forthcoming during the project and Council is required to fully fund the remainder of the project to the tune of some \$1,685,000.	High	Adopt the recommendation.	No.
Reputation risk of declining the Federal Government funding promise and not redeveloping the site.	High	Adopt the recommendation.	Yes
Asset management risk of doing nothing and not doing any capital works on the surf club and surrounds in the near future.	Medium	Adopt the recommendation.	Yes
Governance risk of a change in federal government before the substantial commencement of this project leading to expiration of original	High	Liaise with the local Federal Member of Parliament to determine bi-partisan government support for this project should there be a change in Federal government.	Yes

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funding promise			
People risk of not redeveloping the site resulting in the volunteer surf life saving club ending its services to the area.	Medium	Adopt the recommendation.	Yes
Safety risk of volunteer surf life saving club ending its services to the area.	High	Extend the professional life guard service to Birubi beach at the annual <u>extra cost</u> of around \$45,000.	No. This would require extra annual general rate funding.
Compliance risk of not completing the project within the timeframe of the Federal Government funding promise of July 2014.	High	Liaise with Federal Government funding body and seek agreement on a project plan and the staged release of funding.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no new sustainability risks associated with adopting the recommendations in this report compared to the adopted recommendations of this matter on 26 June 2012.

CONSULTATION

The project has been consulted on widely over many years. Refer to **TABLED DOCUMENT 1** for these details.

Recent consultation includes:

Meeting with Mayor MacKenzie, Cr Dover, Council Staff, members of the Birubi Point Surf Life Saving Club and the Club's project consultant Peake Project Services Pty Ltd - 22 November 2012 at Christmas Bush Room Tomaree Library

Meeting 4 of Birubi Point SLSC development Project Management Consultation Team - 29 November 2012 at Gynea Lilly Room Tomaree Library.

OPTIONS

- 1) Accept the recommendations
- 2) Amend the recommendations
- 3) Reject the recommendations

ATTACHMENTS

Nil.

COUNCILLORS ROOM

- 1) EJE Architecture design for Birubi Point Surf Life Saving Club as arrangement by the Club

TABLED DOCUMENTS

- 1) Copy of Council report Item 5 of 26 June 2012 "Redevelopment of Birubi Point Surf Live Saving Club Building".

ITEM NO. 13

FILE NO: PSC2011-04372

SUSTAINABILITY REVIEW – NGIOKA HORTICULTURAL THERAPY CENTRE

REPORT OF: STEVEN BERNASCONI – COMMUNITY & RECREATION SERVICES MANAGER
GROUP: FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the information contained in the Service Strategy – Ngioka Horticultural Therapy Centre (Tabled documents 1 and 2) and endorse the findings of the review.
- 2) Prepare an Expression Of Interest to gauge interest from disability service providers to operate the Ngioka Horticultural Centre in partnership with Council.
- 3) Report back to Council subsequent to the Expression Of Interest outlined in Recommendation 2.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

MOTION

331	<p>Councillor John Nell Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1. Continue to operate the Ngoika Centre as a Council run service for two years under a new business model that aims to reduce the ratepayer subsidy to an agreed level. 2. Changes to the business might include: <ol style="list-style-type: none"> i. Lobbying for an increase to ADHC funding; ii. Increase client time at Centre through more diverse services; iii. Increase in plant prices to align with benchmark prices; iv. Annual CPI Increase to leased floor space; v. Reviewing staff structure to formalise to 2 EFT; vi. Review centre operating hours; vii Investigate business diversification opportunities as a means of increasing income generation; viii. Review the cost effectiveness of the operation of the Medowie and Salamander plant storage facilities.
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MATTER ARISING

332	Councillor Geoff Dingle Councillor Ken Jordan
	It was resolved that Council be invited to visit the Ngoika Centre in the New Year.

BACKGROUND

The purpose of this report is to present to Council the outcomes of the sustainability review for the Ngoika Horticultural Therapy Centre (Ngoika Centre) and seek endorsement of the recommendations contained in the Ngoika Centre Service Strategy.

The service links to the Community Strategic Plan specifically:

***DELIVERY PLAN 1.3.5** Provide therapeutic and rehabilitation activities for people with disabilities through the Ngoika Centre*

The Ngoika Centre was initiated by Port Stephens Council in 1994, as a unique program to provide horticultural therapy programs to people with a disability. The project had a start up grant from the Area Assistance Scheme, NSW Department of Community Services. Annual recurrent grant funding was later provided to the program in 1997 from the Department of Community Services later to become the Department of Aging Disability and Home Care (ADHC).

There are currently 100 registered clients with this service. Of those the service has regular contact with 68 clients.

The Ngoika Centre provides program activities to clients from Tomaree Lodge, Mai-Wel, Stockton Centre, Life Style Solutions, Port Stephens Disability Service, Tomaree High School, Group Homes, Disability Services Australia as well as individuals who have no affiliation to any other Non Government Organisation.

The program also had the purpose of developing a Native Flora Centre that would propagate the local native plants in the immediate vicinity of the Ngoika Centre and more broadly within the Port Stephens Area.

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Revenue			
External Grants	Yes	(\$42,560)	ADHC Grant Funding (19% of total cost)
Other	Yes	(\$28,158)	Lease fees and plant sales (13% of total cost)
Sub Total (Revenue)		(\$70,718)	2011/12
Expenditure			
Operating Expenditure	Yes	\$188,844	Total budget excluding corporate overhead
Corporate Overheads	Yes	\$34,675	
Sub Total - Expenditure	Yes	\$223,519	2011/12
Operating surplus/(loss)		(\$152,801)	Ratepayer subsidy 2011/12
Staffing (EFT)			1.53

Should Council adopt a recommendation to reduce or cease the internal provision of Ngioka Centre services then the conditions of the Port Stephens Council Enterprise Agreement Clause 28 will come into effect. This clause establishes Council's duty to notify affected staff and relevant Unions regarding an intention to introduce major changes to programs, sets out duties of the parties, establishes procedures to be followed and conditions relating to staff redeployment or redundancies. Redundancies could incur costs of up to 39 weeks ordinary pay for each employee displaced.

Ngioka Centre incurs an operational loss (aka ratepayer subsidy) over a period of five years averaging \$120,513 peaking at \$152,801 in 2011/12. Losses were incurred before corporate overheads were introduced into the Centre's finances in 2011/12. Continuing to operate the service under the current model will incur annual ratepayer subsidies of at least \$120,000 per annum.

The recommendation to find an alternative organisation to manage the Ngioka Centre has the potential to incur a one off cost of about \$128,000 in staff redundancy and entitlement payments. This one off cost would be recovered over two years by no longer carrying the annual operating loss of \$120,000 p.a.

LEGAL, POLICY AND RISK IMPLICATIONS

There are no legal impediments to adopting the recommendations however the following legal matters must be considered:

Should Council adopt a recommendation to reduce or cease the internal provision of the Ngioka Centre then the conditions of the Port Stephens Council Enterprise Agreement Clause 28 will come into effect. This clause establishes Council's duty to notify affected staff and relevant Unions regarding an intention to introduce major changes to programs, sets out duties of the parties, establishes procedures to be followed and conditions relating to staff redeployment or redundancies. Redundancies could incur costs of up to 39 weeks ordinary pay for each employee displaced.

At present Port Stephens Council has a funding agreement with Department of Family and Community Services – (ADHC) Ageing, Disability and Homecare to deliver the Ngioka Centre Programs. By signing the funding agreements Port Stephens Council is legally required to financially and operationally control the services. Transferring responsibilities to another organisation requires approval from ADHC for the funding agreement.

The recommendation is in contrast with Council's Community Services Policy (MIN 363, 28 August 2001) which states that Council will directly deliver services to *"help ensure that a full range of community services exists and is accessible to all members of the community"*.

The recommendation is not intended to reduce the availability or accessibility of the Ngioka Centre service to community. Rather the recommendation is intended to move the delivery of this unique service to the disability services sector and reduce the ratepayer burden associated with providing the service.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a financial risk if Council does not consider outsourcing or partnering the service resulting in an ongoing ratepayer subsidy averaging \$120,000 per year.	High	Prepare an Expression of Interest to gauge interest from other disability service providers to operate the service in partnership with Port Stephens Council.	Yes
There is a risk to Council reputation if the service is outsourced totally or by way of partnership to an unsuitable agency resulting in a reduction in	Medium	Enter into a contract agreement with Disability Service provider with specified levels of service.	Yes

service quality.			
<p>There is a financial risk if Council does not explore internal efficiencies to improve the delivery of the existing service resulting in continued ratepayer subsidies averaging \$120,000 per year.</p>	<p>Medium</p>	<ul style="list-style-type: none"> • Review current staff structure to align with Centre operating hours. • Review Centre operating hours to better align with client times, Centre management time and program administration times. • Review Business capacity for future growth i.e. Disability/ education programs • Review business case for existing Medowie and Salamander Bay Storage Nurseries • Review increase in use of volunteers and activities to fill service gaps from staffing levels. • Increase discretionary service user fees • Increase fees annually to leased floor space • Explore ways to increase usage of services to then increase income from service user charges - HADS (Home and Disability Service) , MDS (Mid Data Set) reporting • Explore ways to increase income generation opportunities and use of facilities 	<p>Yes</p>

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		<ul style="list-style-type: none"> • Investigate business diversification opportunities • Investigate running disability programs from Medowie Nursery 	
There is a safety risk to staff and clients if the staff to client ratio is not retained at 2 EFT staff.	Medium	<ul style="list-style-type: none"> • Continue to fund staff hours at 2 EFT. 	Yes
There is a risk to Council reputation if a new provider cannot fulfil the requirements of a service agreement resulting in to Centre ceasing to operate in the near future.	Medium	<ul style="list-style-type: none"> • PSC enters partnership with new service provider. • Continue to operate and implement internal efficiencies and improved service delivery • Enter into detailed consultation with all effected parties prior to any considered closure of centre. 	Yes
There is a financial risk if staff redeployment is not available resulting in redundancy payments to be made.	Low	<ul style="list-style-type: none"> • If there is no opportunity for staff redeployment Council pay staff redundancy for 1.53 FTE of \$128,198.00 • There would be however an ongoing operational saving of a minimum of \$120,000 p.a. returned to the ratepayer. 	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommendation is intended to continue to provide a disability therapy service from the Ngioka Centre but in a more affordable way for the ratepayers of Port Stephens.

Adopting the recommendation is not expected to have any adverse effects on the local economy.

Whilst the centre in its current form has a focus on horticultural therapy through propagation of endemic native plant species the future of the centre under the management of another organisation may change this focus. If this was the case the result may be a reduction in supply of native plant species sourced from locally collected seed stock and endemic to the Port Stephens local government area.

CONSULTATION

Contracts & Services Coordinator, Ngioka Centre Coordinator, Ngioka Centre Program Supervisor, Ngioka Centre 335C Committee, ADHC Coordinator, Disability Service User Groups, Port Stephens Council Volunteer Coordinator, Port Stephens Council Business Excellence Coordinator, Port Stephens Council Consultative Committee.

Surveys were sent to user groups requesting responses to a range of questions relating to the Ngioka Centres Disability Programs and Horticultural plant sale service. In particular we asked the question;

"How do you rate the service we provide by Importance and Performance?"

- **DISABILITY SERVICE** - there were 10 surveys sent out with 8 returned - 80%
- Importance – the respondents to all 5 questions said the service was very important %100
- Performance – respondents to all 5 questions overall rated the service good to excellent 85 to 100 %
- **HORTICULTURE SERVICE** - there were 12 surveys sent out with 10 returned - 83%
- Importance – the respondents to all 6 questions said the service was very important - %100
- Performance – respondents to all 6 questions overall rated the service good to excellent 85 to 100 %

OPTIONS

- 1) Adopt the recommendations contained in the Sustainability Review – Ngioka Centre Service Strategy
- 2) Amend the recommendations contained in the Sustainability Review – Ngioka Centre – Service Strategy and agree to continued operation of the Centre by Council for a further two years under a new business model that aims to reduce the ratepayer subsidy to an agreed amount.
- 3) Reject the recommendations contained in the Sustainability Review – Ngioka Centre Service Strategy

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Sustainability Review – Ngioka Centre Service Strategy
- 2) Sustainability Review – Ngioka Centre Annexure

ITEM NO. 1

FILE NO: 16-2012-544-1

DEVELOPMENT APPLICATION FOR THE COMPLETION OF A PARTLY CONSTRUCTED RURAL SHED AND ONGOING USE AT 2209 PACIFIC HIGHWAY HEATHERBRAE

REPORT OF: MATTHEW BROWN - MANAGER DEVELOPMENT ASSESSMENT AND COMPLIANCE

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse the Development Application 16-2012-544-1 for the completion of the partly constructed rural shed and ongoing use for the following reasons:
 - a) The development is inconsistent with the provisions and 1(a) Rural zone objectives of Port Stephens Local Environmental Plan 2000 as it relates to ensuring that development is compatible with rural land uses and does not adversely affect the environment or the amenity of the locality
 - b) The development does not comply with the Port Stephens Development Control Plan 2007 Section B6 as it relates to development requirements for ancillary structures
 - c) The development is out of character with the immediate landscape in respect of height, bulk, scale and distance from the boundary and does not maintain an acceptable level of amenity.

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	Councillor Ken Jordan Councillor Chris Doohan
333	It was resolved that Council move into Committee of the Whole.

COMMITTEE OF THE WHOLE RECOMMENDATION

Cr Paul Le Mottee left the meeting at 6.46pm prior to Item 1.

	Councillor Ken Jordan Councillor Chris Doohan
	That Council support the development application for the completion of a partly constructed rural shed and ongoing use at 2209 Pacific Highway, Heatherbrae, in principle and conditions of consent be brought back to Council.

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

Those for the Motion: Crs Bruce MacKenzie, Ken Jordan, Chris Doohan, Steve Tucker, John Morello and Sally Dover.

Those against the Motion: Crs Peter Kafer, Geoff Dingle and John Nell.

MOTION

Cr Paul Le Mottee left the meeting at 7.17pm prior to Item 1.

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

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

Those for the Motion: Crs Bruce MacKenzie, Ken Jordan, Chris Doohan, Steve Tucker, John Morello and Sally Dover.

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

MATTER ARISING

335	Councillor Ken Jordan Councillor Bruce MacKenzie
	It was resolved that a two way conversation be provided to Council on changes to the development control plan with respect to sheds on rural areas.

Cr Paul Le Mottee returned to the meeting at 7.19pm.

BACKGROUND

The purpose of this report is to present a development application to Council for determination.

A previous proposal considered by Council (DA 16-2011-543-1) was for use as a "Machinery Shed" and construction completion of a 330m² shed structure.

The works constructed onsite to which the application sought use approval for included a concrete floor slab of 330m², concrete walls 2.4m high x 27.5m long and a steel frame which is all present on site.

This DA was refused by Council on 24 April 2012.

In addition to the above mentioned refusal the applicant lodged a Section 82A review of the determination. Council upheld the original determination and refused consent under the 82A review on 24 July 2012.

The applicant has redesigned the proposed building works in an effort to reduce the bulk and scale of the design. There have been amendments to the roof design on the previously refused proposal, albeit, arguably minimal in extent.

The location and overall footprint of the structure has not been altered; the alterations that are the subject of this new application are to the roof line adjacent to the southern boundary.

The previous proposal and the current structure present as a 6m eave line adjacent to the boundary. The new DA proposal reduces some of the bulk at the boundary at either end of the structure for a distance of six (6) metres in from either end of the structure. Please refer to the building plans available in the Councillors Room.

In the context of assessing this application the assessing officer conducted a merit assessment under section 79C of the Environmental Planning and Assessment Act 1979, including Councils Local Environmental Plan (LEP 2000) and Development Control Plan in determining whether a structure of this size and distance from boundaries would be considered appropriate. Refer to the assessment report attached.

A substantial factor influencing the assessment of this application (as distinct from former applications) is the change to specific development controls contained with the PSC DCP 2007 which now provide controls for the construction of rural sheds.

These controls apply to the development application lodged. Consequently, this application is assessed against these controls as listed in B6.3 of the DCP 2007.

PSC DCP 2007 B6.3 Outbuildings (Rural residential and rural lots)

DCP 2007 Control	Actual	Complies
Maximum floor area of 200m ² .	330m ²	No
Maximum height of 4.2m	3.6m-6.0m eave 7.0m overall	No
Front setback of 10m	139m	Yes
Side and rear setback of 5m	0.495m-0.565m	No

The front setback of the proposal is compliant however the development does not comply with any other parameters, including floor area, height and side setbacks.

Council unanimously resolved to adopt the DCP controls on 24 April 2012 to provide development standards for proposals such as this.

Given the bulk and scale of the structure as proposed/erected, and its proximity to the adjoining property boundary the proposal is considered to have an unacceptable environmental impact on the amenity of the immediate area.

Whilst it is acknowledged an amenity assessment can be at times a subjective exercise, the recent assessment against Council's newly adopted development controls further validates the initial and current assessment of the proposal. That is that the proposal fails to comply with the DCP and is considered out of character with the surrounding development in the immediate area.

On 8 November 2012, a submission was received on behalf of the Applicant from Synergy Environmental Planning Pty Ltd. As requested a copy of this submission is attached as Attachment 6 for Council's information.

Points of clarification in respect to this submission are as follows;

It is not disputed the proposal is permissible within the zone (that is to construct a shed). The key consideration is whether Council as the relevant planning authority is satisfied with the specific merits of the proposal.

Council staff are of the view the DCP provisions apply to this development application. Irrespective of such, Council legitimately considers the issues of bulk, scale and amenity as prescribed by section 79C of the EPA Act 1979 and Council's LEP.

Contrary to the comments in the submission by Synergy Environmental Planning Pty Ltd, Council staff did not encourage the submission of another development application. The Applicant has consistently been advised to make their own enquiries as to how to remedy the construction/use onsite.

It is not disputed the existing approvals for sheds on the site/similar footprint result in reduced bulk/scale and are compliant with the DCP provisions.

In respect to the amenity on the adjoining property, it is not disputed that the distance to the existing neighbouring dwelling to the south and the existence of mature vegetation minimises this impact on the dwelling. However, amenity equitably relates to the entire adjoining parcel and its current and future use, and arguably Council's role is to ensure people are not disadvantaged from development that is non-compliant with adopted Council policy and community expectation.

The DCP is not being used as a tool to prohibit the proposal as the proposal is a permissible use. Rather the DCP now provides providing development standard guidance in addition to Council's LEP and 79C of the EPA Act 1979.

FINANCIAL/RESOURCE IMPLICATIONS

Negligible financial or resource implications exist at this stage.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Any possible legal challenge will have an impacts on the existing budget
Reserve Funds	No		N/A
Section 94	No		N/A
External Grants	No		N/A
Other	N/A		N/A

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is inconsistent with Council Policy and it is inconsistent with the objectives of the Rural 1(a) zoning within the Port Stephens Local Environmental Plan 2007.

Numerical standards of Councils DCP 2007 have been addressed within the table above. Risk exists in a decision contrary to the recommendation and erosion of the newly amended DCP2007 controls.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
Applicant appeal against refusal	Medium	Adopt recommendation	Yes
If approved; undermine the integrity of Council development Control Plan- Reputational damage	Medium	Adopt recommendation	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

It is considered that there are impacts given the reduction of amenity to adjoining property owners. The current proposal is akin to an industrial size and design, which in turn can erode the character of the zoning in the immediate vicinity.

CONSULTATION

The application was exhibited in accordance with Council Policy and one (1) submission (as an objection) was received, this is provided in Councillor's Room documentation.

On 8 November 2012, a further submission was received on behalf of the Applicant from Synergy Environmental Planning Pty Ltd.

The unauthorised works and alleged illegal land use as a commercially operated business were also brought to Council's attention by an adjoining property owner.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan;
- 2) Assessment;
- 3) Conditions / Reasons for Refusal;
- 4) Minutes of Ordinary Council Meeting 24 April 2012 (Original application determination 16-2011-543-1);
- 5) Minutes of Ordinary Council Meeting 24 July 2012 (82A review of determination 16-2011-543-1); and
- 6) Submission from applicant received 8 November 2012.

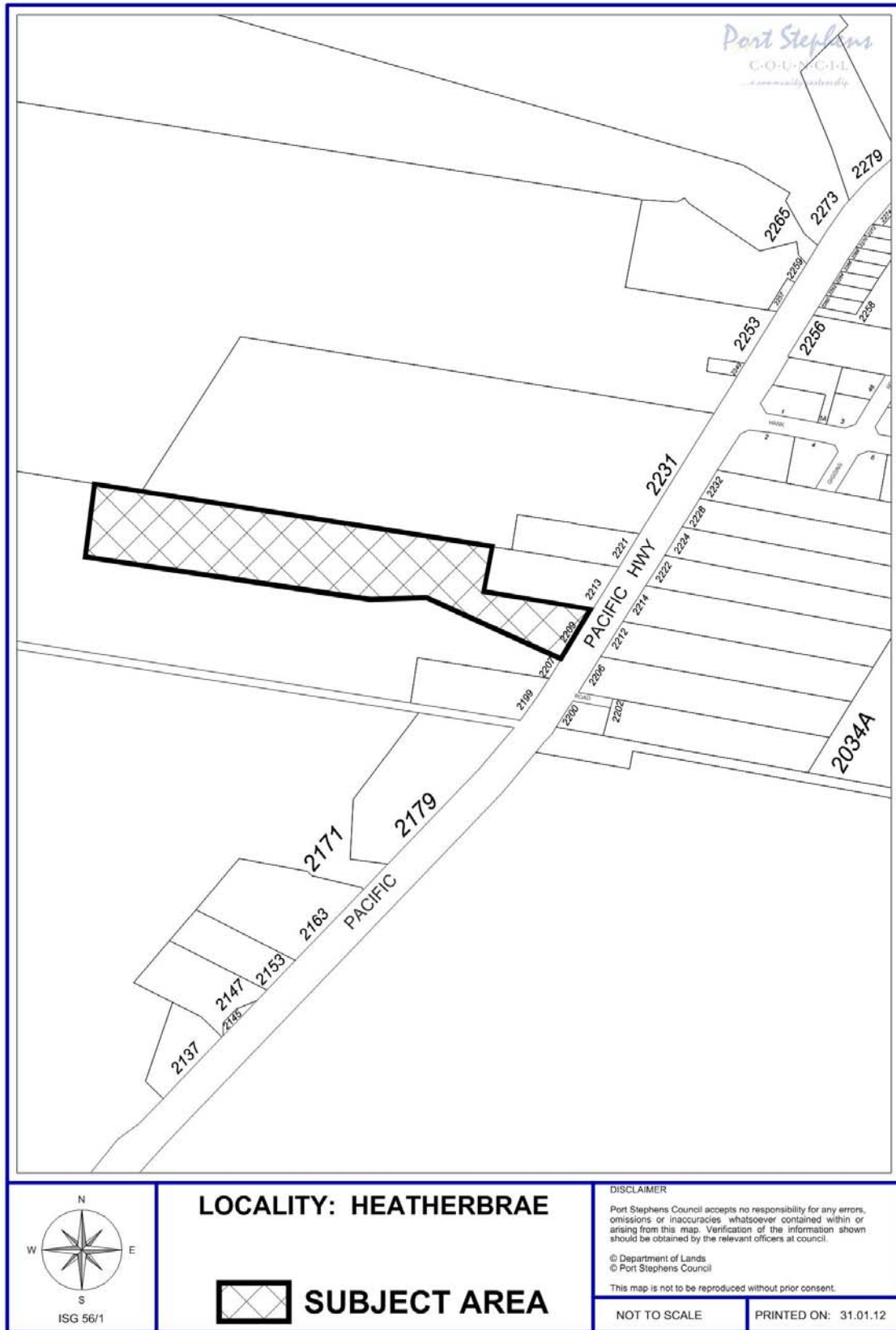
COUNCILLORS ROOM

- 1) Plans, specifications and Statement of Environmental Effects as submitted with the Development Application; and
- 2) Copy of the letter of objection.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



**ATTACHMENT 2
ASSESSMENT**

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

THE PROPOSAL

The development application seeks consent for ongoing use of an already erected structure and the completion of the unauthorised works. The completed works will consist of a 28m long, 12m wide (336m² of floor area) with an overall height of 7m situated 0.2m off the side boundary.

This application is effectively an amended version of the proposal which was subject of DA 16-2011-543-1. The revised design reduces the roof height only of the two end bays from the side boundary to the ridge of the structure to 3.6m all other parameters of the structure remain the same. It is considered to not be a significant reduction in the context of the bulk and scale or overall impacts as discussed.

THE APPLICATION

Owner	MR A M & MRS A L DUHRING
Applicant	MR A M DUHRING
Detail Submitted	Development plans Statement of environmental effects

THE LAND

Property Description	Lot 512 DP 587997
Address	2209 Pacific Highway HEATHERBRAE
Area	4.79ha
Dimensions	88.75m wide x 462.91m long (and variable)
Characteristics	Existing developed residential dwelling, swimming pool, home office (associated with home occupation business) and six (6) machinery sheds (not including this structure)

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	1(a) (Rural Agriculture)
Relevant Clauses	10 and 11
Development Control Plan	B2 – Environmental and Construction Management

B6 - Single Dwellings, Dual Occupancy
Dwellings and Ancillary Structures
Cl. 6.3

PSC DCP 2007 B6.3 Outbuildings (Rural residential and rural lots)

DCP 2007 Control	Actual	Complies
Maximum floor area of 200m ² .	330m ²	No
Maximum height of 4.2m	3.6m-6.0m eave 7.0m overall	No
Front setback of 10m	139m	Yes
Side and rear setback of 5m	0.495m-0.565m	No

State Environmental Planning Policies Nil

Discussion

The area occupying the current structure has had previous approval of many smaller sheds (3 in total) occupying the same area. The applicant has built 1 shed covering the total area of the three sheds.

While this has some minor aesthetic benefits in reducing the visual clutter of three (3) sheds with 1, the applicant has increased the height contrary to the original consent of 3.6m to 7m in total height; the structure retains 2 small sections of roof at 3.6m however, the bulk and scale of the structure is still considered excessive.

In assessing all the relevant information contained in this application, compliance investigations on the site and reviewing previous applications (16-2000-1309-1; 16-2001-35-1 and 16-2011-543-1) the proposal is considered inappropriate for the following reasons.

- The proposal does not comply with DCP2007 controls section B6 Cl. 6.3
- The proposal does not comply with DCP2007 objectives section B6 Cl. 3.1, 3.2 and 3.3
- The applicant has sought to apply for the development after substantial amounts of the works were completed.
- The proximity to the boundary (495mm-565mm) of the structure in conjunction with the height and overall area is such, that it is considered contrary to the zone objectives, not in the public interest and exhibits an undesirable impact on adjacent property owners.
- The structure as presented would not be considered appropriate if presented prior to any works being undertaken. The height, boundary setback and overall size would have been considered inappropriate.
- Adjoining property owners' complaints regarding the bulk and scale of the structure are well founded.
- It is considered that the height adjacent the boundary presents as a major factor in this structures domination of the space.

2. Likely Impact of the Development

The development is considered excessive in regards to height bulk and scale and its proximity to the boundary exacerbates this impact. It is considered that the adjoining owner would be negatively impacted in regards to the amenity of his use of his land, the outlook to the rural pastureland and overshadowing.

The development is akin to an industrial shed in appearance and dimension.

3. Suitability of the Site

While large rural sheds are a commonality within this zoning the impacts are greatly reduced by more skilful orientation of the structures within the landscape. The site is suitable for the proposed development but its current placement has given no consideration to adjoining property owners and as such in a refusal recommendation.

4. Submissions

Two (2) submissions have been received; one (1) from the adjoining property owner and one (1) from the applicants planning consultant. This same owner also brought to Councils attention the erection of the structure without the prior consent of Council. The owner objects to the overall bulk and scale of the development, stating an overdevelopment of the land with a resultant lowering of property values and an impact on amenity; going further to discuss the structure being out of character with the adjoining development.

The planning consultant's submission addresses previous reports and disseminates those and the overall assessment and is contained as **ATTACHMENT 6**.

Comment:

The terms of the objections with the exception of the comment regarding overdevelopment of the site are agreed with by the assessing officer. The site has sufficient space to adequately support this proposal and existing sheds with minimal impact on adjoining property. This proposal is in the wrong location to maintain the area amenity. It is however noted that with the prime use of this land being agriculture use it is questionable that sufficient agricultural activities are taking place on site to justify the amount of overall shed space on this property.

In discussion of the submission made by Synergy Environmental Planning Pty Ltd on 8.11.12, points of clarification in respect to this submission are as follows;

It is not disputed the proposal is permissible within the zone. The key consideration is whether Council as the relevant planning authority is satisfied with the specific merits of the proposal.

The DCP provisions apply to this development application; Council legitimately considers the issues of bulk, scale and amenity as prescribed by section 79C of the EPA Act 1979 and Council's LEP.

Contrary to the comments in the submission by Synergy Environmental Planning Pty Ltd, Council staff did not encourage the submission of another development application. The Applicant has consistently been advised to make their own enquiries how to remedy the construction/use onsite.

It is not disputed the existing approvals for sheds on the site/similar footprint result in reduced bulk/scale and are compliant with the DCP provisions.

In respect to the amenity on the adjoining property, it is not disputed that the distance to the existing neighbouring dwelling to the south and the existence of mature vegetation minimises this impact on the dwelling. However, amenity equitably relates to the entire adjoining parcel and its current and future use, and arguably Council's role is to ensure people are not disadvantaged from development that is non-compliant with adopted Council policy and community expectation.

The DCP is not being used as a tool to prohibit the proposal as the proposal is a permissible use. Rather providing development standard guidance in addition to Council's LEP and 79C of the EPA Act 1979.

5. Public Interest

The public interest considerations are activated in the context of a large proportion of this development has been erected with no appropriate consent in place. If Council were to support this development it may be seen to be condoning unauthorised works; giving those in the community that wish to break the laws encouragement. Any effort to reconcile this has only come about because of the non-compliances being raised due to the unauthorised activities taking place.

This development would have been unlikely to gain support in the first instance had it been presented to Council prior to construction it could reasonably be assumed that public expectation would warrant that the application for approval after construction to be inappropriate.

ATTACHMENT 3

REASONS FOR REFUSAL

- 1) The development is inconsistent with the provisions and 1(a) Rural zone objectives of Port Stephens Local Environmental Plan 2000;
- 2) Does not comply with Section B6 Councils Development Control Plan 2007;
- 3) The development is out of character with the immediate landscape in respect of height, bulk, scale and distance from the boundary and does not maintain an acceptable level of amenity.

ATTACHMENT 4

Council meeting minutes Item 2 (24/4/12)

ITEM NO. 2

FILE NO: PSC2011-04071

AMENDMENTS TO CHAPTER B6 SINGLE AND DUAL OCCUPANCY DWELLINGS – PORT STEPHENS DEVELOPMENT CONTROL PLAN 2007

REPORT OF: BRUCE PETERSEN – COMMUNITY PLANNING AND ENVIRONMENTAL SERVICES SECTION MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the exhibited Chapter B6 Single Dwellings, Dual Occupancy Dwellings and Ancillary Structures – Port Stephens Development Control Plan 2007 incorporating proposed amendments pursuant to the Environmental Planning and Assessment Act (**Attachment 1**), and
- 2) Note that discretion will be applied for a period of six months from adoption to enable assessment and determination of relevant applications under the former Chapter B6 of Port Stephens Development Control Plan 2007 when it is demonstrated that:
 - Applicants have entered into contractual and/or financial situations binding them to designs which are in accordance with the former Chapter B6; and/or
 - Applicants have valid, documented justification for having their applications assessed under the former Chapter.

COUNCIL COMMITTEE MEETING – 10 APRIL 2012

RECOMMENDATION:

	Councillor Bob Westbury Councillor Peter Kafer
	That the recommendation be adopted.

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

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

Those against the motion: Nil.

ATTACHMENT 5

Council meeting minutes Item 3 (24/7/12)

MINUTES ORDINARY COUNCIL – 24 JULY 2012

ITEM NO. 3

FILE NO: 16-2011-543-1

REVIEW OF A DEVELOPMENT DETERMINATION UNDER SECTION 82A OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, FOR THE COMPLETION OF THE PARTLY CONSTRUCTED RURAL SHED AND ONGOING USE

REPORT OF: PAUL MINETT – DEVELOPMENT ASSESSMENT AND COMPLIANCE ACTING
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

Refuse the Section 82A review of development application 16-2011-543-1 for the completion of the partly constructed rural shed and ongoing use, for the following reasons:

- 1) The development is inconsistent with the provisions and 1(a) Rural zone objectives of Port Stephens Local Environmental Plan 2000;
- 2) The development is out of character with the immediate landscape and does not maintain an acceptable level of amenity;
- 3) The development is considered to be incompatible with the immediate landscape in terms of height, bulk, scale and distance from the boundary and poses an unacceptable impact on adjoining premises in terms of solar access.

COUNCIL COMMITTEE MEETING – 10 JULY 2012

RECOMMENDATION:

	Councillor John Nell Councillor Geoff Dingle
	That the recommendation be adopted.

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

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

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

ORDINARY COUNCIL MEETING – 24 APRIL 2012

075	Councillor Peter Kafer Councillor Glenys Francis
	It was resolved that the Council Committee recommendation be adopted.

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

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

Those against the motion: Nil.

ATTACHMENT 6

Submission from applicant received 8 November 2012.

SYNERGY ENVIRONMENTAL PLANNING Pty L^{td}

A.C.N. 102 541 837 A.B.N. 321 025 41837

7TH NOVEMBER 2012

Our Ref: 13/2012

**THE GENERAL MANAGER
PORT STEPHENS COUNCIL
PO BOX 42
RAYMOND TERRACE, NSW 2324.**

Your Ref: 16-2012-544-1

ATTENTION: ANDREW ASHTON

Dear Andrew,

**RE: FARM BUILDING LOT 512 DP 587997, KNOWN AS N^o 2209 PACIFIC HIGHWAY,
HEATHERBRAE.**

Synergy Environmental Planning Pty Ltd have been engaged by the owner of the abovementioned land Mrs Annette Duhring to make a submission to the Council in respect of the applications made under S149B and Section 78A of the Environmental Planning and Assessment Act 1979 for approval to erect a Farm Shed on her property at Heatherbrae.

It is understood that the Council Officers report to Council will recommend refusal of these applications. The reasons for recommending refusal are as yet unknown but are likely to be the same or similar as for the earlier applications together with a strong reliance on the developments non compliance with Element 6.3 of DCP 2007 relating to Rural Sheds (out buildings).

It is our submission that the applications before Council should be approved by the Council in that the development complies with the relevant provisions of Council's LEP 2001 being a use permissible within the zone which applies to the land, it would have complied with the guidelines of DCP 2007 as they existed in April 2012 when the matter came before Council for determination and the development should have no adverse impact on the use and enjoyment of adjoining lands.

Mrs Duhring has sought to remedy the failure to gain prior approval to the development by way of S82A and S149B however the manner in which the applications were reported to Council were written and structured to achieve the staff's recommendations in the reports continued reference to the development being "illegal" when the actual facts of the matter were that the development was "unauthorised" and was and still is a use permissible with consent within the rural zone within which it is located.

The amendments made to Element B6.3 were adopted in May 2012 a full month after the matter was reported to the Council and at which time it was compliant with the Provisions of the DCP. The Officers report at that time confirmed that there were no provisions within the DCP 2007 that were operable to restrict the development as proposed.

40 GREY GUM CRESCENT CHISHOLM NSW 2322
Telephone (02) 4933 6585 or 0439 336 585 Facsimile (02) 4936 6156
Email:- garry@synergyplanning.com.au

SYNERGY ENVIRONMENTAL PLANNING P^{ty} L^{td}

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Since the adoption of the amendments made to Element B6.3 in May 2012 the development proposed by Mrs Duhring is not compliant with the minimum area or height requirements of the revised DCP 2007 (the development is compliant with the setback provisions).

Notwithstanding these circumstances Mrs Duhring was encouraged by Council Staff to submit yet another application for consideration for approval of the shed with attention to be paid to revision of the impact of the height of that shed, this being despite the Staff's knowledge that the shed would not conform to the guidelines contained within the current DCP relating to height and area.

Mrs Duhring has proposed to lower the roof height over the two ends of the building such that the height of the building is reduced to 3.6 metres for those end parts of the proposed building nearest the southern boundary.

Whether or not these attempts to modify the design of the proposed shed are supported by the Council Staff it must be remembered that Mrs Duhring had approval to erect two sheds in the same location as now proposed (generally 0.5m off the southern boundary) with each of these sheds totalling an area of 252m² and the two buildings having a height to the eaves of 4.2 m and 3.6 m respectively which would have resulted in both sheds having an overall height above that now required by the amended DCP.

The earlier officers reports would have Council believe that the proposed shed is not of a similar size to other sheds in the locality and that its bulk and scale were excessive yet this is not the case when an inspection of the immediate area of the site provides confirmation that sheds of this size or larger have been erected on a number of nearby properties generally in the location set back from the Highway as proposed by Mrs Duhring.

Further the earlier reports of council's officers would have Council believe that the proposed shed would impact upon the amenity of the nearby dwelling to the south by way of overshadowing and bulk when the fact of the matter is that the proposed shed is some 37 metres to the north west of the residence to the south and its location is interspersed by 5-6 substantial trees on that adjoining site that would serve to limit if not block views to that shed from that adjoining dwelling.

Further the impact of overshadowing from the proposed shed would predominate to the south and south west at 9.00am and noon well away from the site of the adjoining dwelling and any likely shadowing to the south east at around 3.00pm would not reach the rear yard of the adjoining dwelling and if it did it would be indiscernible from the overshadowing effect of the trees planted in that dwelling's rear yard.

Council should be well aware of the Courts findings in *Chan vs Port Stephens Council* wherein it was highlighted that the Provisions of a DCP should not be used to write down the provisions of a DCP, that is a DCP should not be read so as to prohibit something which is permissible with a zone which is what is being sought to be done in this matter.

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We are also of the view that the Council's officer's reliance on the likelihood of the objector appealing any decision for approval of this proposal to the Land and Environment Court and their being successful in such an appeal was greatly misleading in seeking to encourage Council's refusal of the applications insofar as third party appeals on matters of merit are not provided for under the EP&A Act 1979 unless the development was "designated" development, which the applications were not. Further S123 of the Act provides for appeals by third parties only for "Breaches" of the Act and not for matters of merit.

Our involvement in this matter was brought about by the possibility of this matter proceeding to either Class 1 or Class 4 proceedings in the Land and Environment Court in relation to Council's refusal of the initial Development and S149B applications for the retention and use of the shed erected upon this land at Heatherbrae.

Such involvement was as a result of the applicant seeking advice from Mallik Rees Lawyers of Cessnock who have advised that they have good prospects of succeeding on an appeal for the Council's refusal of both the Building Certificate and Development Applications for the shed.

We have reviewed the documentation relative to those applications and Council's reasons for refusal and agree that the development as originally proposed was worthy of support and was, contrary to the report of the Council's Officers, consistent with the zone objectives and would have been unlikely to have had an adverse impact on the use and enjoyment of adjoining lands by the way of overshadowing or bulk and scale.

In the circumstances of this case we would encourage Council to resolve this matter by way of grant of approval such that the building can be completed and used for its legitimate purpose without the need for costly appeal proceedings before the Courts.

I trust the above is of assistance to you. Should you have any enquiries in the matter or require any additional information please do not hesitate to contact the writer on either (02) 4933 6585 or 0439 336 585.

Yours Sincerely,

SYNERGY ENVIRONMENTAL PLANNING PTY LTD

**Garry Warnes,
Director/ Environmental Planner
Assoc. Dip T&CP, LGTP, MPIA**

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ITEM NO. 2

FILE NO: PSC2008-0049/053

NEW DELEGATIONS AND REVIEWS OF LOCAL ENVIRONMENTAL PLAN DECISIONS

REPORT OF: BRUCE PETERSEN – COMMUNITY PLANNING & ENVIRONMENTAL SERVICES SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) That delegation to prepare certain types of Local Environmental Plans (LEPs) be accepted;
- 2) That the General Manager, Development Services Group Manger, Community Planning & Environmental Services Section Manager & Strategic Planning Co-ordinator be nominated to exercise the appropriate delegation on Council's behalf;
- 3) That the Department of Planning and Infrastructure (DOPI) be advised of Council's decision as requested by the Minister; and
- 4) That the comments expressed in this report in relation to the new LEP review system be conveyed to the Minister and to the Department of Planning and Infrastructure.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

Cr Peter Kafer left the meeting at 6.54pm and did not return.
 Cr Paul Le Mottee returned to the meeting at 6.54pm.

	<p>Councillor Bruce MacKenzie Councillor Ken Jordan</p>
	<p>That the recommendation be adopted.</p>

MOTION

336	<p>Councillor John Nell Councillor John Morello</p>
	<p>It was resolved that the recommendation be adopted.</p>

BACKGROUND

In a letter to Council (**Attachment 1**) The Minister for Planning and Infrastructure and the Minister assisting the Premier on Infrastructure, The Hon. Brad Hazzard MP has:

- requested Council accept his offer to exercise delegations under s.59 of the EP&A Act 1979 for the making of certain Local Environmental Plans following gateway determination; and
- formalised existing statutory arrangements for the review of Local Environmental Plans (informed by advice from joint regional planning panels or the Planning Assessment Commission) effective 2 November 2012.

Full details of the delegations and review process for LEPs is provided in a Planning circular issued by the Department of Planning and Infrastructure (DOP&I) dated 29th October 2012 (**Attachment 2**) and briefly summarised below.

s.59 Delegations

The delegations will empower Council to complete the plan making process for LEP's under certain circumstances following the Department of Planning and Infrastructure (DOP&I) gateway determination. To exercise the delegations Council is required to advise DOPI of its acceptance by 30th November 2012. However the Department has agreed to additional time to enable consideration of this report.

The delegation will be available only for the following types of LEP's

- Mapping alterations
- Section 73A matters (e.g. amending references to documents/agencies, minor errors and anomalies)
- Reclassifications of land
- Heritage LEPs related to specific local heritage items supported by an Officer of Environment and Heritage endorsed study
- Spot zoning consistent with an endorsed strategy and/or surrounding zones, and
- Other matters of local significance as determined by the Gateway.

Reviews of Local Environmental Plans

Measures implemented 2nd November 2012 allow pre or post – gateway reviews of LEP proposals at the request of councils and/or applicants within specific time frames (after 90days). Prior to 2nd November 2012, decisions by councils regarding LEP's were not subject to a formal review process. These reviews will be informed by advice from the Joint Regional Planning Panels or the Planning Assessment Commission in the case of post gateway reviews.

The new process allows applications to be made to Council for planning proposals, such as rezoning applications (a fee is payable to Council for this services). If Council does not indicate support within a specified period (90 days) then the applicant can

request a review. There are also review mechanisms available to Council and applicants at further stages in the process

FINANCIAL/RESOURCE IMPLICATIONS

Responding appropriately to the new system may require additional resources to be allocated to strategic planning functions. This will be offset by fees which can be charged to applicants to progress applications. Resourcing will also be required to ensure the Urban Planning Strategy remains relevant so as to be relied on during through the LEP review process.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Y		Within existing budget
Reserve Funds			
Section 94			
External Grants			
Other	Y		Rezoning fees

LEGAL, POLICY AND RISK IMPLICATIONS

Section 381 of the Local Government Act 1993 requires the proposed delegations under s.59 of the EP&A Act 1979 for the making of certain Local Environmental Plans cannot be delegated to:

- a) the General Manager, except with the approval of the Council; or
- b) an employee of the Council except with the approval of the Council and the General Manager.

It would be advantageous for Council to obtain delegations in order to streamline/expedite the LEP processes for specific types of LEPs with less reliance on DOPI processing times.

However, the new review process in some ways appears contrary to the Minister's desire to return local planning decisions to local councils and their communities. The LEP process will be subject to review by non-elected local community members through the Joint Regional Planning Panel (JRPP) or the Planning Assessment Commission (PAC). As such final decisions may not always reflect local public interest and undermine community confidence in the planning process.

It is important that there is adequate, contemporary detail and sufficient clarity in Council's *Urban Planning Strategy* to properly inform any future decisions/determinations by the Regional Planning Panel dealing with reviews of proposals. This will also be important if Council is required to contest decisions it makes where rezoning applications are 'appealed' to Regional Planning Panels.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
LEP review process outcomes may not be consistent with Council's strategic planning directions.	Medium	Ensure Urban Planning Strategy is relevant and up to date.	Y
Council does not use the delegations correctly.	Medium	Council to nominate appropriate senior staff to exercise delegations in accordance with approved processes.	Y

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are potential social and economic benefits with Council having the delegated power to finalise LEPs in terms of streamlining the process. However the review process for LEPs (JRPP & PAC) may diminish Council's ability to make its own determination of LEPs on behalf of the community.

CONSULTATION

The General Manager and Council's Executive Officer have been consulted. The General Manager has agreed to the nominated employees recommended to exercise the appropriate delegation on Council's behalf.

OPTIONS

- 1) Council not accept the delegated functions under Section 59 of the EP&A Act.
- 2) Council accept the delegated functions under Section 59 of the EP&A Act.

ATTACHMENTS

- 1) The Hon Brad Hazzard MP correspondence.
- 2) DOPI Circular PS12-006 dated 29th October 2012; - Delegations and Independent Reviews of Plan-Making Decisions.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

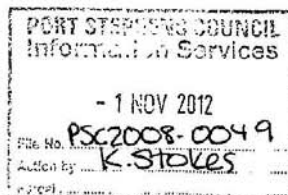
ATTACHMENT 1

The Hon Brad Hazzard MP correspondence



The Hon Brad Hazzard MP
Minister for Planning and Infrastructure
Minister Assisting the Premier on Infrastructure NSW

Mr Peter Gesling
General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324



Dear Mr Gesling,

In April 2012 the NSW Government called for public submissions on a draft policy statement to improve the local plan making process by returning local planning decisions to local councils and their communities, and by making the process more accountable. The proposed changes included formalising the existing statutory arrangements for two reviews within the plan making process (at both the pre and post Gateway determination stage) and introducing delegations to local government to make plans in certain circumstances.

Having considered the submissions received by the Department of Planning & Infrastructure, I now propose to introduce the changes. I note that in their reports released last month the Chairs of the Independent Review into the NSW planning system, the Hon Tim Moore and the Hon Ron Dyer, recommended that the reviews be implemented. The changes will commence on 1 September 2012.

To implement the new policy I have delegated to councils all my functions under section 59 of the *Environmental Planning and Assessment Act, 1979* for the making of Local Environmental Plans (LEPs). The delegations will operate in respect of draft LEPs for local matters where council receives an authorisation following the Gateway determination. For the first time councils will be fully empowered to complete the plan making process for these LEPs.

The Director General of the department has issued planning circular PS 12-006 about the two new reviews and the delegations. Delegations will routinely be issued for particular types of draft LEPs and these are specified in the circular. However, other types of draft LEPs will also be delegated to councils if the Gateway determines that the draft LEP is a local matter and that council should make the LEP.

To be able to exercise these delegations, your council must write to the department advising that they are accepted. Councils are also requested in their response to nominate the officers or employee of council who will be granted the proposed delegation. The name and position of the employee is required.

Council is reminded that the provisions of Section 381 of the *Local Government Act, 1993* require that such functions cannot be delegated to:

- a) The general manager, except with the approval of the council; or
- b) An employee of the council, except with the approval of the council and the general manager.

Further information on the administrative procedures for the various stages of the plan making process for delegated draft LEPs are available on the department's website at: <http://www.planning.nsw.gov.au/lep-practice-notes-and-planning-circulars>

Council is asked to respond to this letter advising if it wishes to accept the delegation and identify the nominated council officers by Friday 30th November, 2012.

If you require any further information on this matter, I have arranged for Mr Neil Selmon, Director Planning Operations Coordination to respond. Mr Selmon may be contacted on (02) 9228 6259 or at Neil.Selmon@planning.nsw.gov.au.

Yours sincerely

HON BRAD HAZZARD MP
Minister

ATTACHMENT 2

DOPI Circular PS12-006 dated 29th October 2012; - Delegations and Independent Reviews of Plan-Making Decisions



PLANNING circular

PLANNING SYSTEM

Plan-making reviews

Circular	PS 12-006
Issued	29 October 2012
Related	

Delegations and independent reviews of plan-making decisions

The purpose of this circular is to advise councils and the public about new delegations and independent reviews related to plan-making under Part 3 of the *Environmental Planning and Assessment Act 1979*.

Introduction

Two changes have been put in place to improve plan-making processes under Part 3 of the *Environmental Planning and Assessment Act 1979* (the Act). These changes come into effect on 2 November 2012 and will increase transparency, provide greater certainty, and increase councils' roles and responsibilities in plan making, by:

- delegating the making of some local environmental plans (LEPs) to councils, and
- allowing for independent reviews of some council and departmental decisions in the plan making process.

LEP delegations

The making of some LEPs will now be delegated back to councils, in keeping with the government's commitment to return local planning powers to local councils and their communities.

The Minister has delegated the following plan-making powers to councils:

- to make – and determine not to make – an LEP under section 59(2), and (3) of the EP&A Act
- to defer inclusion of certain matters in an LEP under section 59(3) and
- to identify which matters must be considered and which stages of the plan-making process must be carried out again prior to resubmission (section 59(4)) if the council defers the proposal or if a matter is deferred from the LEP.

The changes will give local councils responsibility for LEPs of local significance and streamline the processing of their LEPs by removing duplicative steps in the making of these LEPs.

The delegations will operate in respect of a draft LEP on receipt by council of a Written Authorisation to Exercise Delegation (the Authorisation). The Authorisation will be issued to councils as part of the Gateway determination.

When submitting a planning proposal, councils will be required to identify whether they wish to exercise the Authorisation for each planning proposal.

Delegation will be routinely issued for particular types of LEPs (see below). However, any other draft LEP that the Gateway determines is of local significance will also be delegated to councils.

LEPs to be routinely delegated

The following types of draft LEPs will routinely be delegated to councils to prepare and make following a Gateway determination that the planning proposal can proceed:

- mapping alterations
- section 73A matters (e.g. amending references to documents/agencies, minor errors and anomalies)
- reclassifications of land
- heritage LEPs related to specific local heritage items supported by an Office of Environment and Heritage endorsed study
- spot rezoning consistent with an endorsed strategy and/or surrounding zones, and
- other matters of local significance as determined by the Gateway.

Issue of delegations

Section 23 of the Act allows the Minister and the Director-General to delegate functions to a council and/or an officer or employee of a council. The department has written to all councils advising that

plan making powers are to be delegated under section 23 of the Act. A council is to formally accept the delegation before the department will issue an Authorisation in respect of any individual draft LEP.

If a council chooses to accept the delegation, it may sub-delegate the function to an officer within council (usually the general manager or planning director) who will exercise the delegation. If a council chooses to sub-delegate the function, the council should advise the department at the same time it accepts the delegation. When submitting a planning proposal to the gateway a council should advise the department whether the council or an officer will be exercising the delegated function.

Section 381 of the *Local Government Act 1993* requires that such functions cannot be delegated to:

- a) the general manager, except with the approval of the council, or
- b) an employee of the council, except with the approval of the council and the general manager.

Councils must comply with the conditions of the Authorisation in exercising their delegation. If a condition of the Authorisation cannot be complied with council must not exercise the delegation and must advise the department immediately.

Drafting and notifying delegated LEPs

Under section 59(1) of the Act the department currently requests the Office of the Parliamentary Counsel (PCO) to draft the legal instrument that gives effect to a planning proposal. However, when a planning proposal is delegated, the council will now deliver its instructions directly to PCO electronically. The council will concurrently copy the instructions to the department for monitoring and reporting only. The council will then deal directly with PCO to negotiate and agree the final wording of the instrument, prior to making the LEP.

When a plan is made, the department currently requests PCO to 'notify' the plan on the NSW Legislation webpage. The day the plan is notified on that webpage is the day the LEP becomes effective. This process will continue. When a council has made an LEP it will be forwarded to the department. The department will request notification through PCO and will record the dates of making by the council and notification on the NSW Legislation web page.

Reporting requirements

Councils will be required to report to the department on processing times for delegated LEPs (e.g. exhibition dates, dates of council resolution and/or delegated decisions to proceed with the planning proposal after exhibition, request for drafting, making of plan, and forwarding to department to arrange notification).

A template for the reporting of this information has been prepared and is provided on the department's

website at <http://www.planning.nsw.gov.au/gateway-process>. Councils will be required to submit this completed template with each LEP at the time a request is made to the department to notify the plan. Councils are also required to provide written advice to the relevant regional office of the dates as they occur to ensure that the department's publicly accessible LEP Tracking System remains up to date.

Independent Reviews

To increase transparency and accountability in the Part 3 plan-making process, the government has formalised two existing administrative review processes:

- **Pre-gateway reviews** – which may be requested by a proponent before a planning proposal has been submitted to the department for a Gateway determination. These reviews are informed by advice from joint regional planning panels (regional panels) or the Planning Assessment Commission (PAC), and
- **Gateway reviews** – which may be requested by a council or proponent following a Gateway determination, but before community consultation on the planning proposal has commenced. These reviews are informed by advice from the PAC.

These reviews will allow councils and proponents to have decisions in relation to proposed amendments to LEPs reconsidered, by providing an opportunity for an independent body to give advice on such proposals.

An amendment to the Environmental Planning and Assessment Regulation 2000 (the Regulation) has been made to require councils to notify proponents of certain matters and to charge proponents fees for reviews.

This circular provides a summary of the review mechanisms. Detailed guidance for councils and proponents is provided within *A guide to preparing local environmental plans*.

Pre-Gateway reviews

When a review may be requested

If a proponent (e.g. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument, the proponent may ask for a pre-Gateway review if:

- a) the council has notified the proponent that the request to prepare a planning proposal is not supported, or
- b) the council has failed to indicate its support 90 days after the proponent submitted a request, accompanied by the required information.

The Regulation requires councils to notify a proponent when the council determines that it will not prepare a planning proposal. The proponent of the proposed instrument then has 40 days to request that the

relevant regional panel review the proposal. Where a council has not made a determination after 90 days, the proponent may request a review any time after the 90 days has lapsed.

A guide to preparing local environmental plans sets out lodgement requirements, including fees and information a proponent must provide to the department in order for a review to be undertaken. It also sets out strategic and site-specific eligibility criteria that must be met in order for a proposal to be eligible for review by the regional panel.

Review and determination

The relevant regional panel will review all eligible proposals forwarded to it by the department. In the City of Sydney local government area, the PAC will undertake the review.

A guide to preparing local environmental plans sets out what matters the regional panel/PAC will take into consideration when reviewing the proposal.

The regional panel/PAC will provide advice on whether it would recommend to the Minister that the proposed instrument should be submitted for a determination under section 56 of the Act (Gateway determination).

The Minister's final decision will be informed by the regional panel's or PAC's advice, and the views of the department, council and proponent.

For proposals that are to proceed, further work may still be required by the proponent before the proposal complies with section 55 of the Act in relation to submitting a planning proposal for Gateway determination.

Further details on these procedures are outlined in *A guide to preparing local environmental plans*.

Exclusions – Pre-Gateway Reviews

A proponent who has requested council to prepare a planning proposal prior to the date this circular was issued may seek a review if the supporting information accompanying the request is still current (i.e. less than two years old).

A review request accompanied by information that is more than two years old will not normally be considered.

Gateway reviews

When a review may be requested

A council or proponent may request the Minister (or delegate) to alter a Gateway determination, when a Gateway determination is made that:

- a) the planning proposal should not proceed
- b) the planning proposal should be resubmitted to the Gateway, or
- c) imposes requirements (other than consultation requirements) or makes variations to the proposal that the council or proponent thinks should be reconsidered.

If the Gateway determination is either to not proceed or to resubmit the planning proposal, the council or proponent has 40 days from being notified by the department to request a review.

If the Gateway determination is to proceed with the planning proposal but imposes conditions that the council or proponent considers inappropriate, the council or proponent has 14 days from being notified by the department to indicate their intent to request a review. The council or proponent would then have 40 days to formally apply for a Gateway review.

A guide to preparing local environmental plans sets out lodgement requirements, including information the council or proponent must provide for a Gateway review to be undertaken.

Review and determination

The PAC will provide advice on whether the original Gateway determination should be altered, giving consideration to the council or proponent's submission and the reasons given for the original Gateway determination.

The Minister's final decision on whether to alter the Gateway determination will be informed by the PAC's advice, and the views of the council and proponent.

Further details on these procedures are outlined in *A guide to preparing local environmental plans*.

Further information

The Environmental Planning and Assessment Regulation 2000 has been amended to require councils to notify proponents of certain plan-making matters and to charge proponents fees for reviews. The regulation is called the Environmental Planning and Assessment Amendment (Reviews) Regulation 2012.

A guide to preparing local environmental plans provides advice on the various stages in the plan-making process including details of the stages for pre-Gateway reviews, the review of Gateway determinations and the delegation of plan-making functions to councils. The guide has been updated throughout with the main changes relating to:

- delegation procedures
- guidance on the plan making process
- guidance on the procedures for independent review.

A guide to preparing planning proposals, issued under section 55(3) of the Act, provides advice on the preparation and content of planning proposals. The guide has been updated throughout with the main changes relating to:

- guidance on the level of information to be required for planning proposals together with the inclusion of an information checklist for planning proposals
- advice regarding pre-lodgement meetings

- the introduction of 'part 6 – project timeline' and discussion of requirements and procedures
- guidance on mapping requirements and procedures.

Copies of the Environmental Planning and Assessment Regulation 2000 are available online at <http://www.legislation.nsw.gov.au>.

Copies of *A guide to preparing local environmental plans* and *A guide to preparing planning proposals* are available on the department's website <http://www.planning.nsw.gov.au>.

The department has developed a number of template documents to assist councils preparing delegated LEPs. Councils will be able to access these templates and use them to ensure that the key statutory requirements of the plan-making process have been complied with. These templates are available for download from the department's website at: <http://www.planning.nsw.gov.au/gateway-process>

For further information please contact the Department of Planning & Infrastructure's information centre on 1300 305 695.

Department of Planning & Infrastructure circulars are available from <http://www.planning.nsw.gov.au/circulars>

Authorised by:

Sam Haddad
Director-General

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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ITEM NO. 3

FILE NO: PSC2008-0204

ACQUISITION OF 24 AND 24A KING STREET, RAYMOND TERRACE

REPORT OF: CARMEL FOSTER – PROPERTY SERVICES MANAGER

GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Authorise the General Manager to progress negotiations with the Raymond Terrace Scouts Group for the acquisition of 24 and 24A King Street, Raymond Terrace in exchange for land located at 77 Dawson Street, Raymond Terrace and the construction of a Scouts building.
- 2) Note that a further report will be submitted to Council when final valuations of land, a bill of quantities for the construction of the Scouts building and a contract have been prepared.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

Cr John Nell left the meeting at 6.55pm during Item 3.
 Cr John Nell returned the meeting at 6.56pm during Item 3.

	<p>Councillor Ken Jordan Councillor Steve Tucker</p>
	<p>That the recommendation be adopted.</p>

MOTION

337	<p>Councillor John Nell Councillor John Morello</p>
	<p>It was resolved that the recommendation be adopted.</p>

BACKGROUND

The purpose of this report is to authorise the General Manager to progress negotiations with the Raymond Terrace Scout Group to provide them with a new Scouts building constructed upon land located at 77 Dawson Street, Raymond Terrace in exchange for land held in Fee Simple by the Scouts located at 24 and 24A King Street, Raymond Terrace.

Council currently owns six parcels of land in King Street with an area of 3,151m² that adjoins the Scouts land to the south. The King Street area has been identified as a potential entertainment, accommodation and dining precinct due to its location and proximity to the river. The acquisition of the Scouts land of 1,394m² would provide Council with a prime riverfront development parcel of some 4,546m². Whilst the market may not be conducive to the development of this site in the short term it is a valuable strategic land holding.

Additionally a cycleway/footpath is proposed on the land to complete the cycleway that has been constructed along the waterfront. The purchase would alleviate the need to acquire the easement through the compulsory process and the associated fees payable through that process. A report to Council in February 2012 that recommended the acquisition of an easement for footpath/cycleway over the Scouts land and an adjoining allotment (26 King Street) was deferred to allow the Councillors to inspect the land due to the objections received from the Scouts and the owner of 26 King Street.

The land Council proposes to exchange is located at 77 Dawson Street, Raymond Terrace and adjoins Kitty Hawk Park. The land is currently zoned 2a residential; is 1468m² in area; and is classified as Community land. As part of Council's review of its landholdings, this land has been identified as surplus to Council's needs. Council resolved on 28 July 2009, to reclassify the land to Operational. The Property Services Section prepared the Planning Proposal and submitted the proposal to the Development Services Group in May 2012 for lodgement with the Department of Planning and Infrastructure (DoPI).

FINANCIAL/RESOURCE IMPLICATIONS

Valuations on the two parcels of land will need to be undertaken to ascertain the value between the two parcels to determine the funding available for the construction of the Scouts building.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No	Nil	
Reserve Funds	Yes	\$400,000	This is an estimate of the cost based on the existing two storey building design. If the building were to be located on the proposed allotment a single storey facility may be adequate rather than the two storey that was proposed due to the location in a flood prone area. Until the design is finalised and the land values are determined it is difficult at this time to

MINUTES FOR ORDINARY COUNCIL – 11 DECEMBER 2012

			provide accurate costings.
Section 94	No	Nil	
External Grants	No	Nil	
Other	No	Nil	

LEGAL, POLICY AND RISK IMPLICATIONS

A legal contract between the Scouts and Council will need to be prepared. It is essential that expectations are managed appropriately; therefore, a contract will be prepared by Council's lawyers setting out the terms and conditions of the land exchange. A further report will be presented to Council to approve the land exchange contract documentation.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
As the reclassification process for land at 77 Dawson Street has not been finalised there is a risk that DoPI may not approve the reclassification.	Low	The Planning proposal that has been prepared has addressed all the criteria required by the DoPI. As the land is already zoned 2(a) residential and does not have a restrictive community zoning it would be unlikely the DoPI would see it conflicting with its intended use.	Yes
Reputation risk and community opposition.	Low	The Scouts have spoken with residents in the area and the response to date has been positive. Therefore it is anticipated that objections to the reclassification and construction of Scouts building from the community would be minimal.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Scouting began in Australia in 1908 and is the worlds largest youth organisation. The aim of Scouts Australia is to encourage the physical, intellectual, emotional, social and spiritual development of young people so that they take a constructive place in society as a member of their local, national and international community. As Raymond Terrace has a lower socio economic demographic, an organisation such

as the Scouts provides a significant benefit to youth with many varied and affordable activities.

CONSULTATION

- 1) Councillor Dingle;
- 2) Raymond Terrace Scouts Group representatives;
- 3) Group Manager Corporate Services;
- 4) Property Development Coordinator.

OPTIONS

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

ATTACHMENTS

- 1) Aerial of the Scouts land 24 and 24A King Street, Raymond Terrace;
- 2) Aerial of Council owned land, King Street, Raymond Terrace;
- 3) Aerial of 77 Dawson Street, Raymond Terrace.

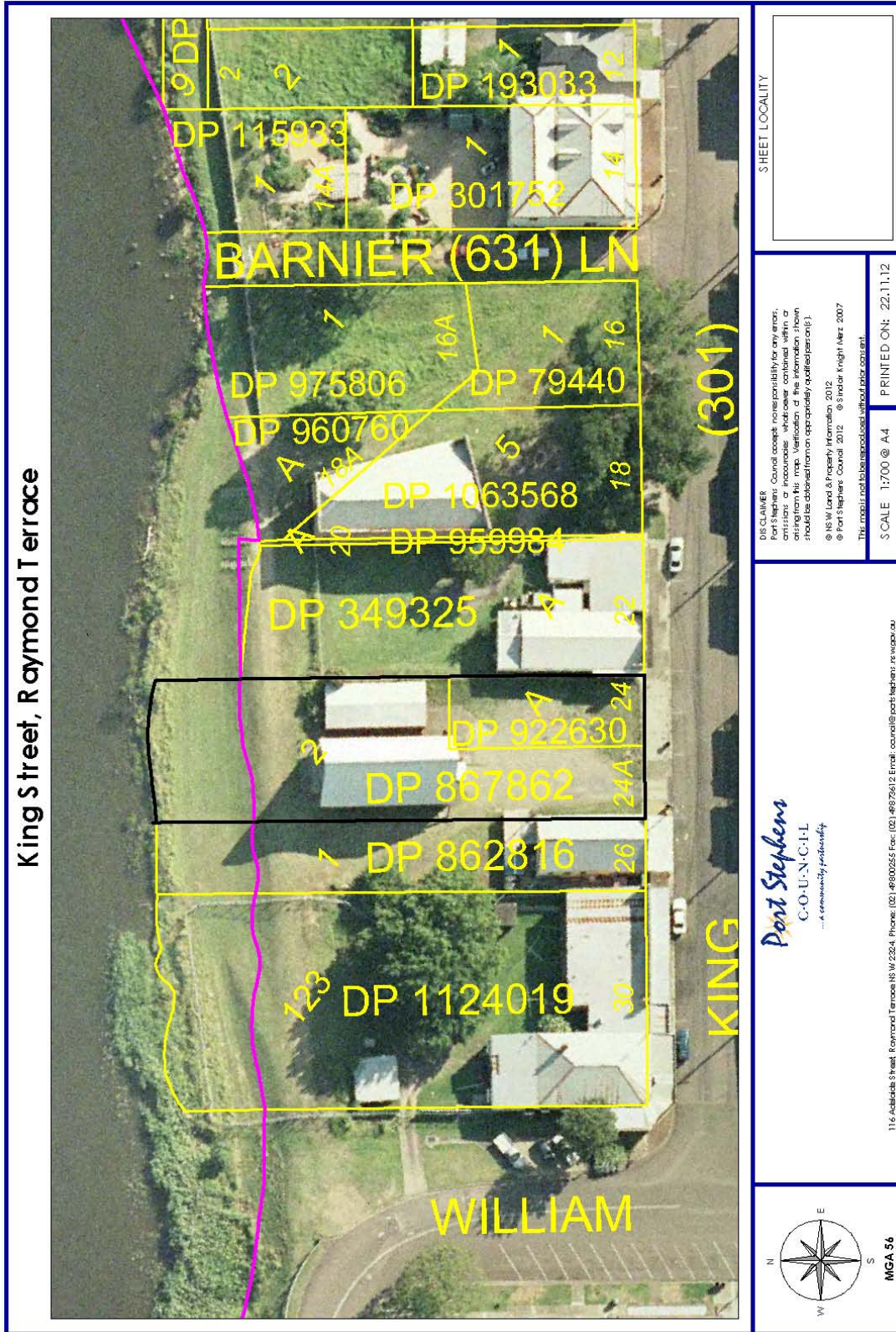
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



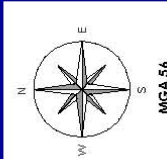
SHEET LOCALITY

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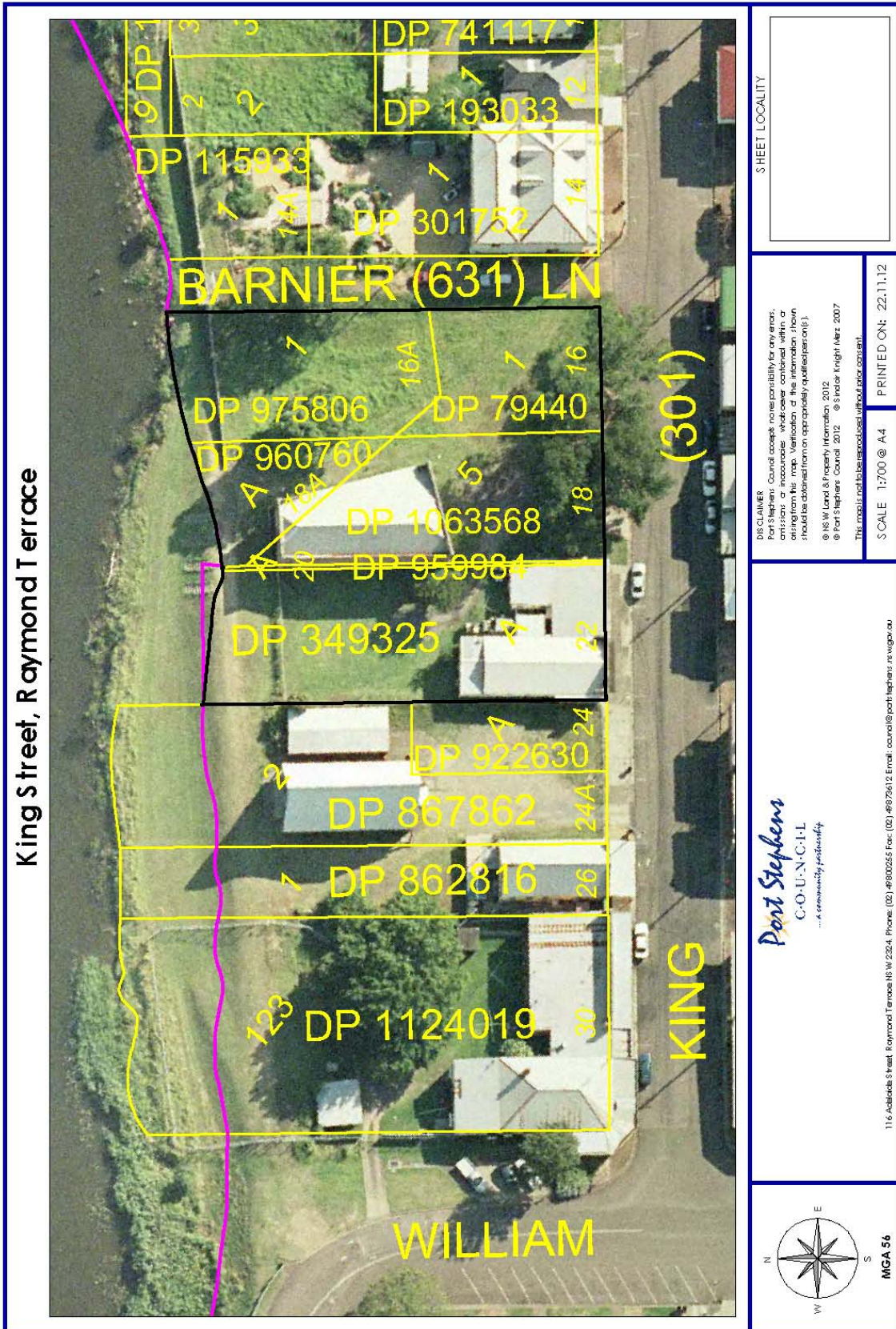
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 ...A community partnership

116 Adelaide Street, Raymond Terrace, NSW 2264. Phone: (02) 49500255 Fax: (02) 49756112 Email: council@portstephens.nsw.gov.au



ATTACHMENT 2



King Street, Raymond Terrace

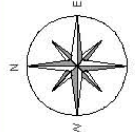
SHEET LOCALITY

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MGA 56

ATTACHMENT 3



77 Dawson Street

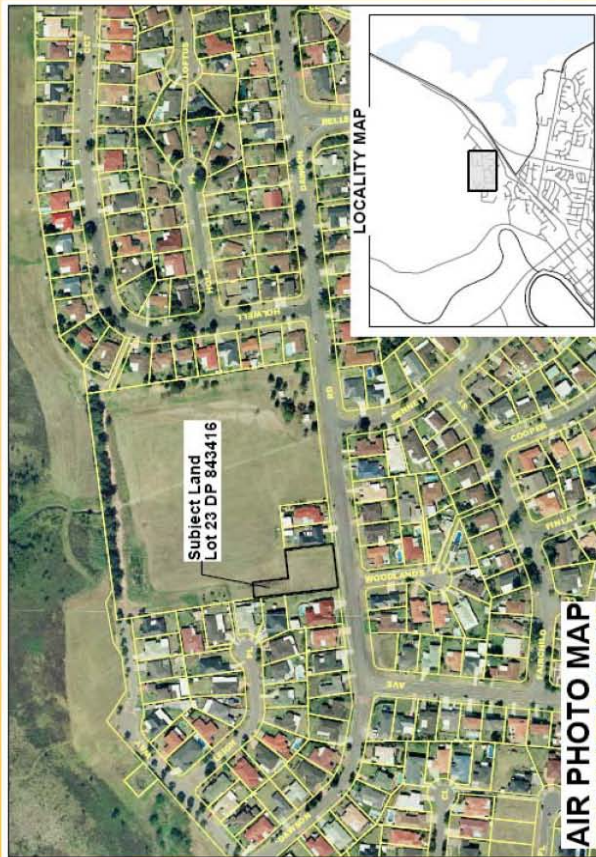
Raymond Terrace

PROPOSED ACTION	FROM	TO
Reclassification	Community	Operational

Size:
1845m² (1468m² excl. handle)

Existing Zoning:
2a Residential

Intention:
Sell or develop



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ITEM NO. 4

FILE NO: PSC2005-0828

REVIEW OF DEBT RECOVERY AND HARDSHIP POLICY

REPORT OF: TIM HAZELL – FINANCIAL SERVICES MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Debt Recovery and Hardship policy presented to Council as Attachment 1.
- 2) Place the Draft Debt Recovery and Hardship policy on public exhibition for 28 days.
- 3) Should no submissions be received adopt the Draft Debt Recovery and Hardship policy presented to Council as Attachment 1.
- 4) Should the Draft Debt Recovery and Hardship policy be adopted, revoke the current Debt Recovery and Hardship policy adopted by Council 14/12/2010, Minute No.404 presented to Council as Attachment 2.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Chris Doohan Councillor Paul Le Mottee</p>
	<p>That the recommendation be adopted.</p>

MOTION

338	<p>Councillor John Nell Councillor John Morello</p>
	<p>It was resolved that the recommendation be adopted.</p>

BACKGROUND

The purpose of this report is to present recommended amendments to the current Debt Recovery and Hardship policy last reviewed by Council on 14 December 2010, Minute No. 404.

The policy prescribes Council's processes for recovering overdue rates, charges, fees and other debts, as well as controlling credit and its processes for assessing ratepayer and debtor hardship and the mechanisms for providing assistance.

The policy has been redrafted to make it easier to read. Specifically dot points replace larger sections of unbroken text, and consistency of wording is applied throughout to state actions 'will be' done rather than 'are' and 'is' etc.

References to position titles are updated.

Part 2 point 3 (Overdue Sundry Debtors – Aged Pensioners) is proposed to be amended to state that a kerb and gutter, cycleway or footpath account may only be deferred against an aged pensioner's estate if they have already deferred payment of their rates against their estate. This is to avoid potential difficulty in recovering these accounts in the future if a pensioner were to defer payment of a construction contribution, but not their rates.

Part 2 point 4 (Recovery Action – Suspension of Credit Facilities) is expanded to clarify the process for suspending credit facilities for non payment of recurring accounts such as commercial tipping fees.

Part 3 point 5 (Judgment Debts and Credit History) is proposed so that the policy reflects Council's legal advice and established practice in relation to requests to set aside judgment debts.

Part 4 point 3 (Hardship Resulting from a General Revaluation of the Port Stephens Local Government Area) is updated to refer to the most recent revaluation.

Part 5 (Sale of Land for Unpaid Rates or Charges) is simplified to point form to explain the process rather than replicate the procedures set out in the Local Government Act 1993.

A review date in two years time is proposed.

FINANCIAL/RESOURCE IMPLICATIONS

Costs associated with policy review are covered in the 2012-2013 Corporate Services Group budget.

All legal costs incurred in debt collection are recovered from the debtor as part of the collection process.

For approximately 10 years Council has provided a deferral option for aged pensioners who meet hardship eligibility criteria. Presently there are six (6) rate assessments with a deferral in place out of a total of 5,578 pensioner rate assessments.

55% of the cost of pensioner rate concessions, including backdated concessions, are reimbursed to Council by government subsidy. The net cost of backdated pensioner rate concessions was \$5,175 last year.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	Nil	<ul style="list-style-type: none"> • Costs associated with the review of this policy are covered in the budget of the Group Manager Corporate Services. • Ongoing costs associated with the implementation of the policy are managed through Council's budget process.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Clause 207 of the Local Government (General) Regulation 2005 requires Council to collect or recover all money payable to it promptly.

Sections 567, 577 and 601 of the Local Government Act 1993 empower Council to provide hardship assistance.

The adoption of a policy prescribing the debt recovery and hardship processes promotes efficiency, consistency and transparency.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
Unstructured credit control and debt recovery processes may result in higher outstanding debts.	High	Adopt revised policy.	Yes
Billing and debt recovery action that does not follow statutory and consistent processes may be rejected by the courts.	High	Adopt revised policy.	Yes

Absence of hardship provisions may be considered harsh by the community and DLG.	Medium	Adopt revised policy.	Yes
Policy wording that is clear and succinct is easier for all stakeholders to understand.	Low	Adopt revised policy.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Debt Recovery and Hardship policy is a public statement of Council's commitment to a fair, consistent approach to debt collection and hardship assistance.

The hardship provisions provide practical financial assistance to financially vulnerable ratepayers and debtors, which is consistent with Council's charter of social justice and equity.

CONSULTATION

- 1) Financial Services Manager;
- 2) Revenue Coordinator;
- 3) Revenue staff.

OPTIONS

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

ATTACHMENTS

- 1) Draft Debt Recovery and Hardship policy
- 2) Current Debt Recovery and Hardship policy

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



DRAFT POLICY

Adopted: #
Minute No: #
Amended:
Minute No:

FILE NO: PSC2005-0828
TITLE: DEBT RECOVERY AND HARDSHIP POLICY
RESPONSIBLE OFFICER: FINANCIAL SERVICES MANAGER

BACKGROUND

This document prescribes Council procedures to recover monies that become overdue for rates, charges, fees and other debts and assistance to ratepayers and debtors experiencing financial hardship.

OBJECTIVE

- 1) The objectives of this policy are to ensure:
 - efficient and effective processes for collection of outstanding debts;
 - provision of a decision making framework for assessment of financial hardship applications;
 - statutory requirements are met for recovery of rates, charges, fees and other debts; and
 - debts are recorded in Council's accounting system.

PRINCIPLES

- 1) This policy has been written considering the following principles:
 - Council has a responsibility to recover monies owing to it in a timely, efficient and effective manner to fund its operations;
 - all people will be treated fairly and consistently;
 - all matters will be considered confidentially; and
 - genuine financial hardship will be recognised and people treated with respect and compassion in considering their circumstances.

POLICY STATEMENT

1) Part 1 – Recovery of Rates and Charges

1. Rates and Charges Notice

A rates and charges notice will be sent in July each year payable in 4 instalments due on 31 August, 30 November, 28 February and 31 May. An instalment notice will be sent 30 days before instalments 2, 3 and 4 are due.

2. Overdue Instalment Notices

An overdue instalment notice will be sent 21 days after the due date for all unpaid assessments over \$25.

Overdue instalment notices will include:

- debt details;
- a request to pay within 14 days;
- option of repayment arrangement;
- notice of referral to Council's debt collection agency if the overdue amount exceeds \$500 and remains unpaid; and
- instruction to disregard notice if complying with a repayment arrangement.

3. Recovery Action – Referral to Debt Collection Agency

14 days after issue of the overdue instalment notice unpaid assessments over \$500 with no repayment arrangement in place will be referred to Council's debt collection agency.

4. Recovery Action – Debt Collection Agency Procedures

Council's debt collection agency will issue a letter of demand in relation to each debt advising:

- Council has referred the debt for collection;
- payment is required within 7 days of the date of the letter;
- if unpaid, legal action will be commenced; and
- the minimum amount in legal costs that will be added to the ratepayer's assessment if legal action is commenced.

The debt will escalate to the following stages only if it remains unpaid:

- 9 days after the date of the letter a statement of liquidated claim will be prepared, filed with the court and issued for service;
- after the statutory period following service, judgment will be obtained;
- further action will be commenced to recover the debt including writ of execution and garnishee orders.

5. Arrangements to Repay Overdue Rates and Charges

A ratepayer may enter into a weekly, fortnightly or monthly arrangement to repay overdue rates and charges with Council or Council's debt collection agency subject to the following conditions:

- the overdue amount must be paid in full within 12 months;
- normal interest charges apply, unless written off under hardship provisions of this policy at part 4;
- Council's Collections Officer may enter into a longer term repayment arrangement if in that Officer's opinion a ratepayer's financial circumstances warrant this;
- a ratepayer dissatisfied with a decision of the Collections Officer may have that decision reviewed by the Senior Revenue Officer;
- ratepayers will be advised at the time of making a repayment arrangement that if the arrangement is dishonoured recovery action will recommence without further notice;
- where an arrangement has been dishonoured, a new arrangement cannot be accepted until a payment is received to show good faith;
- where legal action has commenced, arrangements must be in the form of a court instalment order;
- extensions of time beyond 3 months without any payment will not be acceptable; and
- where a supplementary rates and charges notice is issued in the latter part of the year and where an arrangement is made for payment of the rates within 6 months of the due date, interest will be written off provided payment of one half of the amount due is made within 3 months and the balance is paid within 6 months.

2) Part 2 –Recovery of Sundry Debtor Accounts

1. Sundry Debtor Invoices and Statements

Sundry debtor accounts and Invoices will be created when information becomes available and printed and posted weekly. The payment due date will be 30 days after the invoice issue. A statement will be issued within 7 days of month's end.

2. Overdue Sundry Debtors

The following process applies to recovery of overdue sundry debtor accounts:

- If unpaid by the due date a second and then a third monthly statement will be forwarded as a reminder;
- If full payment is not received after issue of the second statement then a recovery notice requesting payment or the making of a satisfactory arrangement to pay will be forwarded to the debtor as an attachment to the third monthly statement;
- The recovery notice will advise that the recovery of the overdue account will be referred to Council's debt collection agency if the account is not paid within 14 days. Section 355(b) committees, sporting clubs and government agencies will not be referred to the debt collection agency.

3. Overdue Sundry Debtors – Aged Pensioners

If a sundry debtor account is a charge on the land i.e. kerb and gutter, cycleways or foot paving, and it is payable by an aged pensioner, the aged pensioner may apply to Council to have the account deferred against their estate subject to the hardship provisions of this policy and provided they have already deferred their rates against their estate.

4. Recovery Action – Suspension of Credit Facilities

If the account is a recurring account, e.g. waste tipping fees or 149 certificates, and any part remains unpaid for more than 60 days, further credit to that debtor account may be withdrawn until the overdue amount is paid. The process of suspending credit facilities will be:

- A letter of demand will be posted to the debtor advising of the overdue amount, required payment date, 30 day payment terms and advising that non payment will result in the account being suspended with fees required up front to continue to use Council services;
- After the required payment date a second letter will be posted to the debtor advising that the account has been suspended and debt referred to Council's debt collection agency;
- After payment of the overdue amount or commencement of a satisfactory repayment arrangement, credit facilities may be resumed; and
- If payment terms are breached again Council may cancel credit facilities.

5. Recovery Action – Referral to Debt Collection Agency

14 days after issue of the recovery notice as described in 2 above, Council will refer overdue accounts to its debt collection agency.

6. Recovery Action – Debt Collection Agency Procedures

Council's debt collection agency will issue a letter of demand in relation to each debt advising:

- Council has referred the debt for collection;
- payment is required within 7 days of the date of the letter;
- if unpaid, legal action will be commenced; and
- the minimum amount in legal costs that will be added to the ratepayer's account if legal action is commenced.

The debt will escalate to the following stages only if it remains unpaid:

- 9 days after the date of the letter a statement of liquidated claim will be prepared, filed with the court and issued for service;
- after the statutory period following service, judgment will be obtained; and
- further action will be commenced to recover the debt including writ of execution and garnishee orders.

7. Arrangements to Repay Sundry Debtor Accounts

A debtor may enter into a weekly, fortnightly or monthly arrangement to repay overdue accounts with Council or Council's debt collection agency subject to the following conditions:

- the overdue amount must be paid in full within 12 months;
- Council's Collections Officer may enter into a longer term repayment arrangement if in that Officer's opinion a debtor's financial circumstances warrant this;
- a debtor dissatisfied with a decision of the Collections Officer may have that decision reviewed by the Senior Revenue Officer;
- debtors will be advised at the time of making a repayment arrangement that if the arrangement is dishonoured recovery action will recommence without further notice;
- where an arrangement has been dishonoured, a new arrangement cannot be accepted until a payment is received to show good faith;
- where legal action has commenced, arrangements must be in the form of a court instalment order; and
- extensions of time beyond 3 months without any payment will not be acceptable.

3) Part 3 – Credit Control

1. Terms of Payment – 30 Day Accounts

All accounts with Council will be strictly 30 days trading terms, without exceptions. Council will open credit accounts in accordance with this policy.

2. Terms of Payment – Credit Accounts

No credit account will be opened unless a 30-day trading application form has been completed and returned. Council will conduct a reference check on the applicant, verifying references provided by the applicant, before a credit account is offered.

3. Terms of Payment – One Off Usage

No company or individual will be extended credit for one-off use of:

- room hire;
- hall hire;
- community centre bookings;
- holiday park bookings;
- council stores;
- sporting field use;
- enrolment fees;
- tipping fees;
- vehicle repairs; and
- sundry sales including documents, copying and plant.

Council will invoice government departments that provide a purchase order.

All other one off usage must be paid for in advance or at the time of usage to avoid difficulties in locating debtors and recovering fees. Council's receipts satisfy the requirements of a tax invoice for business debtors.

Council will extend credit and allow payment plans for animal impounding fees and sustenance fees at the discretion of the Co-ordinator Environmental Health and Compliance to avoid hardship.

4. Terms of Payment – Deposits and Progress Payments

For private works Council will provide a written quote for the proposed work to cover estimated costs for the work. For work to proceed, Council requires written authorisation from the client and proof of identity. For work valued at more than \$1,000 a 10% deposit will be required before work commences. For work valued at more than \$10,000 Council will require agreed progress payments at various stages.

5. Judgment Debts and Credit History

Credit reporting agencies access some court records relating to debt recovery. Specifically they access details of all default judgments and record these on the individual's credit history, in some cases for 5 years. If a statement of liquidated claim is served and the debtor:

- makes no payment in the next 28 days, and
- doesn't pay the amount claimed, including legal costs, and
- doesn't apply for a court instalment order to pay off the amount claimed, including legal costs, and
- doesn't lodge a notice of defence with the court disputing the claim,

then the debtor will be liable to incur a default judgment. It is these default judgments, where a debtor has not responded to a statement of claim, that may be included in an individual's credit history.

If the debt has been paid in full, Council will upon request, write a letter to the debtor confirming that the debt has been repaid in full which may then be presented as proof of payment. Credit reporting agencies will not remove from an individual's credit history the existence of a default judgement because it assists users of their reports with credit risk assessment.

Debtors may sometimes ask for Council to consent to the filing of a notice of discontinuance or to have judgment set aside to have the default judgment removed from their credit history. The process requires a notice of motion to have judgment set aside and then a notice of discontinuance. Council will not have judgment set aside or issue a notice of discontinuance in these circumstances. A notice of discontinuance is a remedy for correcting a claim that was issued in error, before judgment is entered by the court. A debtor has no right to have a default judgment erased upon payment of the debt. The debtor had the opportunity to avoid default judgment when they were issued with the statement of claim and judgment warning letter. A default judgment is a valid court judgment.

Council does not report debts to any credit reporting agencies, and is under no obligation to assist debtors to delete factually correct court judgment history.

4) Part 4 – Hardship Provisions

1. Defer Payment of Rates and Charges – Aged Pensioners

Aged pensioners who satisfy the eligibility criteria may make application to defer the payment of rates and charges and property related sundry debtor accounts against their estate. If granted, payment of the rates, charges, interest and property related sundry debts will be deferred until any of the following occurs:

- death of the ratepayer; or
- sale of the property; or
- the ratepayer ceases to occupy the property as their principal place of living and rents the property out.

The criteria used to determine eligibility for deferral will be:

- The ratepayer must be an aged pensioner as defined by Centrelink in receipt of a pensioner rate concession in relation to the property; and
- the property must be the ratepayer's principal place of living, and
- the property must be used for residential or farming purposes only, and
- the property can have no more than a single dwelling house or residential unit erected upon it, and
- the total amount of rates and charges (nett of pensioner concession) payable must be more than 8% of the age pension of an individual (if the ratepayer is an individual) or 8% of the age pension of a couple (if the ratepayer is a couple) at the date of the initial application.

An initial application form must be completed and lodged with Council and determined by the Revenue Co-ordinator. A ratepayer dissatisfied with a decision of the Revenue Co-ordinator may have that decision reviewed by the Hardship Panel established under this policy. The Hardship Panel may approve an application for deferral if it believes the circumstances of the ratepayer warrant this even if the eligibility criteria have not been met. A letter of determination will issue to the ratepayer. If an application is refused, the ratepayer will be provided with reasons for the refusal.

After approval, a letter will be posted out annually to the ratepayer with a copy to sign and return to continue the deferral. The purpose of the annual letter will be to confirm that the ratepayer continues to own and occupy the property, is still alive and is aware of and agrees to the deferral. Deferral will continue once granted without the need to satisfy the 8% criteria again, provided that the ratepayer continues to own and occupy the property. Where the ratepayer ceases to occupy the rateable property and the property becomes rented a repayment timeframe for the deferred rates and charges will be negotiated by the Collections Officer. A person dissatisfied with a decision of the Collections Officer may have that decision reviewed by the Senior Revenue Officer.

Interest charges accrue in respect of deferred rates and charges at the rate determined under the Local Government Act. No deferred rates, charges or interest will be written off under this policy.

2. Writing Off of Accrued Interest

The Collections Officer, Senior Revenue Officer and Revenue Officers have delegated authority to write off small amounts of interest that have accrued on rates and charges where the person was unable to pay the rates and charges when they became due and payable for reasons beyond their control. The Revenue Co-ordinator has delegated authority to write off an unspecified amount of interest.

Ratepayers seeking to have interest written off under hardship provisions must submit the prescribed application form to be considered by the Revenue Coordinator. Accrued interest on rates and charges may be written off where payment of the accrued interest would cause the person hardship. A person dissatisfied with a decision of the Revenue Coordinator may have that decision reviewed by the Hardship Panel. The Hardship Panel may request the ratepayer to come to an interview if it is necessary to understand the issues causing hardship.

3. Hardship Resulting from a General Revaluation of the Port Stephens Local Government Area

In accordance with section 601 of the Local Government Act a ratepayer who suffers substantial hardship as the consequence of the making and levying of a rate on the most recent valuation, may apply to Council for relief. Assistance will only be available in the first year new valuations are used to calculate rates.

The criteria used to determine eligibility:

- rates payable must be more than 3% of the gross household income; and
- the applicant must be an owner and occupier of the property to which the rates relate and the dwelling must be the applicant's sole or principal place of living; and
- The ordinary rate increase must be more in percentage terms than the amount determined by Council at each revaluation. The ordinary rate increase is calculated as the ordinary rates payable for the new rating year (being the first year in which new valuations are used) minus the ordinary rates payable in the previous rating year increased by the allowed ratepegging increase for the year.
- (eg. rates 2011/2012 \$900 minus rates 2010/2011 \$700 plus 2.8% ratepegging increase (\$719.60) = \$180.40)

Applications must be submitted on the prescribed application form. Assistance will be calculated as follows:

- One half of the ordinary rate increase up to a maximum of \$200
 - (eg. \$180.40 increase x 0.5 = \$90.20. \$500 increase x 0.5 = \$200 max)
- No assistance will be given for domestic waste management charges, HCRCMA levy, or special rates.
- The maximum amount of assistance in aggregate for all ratepayers will be \$20,000.

Applications will be considered in the order in which they are received by Council. No further applications will be considered once the aggregate amount of assistance has been granted. Applications will be considered by the Revenue Co-ordinator. A ratepayer dissatisfied with a decision of the Revenue Co-ordinator may have that decision reviewed by the Hardship Panel established under this policy. If an application is refused, the applicant will be provided with reasons for the refusal.

4. Fees and Charges

The Coordinator Environmental Health and Compliance may consider hardship matters relating to animal impounding and sustenance fees. Assistance may be provided in the form of allowing additional time to pay or waiving the fees in cases of hardship. A customer dissatisfied with a decision of the Coordinator Environmental Health and Compliance may have that decision reviewed by the Hardship Panel established under this policy. Applicants under this section will be made aware that fees and charges in relation to animal impounding increase on a daily basis and will accrue during the review period. Council will not consider hardship applications in relation to animal registration fees, or the costs of microchipping or veterinarian fees and charges.

5. Hardship Panel

A Panel comprising the Revenue Co-ordinator, Social Planner and a representative from Corporate Services will determine applications for assistance referred to it and review decisions as necessary.

6. Referral of Matters to Hardship Panel

The General Manager or Mayor may refer any Council matter involving financial hardship of a ratepayer or resident to the Hardship Panel for consideration and advice.

7. Privacy

In accordance with the Privacy Code of Practice and Council's Privacy Management Plan, personal information collected as a consequence of this policy will only be used for the purpose of assessing eligibility under the Policy and will not be used for any other purpose or disclosed to any other person unless Council is required by law to do so or authorised to do so by the person to whom that personal information relates.

5) Part 5 – Sale of Land for Unpaid Rates or Charges

Where rates or charges for a property are overdue for more than 5 years the land is liable to be sold under Section 713 of the Local Government Act 1993.

The process in compliance with the requirements of ss713-726 of the Local Government will generally be as follows:

- each September outstanding rate assessments will be reviewed to identify all land liable to be sold;
- land titles will be searched and all persons with an interest in the land will be notified of Council's intention;
- a report will be prepared for Council to consider offering the land for sale by public auction;
- a date will be set for the public auction;
- a real estate agent will be appointed to conduct the sale;
- notice of the auction will be published in accordance with s715 of the Act and given to all persons with an interest in the land;
- contracts for sale will be prepared;
- the real estate agent will market the land;
- reserve prices will be established;

- all land will be offered for sale by public auction unless all overdue amounts are paid in full prior to auction;
- on auction day a deposit of 10% in cash or bank cheque will be payable by the successful bidder;
- if the land is not sold at auction the land may be sold by private treaty, subject to the restrictions contained in s716 of the Act;
- all costs associated with the sale must be met from sale proceeds;
- sale proceeds will be applied as required by the Act;
- the land will be conveyed free of debts to the extent provided by the Act;
- Council will hold any surplus proceeds for persons having estates or interests in the land immediately before the sale according to their respective estates and interests; and
- Council will pay the balance of the purchase money or any part of the balance to or among the persons who are, in its opinion, clearly entitled to it.

6) Part 6 – Pensioner Rate Concessions

The following prescribes how Council will grant concessions to pensioners:

1. Eligibility for Pensioner Concessions

In all situations where an eligible pensioner has assumed full and sole responsibility for the paying of rates, notwithstanding the nature of the ownership of the property, Council agrees to grant the full pensioner concession under Section 577 of the Act. The presentation of a Pensioner Concession Card will be accepted by Council as a sufficient test to meet the hardship requirements of the Act under these circumstances.

2. Backdating of Pensioner Concessions

Where an eligible pensioner applies for a concession Council will backdate that concession for up to 2 years prior to the current year (i.e. a maximum total of 3 years including the current year) provided that:

- The pensioner was at all times eligible for the concession; and
- The pensioner provides a statutory declaration that the rateable property was their sole or principal place of living for all of the period that the concession is claimed for.

RELATED POLICIES

1) The following policies were incorporated into this policy

The following policies were incorporated into earlier versions of this policy:

- Debt Recovery Policy;
- Pensioner Rate Rebates;
- Pensioner Interest Charges;
- Waiving of Interest Charges;
- Interest on Overdue Rates; and
- Interest Charges on Supplementary Rate Levies.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

- 1) Council has a charter under the Local Government Act to raise funds for local purposes by imposing rates, charges and fees fairly. A policy that prescribes Council's process of collecting debts facilitates consistency and promotes fairness.
- 2) The hardship provisions of this policy empower Council to provide practical financial assistance to financially vulnerable ratepayers and debtors, which is consistent with Council's charter of social justice and equity.
- 3) The provisions of the this revised policy are largely unaltered from the previous policy which had been in place for 7 years and provided assistance for many ratepayers in terms of interest reductions, pension rebate extensions, deferral of rates for financially disadvantaged aged pensioners, rate reductions for low income ratepayers following general revaluations, provision of interest free loans to ratepayers experiencing financial hardship with on-site sewage management system upgrades and rate reductions for oyster farmers affected by water contamination.

ECONOMIC IMPLICATIONS

Nil.

ENVIRONMENTAL IMPLICATIONS

Nil.

RELEVANT LEGISLATIVE PROVISIONS

- 1) Local Government Act 1993, and specifically sections 564, 567, 577, 601, 712 and 713-726.

IMPLEMENTATION RESPONSIBILITY

- 1) Corporate Services Group – Financial Services Section.

PROCESS OWNER

- 1) Tim Hazell – Financial Services Manager.

REVIEW DATE

- 1) November 2014.

ATTACHMENT 2



Adopted: 28/08/2007
Minute No: 235
Amended: 14/12/2010
Minute No: 404

FILE NO: PSC2005-0828
TITLE: DEBT RECOVERY AND HARDSHIP POLICY
REPORT OF: FINANCIAL SERVICES MANAGER

BACKGROUND

This document prescribes the procedures Council follows to recover monies that are overdue for rates, charges, fees and other debts.

This document also prescribes the procedures Council follows in providing financial assistance to ratepayers and debtors suffering financial hardship.

OBJECTIVE

The objectives of this policy are:

- To outline the process for efficient and effective collection of outstanding debts;
- To provide a decision making framework for the appropriate assessment of all financial hardship applications;
- To fulfil statutory requirements of the Local Government Act, 1993 and other relevant legislation in relation to the recovery of rates, charges, fees and other debts; and
- To ensure debts are recognised in Council's accounting system.

PRINCIPLES

This policy has been formulated under the following principles:

- Council recognises it has a responsibility to recover monies owing to it in a timely, efficient and effective manner to finance its operations and ensure effective cash flow management;
- Council will treat all people fairly and consistently under this policy;
- Council will consider all matters under this policy confidentially; and
- Council will recognise genuine financial hardship and treat people with respect and compassion in considering their circumstances.

POLICY STATEMENT

Part 1 – Recovery of Rates and Charges

1. Rates and Charges Notice

Rates and charges notices are issued in July each year and are payable in four instalments on 31 August, 30 November, 28 February and 31 May. A rate notice, or rate instalment notice is issued 30 days before each instalment is due.

2. Reminder Notices

If the whole or part of an instalment, exceeding \$25, is not paid within twenty one (21) days of the instalment due date, then a reminder notice will be issued. Reminder notices will be issued to all ratepayers and will request payment within fourteen (14) days. Where the amount overdue is greater than \$500 the reminder notice will advise that the recovery of the rates and charges may be referred to Council's debt collection agency if the overdue amount is not paid in full within fourteen (14) days. The notice will also advise that arrangements may be made with Council to repay the overdue amount. The notice will also advise that ratepayers complying with an existing repayment arrangement may disregard the notice.

3. Recovery Action – Referral to Debt Collection Agency

Following the expiration of the fourteen (14) days specified in the reminder notice Council will refer overdue assessments to its debt collection agency.

4. Recovery Action – Debt Collection Agency Procedures

The debt collection agency will as soon as practicable after receipt of a referral from Council issue a letter in relation to each overdue amount advising that Council has referred the debt to the agency for collection and that payment is required within seven (7) days of the date of the letter, otherwise legal action will be commenced. The letter is to specify the minimum amount in legal costs that will be added to the ratepayer's rate assessment if legal action is commenced. Following the expiration of the seven (7) days as requested in the letter plus an additional two (2) days to allow for agency receipts to be received, the debt collection agency is then to issue a statement of liquidated claim. Following the statutory period after service of the statement of liquidated claim the debt collection agency is to obtain judgment and then take the necessary proceedings to recover the debt including issuing writs of execution and garnishee orders.

5. Arrangements to Repay Rates and Charges

A ratepayer may enter into a weekly, fortnightly or monthly arrangement to repay rates and charges with Council or Council's debt collection agency provided the arrangement will have rates and charges paid in full within twelve months. Normal interest charges apply to arrangements unless interest is to be written off under Section 564 (see hardship provisions of this policy at part 4). Council's may enter into a longer term repayment arrangement if in that Officer's opinion a ratepayer's financial circumstances warrant this. A ratepayer dissatisfied with a decision of the Collections Officer may have that decision reviewed by the Hardship Panel established under this policy. Ratepayers are to be advised at the time of making a repayment arrangement that if an arrangement is dishonoured recovery action will recommence without further notice. Where an arrangement has been dishonoured, a new arrangement cannot be accepted until a payment is received to show good faith. Where legal action has commenced, arrangements are to be in the form of a court instalment order. Extensions of time beyond three months without any payment are not acceptable. Where a supplementary rates and charges notice is issued in the latter part of the year and where an arrangement is made for payment of the rates within six (6) months of the due date, interest will be written off provided payment of one half of the amount due is made within three (3) months and the balance is paid within six (6) months.

Part 2 –Recovery of Sundry Debtor Accounts

1. Sundry Debtor Invoices and Statements

Invoices are raised as debtor information comes to hand eg. Construction of kerbing and guttering, footpaths, waste, private works, property information, etc. and invoices are to be issued weekly. Within 7 days of the close of a month a statement is to be issued. The due date for payment is 30 days after the invoice date.

2. Overdue Sundry Debtors

If an account is not paid by the due date a second and then a third monthly statement will be forwarded as a reminder. If payment is not received after issue of the second statement then a recovery notice requesting payment or the making of a satisfactory arrangement to pay is to be forwarded to the debtor as an attachment to the third monthly statement. The recovery notice will advise that the recovery of the overdue account will be referred to Council's debt collection agency if the account is not paid within fourteen (14) days. Section 355(b) committees, sporting clubs and government agencies will not be referred to the debt collection agency.

3. Overdue Sundry Debtors – Aged Pensioners

If a sundry debtor account is a charge on the land i.e. kerb and gutter or foot paving, and it is due by an aged pensioner, the aged pensioner may apply to Council to have the account deferred against their estate subject to the hardship provisions of this policy.

4. Recovery Action – Suspension of Credit Facilities

If the account is an ongoing account, e.g. waste tipping fees, property information etc., further credit to that debtor will be withdrawn until the account is paid.

5. Recovery Action – Referral to Debt Collection Agency

Following the expiration of the fourteen (14) days specified in the recovery notice Council will refer accounts overdue as described above to its debt collection agency.

6. Recovery Action – Debt Collection Agency Procedures

The debt collection agency will as soon as practicable after receipt of a referral from Council issue a letter in relation to each overdue account advising that Council has referred the debt to the agency for collection and that payment is required within seven (7) days of the date of the letter, otherwise legal action will be commenced. The letter is to specify the minimum amount in legal costs that will be added to the account if legal action is commenced. Following the expiration of the seven (7) days as requested in the letter plus an additional two (2) days to allow for agency receipts to be received, the debt collection agency is then to issue a statement of liquidated claim. Following the statutory period after service of the statement of liquidated claim the debt collection agency is to obtain judgment and then take the necessary proceedings to recover the debt including issuing writs of execution and garnishee orders.

7. Arrangements to Repay Sundry Debtor Accounts

A debtor may enter into a weekly, fortnightly or monthly arrangement to repay accounts with Council or Council's debt collection agency provided the arrangement will have the account paid in full within twelve months. Council's Collections Officer may enter into a longer term repayment arrangement if a debtor's financial circumstances warrant this. A debtor dissatisfied with a decision of the Collections Officer may have that decision reviewed by the Hardship Panel established under this policy. Debtors are to be advised at the time of making a repayment arrangement that if an arrangement is dishonoured, recovery action will recommence without further notice. Where an arrangement has been dishonoured, a new arrangement cannot be accepted until a payment is received to show good faith. Where legal action has occurred, arrangements are to be in the form of a court instalment order. Extensions of time beyond three months without any payment are not acceptable.

Part 3 – Credit Control

1. Terms of Payment – 30 Day Accounts

All accounts with Council are to be strictly 30 days trading terms, without exceptions. Council will open credit accounts in accordance with this policy.

2. Terms of Payment – Credit Accounts

No credit account is to be opened unless a 30-day trading application form has been completed and returned to the Collections Officer. The Collections Officer is to conduct a credit check on the applicant, verifying references provided by the applicant, before a credit account is offered.

3. Terms of Payment – One Off Usage

No company or individual is to be offered a credit account for one-off use of Council facilities such as hall hire, community centre bookings, caravan park bookings, council stores, sporting field use and the like. All one off usage must be paid for in advance or at the time of usage. Council will however extend credit and allow payment plans for animal impounding fees and sustenance fees at the discretion of the Co-ordinator Environmental Health and Regulation to avoid hardship.

4. Terms of Payment – Deposits and Progress Payments

For private works Council will provide a written quote for the proposed work to cover all costs for the work in accordance with the specified rates set out in the Council's Management Plan. For work to proceed, Council requires written authorisation from the client and proof of identity. For work valued at more than \$1,000 a 10% deposit is required before work commences. For work valued at more than \$10,000 Council will require agreed progress payments at various stages.

Part 4 – Hardship Provisions

1. Defer Payment of Rates and Charges – Aged Pensioners

Aged pensioners who satisfy the eligibility criteria may make application to defer the payment of rates and charges and property related sundry debtor accounts, allowing them to accrue as a charge on the land to be paid upon the death of the ratepayer or the sale of the property, or if the pensioner ceases to occupy the property as his/her principal place of living and rents the property out whichever occurs first.

The criteria used to determine eligibility are:

- That the ratepayer is in receipt of a pensioner rate concession in relation to the property; and
- That the property is the pensioner's principal place of living, and
- That the property is used for residential or farming purposes only, and
- That the property has no more than a single dwelling house or residential unit erected upon it, and
- That the total amount of rates and charges (nett of pensioner concession) and property related sundry debtor accounts payable is more than 8% of the age pension of an individual (if the ratepayer is an individual) or 8% of the age pension of a couple (if the ratepayer is a couple) at the date of the initial application.

The aged pensioner is to complete an initial prescribed application form. Council is to post out a letter each year to the aged pensioner with a copy to sign and return to continue the deferral. The purpose of the annual letter is to confirm that the aged pensioner continues to own and occupy the property, is still alive and is aware of and agrees to the deferral. Deferral will continue once granted without the need to satisfy the 8% criteria again, provided that the pensioner continues to own and occupy the property. Where the pensioner ceases to occupy the rateable property and the property is rented the repayment timeframe of the deferred rates and charges are to be negotiated by the Collections Officer. A person dissatisfied with a decision of the Collections Officer may have that decision reviewed by the Hardship Panel established under this policy.

Applications will be considered by the Revenue Co-ordinator. A ratepayer dissatisfied with a decision of the Revenue Co-ordinator may have that decision reviewed by the Hardship Panel established under this policy. The Hardship Panel may approve an application for deferral if it believes the circumstances of the ratepayer warrant this even if the eligibility criteria have not been met. If an application is refused, the applicant will be provided with reasons for such refusal.

Interest charges accrue in respect of deferred rates and charges at the rate determined under the Local Government Act. No deferred rates, charges or interest are to be written off under this policy.

2. Writing Off of Accrued Interest

The Collections Officer and Rates Clerks have delegated authority to write off interest that has accrued on rates and charges up to \$10 where the person was unable to pay the rates and charges when they became due and payable for reasons beyond their control. The Revenue Co-ordinator has delegated authority to write off an unspecified amount of interest.

Ratepayers seeking to have interest written off under hardship provisions are to submit a written application in the form of a letter to be considered by the Hardship Panel. Accrued interest on rates and charges may be written off where payment of the accrued interest would cause the person hardship. The Hardship Panel may request the ratepayer to come to an interview if it is necessary to understand the issues causing hardship.

3. Hardship Resulting from a General Revaluation of the Port Stephens Local Government Area

In accordance with section 601 of the Local Government Act a ratepayer that suffers substantial hardship as the consequence of the making and levying of a rate on the most recent valuation, may apply to Council for relief. Assistance is only available in the first year new valuations are used to calculate rates.

The criteria used to determine eligibility:

- The rates payable must be more than 3% of the gross household income; and
- The applicant must be an owner and an occupier of the property to which the rates relate and the dwelling must be the applicant's sole or principal place of living; and
- The ordinary rate increase must be more in percentage terms than the amount determined by Council at each revaluation. The ordinary rate increase is calculated as the ordinary rates payable for the new rating year (being the first year in which new valuations are used) minus the ordinary rates payable in the previous rating year increased by the allowed ratepegging increase for the year.
(eg. rates 2005/2006 \$600 minus rates 2004/2005 \$400 plus 3% ratepegging increase (\$412) = \$188)

Applications must be submitted on the prescribed application form. Assistance is calculated as follows:

- One half of the ordinary rate increase up to a maximum of \$200
(eg. \$188 increase x 0.5 = \$94. \$500 increase x 0.5 = \$200 max)
- No assistance is to be given for domestic waste management charges, HCRCMA levy, or special rates.
- The maximum amount of assistance in aggregate for all ratepayers is \$20,000.

Applications will be considered in the order in which they are received by Council. No further applications will be considered once the aggregate amount of assistance has been granted. Applications will be considered by the Revenue Co-ordinator. A ratepayer dissatisfied with a decision of the Revenue Co-ordinator may have that decision reviewed by the Hardship Panel established under this policy. If an application is refused, the applicant will be provided with reasons for such refusal.

4. Fees and Charges

The Coordinator Environmental Health and Regulation may consider hardship matters relating to animal impounding and sustenance fees. Assistance may be provided in the form of allowing additional time to pay or waiving the fees in cases of hardship. A customer dissatisfied with a decision of the Coordinator Environmental Health and Regulation may have that decision reviewed by the Hardship Panel established under this policy. Applicants under this section are to be made aware that fees and charges in relation to animal impounding increase on a daily basis and will accrue during the review period. Council will not consider hardship applications in relation to animal registration fees, or the costs of microchipping or veterinarian fees and charges.

5. Hardship Panel

A Panel comprising the Revenue Co-ordinator, Social Planner and a representative from Corporate Management will determine applications for assistance referred to it and review decisions as necessary.

6. Referral of Matters to Hardship Panel

The General Manager or Mayor may refer any Council matter involving financial hardship of a ratepayer or resident to the Hardship Panel for consideration and advice.

7. Privacy

In accordance with the Privacy Code of Practice and Council's Privacy Management Plan, personal information collected as a consequence of this policy will only be used for the purpose of assessing eligibility under the Policy and will not be used for any other purpose or disclosed to any other person unless we are required by law to do so or authorised to do so by the person to whom that personal information relates.

Part 5 – Sale of Property for Overdue Rates

The sale of land, for overdue rates, is in accordance with Chapter 17 division 5, Section 713 to 726 of the Local Government Act 1993. The process is as follows:

- 1) In September of each year, outstanding debts are to be reviewed to identify all properties where any rates or charges are overdue and have remained unpaid for more than five (5) years, or in the case of vacant land (1) years rates, from the date from which they became payable.
- 2) Council staff will establish all owners and interested parties through a title search.
- 3) Vacant land – a comparison of the rates owing and the last valuation shall be undertaken and land identified where the rates owing exceed the valuation. In these cases a valuation shall be obtained in accordance with the Act and the sale process be handled in accordance with the Act.
- 4) A report shall be put to Council recommending the sale to proceed and appointing an agent to conduct the auction from a list of local agents listed on Council's appointed panel.
- 5) Completed Section 149 Certificates, and Drainage Diagrams shall be forwarded to the solicitors for preparation of contracts.
- 6) A date for the auction shall be set being not more than six (6) months and not less than three (3) Months from publishing of the proposed notice of sale.
- 7) All owners and interested parties will be notified of Council's intention to sell the property using the last known address or information available.
- 8) The venue for the auction shall be selected and booked (eg: the Council Chambers).
- 9) Council shall publish the proposed sale in the local newspaper and the Government Gazette.

- 10) Assessments must be checked daily as the sale will not take place if full payment is received. A "Warning Memo" is to be attached to the assessment to notify staff of the impending sale and advising that arrangements are only to be authorised by the General Manager.
- 11) On the day of sale, a deposit of 10% shall be payable by cash or bank cheque.
- 12) If the land is not sold at auction, Council may organise another public auction or the property may be sold by private treaty upon a resolution of Council. All costs associated with the sale are to be met by the purchaser.

Upon settlement of the sale:

- 13) If the sale amount is less than the outstanding balance, Council will consider the debt to be paid in full in accordance with section 719 of the Act.
- 14) If the amount received is more than the amount outstanding Council will hold the money for persons having estates or interests in the land immediately before the sale according to their respective estates and interests. Section 720 of the Act provides for Council to pay the balance of the purchase money or any part of the balance to or among the persons who are, in its opinion, clearly entitled to it. The receipt by the person of any payment so made is an effectual discharge of Council's liability.
- 15) Upon finalisation, the sale results shall be reported to Council.

Part 6 – Pensioner Rate Concessions

The following prescribes how Council will grant concessions to pensioners:

1. Eligibility for Pensioner Concessions

In all situations where an eligible pensioner finds himself/herself in a situation where he/she assumes full and sole responsibility for the paying of rates, notwithstanding the nature of the ownership of the property, Council agrees to grant the full pensioner concession under Section 577 of the Act. The presentation of a Pensioner Concession Card is accepted by Council as a sufficient test to meet the hardship requirements of Section 577 of the Act under these circumstances.

2. Backdating of Pensioner Concessions

Where an eligible pensioner applies for a concession Council will backdate that concession for up to two (2) years prior to the current year (i.e. a maximum total of three (3) years including the current year) provided that:

- The pensioner was at all times eligible for the concession; and
- The pensioner provides a statutory declaration that the rateable property was their sole or principal place of living for all of the period that the concession is claimed for.

RELATED POLICIES

The following policies have been incorporated into this policy:

- Debt Recovery Policy;
- Pensioner Rate Rebates;
- Pensioner Interest Charges;
- Waiving of Interest Charges;
- Interest on Overdue Rates; and
- Interest Charges on Supplementary Rate Levies.

REVIEW DATE

12 months after adoption.

RELEVANT LEGISLATIVE PROVISIONS

Local Government Act 1993, and specifically sections 564, 567, 577, 601, 712 & 713-726.

IMPLEMENTATION RESPONSIBILITY

Commercial Services – Financial Services

ITEM NO. 5

FILE NO: T21-2012

TENDER - MEDICAL PROVIDERS (GENERAL PRACTITIONERS)

REPORT OF: ANNE SCHMARR - ORGANISATION DEVELOPMENT MANAGER

GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Item 4 - on the Ordinary Council agenda namely **Tender - Medical Providers (general practitioners)**.
 - 2) That the reasons for closing the meeting to the public to consider this item be that:
 - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
 - ii) In particular, the report includes confidential pricing information in respect of the **Tender - Medical Providers (general practitioners)**.
 - 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
 - 4) That the report of the closed part of the meeting is to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179) of the Local Government (General) Regulation 2005.
 - 5) The purpose of this report is to seek Council's approval to accept the tender of Shoal Bay Medical Centre Trust (this would also include Anna Bay Medical Centre) for the referral of Council employees on injury management and other work related matters.
-

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Sally Dover Councillor Ken Jordan
	That Council accept the tender of Shoal Bay Medical Centre Trust (this would also include Anna Bay Medical Centre) for the referral of Council employees on injury management and other work related matters.

MOTION

339	Councillor John Nell Councillor John Morello
	It was resolved that Council accept the tender of Shoal Bay Medical Centre Trust (this would also include Anna Bay Medical Centre) for the referral of Council employees on injury management and other work related matters.

BACKGROUND

Council requires all employees who suffer a work related illness or injury to provide a WorkCover Medical Certificate for all medical consultations. This is also a requirement of the Workplace Injury Management & Workers Compensation Act 1998.

Council places a great importance in the early treatment of injuries and sees this as critical in the recovery and rehabilitation of injured workers. By beginning the appropriate medical treatment as soon as possible, it is more likely that the length or severity of the treatment program will be reduced. For the injured worker this means a shorter recovery time, better prognosis for general health and return to work outcomes and quite often a more positive attitude toward their injury and the workplace.

The purpose of this tender is to have in place arrangements that provide immediate access (same day or within 24 hours) to medical providers in circumstances where an employee sustains a work related injury and requires immediate medical attention (outside of a medical emergency).

A medical provider appointed by Council would be involved in:

- Injury management
- Return to work plans
- Assisting in the identification of suitable duties in conjunction with Council's Return to Work Coordinator
- Assisting rehabilitation providers nominated by Council's Insurer to determine functional capacity during medical assessments
- Provide information and advice to Council's workers compensation insurer
- Provide advice to rehabilitation providers on work place assessments

A medical provider would also be involved in:

- Council's Health and Wellness program including services in the area of Hepatitis immunisation, Tetanus vaccinations, Skin Cancer checks and Flu vaccinations.
- The provision of specialist advice on health and wellbeing matters being undertaken in the workplace. Some examples of these topics would be men's Health, prostate cancer, women's health, diabetes, blood pressure, quitte smoking programmes, healthy nutrition and exercise.
- Under 5.7 of the Community Strategic plan Council is required to 'continuously improve the work health and safety management system'.

Only one tender was received being from Shoal Bay Medical Centre Trust. Fees included in the cost of the tender are set by WorkCover as noted in Attachment 1.

Injured workers from outside of the Tomaree Peninsula will attend a local medical practitioner.

There may be occasions, however, where these workers will need to attend Shoal Bay or Anna Bay Medical Centre if they are unable to be accommodated in a timely manner.

Representation will be made to a number of the local medical practitioners in Raymond Terrace to discuss Council's injury management requirements and the potential for negotiating future contract arrangements.

FINANCIAL/RESOURCE IMPLICATIONS

Any costs associated with a Medical Provider appointed by Council would be included in the cost of the workers compensation claim. Funds have been allocated in the budget for the workers compensation premium which is distributed across all sections of Council based on total percentage of wages and claims costs.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	Overheads	The provision of workers compensation costs is included in all section budgets based on an estimate of costs for 2012/2013.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk for the injured worker that the length or severity of their injury could be increased if they are not given access to a medical provider in a timely manner.	High	Establishing a strong working relationship with a provider to assist with the referral of Council employees who sustain a work related injury.	Yes
There is a risk for Council of increased workers compensation premium costs if an injured worker is not returned to work as quickly as possible.	High	Ensuring prompt medical treatment and assessment takes place should an employee be injured in the workplace.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no significant social, economic and environmental implications from this recommendation.

CONSULTATION

- 1) Procurement & Contracts Coordinator;
- 2) Employment Coordinator;
- 3) WHS Manager;
- 4) Human Resources Manager;
- 5) Organisation Development Manager;
- 6) Executive Leadership Team.

OPTIONS

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

ATTACHMENTS – Provided under separate cover.

- 1) Confidential - WorkCover Rates for General Practitioners.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 6

FILE NO: A2004-0945

COMPULSORY ACQUISITION OF EASEMENT OVER LOT 3 DP 340555

REPORT OF: JOHN MARETICH - CIVIL ASSETS MANAGER
GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Rescind Item 7 "Compulsory Acquisition of Easement over Lot 3 DP 340555", Minute number 063 adopted 8 March 2011.
- 2) Authorises the acquisition of the proposed easement to drain water, right of access and maintenance **up to 14 metres** wide and variable over the property Lot 3 in Deposited Plan Numbered 340555 by compulsory process.
- 3) Registers at Land & Property Management Authority a plan of acquisition of an easement to drain water, right of access and maintenance **up to 14 metres** wide and variable over the property Lot 3 in Deposited Plan Numbered 340555.
- 4) Authorises the making of an application for consent to the Minister of Local Government and approval of the Governor for the compulsory acquisition of an easement to drain water, right of access and maintenance **up to 14 metres** wide and variable over the property Lot 3 in Deposited Plan Numbered 340555.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor John Morello Councillor Ken Jordan</p>
	<p>That Council defer Item 6 to allow for a site inspection.</p>

MOTION

340	<p>Councillor John Nell Councillor John Morello</p>
	<p>It was resolved that Council defer Item 6 to allow for a site inspection.</p>

BACKGROUND

The purpose of this report is make an amendment to the original Council report ITEM 7, minute number 063, 8th March 2011, where approval was given for the compulsory acquisition of a 14m wide drainage easement over a Bobs Farm property. The previous recommendation was

- 1) Authorises the acquisition of the proposed easement to drain water, right of access and maintenance 14 metres wide and variable over the property Lot 3 in Deposited Plan Numbered 340555 by compulsory process.
- 2) Registers at Land & Property Management Authority a plan of acquisition of an easement to drain water, right of access and maintenance 14 metres wide and variable over the property Lot 3 in Deposited Plan Numbered 340555.
- 3) Authorises the making of an application for consent to the Minister of Local Government and approval of the Governor for the compulsory acquisition of an easement to drain water, right of access and maintenance 14 metres wide and variable over the property Lot 3 in Deposited Plan Numbered 340555.

Original report was to create an easement over property to permit the legal discharge of water from Nelson Bay Road. In the absence of a full drainage study, the original Council report proposed an easement width that was calculated on simplistic drainage calculations. This easement included the provision of future drainage upgrade and an area adjacent to the drain for maintenance. The Roads and Maritime Services (RMS) at that time had not provided Council with any drainage reports as the Nelson Bay Road Duplication design was not yet completed.

The RMS have now provided Council with the drainage report and stated the road duplication will not have an affect on the existing drainage system. The RMS have noted they will pay for an easement of the existing drainage width plus 5m for maintenance access. A drainage easement wider than this will be at the cost of Council.

Property Owner does not agree with the original 14m easement width and is requesting a more appropriate easement is existing drain width plus 5m for access and boundary clearance. The existing drain varies in top of batter width from 3.4m at the front of the property to the 2.8m wide at the rear of the property. The position of the drain from the adjacent property boundary also varies and is why the proposed easement acquisition is to vary along the length of the drain.

With the confirmation of the drainage requirements from the RMS and the expressed concerns from the property owner, this report has been prepared to change the originally proposed 14m wide easement to up to 14m wide easement to match the varying drainage width and position, and the not yet finalised agreement with the property owner.

FINANCIAL/RESOURCE IMPLICATIONS

If Council proceeds with the recommendation as per Minute number 063 adopted 8 March 2011, Council would have to pay an approximate \$30,000, which is the difference between the total cost of the compensation and the amount the RMS are willing to pay. If the proposed easement is adopted, the cost of the easement acquisition will be funded through the Nelson Bay Road Duplication Project and no costs to Council.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget		Nil	
Reserve Funds		Nil	
Section 94		Nil	
External Grants		Nil	
Other			Easement funded through the RMS Nelson Bay Road Duplication Project.

LEGAL, POLICY AND RISK IMPLICATIONS

As the adopted recommendation ITEM 7, minute number 063, 8th March 2011, specifically stated 14m wide easement, any variation from this must be adopted by Council. The acquisition of the easement is a vital step in the Nelson Bay Road Duplication Project proceeding.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the Resident will appeal through the Land and Environment Court to overturn the original proposed 14m wide easement. Resident does not want the 14m wide easement to place a blight on the property or reduce proposed amenity.	High	Amend the compulsory acquisition easement width.	Yes
There is a risk that the Nelson Bay Road Duplication Project will be delayed until the proposed compulsory acquisition has been	Extreme	Amend the compulsory acquisition easement width.	Yes

MINUTES FOR ORDINARY COUNCIL – 11 DECEMBER 2012

adopted through Council.			
There is a risk that the RMS will not pay for an easement that is greater than the amount required as per the Nelson Bay Rd Duplication Project drainage report.	Extreme	Amend the compulsory acquisition easement width.	Yes
There is a risk that Council cannot maintain the existing drain until the compulsory acquisition of easement is adopted.	High	Amend the compulsory acquisition easement width which then allows Council to access the drain for maintenance.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The drainage easement will allow Council access for maintenance of the drainage channel. Routine maintenance of this open drain is required to ensure it functions and allows passage of water from the properties on the southern side of Nelson Bay Road and the road itself. Lack of maintenance on the drain will result in storm water backing up the drainage catchment into neighbouring properties. Stormwater inundation on upstream properties will impact the private land owners access, utilisation and enjoyment of their property.

CONSULTATION

Consultation has taken place with Roads and Maritime Services, the effected Resident, and Council's Legal Officer.

OPTIONS

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

ATTACHMENTS

- 1) Easement Plan
- 2) Copy of Item 7 "Compulsory Acquisition of Easement over Lot 3 DP 340555", Minute number 063 adopted 8 March 2011.

COUNCILLORS ROOM

Nil.

ATTACHMENT 2

MINUTES ORDINARY COUNCIL – 8 MARCH 2011

ITEM NO. 7

FILE NO: A2004-0945

COMPULSORY ACQUISITION OF EASEMENT OVER LOT 3 DP 340555

REPORT OF: PETER AVIS – PROJECT SERVICES, MANAGER

GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Authorises the acquisition of the proposed easement to drain water, right of access and maintenance 14 metres wide and variable over the property Lot 3 in Deposited Plan Numbered 340555 by compulsory process.
- 2) Registers at Land & Property Management Authority a plan of acquisition of an easement to drain water, right of access and maintenance 14 metres wide and variable over the property Lot 3 in Deposited Plan Numbered 340555.
- 3) Authorises the making of an application for consent to the Minister of Local Government and approval of the Governor for the compulsory acquisition of an easement to drain water, right of access and maintenance 14 metres wide and variable over Lot 3 in Deposited Plan Numbered 340555.

COUNCIL COMMITTEE MEETING – 1 MARCH 2011

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor John Nell	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 8 MARCH 2011

063	Councillor Ken Jordan Councillor Peter Kafer	It was resolved that the Council Committee recommendation be adopted.
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COUNCIL COMMITTEE – 1 MARCH 2011

ITEM NO. 7

FILE NO: A2004-0945

COMPULSORY ACQUISITION OF EASEMENT OVER LOT 3 DP 340555

REPORT OF: PETER AVIS – PROJECT SERVICES, MANAGER

GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Authorises the acquisition of the proposed easement to drain water, right of access and maintenance 14 metres wide and variable over the property Lot 3 in Deposited Plan Numbered 340555 by compulsory process.
- 2) Registers at Land & Property Management Authority a plan of acquisition of an easement to drain water, right of access and maintenance 14 metres wide and variable over the property Lot 3 in Deposited Plan Numbered 340555.
- 3) Authorises the making of an application for consent to the Minister of Local Government and approval of the Governor for the compulsory acquisition of an easement to drain water, right of access and maintenance 14 metres wide and variable over Lot 3 in Deposited Plan Numbered 340555.

BACKGROUND

The purpose of this report is to recommend the completion of the actions of Council resolution minute number 1425 from Council Report of 18 December 1990 :-

"That Council take the following steps in relation to drainage in Main Road, Bobs Farm:

Steps be taken to obtain drainage easements to allow drainage from the Main Road to be discharged through private property to a suitable point of discharge. The easement to be obtained by negotiation, or if this fails, by resumption.

Negotiations be entered into with landowners to allow for the temporary discharge of water, pending the resolution of 1. above."

One of the properties referred to in the Report is the subject property which is currently known as Lot 3 Deposited Plan Numbered 340555 No. 3933 Nelson Bay Road, Bobs Farm.

Negotiations have continued since the Council meeting of 18 December 1990 without agreement being reached. Earlier negotiations were conducted by Council's Principal Property Advisor and more recently by Council's Senior Survey and Land Information Manager.

COUNCIL COMMITTEE – 1 MARCH 2011

Council's drainage section has investigated the drainage through the subject property and advise that the original easement of 5 metres wide and variable determined in 1995 would be inadequate.

As access to the property has been an issue for maintenance in the past, an easement of 14 metres wide and variable will be required to accommodate the drain and provision of access. See Attachment 1 for the plan of the proposed easement.

FINANCIAL/RESOURCE IMPLICATIONS

Funding for the acquisition is available from the Civil Assets budget. Regular maintenance will be conducted and funded as part of the Drainage Maintenance Program.

LEGAL, POLICY AND RISK IMPLICATIONS

Negotiations have been in progress since 1990 without agreement and compulsory acquisition will be the most effective way to complete the acquisition. Under the compulsory acquisition process the valuation of the compensation is assessed in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 by the Valuer-General.

Actions for this matter fall under the Local Government Act 1993, Roads Act 1993, Land Acquisition (Just Terms Compensation) Act 1991, Conveyancing Act 1919 and Real Property Act 1900. There are no Council Policies involved. Risks implications are that an objection to the Valuer-General's valuation could be lodged with the Land and Environment Court by the owner.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The acquisition of the easement will provide a social benefit to surrounding properties with the controlled drainage of stormwater to reduce the possibility of inundation.

There are no economic or environmental implications with the acquisition of the easement.

CONSULTATION

Consultation has involved the owners of the land, their legal, survey and valuation representatives, Roads and Traffic Authority, Land and Property Management Authority, Council Staff and Council's Legal Consultant's.

COUNCIL COMMITTEE – 1 MARCH 2011

OPTIONS

- 1) Adopt recommendations.
- 2) Not acquire easement and cease maintenance.

ATTACHMENTS

- 1) Plan of proposed easement.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



ITEM NO. 7

FILE NO: A2004-0511

INSTALLATION OF LOCKABLE GATE AT GAN GAN LOOKOUT NELSON BAY

**REPORT OF: STEVEN BERNASCONI – COMMUNITY AND RECREATION SERVICES
MANAGER**

GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Manage anti social behaviour and vandalism at Gan Gan Lookout by installing a lockable gate across Lilly Hill Road for a trial period of six months.
- 2) Undertake a consultation process during this trial that includes reconfirming all existing agreements from tenants of Gan Gan Lookout leases, direct written letters to residents in the immediate vicinity of Gan Gan Lookout and the placement of a Public Notice in the Examiner advising of this trial period.
- 3) Receive a further report at the conclusion of the six (6) month trial period.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Geoff Dingle Councillor John Nell</p>
	<p>That the recommendation be adopted.</p>

MOTION

341	<p>Councillor John Nell Councillor John Morello</p>
	<p>It was resolved that the recommendation be adopted.</p>

BACKGROUND

The purpose of this report is to recommend a consultation process and a six months trial for the installation of a lockable gate across Lilly Hill Road leading to Gan Gan Lookout.

Council received a Supplementary Information Report on this matter on 19 October 2012 (see Attachment 1). This report of 19 October 2012 confirmed that the Traffic Committee had endorsed the installation of a lockable boom gate across subject to Council endorsing its approach to consultation on the matter.

The facilities at Gan Gan Lookout have recently received a significant upgrade funded jointly through the NSW Governments Community Building Partnership Program and Council funding. The project has also been done as a formal partnership with the Rotary Club of Nelson Bay who also has "adopted" this area as a special ongoing Rotary project.

Part of this project proposes to install a boom gate across Lily Hill Road as a means of managing anti social behaviour and vandalism at the Gan Gan Lookout. The boom gate will have appropriate lighting and signage and be locked at 9pm and unlocked at 5am each day.

Consultation with the tourism industry suggests that there may be times where night time access is desirable and this can be accommodated for special events through existing communication channels with Council staff and this industry.

FINANCIAL/RESOURCE IMPLICATIONS

There is an annual cost to manage the opening and closing of the gate. This annual cost will be covered within existing budgets through reallocation of funds from service reductions in other areas of the Community and Recreation Services Section budget.

There are existing funds allocated to install the boom gate and associated infrastructure as well as undertake the consultation process.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$5,200	Ongoing annual cost to manage gate opening/closing process. Covered within existing budgets.
		\$10,000	One off installation cost covered within capital project budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that vandalism of this facility could lead to its closure for public use which could affect Councils public image.	Medium	Adopt the recommendation	Yes
There is a risk that the process for locking the gate is not followed resulting in people being locked in the Gan Gan Lookout area and subsequent reputation damage and public liability.	Medium	Adopt the recommendation. Document procedure for opening and closing boom gate. Review gate opening/closing process weekly during the trial period.	Yes.
There is a risk that during the trial there is significant public opposition to the boom gate resulting in Council having to reconsider the ongoing use of the gate and subsequent reputation risk.	Low	Adopt the recommendation and report back at the end of the trial period on the results of the trial.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommendation will limit the potential for antisocial behaviour and vandalism of Gan Gan Lookout which in turn will build social well being by having a safer and more aesthetically pleasing place to visit. There are a number of Council owned facilities that have their vehicle access points locked at night in a successful effort to minimise vandalism and anti social behaviour (eg: Ferodale Oval Medowie, Salamander Bay Sports Complex).

Adopting the recommendation has the potential to increase tourism for the local economy by providing a better quality product in the form of an iconic lookout destination.

Adopting the recommendation will reduce environmental damage to the site that occurs frequently from illegally dumped rubbish, discarded drug and sex items and illegally started bush fires.

CONSULTATION

Consultation had been conducted with all existing lessees on Lilly Hill through communications directly from project partners Rotary Club of Nelson Bay. All lessees have confirmed their support of the proposal of a lockable gate subject to them being able to have 24hour access. The proposal provides for all lessees to have full access to their sites.

The Port Stephens Traffic Committee has reviewed this proposal twice in recent times (4th September 2012 and 5th June 2012).

The Rotary Club of Nelson Bay is a project partner and is fully supportive of this trial.

Others involved in the development of this recommendation have been: Tourism Marketing Manager, Civil Assets Manager, Traffic Engineer, Community and Recreation Planning Coordinator, Group Manager Facilities and Services.

OPTIONS

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

ATTACHMENTS

- 1) Copy of Supplementary Information Report 19 October 2012 regarding lockable boom gate at Lilly Hill Road Nelson Bay.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

**COPY OF SUPPLEMENTARY INFORMATION REPORT 19 OCTOBER 2012 REGARDING
LOOKABLE BOOM GATE ACROSS LILLY HILL ROAD NELSON BAY.**

TO: All Councillors & Executive Team

FROM: Steven Bernasconi
Community and Recreation Services Manager

DATE: 19 October 2012

RE: Supplementary information for Council meeting 23rd October 2012 - Port
Stephens Traffic Committee Minutes of 4th September 2012

FILE No: A2004-0511

ITEM No: 10

REPORT TITLE: Local Traffic Committee Meeting 4th September 2012

PURPOSE

To provide an update on the progress of discussions with the Local Traffic Committee on the proposal to install a lockable gate across Lilly Hill Road leading to Gan Gan Lookout.

BACKGROUND

The Local Traffic Committee considered the proposal of installing a lockable boom gate on the road leading to Gan Gan Lookout on 5th June 2012. At this meeting the proposal was not endorsed due to the committee's opposition to the exclusion of the general public to a public area.

The proposal was subsequently re-submitted on 4th September 2012 and representation to the Local Traffic Committee was made by the Rotary Club of Nelson Bay. At this meeting the Committee supported the proposal on the proviso that the Rotary Club of Nelson Bay liaise with the Council's Property Section for matters of due process and conduct community consultation with a subsequent report to Council for a final decision.

ISSUES

Issue	Response
Restricted vehicle access to public places	There are a number of Council owned sporting facilities and their entrance road and carparks are locked at night in an effort to minimise vandalism and anti social behaviour (eg: Ferodale Oval Medowie, Salamander Bay Sports Complex). Whilst this is seen as a last resort approach, some locations require this approach as all others have been unsuccessful.
Access to lessee sites	Consultation had been conducted with all existing lessees on Lilly Hill. All have confirmed their support of the proposal of a lockable gate subject to them being able to have 24hour access. The proposal provides for all lessees to have full access to their sites.
Process for locking and unlocking	<p>The process for locking and unlocking the gate will be to include the gate on the morning and evening scheduled security checks. Gates will be opened at 5am every day and closed at 9pm every night.</p> <p>Consultation with the tourism industry around night time access for special events can be accommodated as required through existing communication channels with Council staff.</p>
Cost	<p>The upgrade of the Gan Gan Lookout has reserved the funds required to install a lockable gate.</p> <p>The total ongoing costs to open and close the gate are estimated at \$100/week (\$5200 p.a.). Of this Council's parks maintenance budget will absorb \$2000 through the use of existing staff to open the gate in the morning. A contractor will be required to close the gate in the evening and this cost would require an extra \$3200 p.a. to the parks budget through either an increase in funding or a reduction in park services elsewhere.</p> <p>Alternatives to a lockable gate (e.g. CCTV) would too have additional costs. These have not been costed to date as the lockable gate option provides the best deterrent to vandalism where as CCTV provides a mechanism to manage the after effects of vandalism.</p>

RECOMMENDATION

- 1) Endorse the Traffic Committee Minutes of 4th September 2012.
- 2) Give consideration to a further report that will detail the consultation process to be followed to install a lockable gate at Lilly Hill Road Nelson Bay.

ITEM NO. 8

FILE NO: PSC2005-3687

POLICY FOR THE USE OF COUNCIL RESERVES FOR COMMERCIAL FITNESS GROUPS AND PERSONAL TRAINERS.

**REPORT OF: STEVEN BERNASCONI – COMMUNITY AND RECREATION SERVICES
MANAGER**
GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the Draft Use of Council Reserves for Commercial Fitness and Personal Trainers Policy on public exhibition for 28 days. A further report to be submitted to Council following the closure of the public exhibition period.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Sally Dover Councillor Chris Doohan</p>
	<p>That the recommendation be adopted.</p>

MOTION

342	<p>Councillor John Nell Councillor John Morello</p>
	<p>It was resolved that the recommendation be adopted.</p>

BACKGROUND

The purpose of this report is to place the Draft Use of Council Reserves for Commercial Fitness and Personal Trainers Policy on public exhibition for 28 days.

Personal fitness training is one of the strongest growth segments in the fitness industry. Increasing numbers of commercial fitness trainers using Council reserves have raised a number of issues including:

Equity of access issues, eg. Potential conflict with other reserve users, management of demand, noise, domination and monopolisation of areas and unpaid use of Council land by commercial operators.

Impact on the asset, eg. Trainers, especially of large groups are causing wear and tear.

Public liability concerns, eg. Trainers with insufficient insurance.

FINANCIAL/RESOURCE IMPLICATIONS

The proposed fees under this policy are:

- Use of beaches only \$350 per quarter
- Use of parks and reserves only \$350 per quarter
- Use of both beaches and parks and reserves combined \$400 per quarter.

Bookings under this policy will be managed under the current park and reserve booking processes. It is estimated that the implementation of this policy will result in an increase of approx \$8,000 in revenue. Revenue derived from this activity will be allocated to the Community and Recreation Planning budget.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	Nil	The costs to manage this Policy are included within existing budgets.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other – External Revenue	Yes	\$8,000	Potential increase in external revenue will be directed to Community and Recreation Planning budget.

LEGAL, POLICY AND RISK IMPLICATIONS

There is currently no policy in place for this activity. Under the Local Government (General) Regulations 2005, regulation 116 states that for the purposes of Section 46 of the Local Government Act the use or occupation of community land for the point of engaging in trade or business a council may grant a licence on a short term, casual basis.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that uninsured and unlicensed commercial entities will conduct business on a Council owned reserve which could lead to litigation	Med	Adopt and implement the policy	Yes

MINUTES FOR ORDINARY COUNCIL – 11 DECEMBER 2012

against Council if an incident was to occur.			
There is a risk that excessive use of overuse of Council facilities could lead to the closure of facilities for public use.	Low	Implementation of policy, conditions of use and Public Reserve Booking Process	Yes
There is a risk that commercial fitness activities may cause excessive noise outside of normal hours of use which could lead to complaints from the public.	Low	Implementation of policy and conditions of use	Yes
There is a risk that commercial fitness businesses operating from Community land may have an unfair commercial advantage over centre based and rate paying fitness businesses leading to economic risks for the LGA.	Low	Adopt and implement the policy	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The interaction/balance between the general public recreation use of public land and commercial activities needs to be managed to ensure that there is equitable use of facilities for all intended users. This policy recognises and allows for this to take place.

The optimisation of Commercial Group Fitness activities should contribute positively to the general economic health of the municipality.

Group fitness activities will be managed to ensure there are no environmental impacts.

CONSULTATION

Port Stephens Council Staff who have been consulted during the development of this Draft Policy include:

- Recreational Operations Coordinator
- Coordinator Parks East
- Coordinator Parks West
- Community and Recreation Planning Coordinator

Consultation and review of the Draft policy has also been undertaken with:

- 355C Committee Representatives.
- Other Councils who have already adopted similar policies.

OPTIONS

- 1) Adopt the recommendation.
- 2) Amend the draft 'Use of Council Reserves for Commercial Fitness and Personal Trainers Policy'; place the policy on public exhibition for 28 days. A further report to be submitted to Council following the closure of the public exhibition period.
- 3) Reject the recommendation.

ATTACHMENTS

- 1) DRAFT POLICY – Use of Council Reserves for Commercial Fitness Groups and Personal Trainers Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

DRAFT POLICY – USE OF COUNCIL RESERVES FOR COMMERCIAL FITNESS GROUPS AND PERSONAL TRAINERS

Adopted: "[CLICK HERE, INSERT DATE]"
Minute No: "[CLICK HERE, INSERT MINUTE NO.]"
Amended:
Minute No:

FILE NO: PSC2005-3687

TITLE: USE OF COUNCIL RESERVES FOR COMMERCIAL FITNESS GROUPS AND PERSONAL TRAINERS POLICY.

RESPONSIBLE OFFICER: COMMUNITY AND RECREATION SERVICES MANAGER

BACKGROUND

Personal fitness training is a growth segment in the fitness industry. Increasing numbers of commercial fitness trainers using Council reserves have raised a number of issues including:

- Equity of access issues, eg, potential conflict with displaced users, management of demand, noise, domination and monopolisation of areas and unpaid use of Council land by commercial operators.
- Impact on the asset, eg, trainers, especially of large groups, are causing wear and tear.
- Public liability concerns, eg, trainers with insufficient insurance.

OBJECTIVE

- 1) Ensure equity of access to Council parks and reserves;
- 2) Manage the impact of commercial fitness activities on reserves asset condition and maintenance; and
- 3) Manage public liability and risk exposure to Council in relation to commercial operations on Council owned community land and Crown land which is under Councils care and control.

PRINCIPLES

The following principles guide the application of this policy.

- 1) Council has a responsibility to its ratepayers to manage its risk exposure.
- 2) Council has a responsibility to manage the use of open spaces in an equitable way.

- 3) Council must consider the potential impacts of the use of public open space by commercial operators on other users, neighbouring property owners and residents and those with vicarious interests.
- 4) Council must endeavour to reduce the cost of open space management to ratepayers through partial cost recovery.
- 5) Council must endeavour to encourage small business development and public health.
- 6) All businesses that operate in the local government area contribute funding to the provision of services by Port Stephens Council.

POLICY STATEMENT

- 1) Commercial fitness groups and personal fitness trainers must have a permit to operate at any public reserves.
- 2) Fitness Instructors are restricted to 20hrs per week of use on PSC public reserves under the licence arrangements.
- 3) No commercial fitness training will be permitted in high activity areas and/or areas of cultural, environmental or natural significance.
- 4) Specific areas where these activities are prohibited include, but are not limited to, the following:
 - Watercourses and wetland areas
 - High conservation bushland (eg, supporting threatened species)
 - 20 metres from memorials
 - 20 metres from any playground or park furniture
 - 20 metres from any public change room, toilet or kiosk areas
 - 50 metres from any neighbouring residential property
 - 50 metres from any flagged area of beaches and/or as directed by the duty lifeguard
 - Any designated sport ground/reserve when occupied by an approved hirer or allocated user
 - Any beach/foreshore when occupied by an approved hirer
- 5) Council may exclude other public areas at its discretion in the interests of meeting legislative responsibilities for the management of community land.
- 6) Council does not warrant that any public reserve is suitable for the conduct of personal training or any other purpose. The permit holder must take steps to ensure that the area to be used is suitable for the intended purpose and use.
- 7) Permissible fitness activities under the policy (subject to Council approval)
 - Resistance training

- Boxing and pad training
 - Organised aerobic activity
 - Yoga, Tai Chi and Pilates classes and like activities
 - Circuit training
 - A combination of any of the above
 - Other industry endorsed fitness activities having been submitted and approved by Council.
- 8) Excluded activities include:
- Any activity that is deemed to be aggressive or intimidating in nature whether real or perceived by participants or the general public.
 - Any activity that involves amplified music or amplified audio (voice) equipment and loud shouting
- 9) To be eligible for a permit applicants must provide evidence of the following at the time of application:
- Current Senior First Aid Certificate
 - Current public liability insurance which indemnifies Port Stephens Council to a minimum of \$20,000,000.
 - Recognised qualifications (Certificate III or IV in Fitness) and/or registration with Fitness Australia.
- 10) Applications for permits and the number of permits to be issued will be determined by the Reserves Booking Officer taking into account the following factors:
- Usage demand, intensity of use of the area and times requested.
 - Number of approved trainers already using the area.
 - Other activities (passive and active) being undertaken in the area.
 - Type of activities being undertaken and the potential impact on other users and neighbouring residents during the times requested.
 - Whether the activities will contribute to increasing congestion or user conflict in the area requested.
- 11) In considering the above factors, the Reserves Booking Officer may decide to:
- Approve an application and issue a permit.
 - Issue a limited permit with restrictions on the number and type of activities, group size and time and location of the activities.
 - Not approve the application.

- 12) One trainer only will be authorised by Council to operate at any one time under the permit issued. Other trainers providing assistance will be included as part of the training group number. In the event that the nominated trainer is unable to operate under the approved permit a replacement may be approved subject to meeting the eligibility requirements of this policy.
- 13) All trainers must be insured and eligible to operate under the permit in accordance with the policy.
- 14) Applicants can choose from a “one-off” annual permit fee or alternatively seasonal quarterly permit of 12 week duration. The fees for these permits are set out in the Council adopted Fees and Charges and are available on the Council website www.portstephens.nsw.gov.au

RELATED POLICIES

- 1) Crown Lands Act 1989
- 2) Local Government Act 1993

SUSTAINABILITY IMPLICATIONS SOCIAL IMPLICATIONS

The interaction/balance between the general public recreation use of public land and commercial activities needs to be managed. This Policy recognises and allows for this.

ECONOMIC IMPLICATIONS

The optimisation of Commercial Group Fitness activities should contribute positively to the general economic health of the municipality.

ENVIRONMENTAL IMPLICATIONS

Nil. Group fitness activities will be managed to ensure there is no environmental impacts.

RELEVANT LEGISLATIVE PROVISIONS

- 1) Local Government Act 1993
- 2) Local Government (General) Regulations 2005

IMPLEMENTATION RESPONSIBILITY

- 1) Community and Recreation Services Manager

REVIEW DATE

Within one year of first being adopted and then once every Council term.

ITEM NO. 10

FILE NO: PSC2011-00149, T23-2012

SHOAL BAY WHARF RECONSTRUCTION T23-2012

REPORT OF: PETER MURRAY - OPERATIONS MANAGER

GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Item 10 on the Ordinary Council agenda namely **T23-2012 Shoal Bay Wharf Reconstruction**.
 - 2) That the reasons for closing the meeting to the public to consider this item be that:
 - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
 - ii) In particular, the report includes confidential pricing information in respect of the **T23-2012 Shoal Bay Wharf Reconstruction**.
 - 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
 - 4) That the report of the closed part of the meeting is to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179) of the Local Government (General) Regulation 2005.
 - 5) Declines to accept any of the tenders received.
 - 6) Not call fresh tenders as the scope of works has not changed and a successful outcome should be achieved by negotiations.
 - 7) Negotiate with the two lowest tenderers to negotiate a contract.
 - 8) The Mayor and General Manager be authorised to sign the contract documents based on the negotiated contract sum, and the Common Seal of Council be affixed to the contract documents subject to confirmation of funding.
-

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Nell Councillor Bruce MacKenzie
	That Council: <ol style="list-style-type: none">1) Declines to accept any of the tenders received.2) Not call fresh tenders as the scope of works has not changed and a successful outcome should be achieved by negotiations.3) Negotiate with the two lowest tenderers to negotiate a contract.4) The Mayor and General Manager be authorised to sign the contract documents based on the negotiated contract sum, and the Common Seal of Council be affixed to the contract documents subject to confirmation of funding.

MOTION

343	Councillor John Nell Councillor John Morello
	It was resolved that Council: <ol style="list-style-type: none">1. Declines to accept any of the tenders received.2. Not call fresh tenders as the scope of works has not changed and a successful outcome should be achieved by negotiations.3. Negotiate with the two lowest tenderers to negotiate a contract.4. The Mayor and General Manager be authorised to sign the contract documents based on the negotiated contract sum, and the Common Seal of Council be affixed to the contract documents subject to confirmation of funding.

BACKGROUND

The purpose of this report is to seek resolution to negotiate and form a contract for the demolition of the existing Shoal Bay Wharf and reconstruction of a new wharf.

Tenders were advertised in September 2012 and nine tenders were received. The broad range of prices reflect the different approaches available to complete the project. A summary of the tenders received on 13/11/12 exclusive of GST are ranked in apparent order below.

Tenderer	Tender
Civilbuild Pty Ltd	\$ 654,000.00
Marijan Constructions Pty Ltd	\$ 710,000.00
Clement Marine Services Pty Ltd	\$ 975,840.00
GPM Constructions Pty Ltd	\$1,143,987.00
Sydney Marina Contracting Services Pty Ltd	\$1,170,000.00
Pacific Pier and Pontoon Pty Ltd	\$1,198,000.00
HDSA Group Pty Ltd	\$1,289,332.00
Sydney Maritime Services Pty Ltd	\$1,710,764.00
Waterway Constructions Pty Ltd	\$1,848,070.00

The assessment of the tenders submitted considered the structural design and construction techniques proposed. Interviews were held with the three lowest bids from Civil Build Pty Ltd, Marijan Constructions Pty Ltd and Clement Marine Services Pty Ltd to confirm that the contract documentation was acceptable, to review any qualifications to the tender and any subsequent information requested.

The remaining tenderers were not interviewed as their tenders exceeded the budget available for the project and any alternative offers would not have made their offers more competitive.

The assessments of the proposals using the Value Selection Methodology system is presented in **Attachment 1**. Whilst all of the tenders had merit none of them are able to meet the criteria as well as Civilbuild Pty Ltd and Marijan Constructions Pty Ltd who are recommended for further negotiations with the intention of entering into a contract to undertake the work.

These tenders supply all the structural elements of the wharf but require clarification of minor aspects such as architectural finishes and furnishings (eg handrails, seating and decking on the walkways).

Whilst Civilbuild's tender is the cheapest it depends on a construction method that requires approval from the Marine Park Authority and NSW Department of Primary Industries – Fisheries and Aquaculture. Civilbuild proposes building a working platform of sand 40 long by 12 wide to undertake the construction from. All other tenderers propose to undertake the construction from barges.

The construction budget is \$748,000 and assessment of the tenders indicate that the Civilbuild Pty Ltd and Marijan Constructions Pty Ltd tenders can be completed within budget. The assessment has confirmed that continuing negotiations with a view of entering into a contract is in Council's best interest and represents the best means of achieving value for money.

FINANCIAL/RESOURCE IMPLICATIONS

The Estimated cost for the project was \$880,000

The available Construction Budget is calculated as the Total Budget less allowances for contingency and contract supervision

Total Estimate			\$880,000
Less			
Contingency	10%	\$88,000	
Supervision	5%	\$44,000	\$132,000

Construction Budget **\$748,000**

The two lowest tenders, Civilbuild Pty Ltd (\$654,000) and Marijan Constructions Pty Ltd (\$710,000) are within the Construction Budget (\$748,000).

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget			
Reserve Funds			
Section 94	Yes	\$279,500	
External Grants	Yes	\$189,500	Not Confirmed
Other – Holiday Park Reserve	Yes	\$411,000	Not Confirmed

Whilst the tender can be negotiated, the contract will not be entered into until all funding has been confirmed.

LEGAL, POLICY AND RISK IMPLICATIONS

The tendering process complied with Council's procurement guidelines and the Local Government (General) Regulations 2005 for procurement and the Local Government Act 1993. Contracts for the amount of \$150,000 (inc GST) or for a period of more than two years require Council approval.

In accordance with Clause 178 (1) (b) of the Local Government (General) Regulation 2005 Council is able to decline to accept tenders. Clause 178 (3) allows Council to enter into negotiations with any tenderer.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that funding will not be available for the project	Medium	Secure the funding or not proceed with the project at this time. Staff are consulting with Department of Lands to achieve clarity on this aspect.	Yes
There is a risk that tenderers will exceed the available budget	Low	Negotiate contract to be within budget or not proceed with the project until funding is available	Yes
There is a risk of striking rock during piling and incurring additional costs	Low	The sand depth will be confirmed by jetting a bore into the sea bed. The contingency is to allow for possible variations	
There is a risk that Marine Parks or Department of Primary Industries – Fisheries and Aquaculture won't approve of Civilbuild's construction method	Medium	Confirm approval prior to forming the contract with Civilbuild	Yes
There is a risk that Marine Parks or NSW Department of Primary Industries – Fisheries and Aquaculture won't approve the extension of the wharf if it impacts on the seagrass beds	Low	Negotiate the length of the extension	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social implications are improved facilities and access to the Port for the public. The reconstruction will also replace a local icon that is heavily used by the local community and visitors to the area.

There are no significant economic implications from this recommendation except that it adds value to local businesses as it is a tourism attraction.

The environmental implications are that the footprint of the wharf cannot impinge on the seagrass beds beyond the wharf. Otherwise there are no significant environmental implications from this recommendation.

CONSULTATION

Preparation of the plans included consultation with stakeholders and community groups involved in the project in Shoal Bay and government agencies with interests in the area. The community groups are Shoal Bay Community Association and Shoal Bay Fishing Club. The government agencies are Port Stephens Great Lakes Marine Park Authority and Roads and Maritime Services.

OPTIONS

- 1) Accept the recommendation.
- 2) Reject the recommendation and not proceed with the project.

ATTACHMENTS – *Provided under separate cover*

- 1) Confidential - Shoal Bay Wharf Reconstruction – Value Selection Methodology
- 2) Confidential - Shoal Bay Wharf Reconstruction Concept Plans

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 11

FILE NO: PSC2011-04342

SUSTAINABILITY REVIEW – PROJECT AND DESIGN

REPORT OF: PETER MURRAY – OPERATIONS MANAGER

GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the information contained in the Service Strategy –Project and Design **(TABLED DOCUMENT)**.
- 2) Endorse the implementation of the recommendations detailed in Service Strategy – Project and Design **(ATTACHMENT 1)**.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Geoff Dingle Councillor Paul Le Mottee</p>
	<p>That the recommendation be adopted.</p>

MOTION

344	<p>Councillor John Nell Councillor John Morello</p>
	<p>It was resolved that the recommendation be adopted.</p>

BACKGROUND

The purpose of this report is to present to Council the outcomes of the sustainability review of the Service Strategy – Project and Design and to seek endorsement to implement the recommendations detailed in the strategy.

Project and Design service strategy concerns the following services:
 Project management for the design and delivery of structural, civil and landscape projects.
 Project management for the planning and design of road construction projects.

This review was carried out using improvement processes to determine best value for the local community by using internal and externally sourced benchmarking data to

compare service delivery options. This information is detailed in the Service Strategy – Project and Design (**TABLED DOCUMENT**).

FINANCIAL/RESOURCE IMPLICATIONS

Whilst Council's Project and Design team has an equivalent full time staffing level of 8, difficulties attracting and retaining civil engineering designers is resulting in long term vacancies. A strategy to address this skill shortfall is detailed in the Service Strategy.

The Project and Design team is funded from the budgets of the capital works projects they undertake. For 2012/13:

Source of Funds	Yes/No	Funding (\$)	Comment
Operating Expenditure	Yes	\$637,427	
Internal Income	Yes	(\$668,538)	From projects completed for Community & Recreation and Assets Sections.
Revenue	No	\$0	
Corporate Overheads	Yes	\$30,935	
Section 94	No	\$0	
External Grants	No	\$0	
Other	No	\$0	

LEGAL, POLICY AND RISK IMPLICATIONS

Council has a legal obligation to ensure the design and construction of roads and other civil infrastructure meets industry accepted practice. However Council is not obliged to provide these services by "in house" resources.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources ?
There is a risk that delayed project preconstruction planning will lead to disruption of the adopted capital works programme.	High	Maintain "in house" expertise to initiate and scope projects. Use and further develop documented Project Management Plan process. Provide suitable information technologies to support the use of industry standard computer aided design software. Initiate projects to provide sufficient time for initiation and planning to occur. Outsource design work as required. Ensure staff recruitment and development meet demands.	Yes
There is a risk that	High	Designs completed to accepted industry	Yes

projects will be inadequately specified and constructed leading to premature failure		<p>best practice.</p> <p>Detailed designs and specifications incorporate the learnings from previously completed works to minimise ongoing maintenance.</p> <p>Contractors are supervised to ensure compliance with specification.</p>	
There is a risk that projects will not be adequately scoped prior to detailed design and construction leading to cost overruns and failure to satisfy community expectations	High	<p>Use Project Management Plan process to document each phase of the project.</p> <p>Maintain "in house" skills in community consultation.</p> <p>Maintain "in house" skills in the development of project briefs and estimating.</p>	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Project and Design service delivery model combines the best of "in house" services (civil and architectural detailed design, tendering and contract management) with that of "outsourced" services (engineering structural design and certification, building and landscape construction). Benchmarking of these functions has indicated Council is providing these services at a competitive cost by using a service delivery model that is superior to a fully outsourced approach.

Benchmarking to date has also included the contracting out trials of civil design consultancies. However it is evident that improvements to current processes have the potential to provide further significant savings (**ATTACHMENT 1**).

The recommendations contribute to positive social, economic and environmental outcomes by ensuring value for money realised from the expenditure on the delivery of these important community assets and minimise the risk that these assets will become unusable and/or unsafe.

Consequently there are no sustainability implications in adopting the recommendations of this report.

CONSULTATION

- 1) Customers of the Project and Design team
- 2) Two Way Conversation with Councillors – 20th November 2012

OPTIONS

- 1) Adopt the recommendations contained in the Service Strategy – Project and Design;
- 2) Amend the recommendations contained in the Service Strategy – Project and Design;
- 3) Reject the recommendations contained in the Service Strategy – Project and Design

ATTACHMENTS

- 1) Recommendations - Service Strategy – Project & Design

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Service Strategy – Project & Design

**ATTACHMENT 1
Recommendations - Service Strategy – Project and Design**

Service	Details	Net One off costs/savings	Recurrent costs/savings
Project and Design – Roads	<p><u>Improve Initiation and Planning Processes</u> - to reduce rework and minimise delays in these preconstruction phases.</p> <p>Completion by June 2013</p> <p><u>Provide Appropriate Lead Time for Preconstruction Planning</u> to permit construction crews to be properly organised before commencing works. Current compressed lead time to be extended by improving job tasking within Project and Design team and outsourcing some design work ideally to Hunter Councils' or other consultancies. Target lead time of 3 months for 95% of road construction projects.</p> <p>Completion by June 2013</p> <p><u>Recruitment Strategy for Road Designers</u> – develop and implement strategy to address ongoing vacancies in these roles.</p> <p>Completion by March 2013</p> <p><u>Improve Information Technologies</u> to address ongoing reliability issues. (Savings calculated at 1hr/wk at \$110.00/hr for 48 wks pa)</p> <p>Completion by March 2013</p>		<p>Estimate a reduction of 10-15% of construction costs through the minimisation of delays, design variations during construction phase.</p> <p>Reduction of \$5,280 pa per designer of downtime.</p>
Project and Design – Structures, Civil and Landscape Designs	<p><u>Improve Initiation and Planning Processes</u> - to reduce rework and minimise delays in these preconstruction phases.</p> <p>Completion by June 2013</p> <p><u>Improve Information Technologies</u> to address ongoing reliability issues(Savings calculated at 1hr/wk at \$110.00/hr for 48 wks pa)</p> <p>Completion by March 2013</p>		<p>Will reduce rework and delays.</p> <p>Reduction of \$5,280 pa per designer of downtime.</p>
Both Service Packages	<p><u>Project Management Plan</u> process to be implemented for all projects undertaken by the Project and Design Team in the financial year 2012/13.</p> <p>Completion by December 2013</p> <p><u>External Work</u> – Complete current commitments and then divert resources to delivery of Councils' increasing capital works program.</p>		<p>Will reduce rework and delays.</p>

ITEM NO. 12

FILE NO: PSC2011-04372

SUSTAINABILITY REVIEW – COMMUNITY AND RECREATION PLANNING

**REPORT OF: STEVEN BERNASCONI - COMMUNITY AND RECREATION SERVICES
MANAGER**

GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the information contained in the Service Strategy – Community and Recreation Planning Team **(TABLED DOCUMENTS)**
- 2) Endorse the implementation of the recommendations detailed in the Service Strategy – Community and Recreation Planning Team **(ATTACHMENT 1)**.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Chris Doohan Councillor Ken Jordan</p>
	<p>That Council:</p> <ol style="list-style-type: none"> 1. Note the information contained in the Service Strategy – Community and Recreation Planning Team (TABLED DOCUMENTS); 2. Endorse the implementation of the recommendations detailed in the Service Strategy – Community and Recreation Planning Team (ATTACHMENT 1), with the exception of the Sports Council Management.

MOTION

345	<p>Councillor John Nell Councillor John Morello</p>
	<p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1. Note the information contained in the Service Strategy – Community and Recreation Planning Team (TABLED DOCUMENTS); 2. Endorse the implementation of the recommendations detailed in the Service Strategy – Community and Recreation Planning Team (ATTACHMENT 1), with the exception of the Sports Council

	Management.
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BACKGROUND

The purpose of this report is to present to Council the outcomes of the sustainability review for the Community and Recreation Planning Team and seek endorsement of the recommendations contained in the Community and Recreation Planning Service Strategy.

The service links to the Community Strategic Plan 2012/13:

1.2.1 – Continue to monitor external operators and event organisers to ensure they implement effective risk treatment plans.

1.5.1 - Work with partners and volunteers to improve facilities and service delivery.

1.5.2 – Plan and advocate for liveable communities.

2.1.2 – Encourage commercial land/water operations to promote tourism.

Core service functions of the Community & Recreation Planning team are;

Community and Recreation Strategies and policies;

Recreation Plans of Management;

Recreation capital works initiation and planning;

Sports Councils Management;

Facilities Booking;

Sports Star Awards; and

Creation of leases and licences.

The team is responsible for the management and planning for:

Sporting Facilities;

Parks and Reserves;

Playgrounds;

Skate and BMX Facilities;

Community Halls/Centres;

Libraries;

Child Care Facilities; and

Swimming pools.

FINANCIAL/RESOURCE IMPLICATIONS

Adopting the recommendations will provide no direct cost savings to Council.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No	Nil	
Reserve Funds	No	Nil	
Section 94	No	Nil	
External Grants	No	Nil	
Other	No	Nil	

LEGAL, POLICY AND RISK IMPLICATIONS

There are no legal or policy impediments to adopting the recommendations.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Councils reputation may be tarnished if it fails to continue to provide functional community and recreation spaces.	High	Continue the operation of community and recreation planning.	Yes
There is a risk that the sporting community may not support the changes recommended resulting in community backlash and reputation damage.	Medium	Work with existing committees to ensure any change over to new committees occurs with interests of all parties accounted for.	Yes
There is a risk that changes to sports facilities bookings do no result in improved cost recovery resulting in less finances to be put towards asset renewal.	Medium	If returns do not improve look at other methods of collecting user fees.	Yes
There is a risk of fraud relating to large amounts and use of monies held by 355(c) committees in individual bank accounts resulting in legal, financial and reputation damage.	Medium	Monthly and annual reporting of funds by committees to Council including forwarding of bank statements checked by financial staff.	Yes
There is a risk of asset condition declining if the funds held in 355c	High	Adopt the recommendations and commence consultation with committees to form	Yes

MINUTES FOR ORDINARY COUNCIL – 11 DECEMBER 2012

committee accounts are not used to contribute to asset renewal resulting in greater drain on ratepayer revenue.		agreements on appropriate use of committee funds for asset renewal.	
There is a risk of alienating volunteers with excessive red tape resulting in a decline in volunteer numbers, reputation damage and unapproved works being conducted on council assets that do not comply with relevant standards.	High	Adopt the recommendations and create processes and procedures that create a safe working environment for volunteers and allow the autonomy required to act as Council's delegate.	Yes
There is a risk of poorly executed capital works if planning and initiation of capital works is not adequately resourced.	High	Adopt the recommendations.	Yes
There is a risk of harm to volunteers (workers) while undertaking work on Council land, facilities or services resulting in injuries, medical treatment and rehabilitation and legal costs.	High	Work Health and Safety requirements documented in committee constitution, Volunteer Strategy, WHS Volunteer Induction Handbook and 355(c) Committee Information Handbook. Compulsory Work Health and Safety volunteer Induction prior to commencing duties. Safe Work Method Statements and Specific Worksite Assessment and Toolbox forms to be developed prior to work. Ongoing supervision and auditing of committee projects.	Yes
There is a risk of non compliance by volunteers with Council requirements for a 355(c) committee resulting in potential legal, financial and reputation risk.	High	Requirements documented in committee constitution, Volunteer Strategy, 355(c) Committee information Handbook.	Yes

		Implement the Volunteer Strategy.	
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SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Participation in physical activity creates a wide range of benefits for individuals and the communities they live in. When people are physically active they are healthier, happier and more socially inclusive. Providing opportunities for social interaction, sport and recreation can help enhance community identity and promote community integration. Individuals learn and share community values and attitudes and can gain a better understanding of other groups in society. Participation can also have a deterrent effect on anti-social behaviour including vandalism and petty crime.

Adopting the recommendations will have no significant implications for the local economy or ecology.

CONSULTATION

- 1) Community and Recreation Planning Coordinator
- 2) Sustainability Review Team (Community and Recreation Planning Coordinator, Senior Recreation Planning Officer, Recreation Projects Officer & Sports Facilities Officer)
- 3) Group Manager Facilities & Services, Business Improvement Coordinator.
- 4) Consultation was carried out with facility user groups and Sports Councils via a Survey.
- 5) Two way conversation with Councillors on 11th December 2012.

OPTIONS

- 1) Adopt the recommendations
- 2) Amend the recommendations
- 3) Reject the recommendations

ATTACHMENTS

- 1) Recommendations for Sustainability Review – Community and Recreation Planning Team.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Sustainability Review – Community and Recreation Planning – Service Strategy
- 2) Sustainability Review – Community and Recreation Planning – Service Strategy - Appendix 1
- 3) Sustainability Review – Community and Recreation Planning – Service Strategy - Appendix 2
- 4) Sustainability Review – Community and Recreation Planning – Service Strategy - Appendix 3
- 5) Sustainability Review – Community and Recreation Planning - Service Strategy - Annexure

ATTACHMENT 1

RECOMMENDATIONS FOR SUSTAINABILITY REVIEW – COMMUNITY AND RECREATION PLANNING TEAM

Service	Details	Net One off costs/savings	Recurrent costs/savings
Sports Councils Management	<ul style="list-style-type: none"> Implement a 3 Sports Council Structure to align with each Council Ward. The total annual subsidy for Sports Councils is to be split between the 3 Sports Councils. 		
Sport Star Award	<ul style="list-style-type: none"> Include sports star awards as part of Council's existing Community awards to recognise residents who excel in their chosen sport 		<p>Savings:</p> <ul style="list-style-type: none"> Approx 123 Staff hours (\$4890.60) in event management of the sports star awards. <p>Cost:</p> <ul style="list-style-type: none"> \$3,500
Facilities Booking	<ul style="list-style-type: none"> Work with Sports Councils on process improvements to ensure that all user fees are being collected and an allocation is spent on renewal of Sporting Facility Assets. 		

MINUTES FOR ORDINARY COUNCIL – 11 DECEMBER 2012

Service	Details	Net One off costs/savings	Recurrent costs/savings
Capital Works	<ul style="list-style-type: none"> • Make the temporary Community and Recreation Project Officer role permanent to ensure efficient planning and initiation of capital works projects 		Cost: <ul style="list-style-type: none"> • Employment of 1 additional staff at approx salary point 12 funded through CAPEX
Leases and licences	<ul style="list-style-type: none"> • Adopt and implement the current draft community leasing policy in order to increase lease and licence fees from "peppercorn" rates. 		Savings: <ul style="list-style-type: none"> • \$3,740 (crown lands minimum rate being used) the saving will vary until all historical agreements have expired.

ITEM NO. 14

FILE NO: PSC2011-04373

SUSTAINABILITY REVIEW – VOLUNTEER STRATEGY

REPORT OF: STEVEN BERNASCONI – COMMUNITY & RECREATION SERVICES MANAGER
GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the information contained in the Service Strategy – Volunteers Strategy and endorses the findings of this review.
- 2) Continue to work with all volunteers to create an environment where volunteering is easy, safe, adds value and complies with legislation.
- 3) Review all committees and report back to Council with details on those committees that can be amalgamated or wound up.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Ken Jordan Councillor Sally Dover</p>
	<p>That Council:</p> <ol style="list-style-type: none"> 1. Note the information contained in the Service Strategy – Volunteers Strategy and endorses the findings of this review. 2. Continue to work with all volunteers to create an environment where volunteering is easy, safe, adds value and complies with legislation. 3. Review all committees and report back to Council with details on those committees that can be amalgamated or wound up. 4. Review 355C Committees to assess sustainability of these important voluntary groups and their ability to manage current requirements with the skills and manpower to meet their commitments and ongoing viability. 5. Review the funding model for 355C Committees recognising that the annual stipend model is neither equitable nor fair dependant on a committee's access to income streams.

MOTION

346	<p>Councillor John Nell Councillor John Morello</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1. Note the information contained in the Service Strategy – Volunteers Strategy and endorses the findings of this review. 2. Continue to work with all volunteers to create an environment where volunteering is easy, safe, adds value and complies with legislation. 3. Review all committees and report back to Council with details on those committees that can be amalgamated or wound up. 4. Review 355C Committees to assess sustainability of these important voluntary groups and their ability to manage current requirements with the skills and manpower to meet their commitments and ongoing viability. 5. Review the funding model for 355C Committees recognising that the annual stipend model is neither equitable nor fair dependant on a committee's access to income streams.
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BACKGROUND

The purpose of this report is to present to Council the outcomes of the sustainability review for the Volunteer Strategy and seek endorsement of the recommendations contained in the Volunteers Service Strategy.

The service links to the Community Strategic Plan: 1.5.1 – Work with partners and volunteers to improve facilities and service delivery.

The Port Stephens Council Volunteer Strategy was adopted by Council in 2009. The strategy was developed to recognise the contribution of volunteers to the local community and to provide a framework, strategic directions and guidelines for management and support of volunteers. The Volunteer Strategy provides the guidelines to ensure volunteer management meets corporate and legal requirements.

The strategy consists of five key areas:

1. Structures, Processes and Relationships
2. Training and Supervision
3. Risk Management
4. Recruitment
5. Reward and Recognition

As part of the Volunteer Strategy Sustainability Review a consultation process was undertaken with volunteers, 355(c) committee members and staff. This involved a direct survey and focus groups to assess how the current system was working, identify areas for improvement and to update the existing Volunteer Strategy to ensure it continues to provide the framework, strategic directions and guidelines for the management and support of volunteers into the future.

The findings and recommendations of all stages of the review are documented into a comprehensive service strategy (refer to **Tabled Documents 1 and 2**)

Recommendation three (3) is in response to Minute No 238 from Council Meeting 25 September 2009 which stated that *"it was resolved that Council review all committees and report back to Council with details on those committees that can be amalgamated or removed from the list"*.

FINANCIAL/RESOURCE IMPLICATIONS

The current provision of support to volunteers and committees under the Volunteer Strategy is provided within current resources. Whilst the only direct budget item for volunteers is the annual subsidy of \$36,000 there is a further \$497,300 per year in direct and indirect funding of volunteer support and management (refer to Table 1).

Adopting the recommendations is likely to have the following implications for finances and resources:

1. More value added services delivered by volunteers will positively impact on Council's budgets.
2. Increased potential to fund asset renewal works whilst keeping downward pressure on general revenue as a main source of funds.
3. A more strategic approach to asset renewal using committee funds.
4. A fairer distribution of annual subsidies that enables committees to deliver their services.
5. The potential to increase the interest earned on funds held by all committees through a combined investment approach to these funds.
6. A reduction in the number of committees that are no longer required and the subsequent reduction in Councillors and staff resources attending these meetings.
7. Greater demand on staff resources as improvements to the Volunteer Strategy are made and delivered.

Table 1 shows the sources of funds for the support and management of volunteers.

MINUTES FOR ORDINARY COUNCIL – 11 DECEMBER 2012

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$247,300	Direct funding includes: <ul style="list-style-type: none"> Salaries (0.6) Community & Recreation Section \$58,500 Salaries (2 EFT) Operations Section for direct supervision \$152,800 Annual subsidy payments \$36,000
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	Yes	\$286,000	Estimated indirect funding of wages to support and manage volunteers from existing budgets..

Table 1: Sources of funds and expenses for volunteer support and management (Port Stephens Council)

Table 2 shows the total funds held by 355c committees and the comparison of these figures for the 31 December 2010 and 31 December 2011 by hall, parks and specific purpose committees.

Table 3 itemises the funds held by hall, parks and specific purpose committees as at 31 December 2011.

Both Table 2 and Table 3 exclude funds held by five Sports Councils & Salt Ash Sportsground Committee as these are dealt with in the sustainability review for Community and Recreation Planning Team.

Summary	Working A/C	Investment A/C	Total
Closing Balance 31/12/2010	\$299,595	\$139,854	\$439,450
Closing Balance 31/12/2011	\$302,818	\$143,124	\$445,942
Variance	\$3,223	\$3,268	\$6,491

Table 2: Total funds held by halls, parks and specific purpose 355c Committees (Port Stephens Council)

Summary	Halls	Parks	Specific Purpose	Total
Working A/C	\$145,901	\$95,277	\$61,639	\$302,818
Investment A/C	\$85,310	\$6,000	\$51,813	\$143,124
TOTAL	\$231,212	\$101,277	\$113,453	\$445,942

Table 3: Total funds held separately by halls, parks & specific purpose committees as at 31 December 2011.

LEGAL, POLICY AND RISK IMPLICATIONS

Council manages its volunteers under the Local Government Act, 1993 Section 355(c) which allows Council to delegate specific functions to a 355(c) committee. All funds and assets held by Committees are the property of Port Stephens Council. Volunteers are subject to Council's Code of Conduct, Policies, Procedures and Management Directives.

Volunteers are considered to be "workers" by definition under the Work Health and Safety Act 2011.

In assessing options for volunteer management Council must consider that it cannot delegate its overall obligations and requirements under Work Health and Safety Act, 2011 or its responsibilities for Council assets.

With these points in mind Council must balance two sets of responsibilities within available resources to:

1. Promote volunteering as a meaningful and enjoyable way to add value to the community and
2. Minimise risk and liability which may have potential financial or legal impacts on Council and in turn the community/ratepayers.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk of harm to volunteers (workers) while undertaking work on Council land, facilities or services resulting in injuries, medical treatment and rehabilitation and legal costs.	High	Work Health and Safety requirements documented in committee constitution, Volunteer Strategy, WHS Volunteer Induction Handbook and 355(c) Committee Information Handbook. Compulsory Work Health and Safety volunteer Induction prior to commencing duties. Safe Work Method Statements and Specific Worksite Assessment and Toolbox forms to be developed prior to work. Ongoing supervision and auditing of committee projects.	Yes
There is a risk of non compliance by volunteers with Council requirements for a 355(c) committee resulting in potential	High	Requirements documented in committee constitution, Volunteer Strategy, 355(c) Committee information Handbook.	Yes

MINUTES FOR ORDINARY COUNCIL – 11 DECEMBER 2012

legal, financial and reputation risk.		Implement the Volunteer Strategy.	
There is a risk of fraud relating to large amounts and use of monies held by 355(c) committees in individual bank accounts resulting in legal, financial and reputation damage.	Medium	Monthly and annual reporting of funds by committees to Council including forwarding of bank statements checked by financial staff.	Yes
There is a risk of poor quality work and increased costs if the management of volunteers is outsourced resulting in reputation damage and a reduction in genuine partnerships between the community and Council.	Medium	Adopt the recommendations. Implement the Volunteer Strategy.	Yes
There is a risk of asset condition declining if the funds held in 355c committee accounts are not used to contribute to asset renewal resulting in greater drain on ratepayer revenue.	High	Adopt the recommendations and commence consultation with committees to form agreements on appropriate use of committee funds for asset renewal.	Yes
There is a risk of alienating volunteers with excessive red tape resulting in a decline in volunteer numbers, reputation damage and unapproved works being conducted on council assets that do not comply with relevant standards.	High	Adopt the recommendations and create processes and procedures that create a safe working environment for volunteers and allow the autonomy required to act as Council's delegate.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The benefits of volunteers to Port Stephens Council and the local community cannot be overstated. Volunteers not only add value to the services that Council provides, volunteering helps to build social cohesion, sense of ownership, civic pride and well being. Adopting the recommendations will add to this social benefit by increasing options for volunteers, reducing risk to volunteers and improving community and recreational asset condition and service delivery.

Adopting the recommendations will ensure that Council can continue to provide the facilities and services that the community desires in the best possible way. This in turn creates and fills a gap in the market for low cost facilities for small scale events, activities and small businesses to operate and contribute to the local economy.

Environmental management and civic improvement is a big focus for many 355c committees. Adopting the recommendations will ensure that the ecology of the area continues to be protected, improved and developed under the auspice of 355c Committees.

CONSULTATION

Surveys: Three hundred and fifty (350) surveys were distributed with 106 returned (30% return rate)

- Volunteers rated 80.4% (as good to excellent) for the overall satisfaction with being a Council volunteer.

In the key areas of the Volunteer Strategy the results showed:

- Structures, Processes and Relationships – over 75% rated good to excellent
- Training and Supervision – over 65% rated as good to excellent
- Risk Management – over 80% rated as good to excellent
- Recruitment – over 60% rated as good to excellent
- Reward and Recognition – over 57% rated as good to excellent

Focus Groups (Halls and Parks Forums and staff): Areas highlighted for improvement included improved communication, developing better relationships, promoting community awareness of the value of Council's volunteers, more reward and recognition, less red tape and more communication.

Areas working well included: stable numbers of committed passionate volunteers, volunteers saving money for Council, structure and process in place to support volunteers, Councillor and staff support for volunteers, work health and safety a priority and volunteering for Council generally seen as rewarding.

OPTIONS

- 1) Adopt the recommendations contained in the Sustainability Review – Volunteer Strategy Service.
- 2) Amend the recommendations contained in the Sustainability Review – Volunteer Strategy Service.
- 3) Reject the recommendations contained in the Sustainability Review – Volunteer Strategy Service.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Sustainability Review – Volunteer – Service Strategy
- 2) Sustainability Review – Volunteer Service Strategy - Annexure

ITEM NO. 15

FILE NO: PSC2011-04366

SUSTAINABILITY REVIEW – CORPORATE CATERING

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Notes the information contained in the Service Strategy – Corporate Catering.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Ken Jordan Councillor Steve Tucker</p>
	<p>That the recommendation be adopted.</p>

MOTION

347	<p>Councillor John Nell Councillor John Morello</p>
	<p>It was resolved that the recommendation be adopted.</p>

BACKGROUND

The purpose of this report is to present to Council the outcomes of the sustainability review for the Corporate Catering and seek endorsement of the recommendations contained in the Corporate Catering Service Strategy.

The key drivers for this service are operational:

By way of background, the sustainability reviews currently being undertaken across all Council services comprise three key stages:

- Stage 1 Reviewing what is currently delivered – ie service drivers (legal, financial, operational);
- Stage 2 Reviewing what should be delivered – ie service levels (at what standard and at what cost);
- Stage 3 Reviewing how it should best be delivered – ie service delivery method (delivery model).

MINUTES FOR ORDINARY COUNCIL – 11 DECEMBER 2012

The findings of all stages of the review are documented into a comprehensive service strategy, with recommendations on the way forward.

Corporate Catering

As part of its functions, Corporate Catering:

- 1) Provides catering services;
- 2) Provides food preparation and hygiene training;
- 3) Provides food preparation and hygiene training;

Resources available during the current financial year for the GMO comprise:

Operating Expenditure	\$93,705
Capital Expenditure	Nil.
Revenue	\$93,705
Staffing (EFT)	1

The breakdown for each service area is:

Service/Activity	Key Metrics Eg financial cost for specified service level
Provides catering services	\$93,705
Provides food preparation and hygiene training;	\$240.00
Provides food preparation and hygiene training;	\$10,572 (this is the direct impact on the service from corporate catering, full budget is catered for under the GMO budget)

SERVICE REVIEW FINDINGS

Benchmarking

As part of Stage 3 of the review, a survey was undertaken with 16 other Councils (all Hunter Councils included). Also prices were sought from external providers.

The benchmarking showed that Council is on par with other Councils with respect to the costs of this service, however the delivery methods were different in some instances.

The benchmarking further showed that staffing levels varied from .5 to 1 EFT and in other instance external providers were engaged.

Internal Efficiencies and Options

It is anticipated that internal efficiencies/savings of approximately \$4,000 would be achieved with improvements to the service delivery surrounding the tea station facilities within the Administration Building. A further saving of \$16,000 p.a. will be achieved with the introduction of the new Council meeting cycle. The new meeting cycle commenced in October 2012.

If Council was to employ an external party there would be additional tasks undertaken by the incumbent that would not be included in the external parties costs such as setting up the Council Chambers for meeting, servicing tea station, food preparation and hygiene training for staff.

An in-house catering promotional campaign will also be developed to increase staff awareness on the services provided by this function.

SERVICE REVIEW RECOMMENDATIONS

The review resulted in the following recommendations:

- A. Maintain the current structure within the Corporate Catering;
- B. Investigate replacement of coffee machines and improvements to the tea stations;
- C. Proceed with areas of improvements as outlined in Option 1.

FINANCIAL/RESOURCE IMPLICATIONS

Current EFT in Corporate Catering is 1.0.

Should Council adopt a recommendation to reduce or cease the internal provision of this service then the conditions of the Port Stephens Council Enterprise Agreement Clause 28 will come into effect. This clause establishes Council's duty to notify affected staff and relevant Unions regarding an intention to introduce major changes to programs, sets out the duties of the parties, establishes procedures to be followed and conditions relating to staff redeployment or redundancies. Redundancies could incur costs of up to 39 weeks ordinary pay for each employee displaced.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	93,705	It should be noted that this service is full cost recovery.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
Risk associated with the continuation of this services is low, however appropriate food hygiene should be considered as a risk to Council.	Low	Continue to employ a qualified catering	Yes

SUSTAINABILITY IMPLICATIONS

Better utilisation of skills in-house has provided more sustainable outcomes at other nearby councils.

CONSULTATION

Two (2) internal surveys were developed and provided to staff and Councillors. A survey of 16 other Councils was also conducted.

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Sustainability Review – Corporate Catering Service Strategy.

ITEM NO. 16

FILE NO: 1190-001

REQUEST FOR FINANCIAL ASSISTANCE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-
 - a) Tanilba Bay Public School – Mayoral Funds – Donation towards stolen sight assistance equipment - \$500.00
 - b) Tilligerry Community Association Inc. – Ward Funds Rapid Response – Donation towards reimbursement of use for Henderson Park for Tilligerry Festival - \$500.00
 - c) Raymond Terrace Historical Society – Ward Funds Rapid Response – Donation towards costs associated with the 175th Naming of Raymond Terrace Senior Citizens Event - \$290.00
 - d) Tilligerry Adult & Community Education Inc. – Ward Funds Rapid Response – Donation towards installation of signage for Information Board - \$486.20

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Ken Jordan Councillor Steve Tucker</p>
	<p>That the recommendation be adopted.</p>

MOTION

348	<p>Councillor John Nell Councillor John Morello</p>
	<p>It was resolved that the recommendation be adopted.</p>

The purpose of this report is to determine and, where required, authorise payment of financial assistance to recipients judged by Councillors as deserving of public funding. The Financial Assistance Policy gives Councillors a wide discretion to either grant or to refuse any requests.

MINUTES FOR ORDINARY COUNCIL – 11 DECEMBER 2012

The new Financial Assistance Policy provides the community and Councillors with a number of options when seeking financial assistance from Council. Those options being:

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

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

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

WEST WARD – Councillors Jordan, Kafer & Le Mottee

RAYMOND TERRACE HISTORICAL SOCIETY	DONATION TOWARDS COSTS ASSOCIATED WITH THE 175TH NAMING OF RAYMOND TERRACE SENIOR CITIZENS EVENT.	\$290.00
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CENTRAL WARD – Councillors Dingle, Doohan & Tucker

TILLIGERRY COMMUNITY ASSOCIATION INC.	DONATION TOWARDS REIMBURSEMENT OF USE FOR HENDERSON PARK FOR TILLIGERRY FESTIVAL.	\$500.00
TILLIGERRY ADULT & COMMUNITY EDUCATION INC.	DONATION TOWARDS INSTALLATION OF SIGNAGE ON INFORMATION BOARD.	\$486.20

MAYORAL FUNDS – Mayor MacKenzie

TANILBA BAY PUBLIC SCHOOL	DONATION TOWARDS STOLEN SIGHT ASSISTANCE EQUIPMENT.	\$500.00
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FINANCIAL/RESOURCE IMPLICATIONS

Council Ward, Minor Works and Mayoral Funds are the funding source for all financial assistance.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$500	Mayoral funds
Reserve Funds	Yes	\$790	Ward Funds
Section 94	No		
External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

To qualify for assistance under Section 356(1) of the Local Government Act, 1993, the purpose must assist the Council in the exercise of its functions. Functions under the Act include the provision of community, culture, health, sport and recreation services and facilities.

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function which it, the Council, would otherwise undertake;
- b) the funding will directly benefit the community of Port Stephens;
- c) applicants do not act for private gain.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
The only risk associated with this recommendation relates to reputation	Low	Adopt the recommendation	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

- 1) Mayor
- 2) Councillors
- 3) Port Stephens Community

OPTIONS

- 1) Adopt the recommendation;
- 2) Vary the dollar amount before granting each or any request;
- 3) Decline to fund all the requests.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 17

FILE NO: A2004-0284

REVIEW OF THE CODE OF MEETING PRACTICE

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

RECOMMENDATION IS THAT:

- 1) Receive and note the submissions;
- 2) Revoke the previous Code of Meeting Practice dated 29 May 2012, Min No. 121;
- 3) Adopt the revised Code of Meeting Practice as exhibited.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Steve Tucker Councillor Chris Doohan
	That the recommendation be adopted.

MOTION

349	Councillor John Nell Councillor John Morello
	It was resolved that the recommendation be adopted.

BACKGROUND

The purpose of the report is to provide Council with any submissions received from the community following public exhibition of the Code of Meeting Practice.

Council at its meeting on 25 September 2012, resolved to change the Council meeting cycle and remove the Council Committee cycle. Public exhibition was from 11 October 2012 to 25 October 2012.

Two submissions were received and are shown at **ATTACHMENT 1**.

Council is now asked to consider the adoption of the Code.

FINANCIAL/RESOURCE IMPLICATIONS

The Code will be implemented within current human resources.

Once adopted, the Code of Meeting Practice must be available for public inspection free of charge at the office of the Council during ordinary office hours. Copies of the Code must be available free of charge or, if the Council determines, on payment of the approved fee.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		The costs directly related to this resolution are covered within the existing budget
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

The Risk Matrix identifies those risks associated with the adoption of the Code of Meeting Practice.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
Breach of Local Government Act 1993, if Council does not adopt a Code of Meeting Practice in accordance with the Act and Regulations.	Low	Adopt the amended Code	Yes

Under Section 361 of the Local Government Act, the draft Code must be placed on public exhibition for not less than 28 days. The Council must consider all submissions received before determining the Code.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Code allows Councillors to effectively carry out their responsibilities at meetings of the Council and committees of which all the members are councillors.

CONSULTATION

- 1) General Manager;
- 2) Councillors;
- 3) Port Stephens Community.

OPTIONS

- 1) Adopt the recommendation;
- 2) Retain the existing Code of Meeting Practice.

ATTACHMENTS

- 1) Submissions

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

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By email: The General Manager, Port Stephens Council
09 November 2012

Re: Proposed Changes to Code Of Meeting Practice

Dear Mr Gesling

The Code of Meeting Practice is currently on exhibition until 9 November 2012, for public comment. Council has recently proposed a change to the meeting cycle

TRRA would like to lodge a formal submission on the proposed change in Council and Council Committee Meeting schedules. We have no objection to the change to the quorum required for meetings.

Current Cycle

1.2 Date and Times?

1. At a Council Meeting held in September each year, or at the first meeting following a general election of Councillors, Council decides on the dates and times for meetings of Council and Committees for the succeeding twelve months.

The following arrangements currently apply:

Council Meeting

- 4th Tuesday in each month commencing at 5.30pm

Council Committee Meeting

- 2nd Tuesday in each month commencing at 5.30pm

Proposed Cycle

1.2 Date and Times - Proposed 2012

1. At a Council Meeting held in September each year, or at the first meeting following a general election of Councillors, Council decides on the dates and times for meetings of Council and Committees for the succeeding twelve months.

The following arrangements currently apply:

Council Meeting

2nd and 4th Tuesday in each month (immediately following Council Committee)

Council Committee Meeting -2nd and 4th Tuesday in each month commencing at 5.30 pm



TRRA Inc. A: Po Box 290, Nelson Bay 2315 T: 4981 5491 E: Vice chairman@trra.com.au

Issues:

The net effect of this change, will be to give Councillors less time and opportunity to research and properly consider important matters requiring their decision on Tuesday evening, particularly as they only receive the paperwork on the previous Friday evening. (On numerous occasions documentation is incomplete and not received until staff is notified on Monday morning)

This means that if our elected Councillors wish to consult with anyone else, they have a very limited time to do so other than on the weekend when most business is closed. Elected Councillors may also need additional time to consult with their constituents or Council officers to gain a greater understanding of the issues. They are totally dependent on the information provided in the briefing papers for the meeting.

The proposed new process also removes the democratic right of the public to discuss these matters with Councillors, between items being dealt with in Committee and being formally adopted by a formal Meeting of Council.

We understand that this was the reason that the previous arrangement was in place. We do not understand what the justification is for changing it.

Full transparency, consultation, and adequate time for proper consideration would demonstrate a democratic process.

As advertised in the Examiner, the cancellation of the meeting of 13 November due to insufficient agenda items demonstrates that two full meetings of Council each month may not be required.

Recommendation:

TRRA recommends that Council revert to the previous schedule which allows a gap of 2 weeks between Committee meeting and the full Council meeting.

Dick Appleby
Vice President
Tomaree Ratepayers and Residents Association



TRRA Inc. A: Po Box 290, Nelson Bay 2315 T: 4981 5491 E: Vice chairman@trra.com.au

E-mail Message

From: [REDACTED] W [SMTP: [REDACTED]]
To: SwitchPC [EX:/O=PORT STEPHENS
COUNCIL/OU=PSC/CN=RECIPIENTS/CN=SWITCHPC]
Cc:
Sent: 8/11/2012 at 10:01 PM
Received: 8/11/2012 at 10:00 PM
Subject: Code of Meeting Practice Consultation

Could you please refer this email to the person handling the current community consultation (due tomorrow 9/11/12) for Code of Meeting practice.

I write as a concerned citizen about the change in meeting schedule for Council Committee and Full Council meetings.

I witnessed first hand at the meeting (via webcast) of 23rd October what an absolute fiasco this is. Our elected Councillors no longer have the opportunity to consult with affected citizens or to gain further information from Council officers between when they make a decision in Committee and then when it is ratified by full Council. This has just become like a rubber stamp. I recognise that many decisions are satisfactory using that method. Many are not and deserve much greater consideration. With the majority of DAs being processed without reference to Councillors, the ones being discussed do usually have some element of controversy about them and our elected Councillors should be well informed about the issues, and the potential outcomes if they get it wrong.

Even the media can no longer research an issue listed on the Council agenda and have it publicised in the press to gauge public opinion. There is no gap.

Diligent Councillors are denied the opportunity to gain further briefing from the Council officers who prepared the agenda paper or, more importantly, from other sections of Council who were not involved in the preparation.

Clearly many sections of Council do not consult with each other and Councillors (and the community) might only hearing half the story in the agenda papers provided.

It is also quite farcical that the full Council meeting of 13 November has been cancelled due to a lack of agenda items!

The new system introduced is not what I'd call democracy and Council should revert to the previous system so that proper informed decisions can be taken by all our elected Councillors. It may very well save us the ratepayers quite a lot in legal costs, particularly as many decisions being taken are against solid recommendations from Council officers to not approve.

The "getting things done" approach I keep hearing about could well be like a hurricane. Considerable damage done and ratepayers left to clean up the debris..... and at what cost?

Thank you

[REDACTED]
Corlette 2315
Phone: [REDACTED]

file://C:\Documents and Settings\tonyw\Local Settings\Application Data\TOWER Sof... 27/11/2012

ITEM NO. 19

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 11 December, 2012.

No:	Report Title	Page:
1	ABORIGINAL STRATEGIC COMMITTEE	155

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Ken Jordan Councillor Geoff Dingle</p>
	<p>That the recommendation be adopted.</p>

	<p>Councillor Ken Jordan Councillor Steve Tucker</p>
350	<p>It was resolved that Council move out of Committee of the Whole.</p>

MOTION

	<p>Councillor John Nell Councillor John Morello</p>
351	<p>It was resolved that the recommendation be adopted.</p>

GENERAL MANAGERS INFORMATION PAPERS



INFORMATION ITEM NO. 1

ABORIGINAL STRATEGIC COMMITTEE

REPORT OF: BRUCE PETERSEN - MANAGER COMMUNITY PLANNING & ENVIRONMENTAL SERVICES

GROUP: DEVELOPMENT SERVICES

FILE: PSC2005-0629

BACKGROUND

The purpose of this report is to present to Council the minutes of the Aboriginal Strategic Committee meeting held 23 October 2012.

The role of Council's Aboriginal Strategic Committee is:

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

ATTACHMENTS

- 1) Minutes of Aboriginal Strategic Committee meeting held on 23 October 2012.

ATTACHMENT 1



Aboriginal Strategic Committee
Combined Meeting



MINUTES

Minutes of meeting held on 23 October 2012 at Port Stephens Council

Acting Chair: Paul Procter

Minute taker: Paul Procter

Present:

Cr Bruce MacKenzie	Port Stephens Council
Cr Sally Dover	Port Stephens Council
Cr Peter Kafer	Port Stephens Council
Peter Gesling	Port Stephens Council
Steve Bernasconi	Port Stephens Council
Paul Procter	Port Stephens Council
Jennifer Underwood	Port Stephens Council
David Feeney	Karuah Local Aboriginal Land Council
Sharon Feeney	Karuah Local Aboriginal Land Council
Colleen Perry	Karuah Local Aboriginal Land Council
Andrew Smith	Worimi Local Aboriginal Land Council
Neville Lilly	Worimi Local Aboriginal Land Council
Lorraine Lilly	Worimi Local Aboriginal Land Council
Valerie Merrick	Worimi Local Aboriginal Land Council

Apologies:

Jason Linnane Port Stephens Council

Meeting opened at 9:30am

1. WELCOME TO COUNTRY / ACKNOWLEDGEMENT TO LAND:

Worimi Elder Neville Lilly acknowledged land meeting on today, Worimi land and paid respects to Elders past/present.

2. NEW MEETING FORMAT:

This is the first of the new quarterly combined meetings with representatives from Council and Karuah and Worimi Local Aboriginal Land Councils. The new meeting format will enable Council and Karuah and Worimi Local Aboriginal Land Councils to jointly discuss issues, identify and advance opportunities and provide advice to Council.

3. OVERVIEW OF COUNCIL'S COMMUNITY STRATEGIC PLAN AND OTHER KEY PLANS AND INITIATIVES:

Council's Social Planning Co-ordinator gave an overview of Council's current planning framework as follows:

Port Stephens Community Strategic Plan 2021: This is a 10 year plan Council is required to produce for the Dept of Local Government. This plan which has been developed following extensive community consultation includes the following references to Aboriginal culture and heritage: -

OUR LIFESTYLE: - Recreation, Leisure, Arts and Culture:

2.4 Preserve and promote multiculturalism and Port Stephens' heritage, arts and culture

2.4.1 Promote opportunities to celebrate Aboriginal culture and local cultural diversity

(Source: Port Stephens Community Strategic Plan 2021)

The plan identifies the services and activities provided by Council and issues which fall outside the core functions of Council which are the responsibility of other external agencies. In these cases Council's role would generally relate to advocacy.

Other plans being developed currently:

- Crime Prevention Plan
- Raymond Terrace & Heatherbrae Growth Strategy
- Review of Development Control Plan

4. OVERVIEW OF LOCAL ABORIGINAL LAND COUNCILS COMMUNITY & BUSINESS PLANS:

Council's Social Planning Co-ordinator invited each Local Aboriginal Land Council (LALC) to give an overview of their respective plans which in turn would identify opportunities how Council could look at supporting them in the delivery of their plans.

Karuah LALC key areas of focus include employment, education and development. Worimi LALC focus is to become sustainable in its own right, redefining Murrook park lands.

5. WHAT SHOULD THE ABORIGINAL STRATEGIC COMMITTEE FOCUS ON THE NEXT 12 MONTHS?

Council's Social Planning Co-ordinator sought feedback on what the Aboriginal Strategic Committee (ASC) wants to focus on the next 12 months. It was agreed that the focus continue to be on providing to Council and members support, advice, direction, and responding to relevant issues as they arise. This is in line with the agreed role of Council's ASC as follows: -

- To advise Council in relation to issues of concern between Council and the Aboriginal community,
- To promote a positive public image with respect to issues for Aboriginal people in Port Stephens,
- To provide a consultative mechanism with respect to development issues,
- To improve relations between the Aboriginal and non Aboriginal community of Port Stephens,
- To exchange information between the Aboriginal community and Council on issues affecting Aboriginal people,
- To promote mutual awareness and respect for the cultures of both Aboriginal and non Aboriginal communities, and

- To promote an increased awareness of the needs of Aboriginal communities and to assist with the development of programs to address those needs where possible and appropriate.

6. ABORIGINAL NSW 2013 ELDERS OLMPICS:

Will be hosted in Port Stephens on 21 March 2013 with an anticipated 500 – 600 Elders expected to attend. Karuah LALC CEO indicated that they will have a team competing as well in next year's Games. Worimi LALC CEO is seeking support from Council (eg; donations, loan of marquees) towards this event. Also mentioned that they are seeking as part of this event seeking a venue to host a dinner for around 700 – 1000 people.

Council's Manager Community & Recreation Services indicated that whilst Council may be able to assist in providing access to venues and provision of advice etc, Council cannot over commit staff resources, the responsibility is on event organisers to ensure all aspects of the event are addressed and adequately resourced.

7. FEEDBACK ON 2012 NSW ABORIGINAL KNOCKOUT RUGBY LEAGUE COMPETITION:

ASC members felt event went well. Cr Kafer indicated that Council's support of this event contributed to its overall success. The ASC indicated that the event organisers need to look at opportunities for improvement through looking at this year's event and incorporating improvements into future events (eg; improve waste collection facilities through proviso of more bins, placement of food vans).

Cr Kafer past on his congratulations to the Worimi Dolphins on their efforts.

8. ABORIGINAL PROJECTS FUND:

Council's Social Planning Co-ordinator gave an update on the current review Council is undertaking of the Cultural Projects Fund and Aboriginal Projects Fund. As part of this review need to revisit purpose/intent and definitions of each grants program.

Based on this the ASC discussed the two programs and indicated that they see the purpose of the Aboriginal Projects Fund as being about: -

- Council funding projects designed and/or intended to empower Aboriginal people
- Supporting projects in the community
- Funds being aligned with Local Aboriginal Land Councils (**not exclusively**) to obtain funds to help the community to get programs going
- Prefer projects with demonstrated outcomes / not administration

In regards to defining 'Cultural', they see culture as being a term more associated with the traditional landowners. See purpose of Council's Cultural Projects Fund being more about people, race, activity, and place.

In regards to the two programs the ASC indicated that there is a need to ensure the two programs are aligned. Also suggested improvements to the application process which would require applicants seeking Aboriginal Projects Funding to consult with the community first to ensure projects are engrained in the community before they go and discuss their application with the respective Local Aboriginal Land Council.

In regards to the Cultural Projects Fund suggested Council look at expanding name of Cultural Projects Fund, and aligning timing of both grant programs to run parallel to each other.

9. REVIEW OF TRADITIONAL WELCOME AT COUNCIL MEETINGS:

Some time ago Council's Social Planning Co-ordinator drafted an updated acknowledgement based on feedback from the ASC. The draft wording was forwarded to Worimi LALC for their review, comment and sign off. Worimi LALC CEO indicated that the acknowledgment needs to recognise the past, present and future.

Action: 1. **Worimi LALC CEO to review and advise Council on appropriate wording of acknowledgment for Council consideration as soon as possible.**

10. DISCUSSION OF IDEA OF AN ABORIGINAL CULTURAL HERITAGE CHECKLIST

Karuah LALC CEO mentioned they are currently developing a checklist for another organisation with respect to Aboriginal Cultural Heritage. The ASC indicated that this could be a good resource which could be adapted locally once developed.

11. 2013 JOINT MEETING

The ASC discussed this year's joint meeting which was held in July which was a great success. The ASC indicated that given the ageing of a number of the Elders and LALC representatives it would be beneficial to move the future annual joint meeting from July to later in the year when it is warmer with October being preferred time.

Action: 1. **Council's Social Planning Co-ordinator to look at placing this meeting later in the year (preferably Oct) when preparing next year's meeting schedule for the ASC.**

12. GENERAL BUSINESS

Item 1: Mallabula Soccer Fields:

Worimi LALC commended Council on the good condition of the soccer fields at Mallabula.

Item 2: Elders DVD Launch:

Both LALC indicated they will be launching a DVD titled 'Our Living Country – Remembering Our Country' which has been developed by Worimi Elders. It will be launched at Murook on 1 Nov 2012 commencing at 10:30am.

Action: 1. **Worimi LALC CEO to forward details of launch to Council's Social Planning Co-ordinator to enable Councillors and relevant staff to be invited.**

Item 3: Worimi LALC Community Services Expo:

Worimi LALC CEO discussed value of community services forum they hosted a couple of years ago. It was well attended by a range of service providers and government agencies which had as part of their responsibility to provide services to the Port Stephens Aboriginal Community. They suggested consideration be given to promoting awareness of these services to other services and the community. Council's Social Planning Co-ordinator indicated that the Port Stephens Interagency would be ideal means for this to occur.

Action: 1. **Worimi LALC CEO to forward details of agencies which participated in Expo to Council's Social Planning Co-ordinator for inclusion on future meetings of the Port Stephens Interagency.**

Item 4: Health One Raymond Terrace:

The ASC discussed the development of the new Health One facility in Raymond Terrace which is envisaged will open in next 18 months or so. Members were interested in finding out more about what role the facility will play in responding to local health issues such as after hours services, bulk billing and need to increase health services to cater for the community.

Action: 1. **Council's Social Planning Co-ordinator to invite Manager of Hunter New England Health Newcastle Cluster and Manager Raymond Terrace Community Health to next meeting to provide a presentation on the new Raymond Terrace Health One facility.**

Item 5: Street Drainage – Karuah Aboriginal Reserve:

Karuah LALC CEO reported that they are still experiencing problems with drainage on cnr section of Buudhang Close during periods of rain despite Council responding to this issue previously.

Action: 1. **Council's Social Planning Co-ordinator will organise for relevant Council Officer to contact Karuah LALC CEO concerning this matter.**

Item 6: Access to Childcare on Tilligerry Peninsula:

Worimi LALC raised concerns over the increasing difficulty for families on the Tilligerry Peninsula in accessing childcare due to costs. The ASC discussed this issue and alternate service models such as Council's Family Day Care model and the mobile preschool model used by Awabakal in Newcastle.

Action: 1. **The ASC will explore other potential childcare opportunities such as Family Day Care model and Awabakal Mobile Preschool and the associated requirements.**

Item 7: Worimi Knowledge Holders Corporation:

For the information of the ASC Worimi LALC informed the Committee about the Worimi Knowledge Holders Corporation. It consists of a group of local Elders which holds local traditional knowledge of the Port Stephens area.

Item 8: Saltwater Freshwater Festival 2013:

Karuah LALC CEO informed the Committee that the annual Saltwater Freshwater Festival will be held next year at Taree which they will continue to support.

Item 9: Department of Primary Industries, Office of Water – Aboriginal Water Initiative:

Karuah LALC CEO briefed the ASC on the State Government's Aboriginal Water Initiative.

Item 10: Sand Dune Adventures:

Worimi LALC informed the ASC that their Sand Dune Adventures have recently received the accolade of being recognised as the No.1 activity in Port Stephens and No. 2 in the Hunter.

13. DETERMINATION OF MEETING DATES:

Meetings will be held on a quarterly basis on a Tuesday in the morning.

Action: 1. **Council's Social Planning Co-ordinator to organise meeting schedule and inform ASC members of details once confirmed.**

Meeting closed at 12:20pm

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217

ALLOCATION OF REPEALED SECTION 94 FUNDS

COUNCILLORS: BRUCE MACKENZIE, SALLY DOVER, KEN JORDAN, STEVE TUCKER,
CHRIS DOOHAN, JOHN MORELLO, PAUL LE MOTTEE.

THAT COUNCIL:

- 1) Allocate repealed Section 94 funds to the following projects:
 - a. Soldiers Point Memorial Hall asbestos environmental clean \$30,000;
 - b. Tilligerry Aquatic Centre upgrade of electrical switch board \$10,000;
 - c. Salamander Bay Children's Centre stage one kitchen upgrade \$12,000;
 - d. Cornerstone Christian Fellowship Hall upgrade of amenities to accommodate community playgroups displaced by the closure of Soldiers Point Memorial Hall \$18,000;
 - e. Brandon Park cricket wicket resurfacing \$40,000;
 - f. Brandon Park cricket net installation \$6,500;
 - g. Seaham Park picnic shelters and furniture \$12,000;
 - h. King Park playing surface drainage works \$13,600;
 - i. Fern Bay Van Village community shipping container \$4,000;
 - j. Medowie Rugby Union Club equipment shipping container \$4,000;
 - k. Medowie Rugby Union Club concrete pad under awning \$4,000;
 - l. Karuah Men's Shed \$25,000;
 - m. Croquet courts (2 off) at Boomerang Park Raymond Terrace \$40,000;
 - n. Nelson Bay foreshore playground shade structure \$30,000;
 - o. Anna Bay Lawn Cemetery top dressing of lawn cemetery \$10,000;
 - p. Salt Ash Equestrian Centre top dressing of pony club arena \$10,000;
 - q. Tilligerry Men's Shed \$20,000;
 - r. Nelson Bay Skate Park \$20,000;
 - s. Boat Harbour Reserve Committee \$2,000.
-

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

MOTION

	Councillor Ken Jordan Councillor Steve Tucker
352	It was resolved that the Notice of Motion be adopted.

BACKGROUND REPORT OF: STEVEN BERNASCONI – COMMUNITY AND RECREATION SERVICES

BACKGROUND

The projects listed for funding in this Notice of Motion contribute to community and recreation capital infrastructure. The allocation of these funds will

(a) match other sources of funds and allow some projects listed to be completed out right and

(b) provide seed funds for other projects to enable plans and matching grant funding to be pursued.

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Repelled Section 94	Yes	\$311,100	Funding from repelled Section 94 \$450,000.
External Grants	No		
Other	No		

There being no further business the meeting closed at 7.27pm.

I certify that pages 1 to 164 of the Open Ordinary Minutes of Council 11 December 2012 were confirmed by Council at its meeting held on 18 December 2012.

.....
Bruce MacKenzie
MAYOR