Minutes 24 April 2007 C·O·U·N·C·I·L

... a community partnership

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 24 April 2007, commencing at 5.40pm.

PRESENT:

Councillors R. Swan (Mayor); S. Tucker (Deputy Mayor); C. Baumann; H. Brown; G. Dingle; S. Dover; G. Francis; J. Hodges; K. Jordan; J. Nell; G. Robinson; R. Westbury; General Manager; Executive Manager – Corporate Management, Facilities and Services Group Manager; Sustainable Planning Group Manager; Business and Support Group Manager.

099	Councillor Jordan Councillor Hodges	It was resolved that the Minutes of the Ordinary meeting of Port Stephens Council held on 27 March and 10 April 2007 be confirmed.
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SUBJECT

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# MAYORAL MINUTE

# MAYORAL MINUTE

ITEM NO. 1

FILE NO:16/2006/793/1

# PLAN OF SUBDIVISION AND 88B INSTRUMENT – KING, BOURKE AND PETER DRON STREET, RAYMOND TERRACE

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#### THAT COUNCIL:

1) Authorise the Mayor and General Manager to affix the seal of Council to the amended 88B Instrument and Plan of Subdivision, to alter the existing drainage easement.

#### ORDINARY MEETING OF COUNCIL - 24 April 2007

RESOLUTION:		
100	Councillor Swan	There being no objection it was resolved that the Mayoral Minute be adopted.

#### BACKGROUND

The purpose of this report is to seek Council's consent to the affixing of the seal to the Plan of Subdivision and 88B Instrument in relation to Council owned Community Land and the privately owned adjoining land, known as the Aldi site.

At its meeting of 12 December 2006, Council considered a Development Application for the construction of an Aldi supermarket, located on the corner of King and Bourke Street, Raymond Terrace (the Aldi site). Approval for the development was subsequently granted on 19 December 2006 and the applicant is now proceeding with the development.

The Aldi site encompasses 5 individual lots (Lots 8, 9, 10, DP 939306, Lot 1 DP 995436 and Lot 22 DP 788588) and adjoins Council owned land identified as Lot 21 DP 788588. At present, an 88B Instrument is registered over both Council's land and the Aldi site, identifying Council's land as having the benefit of a drainage easement 4metres wide that burdens the Aldi site. A condition of Consent for the Aldi site requires the applicant to undertake specific drainage works and also to consolidate the existing 5 lots into 2 lots, which requires alteration to the location of the existing easement. As a result, a plan of Subdivision and relevant 88B Instrument have been prepared, which encompass the Aldi site and also refers to the adjoining Council owned land, Lot 21.

Consolidation of the 5 lots into 2 has no impact on the adjoining Council owned land and the Plan of Subdivision and 88B Instrument continue to protect Council's interests. Lot 21 DP 788588 continues to benefit from the drainage easement located on the Aldi site. Consultation with Council's Manager Development and Building and Property Unit Coordinator has confirmed that the proposed Plan of Subdivision and 88B Instrument are acceptable.

In order to lodge and register the Plan of Subdivision and 88B Instrument, Council's Seal is required on both documents and cannot be affixed without a specific resolution of Council. Accordingly Council's consent to the affixing of the seal to the relevant documentation is now required. Attached is a copy of the subject Plan of Subdivision and 88B instrument.

# OPERATIONS COMMITTEE RECOMMENDATIONS

ITEM NO. 1

FILE NO: PSC 2007-0753

# PROPOSED AMENDMENT TO LOCAL ENVIRONMENTAL PLAN 2000 TO REZONE LAND TO FACILITATE RESIDENTIAL DEVELOPMENT ON 100 SALAMANDER WAY, SALAMANDER BAY.

#### **REPORT OF: JENNY SMITH – MANAGER COMMUNITY PLANNING**

#### **RECOMMENDATION IS THAT COUNCIL:**

- 1) Pursuant to Section 54 of the Environmental Planning and Assessment Act, Council resolve to prepare a Draft Local Environmental Plan to:
  - a. Rezone Lot 21 DP 1044009 to part urban development and part environmental protection as specified in this report;
  - b. Reclassify part of Lot 21 DP 1044009 proposed for urban development from community to operational pursuant to the Local Government Act 1993 to permit the Council as land owner to sell or lease that part of the land subject being rezoned for urban development;
  - c. Subject to resolution of ecology, urban design, transport, hydrology and land owner consultation, rezone land adjoining the subject land and located on Salamander Way from 7(f3) Environmental Protection (Urban Conservation) to an urban zone to support the economic and social viability of Salamander Way "Town Centre";
  - d. Remove Clause 52 from Port Stephens Local Environmental Plan 2000 that permits development of 251 dwellings and 600 square metres of commercial or retail floor space on Lot 21 DP 1044009 as the proposed rezoning that is the subject of this report will make this clause redundant.
  - e. Amend clause 62 of the Port Stephens LEP 2000 by removing reference to Lot 50 -144, DP 751013, Lot 1 13, DP 734433 and Lot 1, DP 810714 Salamander Way, Salamander.
- Council resolve pursuant to Section 57 of the Environmental Planning and Assessment Act 1979 to prepare a Local Environmental Study to support and justify the draft LEP;
- 3) Engage a qualified urban designer to prepare a structure plan over the subject land and adjoining lands to understand how urban development can occur on part of the subject land and adjacent residential lands that integrates social, economic and environmental sustainability outcomes for the site and the Salamander area;
- 4) Prepare a site specific chapter to be inserted into PSC Development Control Plan 2007 that includes the outcomes of the investigations undertaken in Recommendation No. 2 and 3 to guide future development of land covered by the draft LEP.

## **OPERATIONS COMMITTEE MEETING – 10 April 2007**

#### **RECOMMENDATION:**

That the Recommendation be adopted.

## **ORDINARY MEETING OF COUNCIL – 24 APRIL 2007**

AMENDMENT:	
Councillor Dover Councillor Nell	Pursuant to Section 54 of the Environmental Planning and Assessment Act, Council resolve to prepare a Draft Local Environmental Plan to:
	a. Rezone Lot 21 DP 1044009 to part urban development and part environmental protection as specified in this report;
	<ul> <li>Reclassify part of Lot 21 DP 1044009 proposed for urban development from community to operational pursuant to the Local Government Act 1993 to permit the Council as land owner to sell or lease that part of the land subject being rezoned for urban development;</li> </ul>
	c. Subject to resolution of ecology, urban design, transport, hydrology and land owner consultation, rezone land adjoining the subject land and located on Salamander Way from 7(f3) Environmental Protection (Urban Conservation) to an urban zone to support the economic and social viability of Salamander Way "Town Centre";
	d. Remove Clause 52 from Port Stephens Local Environmental Plan 2000 that permits development of 251 dwellings and 600 square metres of commercial or retail floor space on Lot 21 DP 1044009 as the proposed rezoning that is the subject of this report will make this clause redundant.
	e. Amend clause 62 of the Port Stephens LEP 2000 by removing

	reference to Lot 50 -144, DP 751013, Lot 1 – 13, DP 734433 and Lot 1, DP 810714 Salamander Way, Salamander.
2)	Council resolve pursuant to Section 57 of the Environmental Planning and Assessment Act 1979 to prepare a Local Environmental Study to support and justify the draft LEP;
3)	Engage a qualified urban designer to prepare a structure plan over the subject land and adjoining lands to understand how urban development can occur on part of the subject land and adjacent residential lands that integrates social, economic and environmental sustainability outcomes for the site and the Salamander area;
4)	Prepare a site specific chapter to be inserted into PSC Development Control Plan 2007 that includes the outcomes of the investigations undertaken in Recommendation No. 2 and 3 to guide future development of land covered by the draft LEP.
5)	Council notes that this report does not support option 2 recommended by ERM report

On being put the Amendment was lost.

# **ORDINARY MEETING OF COUNCIL – 24 APRIL 2007**

RESOLUTION:		
101	Councillor Jordan	That the Recommendation be adopted
	Councillor Hodges	

The purpose of this report is to recommend to Council to initiate the rezoning process under Section 54 of the Environmental Planning and Assessment Act 1979, and allow opportunity to investigate, consult and resolve the outstanding issues identified in this report.

### PROPOSAL

This request is to amend Port Stephens Local Environmental Plan 2000 (LEP 2000) to replace a portion of the existing zone with a zone that will permit residential development.

Owner Proponent	Port Stephens Council and numerous private land owners For Lot 21 DP 1044009 - Port Stephens Council - Business
and Support Group	
Date of Submission	25 May 2006
Subject Land	Refer to Map - Attachments
Current Land Use Zone	7(f3) Environment Protection (Urban Conservation)
	6(c) Special Recreation
	7(a) Environment Protection "A" Zone
Proposed Zone	Subject to investigation and consultation – General
	Residential Zone (Standard Instrument – Principal
	Environmental Plan - 2006)

### BACKGROUND

A portion of the subject site was mined and dredged for heavy minerals between 1971 and 1977. Since then, the site has been the subject of proposed urban development on a number of occasions over the past 16 years. On each occasion, the proposal has not proceeded due to commercial reasons. In 1990, Port Stephens LEP 1987 was amended to permit residential, commercial and retail development on this site; LEP 2000 carried this clause across as Clause 52.

Despite previous land uses and development intentions, Council did not classify the land as operational when required under the Local Government Act 1993, therefore the land remains community Land. This report recommends the reclassification of part of this land to operational land.

Council's Business and Support Group met with the Rezoning Assessment Panel in 2005 to discuss proposed development. The Rezoning Assessment Panel advised that the proposed infill development would be suitable on the site given the site's close proximity to Salamander Town Centre and surrounding community facilities. However, the Panel cautioned of the environmentally sensitive attributes of the site and the need to address statutory policy requirements.

The rezoning request submitted by the proponent is narrow in its scope and would be difficult to justify without understanding and addressing its location relative to the adjoining residential lands fronting onto Salamander Way that, in turn, connects the subject land to the Salamander "town centre".

It is understood that the 7(f3) Environmental Protection (Urban Conservation) zoned land was created prior to the availability of sewerage infrastructure and the fact that this area is located adjacent to SEPP 14 wetland systems. This has lead to the creation of large residential lots and the use of sewage pump out systems. Despite the title of the zone, this land is in effect large lot residential.

The proponent's rezoning submission allows an opportunity to review the appropriateness of retaining the 7(f3) Environmental Protection (Urban Investigation) zone along Salamander Way for the following reasons:

- the majority if not all of lots zoned 7(f3) are now connected to the sewer main running along Salamander Way and therefore on site management of sewage and water quality impacts on SEPP 14 wetlands is no longer an issue;
- Council has determined a number of dual occupancy / two lot subdivision development applications on lots zoned 7(f3) fronting Salamander Way through Clause 62 of the LEP that enables Council to consider such applications. This has led to undesirable built form outcomes and access issues onto Salamander Way.
- As green field land supply decreases on the Tomaree Peninsula, it is expected that land values and development pressures will increase on land that is zoned for low density residential development.
- As Salamander "town centre" grows it is generating economic activities on lands in proximity to the centre in the form of home based businesses being established in residential dwellings in 7(f3) lands along Salamander Way.

It is for these reasons that Community Planning has recommended in this report that other lands be included with the rezoning submission so that it's potential development and the long term economic, social and environmental sustainability of this area of Salamander can be considered in a strategic and integrated manner. Hence, Option 2 in the rezoning submission is not supported. However, it is the purpose of the LES and the preparation of a structure plan to resolve these issues.

## LINKS TO CORPORATE PLANS

This report addresses the strategic and future directions of Council's Plan 2005-2008 in particular:

- Integrating planning for facilities and services.
- Promote, plan and guide development to create sustainable communities that conserve and enhance the natural and built environment.
- Ensure that our planning framework provides appropriate levels of housing, transport, infrastructure, human services and community facilities across all of our communities.
- Alignment of Council Plans.
- Alignment with State and Regional Plans.
- Deliver facilities and services to meet community needs now and in the future.

### FINANCIAL/RESOURCE IMPLICATIONS

Council as the owner of Lot 21 DP 1044009 land would be able to profit from the selling or developing of the proposed urban zoned land should the rezoning be supported by the Minister for Planning.

Regardless of ownership, development of the land will generate Section 94 payments per allotment created to contribute to capital works itemised in the Salamander Bay Section 94 Plan. As well, developer agreement/s may be arranged to contribute to specific capital works identified through the rezoning process that are not included in the current Section 94 Contributions Plan.

This rezoning request has not been identified in Community Planning's work program. It is acknowledged that the recommendations of this report may require substantial resources to manage the rezoning process. To this end Community Planning will be negotiating with the developer the appointment of a strategic planner to manage the rezoning process and achieve the recommendations of this report.

#### LEGAL AND POLICY IMPLICATIONS

#### Local Government Act 1993

Council did not seek Operational classification of the land at the time that the Local Government Act 1993 was enacted. This omission occurred even though the land had been mined through 1971 -77 and options for urban development was actively sought since 1990. This report seeks Council's recommendation to pursue the reclassification process under the Local Government Act 1993 to reclassify from Community to Operational the portion of the land proposed to be developed. The remainder of the site shall remain as Community land.

#### Port Stephens Local Environmental Plan 2000

The proposal requires LEP 2000 to be amended to permit residential development on part of the subject site. It is considered that General Residential Zone R1 under the Standard Instrument would be a suitable residential zone for the proposed development as it permits dwellings, group homes and Residential flat buildings and Seniors housing. The development standards to apply to General Residential Zone R1 will be determined through the process of Council adopting the Standard Instrument in the next 3 to 5 years.

The two residential zones currently in LEP 2000 are not suitable for the site or the proposal. Residential 2(a) permits only 1 to 2 storey dwellings generally at 300 square metres per dwelling and Residential 2(c) permits 15m (5 storey) high buildings at 150 square metres per dwelling. The proximity to Salamander Town Centre and the surrounding single storey dwellings site requires a residential zone between the development standards of 2(a) and 2(c).

Currently, clause 52 of LEP 2000 permits development of 251 dwellings and 600 square metres of commercial or retail floor space on the subject site. This potential development is under the proviso that suitable analysis concludes that adverse impacts will not affect the hydrological regime and the ecology of the site. It is the intention of this draft LEP to remove this clause as it will be redundant should the proposed rezoning be made.

#### Draft Community Settlement and Infrastructure Strategy 2006 (CSIS)

The Sustainability Principles and Criteria in the draft Strategy provide an evaluation framework to consider rezoning requests. If Council resolves to prepare a draft LEP consistent with the recommendations of this report, this will allow Community Planning to consult and negotiate with the proponent and other affected landowners to achieve a land use zoning and Development Control Plan that are consistent with the sustainability principles and criteria of the draft Strategy.

#### Lower Hunter Regional Strategy 2006

The subject site and the locality of Salamander Bay are not identified in the Lower Hunter Regional Strategy 2006 as future urban development land. However, the Strategy provides opportunity for innovative development proposals outside the regional strategy process to be considered. Sustainability Criteria provide the framework for such proposals to be considered. In principle, the proposal as recommended in this report meets the objectives of; infrastructure provision, access, housing diversity, avoidance of risk (from flood, land slip etc), demand on natural resources (water, energy) and quality and equity in services (health, education etc). However, further justification and a more sustainable approach are required

to satisfy the 'improve or maintain' objective of Environment Protection using vegetation offset mechanisms.

#### Port Stephens Council Comprehensive Koala Plan of Management

The proposal requires the removal of approximately 5.3 hectares of Preferred Koala Habitat. Under Appendix 2, Performance Criteria for Rezoning Requests of the CKPoM, Council needs to be satisfied that a rezoning;

a) Does not result in development within areas of Preferred Koala Habitat or defined Habitat Buffers;

However the CKPoM also requires Council to take into consideration the likely impacts of the development made possible by the rezoning including environmental impacts on both the natural and built environment, and social and economic impacts on the locality. In this instance and in conjunction with a biodiversity offset package to be prepared by the proponent during the rezoning process, the social and economic benefits of increased population in proximity to Salamander "town centre" and associated community facilities may justify the loss of 5.3 hectares of preferred koala habitat.

State Environmental Planning Policy – (Major Projects) 2005 and State Environmental Planning Policy 71 – Coastal Protection (SEPP 71)

As the proposal requires the subdivision of more than 25 lots within the Coastal Zone, certain prerequisites are required at the development application stage. SEPP (Major Projects) 2005 identifies the development as a 'specified site' and therefore approval of a development application from the Minister for Planning is required. SEPP 71 requires the Minister of Planning to adopt a master plan prior to consent being granted.

These prerequisites are not required at the rezoning stage but it is should be noted that they will be required when a development application is lodged.

#### Planning circulars 2005 – 06

Planning Circular PS 06-013 – Local Environmental Study

The LEP Review Panel was formulated to ensure that spot rezonings are thoroughly justified in a strategic context. A Local Environmental Study (LES) provides an objective analysis of the capability and suitability of the land for the proposed development. A LES may be required to justify any inconsistencies with 117 directions (see below). Material already prepared by the proponent may provide substantial input into a formal LES.

Whilst the Director-General ultimately decides whether a LES is required based on the LEP Review Panels recommendation, Council is required under Section 54 to notify the Director General whether an LES is necessary. Given the significance and complexity of issues raised in the recommendations to this report, it is recommended that an LES be prepared to support and justify the draft LEP.

Planning Circular PS 06-015 Spot rezoning

The Spot rezoning Planning Circular was devised to apply more rigour to the large number of spot rezonings that the LEP Review Panel receives. The Circular sets out the criteria to be

considered when requesting an LEP Amendment for a spot rezoning. The circular asks if the spot rezoning is;

- Identified in a regional strategy direction
- Consistent with Section 117 directions
- Compatible with surrounding land uses
- Create a precedent or change the expectations of other landholders

If Council resolves to prepare a draft LEP in accordance with the recommendations of this report, it is considered that this could address many of the concerns raised in this circular.

#### Section 117 ministerial directions 2005 (under EP&A Act 1979)

Direction No. 6 - Coastal Protection

A draft LEP shall demonstrate consistency with the Coastal Design Guidelines 2003 (see below). The proposal is inconsistent in its current form as it exceeds 3 storeys in a suburban centre... However an inconsistency may be justified through an LES.

Direction No. 13 – Environmental Protection Zones

A draft LEP shall not remove existing zones of land for environment protection or remove existing provisions relating to subdivision in Environmental Protection Zones. Land Use Planning proposes that the 7(f3) Environment Protection (Urban Conservation) lots adjoining the subject site be considered strategically to permit future closer settlement in view of the proximity of Salamander Town Centre. However an inconsistency may be justified through an LES.

#### Direction No. 26 – Special Area Zones and Recreation

A draft LEP shall not alter or reduce existing reservations or zonings of land for public open space without the approval of the Director-General. The majority of the proposed developable area is zoned 6(c) Special Recreation Zone. The purpose of this zone is to provide for recreational purposes and to enable public or private operated recreational development in suitable accessible localities. The zone and the community classification of the land make the approval of the Director-General a prerequisite.

If Council resolves to prepare a draft LEP in accordance with the recommendations of this report including the preparation of an LES, any inconsistencies with Section 117 Direction may be justified.

Coastal Design Guidelines for NSW 2003

The proposal, in most part, is consistent with the Coastal Design Guidelines apart from that component that proposed buildings greater than 3 storeys in a suburban centre. It is the view of Land Use Planning that the urban design attributes of the proposal can be reconsidered so that the proposal will be consistent.

#### Australian Business Excellence Framework

This aligns with the following ABEF Principles.

1) Clear direction allows organisational alignment and a focus on the achievement of goals

- 2) Mutually agreed plans translate organisational direction into actions
- 8) Effective use of facts, data and knowledge leads to improved decisions
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders
- 12) Senior leadership's constant role-modelling of these principles, and creating a supportive environment in which to live these principles will help the enterprise and its people to reach their full potential

#### SUSTAINABILITY IMPLICATIONS

#### SOCIAL IMPLICATIONS

#### Social/community benefits

The social and community impacts of proposed population increase within 1km of Salamander Town Centre to those intended to live there and to those operating commercial enterprises are beneficial. From a community facility viewpoint, the proximity to a public library, significant sporting fields, public swimming pool, K -12 community high school, private secondary and primary schools and various child care and pre-school facilities offers a great deal of opportunity and support. Co-location of diverse housing with these facilities is also consistent with Council's sustainability principles.

The proponent's preferred Option 2 proposes;

- 120 bed aged care facility
- 50 two storey town houses
- 480 units in 10 x 3-5 storey apartment buildings

At 2.6 persons per dwelling = 1378 people + 120 in aged care (+ 10 staff)

Total 1508 people.

#### Transport implications

The rezoning submission suggests that Salamander Way currently carries 7,221 vehicles per day and that the proposed Option 2 would result in approximately a 25% increase in traffic on Salamander Way. The proponent concedes that this is a 'notable' increase but is mitigated by the wide road reserve and good sight distances on Salamander Way.

The proposed western intersection with Salamander Way is duplicated with Horizons Drive on the adjacent property. It is recommended that a connection be sought with Horizons Drive to enable safer access and for more efficient use of infrastructure. A detailed traffic study is needed to indicate appropriate measures at intersections. Improved connections with Salamander Way would be achieved by making a third connection with Salamander Way between the two proposed intersections which currently lie 570 metres apart. Council's standard street block length is 160 metres (Port Stephens DCP 2006).

#### Heritage implications

Field surveys were carried out in 2001 by representatives from ERM Australia and Worimi Local Aboriginal Land Council across the majority of the site. Another field survey, over the same territory, was carried out by representatives of the Maaiangal Aboriginal Heritage

Cooperative. No Aboriginal archaeological material or scar trees were found over the area disturbed by mining. However, the north – western corner identified in the report as wetland C, is undisturbed bushland and would require further field survey should Council resolve to pursue this LEP.

#### Visual implications

The immediate locality is characterised by single storey dwellings on large allotments along Salamander Way. Situating 4-5 storey apartment buildings adjacent to this residential type is incongruous. Option 2 proposes a narrow buffer of vegetation between the dwellings on Salamander Way and a proposed two rows of two-storey terraces. Behind these terraces are ten 3-5 storey apartment buildings that do not define public streets or open space. These apartment buildings are accessed by a perimeter road and a number of winding, internal footpaths. A better community outcome can be achieved by revisiting this design and a quality neighbourhood achieved through adhering to basic urban design principles. The adverse visual impacts of this proposal are in part due to proposing 2(c) Residential Zone. Resolution of design issues will assist in meeting the requirements of SEPP 71 and Coastal Design Guidelines for NSW 2003.

#### ECONOMIC IMPLICATIONS

The proposal will have positive impacts on the ratio of demand and supply of residential land and housing stock in the region and specifically, the Tomaree Peninsula. The proponents reference Analysis of Projected Demand & Supply of Land in the Lower Hunter 2004-5 to 2013-14 prepared by Progress Economics on behalf of the Urban Development Institute of Australia (UDIA) which provides insight into the market's current condition. The document describes the Lower Hunter Region as growing due to a healthy local economy and as a result of migration of retirees from Sydney; the later is particularly true of the Tomaree Peninsula. The document also states that Port Stephens supplies only 12.4 % of the total amount of the total residential land throughout the Region.

Demand for residential land on the Tomaree Peninsula is high due to the lifestyle choices available and access to community and commercial infrastructure. The proposed infill development in adjacent to a suburban centre, contributes somewhat to the short fall in residential land.

The proposed increased population (1300 people) will have a positive economic affect on spending at Salamander Town Centre. This will have a resultant positive affect on local employment based on average household income expenditure locally.

As recommended in this report, the dwellings adjoining the subject site will be investigated for potential zone change to permit closer settlement. This section of Salamander Way is characterised by the presence of home businesses and home employment activities. A likely determining factor of this is the relatively high traffic numbers on this road. Through this proposed LEP Amendment it is recommended that controls be devised to encourage coordinated, formal growth of home employment activities in this area.

#### Infrastructure

It is intended through Section 62 consultation with Government agencies, advice on the available capacity and necessary upgrades of the following service providers;

Anna Bay Water Treatment Works

- Hunter Water
- RTA
- Telstra
- Energy Australia
- NSW Police, Ambulance and Fire Brigade
- NSW Rural Fire Service

#### **ENVIRONMENTAL IMPLICATIONS** Topography, hydrology and soils

The majority of the site is made up of sand dunes after mining and dredging had occurred. The site, in general, ranges from 4 to 30m AHD. The site is characterised by a ridgeline that meanders from east to west with an average gradient of 15%. The soils comprise of Shoal Bay sands and Shoal Bay Swamp peat associated with the wetlands. Testing in 1995 has concluded that the site is not contaminated by radioactive materials as a result of sand mining.

Groundwater movement and surface run-off fall towards the surrounding wetlands to the south, east and north of the site. Groundwater levels range between 5 metres to 3 metres below natural ground level. Hunter Water has designated the area as Area A2: Tomaree Groundwater – High Vulnerability. Therefore stringent water sensitive urban design would need to be incorporated into the design and construction of urban development on the site.

Existing urban development in the area directs stormwater from Salamander Town Centre and the surrounding residential area through Sandpiper reserve into the SEPP 14 wetland to the south of the subject site which eventual flows into Mambo wetland.

Much of the central and eastern portion of the site is flood affected as the water spills over from Salamander bay and Mambo wetland. The existing Flood Level at the culvert beneath Salamander Way is 4.2 metres AHD.I It is proposed that a Flood Planning Level of 4.8 metres AHD be employed.

#### Ecological assessment Vegetation communities

Classification of vegetation communities on the site is based on LHCCREMS mapping (2000) and survey work carried out by the proponent. The following three vegetation communities were identified;

- Disturbed heathland community
  - Smooth-barked apple
  - o Blackbutt
  - Swamp mahogany preferred koala feed tree
  - Scribbly gum
  - Drooping red gum (up to14m high
- Coastal wetland community
  - o tall sedgeland
  - o broad-leaved paperbark
  - o various callistemon species
- Open woodland with swamp forest fringing wetlands community

- o Smooth-barked apple
- o Blackbutt
- o Swamp mahogany
- Broad-leaved paperbark

It is significant that the far eastern area of the site, between two SEPP 14 wetlands, contains an estimated 20 Drooping red gums (eucalyptus parramattensis subsp. decadnes) listed as a vulnerable species under Threatened Species Conservation Act 1995 & Environment Protection and Biodiversity Conservation Act 1999. This species of Eucalypt is also a preferred koala feed tree listed under the Comprehensive Koala Plan of Management.

The total Preferred Koala Habitat amounts to 25.7 ha and contains a combination of Swampy Mahogany, Brushbox and Drooping red gum. The proposal requires 5.3ha be removed and 20.4 ha is retained. The majority of the vulnerable Drooping red gum is in the area to be retained. It is also proposed to rehabilitate 21.8ha of disturbed heathland.

#### Fauna assessment

The site plays a significant and valuable role as a corridor linking surrounding areas across Salamander Way to Mambo wetlands to the north.

The proponent's ecological survey found that the wetlands provide habitat for the threatened Wallum froglet. Forty different bird species were recorded on site including a pair of Latham's snipe in the swamp forest (listed as migratory in the EPBC Act 1995). The presence of smaller hollows in trees suggests habitat for microchiroteran bats but none were recorded. A number of Eastern grey kangaroos and the common ringtail possum were also recorded on site.

Council's Environmental Services Department stated that the method used by the proponent to record koalas did not comply with the requirements of Port Stephens Council Comprehensive Koala Plan of Management. The Koala Spot Assessment Method (KSAM) is the correct method but was only used in the eastern part of the site and not in the area that is proposed to be cleared for development. The KSA method is required to be used in the areas to be developed and in the buffer areas. Koala faecal pellets were found in the Preferred Koala Habitat and buffer areas so they are present on the site and there is more survey work to be carried out around the wetland c area.

#### Endangered Ecological Communities (EEC)

The proponent's submission states that the vegetation on site did not match the scientific description of Swamp sclerophyll forest on coastal floodplains of the NSW North Coast, Sydney basin and south-east corner bioregions or the freshwater wetlands on coastal floodplains of the NSW North Coast, Sydney basin and south-east corner bioregions and therefore not an EEC.

However, the consultant found that the Sydney freshwater wetlands is an EEC and corresponds to the SEPP 14 wetlands on site. Therefore, it is imperative that if part of the site is zoned for urban development, then water sensitive urban design measures are incorporated into the design and construction of urban development.

#### Threatened Species Conservation Act 1995 (TSC)

Although not required for a rezoning request, the eight part test was completed and found that the proposed development was not likely to have a significant impact on threatened species. The test also concluded that the loss of habitat was compensated by areas set aside for conservation and revegetation. The Wallum froglet is listed as a threatened species under the TSC Act 1995.

#### Native Vegetation Act 2003

Where there is significant impact on a threatened species or critical habitat Council must consult with the Director-General of Department of Environment Conservation (DEC). In this instance it is considered that there the rezoning request does not pose a significant impact on threatened species or critical habitat. Should Council resolve to support the recommendations of this report, Section 62 consultation with DEC and the Catchment Management Authority will determine if Council's conclusion is supported.

#### Environment Protection Biodiversity Conservation Act 1999 (EPBC)

Assessment under the EPBC found that there would be no significant impact on matters of national environmental importance and therefore approval of the Commonwealth Minister for the Environment is not required.

Drooping red gum is listed as vulnerable under EPBC.

#### Habitat loss

The proposal will result in 15.7 ha of vegetation loss. The total loss of vegetation consists of 5.5 ha of swamp forest and 10.2 ha of disturbed woodland. The total area to be conserved is 71.6ha consisting of the three vegetation communities listed.

Fragmentation of vegetation communities would occur in the western portion of the site around the proposed western access point and retention basin is located. This patch of undisturbed swamp forest consisting of preferred koala feed trees is already isolated by Salamander Way, Horizons Golf Course and by the proposed development. This report recommends that this isolated patch of vegetation be included in the proposed development footprint based on the social and economic advantages of connecting any future neighbourhoods with existing.

#### Bushfire Prone Land

The site is identified as bush fire prone on the Bushfire Prone Land Map and as such requires assessment under NSW Rural Fires Act 1997. Asset protection zones (APZ), road design and building construction level are employed to ameliorate against the threat of bushfire attack. The proposed Seniors living component of the development is identified as a Special Fire Protection Purpose under the Act and in this instance a 40 metre APZ is required. All other residential development would require a 20 to 35 metre APZ. A perimeter road design will act as an APZ and provide adequate service for fire fighting vehicles to the proposed residential neighbourhoods.

The discrepancies and gaps identified in the proponent's submission can be addressed in the Local Environmental Study that this report recommends that Council undertake.

#### CONSULTATION

Internal experts within Council in flooding and drainage, ecology, transport, community planning were consulted and their comments were considered in this report.

The proponent consulted with the surrounding residents, and key government and nongovernment agencies. Comment from these sources is included in the Rezoning Report.

#### OPTIONS

The partial urban development of the subject land is supported but there are challenging balances to be met in the Local Environmental Study between urban development impacts and opportunities and the ecological sensitivities of the surrounding lands.

- 1) Adopt the recommendations of this report.
- 2) Not adopt the recommendations of this report and retain Clause 52 of Port Stephens LEP 2000 that permits development of 251 dwellings and 600 square metres of commercial or retail floor space if suitable analysis concludes that adverse impacts do not occur on the hydrological regime and the ecology of the site.

#### ATTACHMENTS

1) Map of subject site indicating proposed and existing zoning.

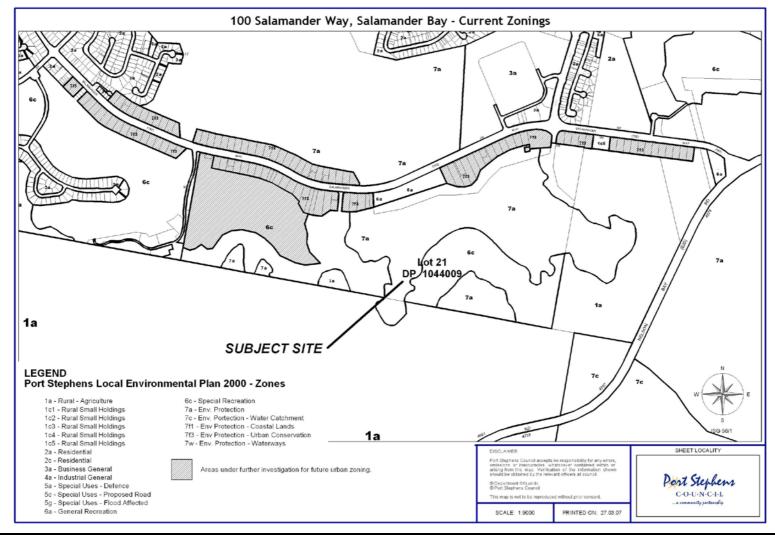
#### **COUNCILLORS ROOM**

1) Rezoning Report prepared by ERM Australia dated March 2006

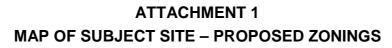
#### TABLED DOCUMENTS

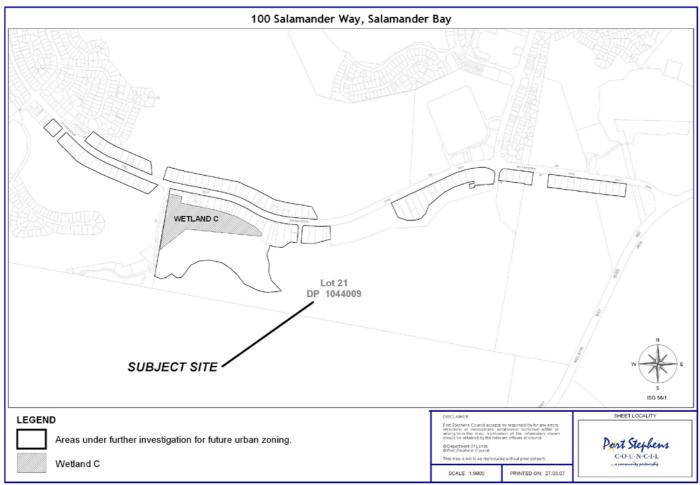
Nil





PORT STEPHENS COUNCIL





#### ITEM NO. 2

#### FILE NO:PSC2006-0046

# DRAFT PORT STEPHENS COMMUNITY SETTLEMENT AND INFRASTRUCTURE STRATEGY

#### AUTHOR: JENNY SMITH- MANAGER COMMUNITY PLANNING

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#### **RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the recommended revisions to the Draft Port Stephens Community Settlement and Infrastructure Strategy 2007 made in response to submissions received during public exhibition;
- 2) Adopt the Port Stephens Community Settlement and Infrastructure Strategy 2007, and
- 3) Forward the Strategy to the Department of Planning requesting that it be approved by the Director General of Planning as a strategy to guide the preparation and consideration of draft LEPs for urban development between Council and the Department of Planning.

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#### **OPERATIONS COMMITTEE MEETING – 10 April 2007**

#### **RECOMMENDATION:**

- 1. Endorse the recommended revisions to the draft port stephens community settlement and infrastructure strategy 2007 made in response to submissions received during public exhibition;
- 2. Adopt the Port Stephens Community Settlement and Infrastructure Strategy 2007, and
- 3. Forward the strategy to the Department of Planning requesting that it be approved by the director general of planning as a strategy to guide the preparation and consideration of draft leps for urban development between council and the department of planning, and
- 4. That council, in considering item2, community settlement and infrastructure strategy, not support the proposal for rural residential rezoning at wallalong by the mccloy property group and reconsider the proposal when council and state government decision-making has been finalised on the north raymond terrace/kings hill and medowie release areas.

#### Tabled Document

Draft Port Stephens Community Settlement and Infrastructure Strategy 2007 – Managing urban growth & building communities.

#### ORDINARY MEETING OF COUNCIL – 24 April 2007

RESOLUTION:		
102	Councillor Nell	That the Operations Committee
	Councillor Robinson	Recommendation be adopted.

The purpose of this report is to review submissions made in response to exhibition of the draft Port Stephens Community Settlement and Infrastructure Strategy and seek Council's endorsement of the Strategy as the policy to guide urban land use planning across the Port Stephens Local Government Area.

#### BACKGROUND

The Strategy was prepared over a period of some 12 months beginning in late 2005. A Project Reference Group consisting of representatives from the community, Urban Development Institute of Australia, Property Council of Australia, Department of Planning and senior officers from Council's Sustainable Planning Group was formed to support the preparation of the draft Strategy.

Council was briefed on the draft Strategy twice before resolving to place it on public exhibition during late 2006. Members of the Project Reference Group were invited to attend the briefing.

The public exhibition occurred for six weeks from 25<sup>th</sup> October to 5<sup>th</sup> December 2006. The draft Strategy was jointly exhibited with and followed the same process as the draft Port Stephens Development Control Plan 2007 that was adopted by Council in March 2007.

#### LINKS TO CORPORATE PLANS

The sustainability principles and implementation criteria of the Strategy emphasise the integration of issues of location, size and design of development, infrastructure and ability for council to service and maintain infrastructure as key issues that affect the entire council organisation.

Because it influences a large number of Council's Operation Plans, it is proposed to place the Strategy alongside the Council Plan as an organisational document within Council's Integrated Planning Framework. The Strategy addresses the strategic and future directions of Council's Plan 2005-2008 in particular:

- Providing an integrated policy framework.
- Integrating planning for facilities and services.
- Integrating local and regional strategies.
- Creating safe communities.
- Preserving and enhancing our heritage, biodiversity, and environmental health.
- Maintaining and improving the quality of environment and recreation facilities.
- Ecologically sustainable development.
- Protecting, restoring and managing biodiversity through planning
- Research and implement environmental best practice.
- Water sensitive urban design.
- Match and fund infrastructure development with economic development.
- Identify the capabilities of the Port Stephens area to sustain growth.

• Promote, plan and guide development to create sustainable communities that conserve and enhance the natural and built environment.

• Ensure that our planning framework provides appropriate levels of housing, transport, infrastructure, human services and community facilities across all of our communities.

• Planning and development processes involve community participation and development outcomes reflect community values.

• Align our policies with our planning framework.

- Alignment of Council Plans with State and Regional Plans.
- Deliver facilities and services to meet community needs now and in the future.

• Manage facilities and services to meet community needs in a way that protects and enhances the environment and community values.

- Ensure Council's forward planning framework for infrastructure matches development.
- Integrated Transport Strategy.

#### FINANCIAL/RESOURCE IMPLICATIONS

A central concern of the Strategy is the importance of short and long term public infrastructure and human services costs to be a key consideration of Council and the state government when considering rezoning requests for urban development in the Port Stephens local government area. To this end, the Strategy requires rezoning requests for urban development to address infrastructure provision and costings both for physical and human services infrastructure and the implications of this in terms of development yield, infrastructure demand and long term rating income for Council to provide, maintain and replace such infrastructure.

Further, the Sustainability Principles and Criteria in the Strategy seek to integrate public infrastructure and human services cost issues against the design requirements for a future sustainable neighbourhoods, villages or towns to achieve more economic, social and environmental sustainability.

Adoption of the Strategy has no immediate financial or resource implications for Council.

#### LEGAL AND POLICY IMPLICATIONS

Since Council resolved to place the draft Strategy on exhibition the State government released the final version of the Lower Hunter Regional Strategy in October 2006 and the draft Hunter Regional Conservation Plan late 2006. The draft Regional Conservation Plan is a partner document to the Regional Strategy.

#### Lower Hunter Regional Strategy

Key differences between the Lower Hunter Regional Strategy (LHRS) and the Draft Community Strategy & Infrastructure Strategy (CS&IS) are:

- 1. The substantial portion of the Port Stephens Local Government Area that is identified for "management for conservation purposes" as reflected in the LHRS.
- 2. The Sustainability Criteria have been turned off for this area to be "managed for conservation purposes", i.e. the Watagan, Stockton and Wallarah green corridors. These corridors are also recommended and elaborated upon in the draft Regional Conservation Plan that is a partner document to the LHRS.
- 3. Raymond Terrace is nominated as a major regional centre with projected 1600 jobs and 300 dwellings by 2031.
- 4. Specialist centres are nominated in the LHRS. The airport with 3000 jobs and Nelson Bay with 1500 jobs and 1200 dwellings by 2031.

5. The LHRS projects 7,200 dwellings in the release areas are at 2.6 persons per household would provide for 18,700 population. The Kings Hill Draft Plan and Draft Medowie Strategy provide for capacities of up to 25,000 population.

The latter document has been amended to include the biodiversity conservation priorities for the region. The Community Settlement and Infrastructure Strategy has been updated and is now consistent with the Regional Strategy.

The Strategy is not a legal document required by legislation but is a policy document, which, upon approval by the Director General of the Department of Planning, will be the basis for considering future Local Environmental Plans in Port Stephens. The Strategy is a key Council policy to guide where new urban development should occur in identified areas and identify how social, economic and environmental factors can be integrated into the planning and design of these areas to achieve more sustainable development.

#### Australian Business Excellence Framework

This aligns with the following ABEF Principles.

1) Clear direction allows organisational alignment and a focus on the achievement of goals;

2) Mutually agreed plans translate organisational direction into actions;

4) to improve the outcome, improve the system and its associated processes;

6) Continual improvement and innovation depend on continual learning;

7) All people work IN a system; outcomes are improved when people work ON the system

8) Effective use of facts, data and knowledge leads to improved decisions;

9) All systems and processes exhibit variability, which impacts on predictability and performance;

10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society;

11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders;

### SUSTAINABILITY IMPLICATIONS

The Strategy identifies sites to accommodate future green field development and proposes an evaluation framework for planning, designing and considering rezoning requests that integrates social, economic and environmental factors to achieve greater levels of sustainability. The draft Strategy is consistent with, and incorporates the Direction Statements from, Council's Sustainability Policy.

The Strategy is based on integrating sustainability issues and therefore, has significant environmental, economic and social implications for future development in the Port Stephens Local Government Area that involves the rezoning of land for urban development purposes.

#### CONSULTATION

The draft Strategy was prepared in consultation with the Project Reference Group (PRG). The PRG consisted of three councillors, a community representative, a representative from the Property Council of Australia and from the Urban Development Institute of Australia and representatives from Council's Sustainable Planning Group.

Public exhibition of the draft Settlement Strategy was undertaken as follows:

- Public exhibition for 6 weeks with copies available at Council administration building, Raymond Terrace, Tomaree and Mobile Libraries and on Council's website inviting written submissions from the public;
- 2) Formal consultation with Department of Planning; Department of State and Regional Development; Department of Environment and Conservation; Catchment Management Authority; Department of Education and Training; Ministry of Transport; Department of Housing; Tourism NSW; Rural Fire Service; NSW Fire Brigade; Department of Natural Resources; Hunter Water Corporation, Newcastle, Maitland, Dungog and Great Lakes Councils, Energy Australia; Port Stephens Marine Park Authority; Department of Energy, Utilities and Sustainability; and Landcom.
- 3) A half day summit for members of the development industry and government agencies to ensure that the principles and guidelines of the Draft Strategy are clear and achievable.

#### Submissions

Twenty submissions were received. Comments made and the responses have been summarised in **Attachment 1**.

Nine submissions were received from State agencies. Seven submissions were made by developers two of which were from the same company. One submission was made by a resident and three were made from community groups of which two were made by the same group.

Several submissions indicated strong support for Council's initiative of integrating social, economic and environmental issues into the strategy and developing design criteria to guide future urban development in Port Stephens. These included Landcom and EcoNetwork. No objections to the draft Strategy were received.

The majority of submissions suggested changes to be made to the draft document. These suggested changes generally related to clarification of matters, further research or updating of document in relation to the release of other planning initiatives, e.g. draft Regional Conservation Plan and the Port Stephens Great Lakes Marine Park.

One submission made comment about modifying or removing Part F Sustainability Principles and Criteria and Part G Implementation to support a proposed rezoning at Taylors Beach. Another submission indicated that the projected yield for urban development for all urban release areas identified in the draft Strategy was unlikely to be achieved for a variety of reasons and that this justified the inclusion of land north of Medowie into the draft Strategy.

The draft Strategy was presented to the Industry Summit held at Council on the 24<sup>th</sup> November 2006. No comments or suggestions made at the Summit that required significant amendments to the draft Strategy.

# Amendments to draft Settlement Strategy in response to Submissions and Public Exhibition

The draft Strategy has been re-edited throughout to improve document structure and content and to update against state government policy initiatives that have occurred since the draft Strategy was first submitted to Council. **Executive Summary** – no change.

Part A Introduction – no change.

#### Part B Background

Regional Strategy revised population growth and projected dwelling numbers updated. New section B3 added concerning the release of the draft Regional Conservation Plan. Photographs deleted as they do not assist the reader and are superfluous.

#### Part C Context

- Revision of Section C2.1 following further research. Photos and text added to illustrate the importance of transport technology and accessibility and how this has lead to the current settlement structure of the LGA.
- All maps enlarged to A3 and refined to improve interpretation.
- Section C5.1 map and text added relating to Port Stephens/Great Lakes Marine Park
- Section C5.2 text added indicating that Council's Aircraft Noise Policy is intended to be amended and transferred into the now adopted Port Stephens Development Control Plan 2007.
- Figure 17 concerning prime agricultural land in the LGA caption amended to indicate that map has been prepared at a large scale and therefore, there maybe some discrepancies between the map and detailed site investigations.
- Figure relating to biodiversity corridors has been deleted as mapping from the draft Regional Conservation Plan that is incorporated into the Regional Strategy assists in defining biodiversity corridors.

#### Part D Strategic Directions

- Data and map from released Regional Strategy incorporated into Figures 21 and 22 to be consistent with the Regional Strategy.
- Table 10 reference to Medowie release area requiring further noise investigations deleted consistent with released Regional Strategy.
  - timing dates amended to reflect lead times for rezoning and development application process.
  - yield for Medowie amended to reflect that established by the draft Medowie Strategy.
  - Average persons per dwelling amended to reflect likely demographics for each release area.
  - total yield and population increase amended accordingly.

#### Part E Local Area Strategies

Figure 24 Medowie – reference to investigation area at Wade Close deleted as investigations have concluded that further development above that currently permitted in Port Stephens LEP 2000 would be inappropriate.

Figure 25 Karuah – reference to land on the north side of Karuah River deleted as this lies outside of Port Stephens Local Government Area.

Graphic format in Figure 25 modified to be consistent with other Local Area Strategy maps. Section E3.1 added in response to submission from Hunter Water

Section E3.2 added to reflect discussions with and advice from Great Lakes Shire Council.

#### Part F Sustainability Principles

- Part F1 Principle 7 transferred from Part H Implementation
- Part FI Principle 9 text added in response to RTA suggestions.
- Part F2 Principle 5 added in response to Hunter Water suggestions
- Part F3 photos and graphics inserted to illustrate examples and concepts promoted by the Strategy. Reference made to Landcom's *Street Design Guidelines for Landcom Projects* (2006).
- Part F4 Principle 5 and 6 inserted in response to suggestions from Department of Natural Resources.
- Part F4 Principle 8 text added referring to Clause 51 of Port Stephens LEP 2000.
- Part F4 Principle 13 inserted in response to suggestions by Rural Fire Service.
- Part F6 updated to be consistent with Lower Hunter Regional Strategy.

#### Part G Implementation

- Part G Criterion 2 text added stating that variations to the staging and implementation of the draft Strategy may be considered by Council if it can be demonstrated that it is in the public interest to do so.
- Part G Criterion 3 added requiring structure plans to be prepared for rezoning proposals in urban release areas identified in the draft Strategy. This means that all rezoning proposals require a structure plan that illustrates how the proposal works strategically and within the context of the site itself.
- Part G Criterion 5 wetland and riparian buffers areas to be excluded from the nominated 50 hectares minimum area for isolated urban development proposals in response to suggestions from Department of Natural Resources.
- Part G Criterion 7 all rezoning proposals for land not strategically identified for urban development will be supported by a Local Environmental Study. Clarification in response to Submission 2.
- Part G Criterion 9 inserted in response to suggestions from RTA.
- Part G Criterion 10 ratio of attached and detached dwellings amended in response to Submission 2 and to be consistent with the Lower Hunter Regional Strategy.
- Figure 45 amended to be consistent with the Lower Hunter Regional Strategy that does not allow the Sustainability Criteria to be applied to large areas of the eastern half of the LGA.

#### Part I Appendices

- Appendix 1 Port Stephens Centres Hierarchy; no change
- Appendix 2 Future Trends and Issues A Discussion text inserted in Section 10 relating to global warming and sea level rise.
- Appendix 3 Examples of Structure Planning and Development inserted to illustrate how structure planning in Australia at sub regional, district and local levels are being developed and implemented in terms of policy and construction.

6. The total population and the breakdown amongst the planning districts contained in the CSIS, i.e. the Table 6 on page 20 may be an issue with the State Department of Planning.

### OPTIONS

- 1) Adopt the Strategy as recommended.
- 2) Not adopt the Strategy

#### ATTACHMENTS

- 1): Summary of Submissions
- 2) Lower Hunter Regional Strategy Map
- 3) The Draft Port Stephens Settlement Strategy (Note: document supplied under separate cover)

### **COUNCILLORS ROOM**

Nil.

TABLED DOCUMENTS

Nil.

## ATTACHMENT 1

# SUMMARY OF SUBMISSIONS RECEIVED DURING THE PUBLIC EXHIBITION OF THE DRAFT PORT STEPHENS SETTLEMENT STRATEGY.

Submission 1 - 11/06 - Marine Parks Autho	ority
Issue	Response
Section C5.1 Protected Areas and C5.3 Ecological Challenges/constraints needs to include reference to Port Stephens – Great Lakes Marine Park.	Text amended. Protected areas relates terrestrial environments and associated development pressures and not to aquatic environments. Part F4 Principle 4 identifies need for urban development to incorporate Water Sensitive Urban Design to protect water quality in the Port and other receiving waters.
igure 7 does not include Marine Park. Marine park abitat map provided.	Agreed – map amended and marine habitat map inserted.
Submission 2 - 27/11/06 Walker Corporation	n – submission made to support proposal to seek rezoning of land at Taylors
Beach.	
. Principles and criteria in Part F are "generic" ideas ather than matters that apply to the Port Stephens ontext – this section should be contained in an appendix.	Principles are generic and based on desired outcomes. But their application is required to suit context. The application of principles needs to respond to context.
. Principles in F2 Infrastructure could conflict with ouncil's responsibilities for Section 94	No conflict as rezoning proposals can have specific S94 plans and/or developer agreements.
Principles in F2 Infrastructure should be condensed not one principle.	Strategy identifies the types of infrastructure required whilst S.94 and developer agreements are the legal mechanisms necessary to achieve implementation.
5. Section G3 Criterion 2 should be removed as it will have negative impacts on market dynamics, competition affordability.	Table 10 has dual purpose of identifying priorities for urban development and strategic planning priorities for Council in terms of staff time and commitment. Release areas have long lead in times, are at different planning stages and have long completion times. All release areas begin within 5 years and hence address competition, choice and affordability issues.
•. Reword first paragraph to Section G3 to state that Council will consider rezoning proposals on land not dentified in the strategy.	Under the Environmental Planning and Assessment Act, Council has discretionary powers to consider rezoning requests.
. Reword Section G3 Criterion 4 to be more generic.	Noted.
elease areas will require an LES.	Agreed. Part G Criterion 7 reworded to require that all rezoning requests for land not identified in the Strategy for urban development to be supported by a Local Environmental Strategy.

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Issue	Response
7. Reword Section G3 Criterion 6 to state that urban design to be part of LES.	Noted.
3. Reword Section G3 Criterion 7 to provide more lexibility for considering urban development proposals.	One of the key messages of the strategy is linking the location of urban development with transport network to give effect to Council's Sustainability Policy and to Integrating Land Use and Transport policy package. Suggested rewording would be contrary to policy directions.
9. Reword G3 Criterion 8. Delete requirement for urban development to have a mix of 25% attached & 75%	Noted. Criterion has been amended to be consistent with the Regional Strategy and requiring greater mix of housing type to match demographic mix and more diverse housing needs.
10. Delete Section G3 Criterion 9 as is covered elsewhere in Strategy.	Criterion retained but reference to LES requirements deleted as covered under former Criterion 5 now Criterion 7.
11. Delete Section G3 Criterion 10 as it is too prescriptive.	As indicated in Figure 24, the transect is a tool to guide the design of development proposals. It is not prescriptive. Rezoning proposals need to respond to site and context and create environments guided by the transect.
12. Reword Section G3 Criterion 11 to focus on the mportance of the natural environment.	Noted. Strategy is about jointly considering environmental, social and economic issues and not considering development proposals on a single issue basis.
<ol> <li>Delete Section G3 Criterion 12 as it is already addressed in Recommendation 8</li> </ol>	Recommendation does not acknowledge that locating urban development on a transport corridor can further improve the movement network and the movement economy if such development is located on transport corridor junctions.
14. Reword Section G3 Criterion 13 as Section 94 and developer agreements address infrastructure costs to council.	Section 94 only relates to capital works. Criterion 13 emphasises the need to consider all hard and soft infrastructure required to support communities and ensure that Council is not burdened with long term responsibilities that it cannot financially meet.
15. Subject to recommendation 14, delete Section G3 Criterion 14.	Noted. It is imperative that the long term public financial responsibilities are considered for urban development proposals.
16. Delete Section G3 Criterion 15 as covered by recommendation 8.	Noted. Specific requirement from the RTA.
17. Review contributions plans and prepare a planning agreement policy.	Noted. Contributions plans are being revised. Need to prepare a planning agreement policy is acknowledged. Contributions plans/developer agreements can be prepared for rezoning requests.
	opments Pty Ltd- to support proposition that Lot 51 DP 1069432 Clarence al land and has urban development potential
Draft strategy generally appears to be a well thought out document.	Noted
Document provides flexibility over the life of the strategy which is an important inclusion in any planning document.	Noted

Issue	Response
Based on consultant investigation of Lot 51, DP 1069432 Clarence Town Road, Wallalong by the subject land is marginal grazing land classified as Class 4 and not prime agricultural land.	Noted. Department of Primary Industry – Agriculture are custodians of data that forms basis for Figure 11. Caption to Figure 11 amended to state that large scale mapping may not correlate with the findings of detailed site investigations.
Submission 4 - 25 + 27 /11/07 - Eastern Tor	naree Precinct
Content is excellent where energy and water conservation techniques are included.	Noted
The strategy goes beyond physical limitations for future population and development and is good in that respect but it still falls short.	Noted
1. Para C4.1 – existing densities should be retained on the Tomaree Peninsula.	Noted. In Section C4.1 – Tomaree Peninsula has been added "Under current planning controls infill development is likely to still increase"
2. Figures 15 and 16 should be consistent with Lower Hunter Regional Strategy map.	Agreed. Draft Strategy contained maps from Draft Regional Strategy. Figures have been updated with maps from final version of Regional Strategy.
3. Appropriate PSC figures should recognise the State's plan for "Green corridors"	The State Plan does not contain any spatial data that is applicable to Port Stephens.
4. The State Plan does not include any new railway service to pass through Williamtown. Figure 5 corrected accordingly.	Figure 5 is simply identifying long term transport infrastructure opportunities. Realisation of such opportunities is subject to many factors outside of Council's control.
5. Strategy uses higher yield of dwellings per ha than the 12 ha provided in the regional strategy.	Regional Strategy states average yield of 12dwgs/ha with higher densities possible through careful planning and good design. The design of urban release areas in Port Stephens is seeking this.
6. Does not include climate change data.	Climate and sea level change issues added to Appendix 2. Need for sea level change spatial data recognised and is being pursued by Council.
7. How can we accept a larger population growth of 55,474 extra people who will be scattered as per Figure 17?	Noted. Figure 17 reflects existing Council policy – namely the Rural West and Raymond Terrace Local Area Plans – now renamed Local Area Strategies. The Strategy proposes accommodating future green field development to occur in the form of villages and towns that are more economically, socially and environmentally sustainable.
8. How will the community just north of Raymond Terrace exist? So what gives?	The planning and design of North Raymond Terrace is consistent with the principles of the Strategy. The new town will socially and economically complement Raymond Terrace.
9. Figure 17 – a future neighbourhood at Hinton?	Mapping amended to indicate Hinton as an existing neighbourhood.
11.Plans, maps and diagrams are unreadable.	LGA maps have been enlarged to A3 size and the quality of the image has been improved. Internet users can enlarge images or text to suit their needs.

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Issue	Response
13. Historical introduction statement is completely misleading and incorrect.	Historical context is about the evolution of settlement patterns in the LGA and is derived from recognised sources. Amendments made to reflect further research.
14. Council to raise the poor condition of our roads with the State government	Noted.
15. Speed and load limits on Medowie Road are needed.	Noted
16	
17 -	
18. Condition of Nelson Bay Road and projected increase in population.	Likely that, over time, Nelson Bay Road will become dual carriageway building on improvements made to date. Appendix 2 of the Lower Hunter Regional Strategy identifies construction of dual carriageway from Bobs Farm to Anna Bay by 2015-16.
19. Separate Raymond Terrace and Tomaree retailing text so we understand what you mean.	Noted.
20	
21 Retailing text on Nelson Bay Road is a load of rubbish. Wrong! Wrong! Wrong! Lack of parking, parking meters and holiday gridlock have lead to decline of retailing in Nelson Bay.	Parking issues are only one factor that influence retailing activities. Strategy identifies macro trends influencing the retailing industry and micro trends influencing retailing in Port Stephens including the establishment of Salamander Shopping Centre.
22. C3.5 Future Economic Challenges – need adjusting following contents of this submission.	Future economic challenges was compiled by the Project Reference Group established as part of the review of the 2002 Strategy that has lead to the current Strategy.
23. Detailed research on basic services required.	Strategy identifies need for Infrastructure Study.
24. Reword C4.1 page 22	Noted. Part C identifies current situation only and does not establish policy directions.
25. Future PSC Work Program required.	Council has a Forward Works Program that is continually updated.
26. C4.4 Work accessibility data is useless and misleading.	Data is the result of 2002 Community Survey of Port Stephens residents.
27. PSC to reconsider all related safety issues, talk to each community, list district concerns and support a total push for a better society in PS LGA.	Noted.
28. (i) Correct text (ii) put in place a working group to gain better health facilities (iii) C4.8 Aged housing – para glosses over details	Noted
29. Aged care housing must be grouped between 7&40 dwellings.	Part C Context identifies the current situation only and is not establishing policy direction.

Issue	Response
31. C4.11 Future social challenges – change title.	Noted
32. Suggested changes to Transect in Figure 24.	Transect is a tool only to assist identifying what kind of built environment is desired for considering rezoning requests. Suggested changes not cognisant of the complexities of urban development.
33. F2 Infrastructure – please sort out and advise.	The Strategy applies to the planning and design of rezoning requests for urban development. It provides the framework for considering and preparing Section 94 and Developer Agreements.
34. F3 Quality Places to Live – we want similar dwellings and types in subdivisions as per the existing LEP 2000	Noted.
35. F3 Quality Places to Live "What is a neighbourhood" – numerous design issues.	The Strategy does not propose redevelopment of existing suburban areas to create new neighbourhoods.
36. F6 Sustainability Criteria – comments about transport issues in LGA particularly in industrial areas.	Sustainability Criteria is part of the Lower Hunter Regional Strategy and establishes criteria for the state government to consider rezoning requests by Council for urban development on land outside that identified in the regional strategy.
37. Appendix 1 Centres Hierarchy – requires rewrite to be understood.	Appendix 1 table enlarged and sits on two pages.
38. Appendix 2 page 78 – comment on possible impacts of rising fuel costs and isolated urban development at Karuah, Hinton and Tanilba Bay.	Noted.
39. Ecological footprint – quote useful data that can be used to limit and justify future happenings.	Noted.
40. Appendix 2 page 79 – comments about characteristics of post industrial economy.	Noted.
41. Table 11 in Appendix 2 is demeaning and utter rubbish.	Noted. Strategy identifies some of the forces that are shaping our communities that we should be aware of for policy preparation and decision making.
43. Table 5 should compare other lower Hunter councils.	Derek Kemp's analysis is based on comparing Port Stephens LGA to other LGAs that have similar size, coastal location and proximity to Sydney.
Appendix – overprovision of sporting areas to the detriment of providing other services.	Noted.
Submission 5 - 28/11/06 - Eastern Tomaree	Precinct Committee
Repeats comments made in the 27 <sup>th</sup> November submission.	As per above.

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Submission 6 - 11/12/06 - EcoNetwork – Port Stephens Inc	
Issue	Response
1. Higher densities. Multiple dwellings per lot, of innovative design, improved privacy and amenity with full insulation, and exterior spatial needs.	Strategy contains principles and design elements that facilitate improved outcomes for rezoning requests for urban development.
2. Assertion and monitoring of ESD implementation.	Strategy integrates social, economic and environmental issues underpinned by efficiency in energy and water use.
3. BASIX to be monitored and a Code of Practice to be implemented.	BASIX relates to Development Applications and not to rezoning matters. However, the design principles and criteria in the strategy require that street and lot layout for greenfield development are designed to facilitate energy and water efficiency.
4. Provide an affordable housing program for Port Stephens.	Strategy seeks to increase greater diversity in lot size and dwelling size and hence increase the price ranges and affordability for housing in greenfield release areas.
5. Will Council take advantage of the regional strategy's 2 year trial period?	Regional Strategy has been ratified by the State government and does not have a trial period.
6. Development offsets to be selective, judicious, transparent and subject to strict implementation criteria for lasting outcomes.	Noted. Department of Environment and Conservation will determine adequacy of any offset scheme under recently gazetted biobanking legislation.
7. Develop an alternative plan for on-site vehicle parking in residential neighbourhoods.	The planning and design of development will be assisted by the Transect (Figure 24) to identify what kind of street environment is desired and the treatment of on site and on street car parking.
8. Traffic calming techniques in all main streets and thoroughfares within residential neighbourhoods.	Traffic calming streets is retro fitting existing streets that are designed primarily for motor vehicles. The strategy stresses the importance of designing new streets to be slow vehicular environments to encourage safe walking and cycling.
Submission 7 - 18/12/06 - Urbin Pty Ltd – s Course.	submission made in support of residential proposal around Tanilba Bay Golf
1. Keen for project to achieve connectivity to and integration with the broader Tilligerry Peninsula community and more specifically Tanilba Bay.	Noted
2. Supports proposal to progress a Local Area Strategy and structure plan for the Tilligerry Peninsula and welcome the opportunity to participate in the process to ensure a sustainable and integrated outcome for the golf course/residential development.	Noted.

Submission 8. - 4/12/06 - urbisJHD – on behalf of Buildev requesting that land north of Medowie be identified in the Strategy for urban development.

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Issue	Response
2. Fragmented and incremental nature of infill development provides limited potential for urban infill in Port Stephens for the foreseeable future. The region is anticipated to rely heavily on the release of new urban land to meet the housing targets set out in the regional strategy.	No data is provided to substantiate that infill development in Port Stephens will be limited. Infill development is influenced by land and building values, age and condition of buildings, location factors that generate demand (e.g amenity, proximity to services employment etc), demographics and quantity and quality of supply of land. The Strategy identifies a range of issues that are likely to see the rates of infill continue and to increase in existing urban areas where these influences are positive for redevelopment. The submission fails to acknowledge that the Regional Strategy requires that 60% of new dwellings occur in new release areas and 40% as infill development.
4. Following the principles of supply and demand and economies of scale, release of the site for urban development will greatly increase the level of affordability for housing within Port Stephens.	See response to item 3. It is unclear how development of subject land at Medowie would influence house prices on Tilligerry and Tomaree Peninsulas or Raymond Terrace.
Increased supply of residential land will increase the level of competition and influence pricing levels to a more affordable level.	• The draft Medowie Strategy is proposing the release of a number of areas simultaneously for urban development to encourage competition, product diversity and choice and influence subsequent housing costs.
6. Mapped information in draft Regional Conservation Plan should be referred to rather than the broad and seemingly inaccurate information in Figure 14.	Draft Regional Conservation Plan is mapped at a large scale. However, it would be logical to link the lands to the north of Medowie with the Watagans to Port Stephens wildlife corridor. The Regional Strategy identifies the site as part of the Watagan Stockton green corridor that has high conservation values joining key corridors through the region.
7. Boundary Rd site to be clearly referenced and included in the Settlement Strategy.	The submission does not address any of the sustainability principles and criteria in the Settlement Strategy. Location and accessibility are crucial to achieving a more sustainable settlement patterns. The draft Medowie Strategy has investigated the social, economic, ecological and transport accessibility issues for the Medowie study area including the subject site. The subsequent structure plan proposes concentrating urban growth around the existing town centre to facilitate walking and cycling and growing towards public transport network and Williamtown airport and employment opportunities. The subject site is 3 km from the town centre (with significant rural residential areas in between) and away

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	from public transport routes and employment opportunities.
	Furthermore, the Structure Plan proposes urban growth to occur within the existing development footprint of Medowie and therefore, avoid locating urban development closer to the ANEF contours generated by the Salt Ash Air Weapons Range. The Boundary Road site is just south of the ANEF contours. Its development would place residential dwellings closer to the ANEF contours than any other land proposed by the draft Medowie Strategy.
	The Regional Strategy identifies subject site as part of the Watagan to Port Stephens green corridor.
	There is sufficient supply of land identified in the Settlement Strategy and in the Medowie Strategy to meet the dwelling capacity projections provided in the regional strategy. Allowing urban growth to occur on the periphery of Medowie, on land that does not meet the sustainability principles and criteria would influence the economics of urban development and potentially undermine the staging and desired outcomes for the identified growth areas for the town.
Submission 9 412/06 - Port Stephens Cou	
Issue	Response
2. Identifying minor typographic errors.	Corrected.
3. Need section on Climate change separate to Greenhouse gases. In particular issue of sea level rise.	Agreed. New section on climate change and sea level rise added to Appendix 2 Future Trends and Issues – A Discussion.
Submission 10 Dec 2006 - For Wallalong	Land Owners Group by Economica PDS
1. Draft Strategy is inconsistent with the population growth projections in the Regional Strategy.	Draft Strategy has been updated to be consistent with the regional strategy.
2.Uncertainty with housing yields from Kings Hill and Medowie release areas will place additional pressure on land supply in LGA.	Council is negotiating with the Department of Planning and the Department of Defence concerning aircraft noise issues particularly for Kings Hill. Aircraft noise issues are likely to be an issue for any other possible large urban release areas in the LGA including Wallalong.
	Projected housing yields for both release areas meet and exceed regional projections.
3. Draft Strategy is inconsistent with the Rural West Local Area Plan and its identification of urban growth opportunities for Wallalong and Seaham.	LAP prepared prior to Regional Strategy. Discussions with the Department of Planning indicate that the regional strategy has considered these opportunities as surplus to the region's dwelling capacity projections, are relatively remote from services, employment and infrastucture and, due to the presence of the Hunter River, major infrastructure works could not be funded by the state government.
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	As these areas have not been identified in the regional strategy, they have been deleted from the Settlement Strategy for consistency. All LAPs have been amended where necessary and incorporated into Strategy to be consistent with regional strategy.
Issue	Response
Submission 11 8/12/06 - Carolyn O'Grady	- resident
Affordable housing and local employment opportunities	Noted.
Submission 12 13/12/06 – Landcom	
1. Landcom commends the strategy and welcomes its initiatives and support of quality residential development.	Noted.
2. Clause 15 prevents Landcom from advertising on rural land its residential estates. This makes the economic viability of developments questionable and is detrimental to the sustainable growth of the LGA.	Billboard advertising is generally regarded as visually intrusive and degrades the landscape. The objective of clause 15 is to protect the rural and natural landscapes of the LGA by controlling advertising on rural land for activities not associated with that land. Residential estates involve real estate agents and marketing agents to ensure that persons looking for the purchase of developments are aware of them. Furthermore, direct and indirect marketing for residential estates can occur via media outlets, the internet, sponsorships, promotions etc.
3. Amend clause 15 of the Port Stephens LEP to allow signage on rural land advertising residential estates for	Recommendation not supported for reasons identified in response No.2
marketing purposes.	
Submission 13 - 14/12/06 - Hunter New Eng	land Area Health Service
No objection to Strategy.	
The following points reflect the NSW Health strategic document "Healthy People 2005"	
• The historical poor performance of on-site sewerage treatment systems.	Noted.
<ul> <li>likely extension of sewer to these lots in the future</li> <li>Rainwater tanks for external domestic use (if reticulated water is provided)</li> <li>Air quality from installation of solid fuel heaters</li> <li>Provision of footpaths, cycleways and open spaces</li> <li>Street lighting</li> </ul>	
<ul><li>Street lighting</li><li>Provision of affordable housing</li><li>Nuisance to residents arising from dust from unmade</li></ul>	

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roads	
• Mosquito breeding sites such as dams in future	
allotments	
• Establish adequate buffer zones for differing land uses.	
Submission 14 - 18/12/06 - ERM on behalf of	Df Legend Cranes, Cabbage Tree Road, Williamtown.
Issue	Response
	Having a new employment area or neighbourhood proposed because a small existing development cannot expand is not sound strategic planning
Seeking to have land in the vicinity of Masonite and Cabbage Tree Roads intersection, Williamtown included as an investigation area for future employment opportunities.	Council and the Department of Planning are currently preparing a Land Use Strategy for the Williamtown airport employment hub – to the east of the Legend Cranes site. Council and the Department of Planning are also discussing the status of SEPP 74 land to the west of Legend Cranes. Both of these projects propose significant employment land. It is difficult to conceive that there will be a need for additional employment land for the foreseeable future.
	If future circumstances were to change, the Strategy has the flexibility to consider proposals for the Masonite and Cabbage Tree Road intersection as a future employment area.
Submission 15 - 20/12/06 - Hunter Water Co	prporation
1.Sustainability Principles and Criteria – should include a	Agreed. Section added to Part F2
section about supply of clean potable water and safe	
treatment and discharge of wastewater.	
2. Connection of new developments to Hunter Water	Noted. Added to Part F2
systems may depend on factors other than economic.	
New development may be required to wait until any	
Hunter Water system upgrades are completed prior to	
connecting. The developer may be able to bring these	
upgrades forward if it is feasible to do so.	
Issue	Response
4. No objection to land S and SE of airport for proposed	Noted. Matter is being considered by Project Control Group (Hunter Water is member) for Williamtown
employment airport hub but would object to land directly	Airport Related Employment Zone (AREZ) Land Use and Development Strategy
west of airport being dedicated for development as it is	
within the ground water capture zone and contains	
ground water extraction infrastructure that is crucial to	

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Hunter Water's regular, drought and emergency water supply strategies.	
5. Karuah new release area would result in growth that exceeds the 4000 EP capacity for sewage treatment identified in the Karuah Sewerage Scheme EIS and the 4000 EP capacity of the existing Karuah reuse scheme. If the identified Karuah release areas were to be serviced by reticulated sewerage, significant studies will need to be undertaken to identify how wastewater will be disposed of in the area.	Karuah Local Area Plan was prepared in consultation with Hunter Water. Section added to Part E E3 Local Area Strategies stating that sewage treatment system capacities may limit the amount of Greenfield urban development identified in Karuah in Figure 19.
Submission 16 - 20/12/06 - Rural Fire Service	Ce la
The Community Settlement and Infrastructure Strategy be consistent with the provisions of <i>Planning for Bushfire Protection 2001</i>	Principle added to Part F4 Natural Areas and Resources requiring that the design of urban development be consistent with the principles of the <i>Planning for Bushfire Protection 2001</i> .
Strategy for urban development. Submission elaborates on conclusions and recommendations made in earlier submission dated 4/12/06	
1. Critical that adequate housing stock can be delivered in a sustainable and affordable manner.	Agreed. However, sustainability and affordability of housing is underpinned by location relative to transport corridors and existing and new centres to increase catchments for public transport, promote cycling and walking and provide greater choice to reduce reliance on private motor vehicles. Hence reduce private transport costs and pressure on household budgets and housing affordability.
<ol> <li>Various comments on the constraints to achieving infill development in Raymond Terrace:</li> <li>Surrounding floodplains</li> <li>ANEF contours and Grahamstown dam</li> <li>Heritage and character qualities have been identified by Council to be protected thereby limiting development potential.</li> <li>Existing long and narrow lots are not conducive to good design, require consolidation of lots, coordination of landowners leading to time delays</li> </ol>	<ul> <li>The majority of existing residential areas of Raymond Terrace are not flood affected nor affected by ANEF noise contours and therefore, are not issues for infill development.</li> <li>Grahamstown Dam does not impact on infill development of Raymond Terrace.</li> <li>Heritage controls do not limit development potential. Rather they stipulate particular building design requirements. Generally, only buildings listed as heritage items may limit development potential.</li> <li>All infill development is faced with issues associated with existing conditions and can be overcome as dwelling stock ages and market demands and land values change.</li> <li>Infill development can vary according to its spatial location relative to a centre or transport corridor and the desired type of environment (see Figure 24 the transect). "Tranquillity (from a rural amenity perspective) and semi rural lifestyle" issues are not applicable for suburban and urban infill</li> </ul>

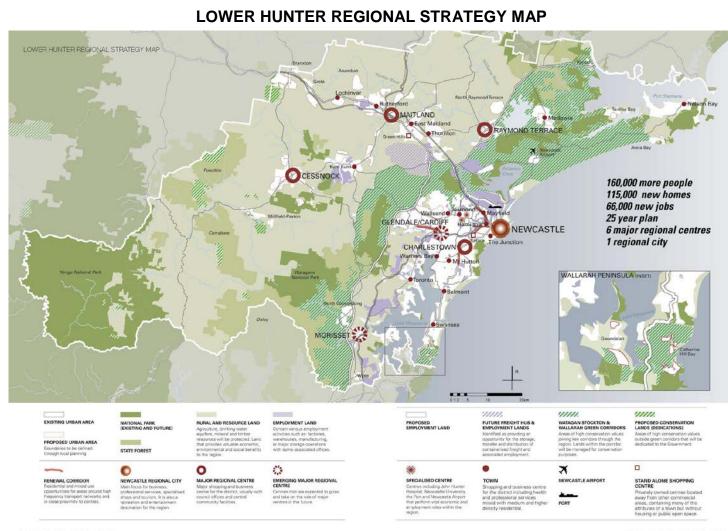
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<ul> <li>Community values of "the peace and quiet, tranquillity and semi rural lifestyle" limit infill development.</li> <li>Given the physical land use constraints which limit the growth of Raymond Terrace, there are limited opportunities for any significant scale of infill residential development within the town centre or existing urban areas.</li> </ul>	<ul> <li>development in the town.</li> <li>There are constraints that limit the physical expansion of the town but they do not limit infill development within the town.</li> <li>The playing fields in the town centre were recently rezoned allowing potential for a significant amount of infill residential development.</li> </ul>
Issue	Response
<ol> <li>Various comments relating to infill development in Nelson Bay:</li> <li>Environmental and topographical constraints provide very little opportunity for further expansion of existing urban areas in Nelson Bay.</li> <li>Strong tourism/investor market limits potential for growth in permanent residential market.</li> <li>No major shopping facilities or civic facilities in Nelson Bay with existing retailing providing for tourists rather than permanent residents.</li> <li>Current planning controls are relatively stringent and highly prescriptive thereby limiting potential for infill development.</li> </ol>	<ul> <li>Infill development is about redevelopment of existing urban areas and not about expansion of an existing area. Constraints to expansion are conducive to directing investment towards infill development.</li> <li>There are no differences between a dwelling used for rental and a dwelling used for permanent occupancy in terms of land requirements, zoning and development approval. Differences between the supply and demand of residential dwellings and tourist accommodation in residentially zoned land will vary according to economic and demographic cycles.</li> <li>Nelson Bay is a town with most retail and civic infrastructure. It is complemented by Salamander and, over time, redevelopment of retailing premises will occur as building stock ages and land values, demographic and economic circumstances change. Anecdotally, there is an oversupply of retail zoned land in the town centre providing diverse possibilities for retail redevelopment.</li> <li>Distinction between serving permanent residents and tourists is exaggerated. Many coastal towns have these circumstances.</li> <li>There is no substance or evidence provided to support this claim.</li> <li>In summary, submission states that infill is too difficult and so need to release more greenfield land.</li> </ul>
Issue	Response
<ul> <li>3. Medowie – unlikely that projected yield will be achieved due to:</li> <li>"definitive" constraints on each side of the town</li> <li>"accentuated" constraints exist on land S of Ferodale Rd.</li> </ul>	<ul> <li>The structure plan developed in the draft Medowie Strategy has identified how constraints have been considered and integrated with proposed street network and street blocks to achieve a sustainable town consisting of approx. 4500 dwellings.</li> <li>Council and the Department of Planning are seeking optimum yield from Medowie. Council will be seeking from the Departments of Planning and Environment and Conservation agreement with the</li> </ul>

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• pattern of constraints means that a concentric growth pattern around commercial centre has not emerged over time and is unlikely to emerge in the future.	<ul> <li>Medowie Strategy including exemption from the 7 part test under the biobanking legislation.</li> <li>This is an environmental deterministic approach to planning and design of urban development. Such an approach cannot achieve economic and social sustainability and often leads to poor quality of design outcome. Hence this approach was not applied in the Medowie Strategy. The structure plan integrates ecological issues with social and economic issues to achieve a more sustainable and quality of design outcome.</li> <li>The Medowie Local Area Plan has seen clusters of land owners grouping together with developers</li> </ul>
<ul> <li>Land that is "free" of constraints vary in size and shape and the potential development yield within each area is limited as is the quality of the design outcome.</li> <li>Potential development areas consist of multiple land</li> </ul>	<ul> <li>with intent of seeking the rezoning of their land. This trend is likely to continue and increase with the exhibition and adoption of the Medowie Strategy by Council and the Department of Planning as the strategy to create 4500 lots and transform Medowie into a real town.</li> <li>The draft structure plan identifies the boundaries and structure of the growth of the town.</li> </ul>
owners and presents a further constraint in the ability to "unlock" the development potential of each area.	• The draft structure plan identifies the boundaries and structure of the growth of the town.
<ul> <li>4. Anna Bay – unlikely that projected yield will be achieved due to:</li> <li>Community values and desired character of the area makes it unlikely that there will be demand for urban development of the scale and density proposed by the Strategy.</li> <li>Significant land use constraints provide little opportunity for further expansion of existing urban area.</li> </ul>	<ul> <li>Simply stating that community values and desired character will determine urban development outcomes for Anna Bay dismisses economic, demographic and "supply and demand" issues that the author has stated in an earlier submission that refers to supply and demand issues to be considered for planning of urban development.</li> <li>Environmental deterministic approach will not be applied in the preparation of the Anna Bay strategy. Methodology to be applied similar to that for Medowie but with outcomes appropriate to the context of Anna Bay.</li> </ul>
<ul> <li>5. Karuah – unlikely that projected yield will be achieved due to:</li> <li>community values and demographic profile means that there is unlikely to be demand for urban development of the scale and density proposed.</li> <li>Significant land use constraints provide very little opportunity for urban expansion.</li> <li>Significant lack of social and community services</li> </ul>	<ul> <li>See first response to Item 5 above. Council has resolved to prepare a number of draft LEPs for residential development that will provide approximately 400 lots.</li> <li>See second response to Item 5 above.</li> <li>New development and population will assist generating economies of scale for additional social and community services. However, it is acknowledged that Karuah is on the periphery of the region hence scale of urban development is considered to be a minor extensions of the existing town footprint.</li> </ul>
Issue	Response
<ul><li>6. Tanilba Bay - unlikely that projected yield will be achieved due to:</li><li>Significant land use constraints provide very little</li></ul>	<ul> <li>See response to Item 5 above.</li> <li>A developer has expressed interest to Council of undertaking large scale urban development at Tanilba Bay.</li> </ul>

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<ul><li>opportunity for urban expansion.</li><li>Potential limited demand</li></ul>	
7. Regional biodiversity areas and links Draft regional conservation Plan should be referred to and not Figure 14 that is broad and seemingly inaccurate.	• Noted. Figure 14 replaced with updated local corridors mapping. Mapping in draft Regional Conservation Plan is coarse scaled and does not give adequate definition to local corridors. Land to the north of Medowie surrounding the subject land on three sides has been recently transferred across the Dept of Environment and Conservation as part of the National Park estate. This land therefore, has regional and state significance. It is reasonable to conclude that high quality habitat linking a regional corridor and a National park can be classified as a regional corridor. Furthermore Council, as the local planning authority, has the responsibility and capability to determine biodiversity corridors within its LGA.
<ul> <li>Boundary Rd site is not included in the Watagan/Stockton green corridor within the draft Regional conservation plan.</li> </ul>	• Site is identified in the Lower Hunter Regional Strategy as part of the Wallarah/Stockton green corridor. The regional strategy requires boundaries for proposed urban areas to be defined through local planning. The structure plan has done this and has excluded the site as it has high conservation values, it is on the northern fringe of Medowie some 3 km's away from the town centre, is divorced from the growth area of the town by distance and by interceding rural residential development, is car dependent and remote from public transport, services and infrastructure.
Submission to the Department of Environment and Conservation re: draft Regional Conservation Corridor attached.	Noted.
9. Recommend that subject site be referenced in mapping in Figure 16 and Table 10 in Part E of CSIS.	Noted. For reasons stated above and based upon the draft Medowie Strategy, site has not been included.
11. Development of site will address demand and affordability issues in the region.	Market demand and affordability have been addressed in the draft Medowie Strategy. Development of site on fringes of town and away from services, infrastructure and transport places greater reliance on motor vehicle ownership that in turn undermines housing affordability. No data is provided by submission on how extension of infrastructure including any necessary upgrades will be achieved that in turn affect development costs and subsequent land and housing costs and hence affordability issues.
Issue	Response
Submission 18 05/01/07 - Department of I	Vatural Resources
<ol> <li>Support the use of the Regional Strategy in providing a policy context within which council can plan strategically to manage growth.</li> </ol>	Noted.
<ol> <li>Strategic priorities could be greatly enhanced if the draft Regional Conservation Plan was also used to</li> </ol>	Noted. Draft Strategy updated with mapping and text referencing the draft Regional Conservation Plan.

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	inform development of strategy.	
3.	The Department supports the Sustainability Principles and Criteria in the draft Strategy.	Noted.
4.	Part G Implementation Section G3(4) – asset protection zones for bushfire and riparian and wetland buffers should be outside of the development envelope.	Agreed. Text added to F4 stating that asset protection zones should be outside of buffer zones for creeks and wetlands.
Sı	ubmission 19 09/01/07 - Department of I	Defence
1.	Figure 5.1 should be amended to refer to airport as "Newcastle Airport/RAAF Base Williamtown" and improve legibility.	Agreed. Map updated.
2.	concerning Aircraft Noise Policy and proposed transferring across to DCP.	Agreed. Section 5.2 Aircraft Noise updated.
3.	Table C5.4 Page 29 reword to reflect decisions by Project Control Group for Williamtown Airport Related Employment Zone.	Text reworded to airport related employment.
4.	Page 47 F1 Settlement Structure and Movement Network – add additional principle – "The location and type of development will consider impacts associated with Defence related activities that occur at RAAF Base Williamtown in order to avoid, and if not possible, reduce land use conflict".	Australian Noise Exposure Forecast contours are the recognised tool to consider aircraft noise emanating from RAAF Base Williamtown. All urban development proposed within the Strategy is outside of ANEF contours. Department of Defence will be consulted as with other government agencies during the preparation of local area strategies and draft LEPs.
5.		Suggested clause is worded for Section 149 certificates and therefore, is not appropriate for inclusion into the Settlement Strategy. Council is currently reviewing Section 149 certificates and incorporating this advice. See response to Item 4.

Submission 20 07/01/07 - Roads and Tra	ffic Authority
Issue	Response
2. Any development adjacent to Pacific Highway should include local/regional road connections as the Highway should not be used for local trips. Anny connections to the Pacific Highway for urban development areas would be required as grade separated interchanges and not as at grade intersections.	Agreed. Added as principles to Part F1 Settlement Structure and Movement Network.
3. F3 Freeway to Raymond Terrace – preferred route was announced in August 2006.	Noted.
4. Council should ensure that the arterial road network is maintained with controlled access conditions as articulated in the LEP. There should be no direct access to lots to/from arterial roads.	Principle 9 in Part F1 Settlement Structure and Movement Network states that arterial road capacity and safety will be maintained through design.
5. Any proposed development be designed such that road traffic noise from Classified roads is mitigated and that any attenuation measures are not the responsibility of the RTA.	Noted. Principle 9 Part F1 Settlement Structure and Movement Network amended to include traffic noise -resident amenity conflicts to be minimised through design.



# **ATTACHMENT 2**

#### ATTACHMENT 3 THE DRAFT PORT STEPHENS SETTLEMENT STRATEGY

(Note: document supplied under separate cover)

#### ITEM NO. 3

#### FILE NO: PSC2005-0629

## PROPOSED NAME CHANGE OF INDIGENOUS STRATEGIC COMMITTEE

#### **REPORT OF: JENNY SMITH- MANAGER COMMUNITY PLANNING**

#### **RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the renaming of Council's 'Indigenous Strategic Committee' to the new name of 'Aboriginal Strategic Committee'.
- 2) Subject to recommendation (1), endorse the amended naming of the Committee in the attached Constitution Schedule.

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#### **OPERATIONS COMMITTEE MEETING – 10 April 2007**

#### **RECOMMENDATION:**

That the Recommendation be adopted.

#### ORDINARY MEETING OF COUNCIL – 24 April 2007

RESOLUTION:						
103	Councillor Hodges	That the Recommendation be adopted.				
	Councillor Dover					

#### BACKGROUND

### The purpose of this report is to recommend that Council rename the 'Indigenous Strategic Committee' (ie; ISC) as 'Aboriginal Strategic Committee'.

Prior to the year 2000 the ISC was known as Council's 'Aboriginal Advisory Committee'. In March 2000 Council endorsed the renaming of the Committee to its current name. The name change was attributed to the Committee members at that time desiring for the Committee to have a name that more accurately reflected its role of strategically advising Council on Indigenous matters whilst aligning with language used at the time by the State and Federal Government.

During the last seven years all spheres of government and the broader community have placed a far greater emphasis in recognising and valuing Aboriginal Australians as our Country's Traditional Land Owners. This has resulted in the term Aboriginal being used widely in State and Federal Government Policy in lieu of being referred to as Indigenous.

At ISC Committee members' instigation recently, members unanimously supported the renaming of the Committee as 'Aboriginal Strategic Committee'. The Committee's request

for the name change is due to *Indigenous* being a generic global term for describing native residents as opposed to the name *Aboriginal*, which is the appropriate cultural name for Indigenous Australians.

#### LINKS TO CORPORATE PLANS

Council's ISC is linked to the following key result areas specified in Council's Council Plan 2006/2009: -

- Community: Our Council will provide opportunities for effective consultation and participation in Council's activities
- Lifestyle: Our community celebrates its diversity, contributes to and enjoys the lifestyle of Port Stephens
- Environment: Our treasured environment is maintained and improved for the well-being of the community
- Infrastructure: Our facilities and services meet community need

Planning: Our development focuses on our communities being sustainable & Development

The ISC also promotes the following principles contained in Council's Social Policy (2003): -

- People: A community where individuals and families are valued regardless of differences such as age, gender, race, religion, culture, ability, income level or place of residence
- Opportunity: An empowered community where there are opportunities for people to genuinely participate in community life and in decisions that affect their lives.
- Sustainability: A community where through our actions, we leave it for our children and grandchildren as good or better than it is now
- Equity: A community where residents under stress are cared for by providing equitable access to resources for disadvantaged and marginalised groups

#### FINANCIAL/RESOURCE IMPLICATIONS

There are no financial implications.

#### LEGAL AND POLICY IMPLICATIONS

The ISC is a constituted Committee of Council under S355 (b) of the Local Government Act (1993). The Schedule to the Constitution of this Committee (see Attachment 1) has been amended in accordance with the recommendation specified herein.

#### Australian Business Excellence Framework

This aligns with the following ABEF Principles: -

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions
- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 4) To improve the outcome, improve the system and its associated processes
- 6) Continual improvement and innovation depend on continual learning
- 8) Effective use of facts, data and knowledge leads to improved decisions

#### SUSTAINABILITY IMPLICATIONS

#### SOCIAL IMPLICATIONS

The ISC plays a central role in advising Council on issues of concern and interest to the Aboriginal community across Council's various functions. The ongoing efforts of the Committee have seen a range of positive outcomes in regards to enhancing the social well being of our local Aboriginal community as demonstrated through the community building projects funded annually through Council's Aboriginal Project Fund.

#### **ECONOMIC IMPLICATIONS**

There are no economic implications.

#### ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

#### CONSULTATION

The proposed renaming of the ISC was discussed with the ISC at meetings with the Karuah and Worimi Local Aboriginal Land Councils on 12 February 2007 and 12 March 2007 respectively. At these meetings the members of the Committee were unanimous in their support of the proposed name change to Aboriginal *Strategic Committee*.

Discussions have also been held concerning this name change with Council's Community Facilities Co-ordinator who coordinates Council's S355 Committees.

#### OPTIONS

- 1) To accept the recommendation
- 2) To reject the recommendation and call for more information to support the report

#### ATTACHMENTS

1) Indigenous Strategic Committee Constitution Schedule

#### **COUNCILLORS ROOM**

1) Nil

#### TABLED DOCUMENTS

1) Nil

#### **ATTACHMENT 1**

Item 1	Name of Committee	Aboriginal Strategic Committee			
Item 2	Name of Council Team	Community Planning			
Item 3	Functions delegated by Council to committee	<ol> <li>To advise Council in relation to issues of concern between Council and the Aboriginal community,</li> <li>To promote a positive public image with respect to issues for Aboriginal people in Port Stephens,</li> <li>To provide a consultative mechanism with respect to development issues,</li> <li>To improve relations between the Aboriginal and non Aboriginal community of Port Stephens,</li> <li>To exchange information between the Aboriginal community and Council on issues affecting Aboriginal people,</li> <li>To promote mutual awareness and respect for the cultures of both Aboriginal and non Aboriginal communities, and</li> <li>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</li> </ol>			
Item 4	Restrictions on functions delegated	appropriate. The committee may only resolve to undertake actions outlined within this constitution.			
Item 5	Policies, legislation the committee is required to comply with	Principle policies & legislation include: OH&S, 2000 OH&S Regulations, 2001 Local Government Act & Regulations 1993 PPIPA 1988 Code of Conduct Code of Meeting Practice Accessing Information Policy Child Protection Policy Volunteers Policy			
Item 6	Date on which constitution concludes	September of Council Election each four years. Council to re adopt constitution within three months following election.			

#### SCHEDULE TO CONSTITUTION OF ABORIGINAL STRATEGIC COMMITTEE

Item 7	Maximum number and make up of committee members	8)	The Committee is to consist of up to eleven (11) Aboriginal Community Representatives.					
	members	9)	The Committee is to also consist of the following ex-officio members: the Manager Sustainable Planning, or their delegates.					
		10)	Decisions of the Committee shall be by consensus.					
		11)	Non members may attend meetings of the Committee and may speak to the Committee.					
		12) Aboriginal Community members will be nominated according to the following formula:-						
		a) Three representatives nominated by the Karuah L Aboriginal Land Council (LALC),						
		b)	Three representatives nominated by the Worimi LALC,					
		c)	Two elders nominated jointly by the Karuah and Worimi LALC's.					
		d)	Representatives of the Mindurriba LALC (up to three).					
		13)	Casual vacancies may be filled by the Committee according to the formula outlined above.					
Item 8	Councillors	As resolved by Council.						
Item 9	Council employees	Comm	unity Planning Manager, Social Planning Co-ordinator					
Item 10	Name of financial institution and type of account	Not applicable						
Item 11	Name of any account operated by the committee	Not ap	plicable					
ltem 12	Area assigned to committee and/or map	Not ap	plicable					
Item	Additional clauses or	AMEN	DMENTS TO STANDARD CONSTITUTION					
13	amendments to Standard Constitution or Schedule.		boriginal Strategic Committee is an Advisory Committee which that some clauses of the Standard 355(b) Committee					
	To be listed in full -		tution require amendment to reflect the operation of the					
	body of constitution not to be altered.		eneral operating functions of the Aboriginal Strategic Committee dertaken by Council Officers.					
		Clause 4. Functions of the Committee Additional Sub Clause						
		4.7 Confidentiality And Conflict Of Interest According to Councils Code of Conduct:- "A conflict of interest arises if a person with a private or personal interest could be influenced in the performance of his or her public or professional duties".						
		<ul><li>4.7 a) Committee members are to declare any conflicts of interest at the commencement of the meeting or as the relevant item is raised in General Business.</li></ul>						

		4.7 b) Conflicts of interest will be noted reported in minutes and the Chairperson may request the parties involved to leave the room while the matter is decided.
		4.7 c) A majority of members may decide at any time to close the meeting and begin confidential discussions. Participants excluded from the meeting should be provided with reasons for moving into confidential session.
		4.7 d) Breach of confidentiality is grounds for dismissal.
		Clause 7 The Executive – not applicable
		<b>Clause 9 Meetings</b> The following sub clauses replace the same numbered sub clauses in the Standard 355 (b) Constitution.
		9.1 The Committee will be chaired by the Mayor or their nominee.
		<ul> <li>a) Meetings will be held at the Port Stephens Council Administration Building, but can be held at other community venues as appropriate.</li> <li>b) All agenda items to be submitted prior to the meeting.</li> </ul>
		9.3 Ordinary meetings shall comprise of separate bi-monthly meetings alternating between Karuah and Worimi Local Aboriginal Land Councils.
		At all ordinary meetings with the Karuah Local Aboriginal Land Council, four members consisting of three nominated representatives from the Karuah Local Aboriginal Land Council (LALC), and one Councillor shall constitute a quorum.
		At all ordinary meetings with the Worimi Local Aboriginal Land Council, four members consisting of three nominated representatives from the Worimi Local Aboriginal Land Council (LALC), and one Councillor shall constitute a quorum.
		The committee shall hold ordinary meetings at least six times a year at a time and frequency to be determined by the committee.
		Clauses 10 Finances, 11 Records, 12 Reports Not applicable
		The Social Planning Co-ordinator shall be responsible for the correct recording of all proceedings of the Committee, conduct all correspondence on behalf of the Committee, the receipt of monies and payments of accounts and all other things necessary for the proper control of the Committee's affairs.
Item 14	Changes to constitution or Schedule –	N/A
	Adopted by Council: Meeting Date: Minute No: Resolution:	Adopted by Council Min No.

#### ITEM NO. 4

#### FILE NO: PSC2005-3605

#### **CEMETERIES FEES & CHARGES**

#### **REPORT OF: JASON LINNANE – MANAGER RECREATION SERVICES**

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#### **RECOMMENDATION IS THAT COUNCIL:**

1) Adopt the fees and charges as publicly exhibited for Cemetery Memorial Trees & Bronze Niche Plaques.

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#### **OPERATIONS COMMITTEE MEETING – 10 April 2007**

#### **RECOMMENDATION:**

That the Recommendation be adopted.

#### ORDINARY MEETING OF COUNCIL – 24 April 2007

RESOLUTION:						
104	Councillor Francis	That the Recommendation be adopted.				
	Councillor Brown					

#### BACKGROUND

### The purpose of this report is recommend to Council the adoption of fees and charges for Cemetery Memorial Trees & Bronze Niche Plaques

The proposed fees and charges were placed on public exhibition for a period of 28 days from 7 December 2006 with closing date for submissions 4 January 2007. No submissions were received.

#### Memorial Trees at Raymond Terrace Cemetery

Proposed increase is from \$93.00 to \$120.00 for Memorial Tree (includes tree & stainless steel plaque).

The West Ward Cemeteries Committee have requested an increase in fees & charges for memorial trees to fully cover the increased cost of supplying this service to the community.

Memorial Trees are only available at Raymond Terrace Cemetery on advertised occasions and are provided by West Ward Cemeteries Committee and are not an ongoing provision of Council.

#### Bronze Niche Plaques

Proposed increase of a 10% surcharge on bronze niche plaques.

Due to an increase in the world price of bronze Council's supplier of plaques has added a surcharge to the purchase price of bronze plaques. Currently the surcharge is 10%.

Plaques for Niches in Columbarium Walls, Terrazzo Walls & Memorial Gardens will increase in price by the surcharge amount charged to Council by the supplier. This increase will be removed immediately the supplier removes the surcharge.

#### LINKS TO CORPORATE PLANS

The proposed increase in fees and charges to meet increased costs demonstrates Corporate Accountability – Our Council open, transparent and accountable in its decision making.

#### FINANCIAL/RESOURCE IMPLICATIONS

The increased revenue from the proposed increases will cover the increased costs of providing the placement of memorial trees and purchase of bronze plaques without impacting on Council's Budget.

#### LEGAL AND POLICY IMPLICATIONS

The process to increase the fees & charges meets the requirements of:

#### LOCAL GOVERNMENT ACT 1993 - SECT 610F

Public notice of fees

610F Public notice of fees

- (1) A council must not determine the amount of a fee until it has given public notice of the fee in accordance with this section and has considered any submissions duly made to it during the period of public notice.
- Public notice of the amount of a proposed fee must be given (in accordance with section 405) in the draft management plan for the year in which the fee is to be made.
   However, if, after the date on which the management plan commences:
  - However, if, after the date on which the management plan commences:
     (a) a new service is provided, or the nature or extent of an existing service is changed, or

(b)the regulations in accordance with which the fee is determined are amended, the council must give public notice (in accordance with section 705) for at least 28 days of the fee proposed for the new or changed service or the fee determined in accordance with the amended regulations.

(4) This section does not apply to a fee determined by a council for an application made in a filming proposal, if that fee is consistent with a scale or structure of fees set out in a filming protocol.

#### Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 8) Effective use of facts, data and knowledge leads to improved decisions.
- 9) All systems and processes exhibit variability, which impacts on predictability and performance.
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders.

#### SUSTAINABILITY IMPLICATIONS

#### SOCIAL IMPLICATIONS

Council provides cemetery and memorial gardens facilities for the community. The proposed planting of memorial trees will enhance the presentation of Raymond Terrace Cemetery.

#### ECONOMIC IMPLICATIONS

The proposed increases in fees and charges meet cost increases and allow Council to continue to provide an excellent service at competitive prices.

#### **ENVIRONMENTAL IMPLICATIONS**

Council's cemeteries are managed in accordance with recognised practices to maximise the use of available ground. .

#### CONSULTATION

West Ward Cemeteries Committee

#### **OPTIONS**

- 1) Accept the Proposed Fees & Charges
- 2) Reject the Proposed Fees & Charges

#### **ATTACHMENTS**

Nil

TABLED DOCUMENTS Nil

#### ITEM NO. 5

#### **INFORMATION PAPERS**

#### **REPORT OF: JUNE SHINE – EXECUTIVE MANAGER, CORPORATE MANAGEMENT**

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#### **RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 13 March 2007.

No:	Report Title
1	Cash and Investments held at 28 February 2007
2.	Sale of Port Stephens Waste Management Group Pty Ltd from EWT Pty Ltd to Sita CEC Environmental Solutions Pty Ltd
3.	Access Committee Minutes
4.	Indigenous Strategic Committee Meeting with Worimi Local Aboriginal Land Council
5.	Council Ward Funds

#### **OPERATIONS COMMITTEE MEETING – 10 April 2007**

#### **RECOMMENDATION:**

That the Recommendation be adopted.

#### ORDINARY MEETING OF COUNCIL – 24 April 2007

RESOLUTION:						
105	Councillor Hodges	That the Recommendation be adopted.				
	Councillor Brown					

# OPERATIONS COMMITTEE INFORMATION PAPERS



#### **INFORMATION ITEM NO.** 1

#### CASH AND INVESTMENTS HELD AT 28 FEBRUARY 2007

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REPORT OF: JEFF SMITH – MANAGER FINANCIAL SERVICES FILE: PSC2006-6531

#### BACKGROUND

The purpose of this report is present Council's schedule of Cash and Investments Held at 28 February 2007.

#### ATTACHMENTS

1) Cash and Investments Held at 28 February 2007.

CAS	SH & INVESTMEN	ITS HELD	- AS AT 28 FI	EBRUAR	Y 2007		
INVESTED	INV.	DATE	MATURITY OR	NO. OF	AMOUNT	INTEREST	% OF TOTAL
WITH	TYPE	INVESTED	COUPON DATE	DAYS	INVESTED	RATE	FUNDS HELD
GRANGE SECURITIES							
WIDE BAY CAPRICORN BUILDING SOCIETY	Floating Rate Sub Debt	15-Dec-06	15-Mar-07	90	500,000.00	8.05%	1.45%
SAPHIR FINANCE PLC 2004 - 4 "ENDEAVOUR AAA"	Floating Rate CDO	5-Feb-07	4-May-07	88	1,000,000.00	7.69%	2.90%
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	20-Dec-06	20-Mar-07	90	1,000,000.00	7.92%	2.90%
NEXUS BONDS LTD "TOPAZ AA-"	Floating Rate CDO	23-Nov-06	23-May-07	181	1,500,000.00	6.47%	4.35%
HERALD LTD "QUARTZ AA"	Floating Rate CDO	20-Dec-06	20-Mar-07	90	1,000,000.00	7.92%	2.90%
STARTS CAYMAN LTD "BLUE GUM AA-"	Floating Rate CDO	22-Dec-06	22-Mar-07	90	1,000,000.00	7.80%	2.90%
CYPRESS TREE CDO LTD "LAWSON AA"	Floating Rate CDO	29-Dec-06	30-Mar-07	91	1,000,000.00	7.74%	2.90%
HELIUM CAPITAL LTD "ESPERANCE AA+"	Floating Rate CDO	20-Dec-06	20-Mar-07	90	1,000,000.00	7.52%	2.90%
HOME BUILDING SOCIETY	Floating Rate Sub Debt	25-Jan-07	25-Apr-07	90	500,000.00	7.39%	1.45%
DEUTSCHE BANK CAPITAL GUARANTEED YIELD							
	Yield Curve Note	18-Jan-07	18-Apr-07	90	500,000.00	8.25%	1.45%
GRANGE SECURITIES "KAKADU AA"	Floating Rate CDO	20-Dec-06	20-Mar-07	90	1,000,000.00	7.42%	2.90%
TOTAL GRANGE SECURITIES					\$10,000,000.00		29.02%
ABN AMRO MORGANS							
REMBRANDT ISOSCELES SERIES 1	Floating Rate CDO	20-Dec-06	20-Mar-07	90	2,000,000.00	7.82%	5.80%
GLOBAL PROTECTED PROPERTY NOTES	Property Linked Note	9-Jul-06	9-Jul-07	365	1,000,000.00	7.00%	2.90%
TOTAL ABN AMRO MORGANS					\$3,000,000.00		8.71%
ANZ INVESTMENTS							
ECHO FUNDING PTY LTD SERIES 16 "3 PILLARS AA-"	Floating Rate CDO	8-Jan-07	6-Apr-07	88	500,000.00	7.61%	1.45%
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	20-Dec-06	20-Mar-07	90	1,000,000.00	7.92%	2.90%
ECHO FUNDING PTY LTD SERIES 20 "ECHO CHARLIE							
AA"	Floating Rate CDO	20-Dec-06	20-Mar-07	90	500,000.00	7.92%	1.45%
TOTAL ANZ INVESTMENTS					\$2,000,000.00		5.80%
RIM SECURITIES							
HERITAGE BUILDING SOCIETY LTD (2008)	Floating Rate Sub Debt	29-Jan-07	30-Apr-07	91	500,000.00	8.10%	1.45%
CSFB AUSTRALIA PROPERTY LINKED NOTE (2010)	Property Linked Note	21-Dec-06	21-Mar-07	90	2,000,000.00	2.00%	5.80%
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO	8-Jan-07	6-Apr-07	88	2,000,000.00	8.41%	5.80%
ROCK BUILDING SOCIETY LTD (2007)	Floating Rate Sub Debt	31-Jan-07	30-Apr-07	89	500,000.00	9.14%	1.45%
ELDERS RURAL BANK (2011)	Floating Rate Sub Debt	5-Jan-07	5-Apr-07	90	1,000,000.00	7.10%	2.90%
TOTAL RIM SECURITIES					\$6,000,000.00		17.41%

#### ATTACHMENT 1

#### **ATTACHMENT 1**

WESTPAC INVESTMENT BANK							
HOME BUILDING SOCIETY (2010)	Floating Rate Sub Debt	29-Jan-07	27-Apr-07	88	500,000.00	7.55%	1.45%
MACKAY PERMANENT BUILDING SOCIETY	Floating Rate Sub Debt	21-Feb-07	21-May-07	89	500,000.00	7.47%	1.45%
TOTAL WESTPAC INV. BANK					\$1,000,000.00		2.90%
LONGREACH CAPITAL MARKETS							
LONGREACH SERIES 16 PROPERTY LINKED NOTE LONGREACH SERIES 19 GLOBAL PROPERTY LINKED	Property Linked Note	7-Sep-06	7-Mar-07	181	500,000.00	6.56%	1.45%
NOTE	Property Linked Note	7-Sep-06	6-Mar-07	180	500,000.00	6.00%	1.45%
TOTAL LONGREACH CAPITAL					\$1,000,000.00		2.90%
FUND MANAGERS						RATE OF	
						<b>RETURN - MTH</b>	
MERRILL LYNCH INVESTMENT MANAGERS					93,150.12	8.63%	0.27%
PERPETUAL INVESTMENTS					143,540.63	6.57%	0.42%
ADELAIDE MANAGED FUNDS					250,000.00	6.40%	0.73%
TOTAL FUND MANAGERS					\$486,690.75		1.41%
COMMONWEALTH BANK							
PRINCIPAL PROTECTED YIELD ACCRUAL NOTE	Yield Curve Note	06-Feb-07	07-May-07	90	500,000.00	9.25%	1.45%
PRINCIPAL PROTECTED YIELD ENHANCED ACCRUAL N	Yield Curve Note	31-Jan-07	31-Oct-07	273	500,000.00	7.15%	1.45%
TOTAL COMMONWEALTH BANK					\$1,000,000.00		2.90%
FIIG SECURITIES CREDIT SUISSE PRINCIPAL PROTECTED NOTE							
AQUADUCT AA-	Principal Protected Note	21-Dec-06	22-Mar-07	91	1,000,000.00	7.00%	2.90%
TOTAL FIIG SECURITIES					\$1,000,000.00		2.90%
MAITLAND MUTUAL	Floating Rate Sub Debt	16-Jan-07	16-Apr-07	90	500,000.00	7.46%	1.45%
	Term Deposit	4-Dec-06	4-Mar-07	90	2,015,717.94	6.35%	5.85%
	Floating Rate Sub Debt	11-Dec-06	11-Mar-07	90	500,000.00	7.40%	1.45%
TOTAL M'LAND MUTUAL					\$3,015,717.94		8.75%
TOTAL INVESTMENTS					\$28,502,408.69		82.72%
CASH AT BANK					\$5,955,566.87	6.20%	17.28%
TOTAL CASH & INVESTMENTS					\$34,457,975.56		100.00%

#### CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER

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

P GESLING

#### INFORMATION ITEM NO. 2

#### SALE OF PORT STEPHENS WASTE MANAGEMENT GROUP PTY LIMITED FROM EWT PTY LTD TO SITA CEC ENVIRONMENTAL SOLUTIONS PTY LIMITED

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#### REPORT OF: MICK LOOMES- MANAGER ENGINEERING SERVICES FILE: PSC2005-2675

#### BACKGROUND

The purpose of this report is to brief Council on the recent sale of Port Stephens Waste Management Group Pty Limited (PSWMG) from EWT Pty Ltd to Sita CEC Environmental Solutions Pty Limited (SITA CEC).

Council has a waste disposal agreement with Port Stephens Waste Management Group Pty Limited (PSWMG) for the processing of domestic waste until 2019 using the Bedminster composting technology. Since it's commencement in 1999 the facility has been owned by EWT Pty Ltd (formerly known as Bedminster Bioconversions Australasia Pty Ltd).

In a recent letter to Council it was confirmed that all of the shares in PSWMG were sold to SITA CEC on Friday 2 March 2007. SITA CEC is a joint venture company of Sita Environmental Solutions Pty Ltd and CEC Pty Ltd. SITA CEC also owns and operates the Bedminster composting facility in Cairns QLD.

The sale of PSWMG to SITA CEC poses no significant implications to Council's operations as the Waste Disposal Agreement was transferred entirely and unchanged to the new owners. The only significant change for Council is the need to develop a new partnership charter and relationship with the new owners SITA CEC.

In the coming months Council's Waste Team will arrange a briefing to Councillors by SITA CEC staff. This briefing will provide an opportunity for Councillors to meet with representatives from SITA CEC and to obtain initial projections of the company's plans for the facility. Later in the year, a partnership workshop will be arranged for Councillors and the SITA CEC Board, to develop a new partnership charter.

#### ATTACHMENTS

1) Copy of current Partnering Charter between Port Stephens Council and EWT Pty Ltd 29 November 2005.

#### **ATTACHMENT 1**

PARTNERSHIP CHARTER PORT STEPHENS RESOURCE RECOVERY AND WASTE MANAGEMENT FACILITY PORT STEPHENS COUNCIL AND **EWT PTY LIMITED** (PORT STEPHENS WASTE MANAGEMENT GROUP) C-O-U-N-C-I-L .. a community partnership OUR MISSI We will work together to enhance and further develop, operate and proudly promote the Bedminster resource recovery facility to process Port Stephen's and regional waste, thus continuing to demonstrate the technology's environmental, economic and social sustainability. A. Karel ATTALOUR SHARED OBJECT 1. Financial viability to all stakeholders 2. Periodic systems review and enhancement 3. Beneficial re-use of resources 4. Port Stephens Council recognised as leader, innovator and educator 5. Promotion and marketing of achieved technology outcomes and recycled/recovered products 6. Team effort based on communication and trust 7. Exceed statutory obligations and policy guidelines including waste reduction and increased resource recovery 8. Develop greater community, industry and regulatory awareness through education yeng traning hanglan This Partnership Charter supersedes: Partnership Charter 18 January 1998 (original version) Partnership Charter 30 September 2003 (first partnership review) 4/10

#### INFORMATION ITEM NO. 3

#### **ACCESS COMMITTEE MINUTES**

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#### **REPORT OF: JENNY SMITH - MANAGER COMMUNITY PLANNING**

FILE: A2004-0226

#### BACKGROUND

The purpose of this report is to present to Council the minutes of the Access Committee meeting held on 6 March 2007.

Key issues addressed at the meeting included: -

- 1) Status of Access Improvements to Lakeside Leisure Centre
- 2) Access Enhancements undertaken at Council's Administration Building

#### ATTACHMENTS

1) Minutes of the Access Committee meeting held on 6 March 2007.

#### ATTACHMENT 1 PORT STEPHENS ACCESS COMMITTEE MINUTES OF MEETING HELD 6 MARCH 2007 AT THE RAYMOND TERRACE COMMUNITY CARE CENTRE

#### Present:

Ken Whiting, Cr. Helen Brown, Karen Whiting, Liz Harper, David Painter, Valda Painter, Alice De-Carle, Margaret O'Leary (+ 2 students Katherine & Alyce), Tony Kean, Joe Delia, Kathy Delia, Deborah Franklin, Michael Elliott, Cathy Jennings, Graham Roberts, Frank Carr, Michael Elliott

#### Apologies:

Cr Sally Dover, Judy Rosier, Susan Rosier, Robert Harper, Bill Bobbins, Tony Kremen, Sue Spleit, Michelle Pavy, Kathy Lees

#### 1. WELCOME & ADOPTION OF PREVIOUS MINUTES

Chairperson Ken Whiting welcomed the Committee members and extended a special welcome to newcomer Frank Carr. The minutes of the previous meeting were adopted after the following amendment: -

• The Annual General Meeting will be held on the 1 May 2007 – not March as listed

Motion put forward by Graham Roberts, Seconded by Tony Kean

#### 2. BUSINESS ARISING FROM PREVIOUS MINUTES

#### 2.1 Tomaree Aquatic Centre Access Upgrade

Ken Whiting reported that Council's Recreational Services Manager had informed him that upgrades would be carried out to the Tomaree Aquatic Centre this coming winter. The upgrade would include the provision of accessible unisex toilets and change rooms.

#### 2.2 Birubi Beach Disabled Toilet

Michael Elliott reported that Council's Parks Co-ordinator has indicated that his staff removed the MLAK lock for two reasons: -

- the saltwater environment combined with minimal usage meant that the lock consistently rusted out and required regular replacement. There is no way of eliminating this problem. In toilets where the lock is used more regularly it is not as much of an issue.
- consistent vandalism the cost of consistently replacing the MLAK lock made it impractical to leave it in place. The toilet is still designated as a disabled toilet and a latch type lock has been placed on the inside of the door for the convenience of people using it. Council's Parks Co-ordinator is well aware of the toilet being used by tourists and being left in an untidy state. He and his staff are monitoring the situation and looking at

other avenues for solving the problems (eg; encouraging tour bus operators to help educate their patrons about proper use of the facilities).

#### 2.3 Lakeside Leisure Centre Access Improvements

Erin Devlin reported that both the shower rose and the onsite wheelchair have been repaired as requested. She said it was good to see a large number of people with disabilities using the facility.

# 2.4 Beach Tour Operator Licensing

Ken Whiting reported that the formal handover of land in the Stockton Bight to the traditional aboriginal owners has occurred and that this would mean the current moratorium on issuing of beach tour operator licenses would soon be lifted and that new applications would soon be considered. He was confident that local tour operators providing accessible tours would soon be able to obtain a license, significantly improving access to beach tours for people with a disability.

# 2.5 Medowie Roundabout

Tony Kean passed on a thankyou and congratulations to the Committee from Cr Baumann for their successful lobbying to have work done to improve access and visibility in the area of the roundabout at the intersection of Medowie and Ferodale Roads at Medowie.

# 2.6 **Promotion Strategy for the Access Committee**

The Committee's Media Liaison Officer Karen Whiting reported that she had investigated an opportunity for a free community announcement on a local radio station and thought this would be a good way to help promote the Access Committee. The Committee unanimously agreed and Karen go ahead with the arrangements in consultation with Council's Media Liaison Officer.

# 3. GENERAL BUSINESS

# 3.1 Birubi Surf Club Disabled Parking

Ken Whiting reported that the Birubi Surf Club had removed signage from two of its disabled parking spaces as a temporary measure during previous renovation and extension works. It was understood that it was a condition of the DA consent that these spaces be reinstated upon completion of the work, however this has not yet occurred. Michael Elliott will investigate the original DA conditions of consent and the circumstances around the situation in an effort to resolve this issue.

# 3.2 Amputee Golf

Michael Elliott reported that the  $4^{th}$  Australian Amputee Golf Open will be held at Horizons Golf Resort from the 19 – 23 March 2007. For further information contact the Horizons Golf Resort.

# 3.3 Salamander Bay Community Land Proposal

Margaret O'Leary reported on Council's current proposal to rezone the Community land at Salamander Bay that is the current site of amenities such as the library and neighbourhood centre. Margaret was concerned that the location of the current facilities provides excellent access as well as a strong link to the adjacent commercial area. Michael Elliott undertook to investigate further and report back to the committee.

# 3.4 Accessible Tourism

A discussion was held around accessible tourism. Karen Whiting and Michael Elliott reported that they had both liaised with members of the Port Stephens Tourism Board about continued promotion of accessible tourism in Port Stephens. Michael also reported that Greg Carroll had brought to his attention that the issue of accessible tourism is the current focus of a consortium *(between Australian Universities, Vision Australia, NPWS, TTF and Tourism NSW)* who are working on four major research projects in the area.

# 3.5 MLAK Keys

Margaret O'Leary reported a case of confusion around availability and supply of MLAK keys involving Council staff. Michael Elliott stated that he had recently replenished the supply of MLAK keys at several outlets available to the public. Michael stated he would pursue the matter and ensure relevant Council staff were familiar with the system.

# 3.6 Access - Anna Bay Shops

Ken Whiting reported that the issue of access to several existing shops at Anna Bay had been brought to his attention. A site inspection was carried out by Occupational Therapist Margaret O'Leary along with several of her students. Margaret reported that the shops in question had a step at the front entrance ranging in height from a small lip to a 120mm step. Margaret met with the property owner as well as some of the shopkeepers to discuss the issue. The response was positive however no solution was able to be implemented at this stage due to the large financial commitment required to rectify the problem. Several of the shops were already proactive with their service around issues of access and provided footpath service, temporary ramps or assistance to alternate rear entrances. All parties involved are meeting their obligations under the Disability Discrimination Act and access improvements will occur over time with future development, no further action is anticipated regarding this issue.

# 3.7 Stair Edges Painted at Council's Administration Building

Michael Elliott reported that all external stairs at Council's Administration Building in Raymond Terrace have been painted with a highly visible bright yellow edging strip. The work was listed in Council's Forward Works Program.

# 3.8 Access - One Mile Beach Roundabout

Karen Whiting reported that she had received a complaint regarding access in the area of Koala PI One Mile Beach. Michael Elliott reported that he was aware of these issues and they were currently in Council's Forward Works Program. Discussion was held around possible funding sources for such works.

#### 3.9 Recent Development Applications Assessed by Council's Disability Access Officer

Michael Elliott reported that he had assessed several Development Applications with regard to access including several clubs with proposed extensions such as courtyards to enable them to comply with pending legislation requiring them to provide smoking areas. All were approved with conditions and access provisions were good.

# 3.10 Medowie Speed Humps

David Painter enquired as to progress made by the Disability Access Officer in improving the visibility of several unmarked speed humps in Medowie. Michael Elliott reported no progress had been made at this stage and that he would investigate and report back to the Committee.

# 3.11 Entry Fees for Carers at Public Swimming Pools

David Painter enquired as to the current situation regarding fees paid by carers to enter public swimming pool complexes. Discussion was held around the matter. A formal request from the Access Committee to Council in 2006 for removal or reduction of entry fees for carers was rejected. Several members indicated that carers are usually able to recoup any of these expenses from their employer. No further action is anticipated regarding this matter at this stage.

#### 3.12 Access to Anna Bay Disabled Toilet

David Painter raised concerns over the adequacy of access provisions to the public toilet near the Anna Bay shops. It's designated as a disabled toilet, however the incline of adjoining paths and undulations make it difficult for wheelchair users to use. Michael Elliott undertook to raise the issue with Council's Operations staff.

#### 3.13 Support for Former Committee Member

David Painter reported that the Committee's former Chairperson was unwell and had recently been admitted to Hospital. David put forward a motion that the Committee send flowers to the value of \$50.00, this was seconded by Erin Devlin and unanimously supported by those present at the meeting.

#### 3.14 Committee Member Seeking Assistance with Transport

Ken Whiting congratulated the Committee's Deputy Chairperson in successfully securing a job at Salamander Bay. He will commence employment shortly following the completion of access improvements employer is carrying out of their own volition. In addition to this, suitable transport arrangements to/from Raymond Terrace and this Salamander Bay workplace need to be in place. A local newspaper has agreed to print a brief article requesting assistance from the public. Anyone who may be able to assist please contact Council's Disability Access Officer on 4980 0355.

# 4. CORRESPONDENCE

Michael Elliott presented the following items of correspondence: -

- Multicultural Disability Advocacy Service information package
- Wheelchair Dance sport
- Recent changes to the Information Accessibility Code (Note: Sue Spliet supplied information regarding these changes in legislation that mean retailers of communications equipment are bound to supply information about the accessibility features of any communications equipment they are selling upon request. There is an 18-month lead time to full implementation of this legislation change. For further information refer to the Communications Alliance website www.acif.org.au).
- Local Archer, Rhys McDonald crowned best disabled archer in Australia, article appearing in the Port Stephens Examiner 1 March 2007.

# 5. DETAILS OF NEXT MEETING

The next meeting will be held at 10.30am on Tuesday the 3 April 2007 at the Nelson Bay RSL Club.

# INFORMATION ITEM NO. 4

# INDIGENOUS STRATEGIC COMMITTEE MEETING WITH WORIMI LOCAL ABORIGINAL LAND COUNCIL

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#### **REPORT OF: JENNY SMITH, MANAGER COMMUNITY PLANNING**

FILE: PSC2005-0629

#### BACKGROUND

The purpose of this report is to present to Council the minutes of the Indigenous Strategic Committee meeting with Worimi Local Aboriginal Land Council on 12 March 2007.

Key issues considered at the meeting included:

- 1) Referring of Development Applications
- 2) Naidoc Week 2007
- 3) 2007 Joint ISC Meeting

#### ATTACHMENTS

1) Minutes of Indigenous Strategic Committee meeting with Worimi LALC on 12 March 2007.

# ATTACHMENT 1

# INDIGENOUS STRATEGIC COMMITTEE MEETING WITH WORIMI LOCAL ABORIGINAL LAND COUNCIL HELD ON THE 12 MARCH 2007 AT THE MURROOK CULTURAL & LEISURE CENTRE

#### Present:

Val Merrick	Worimi LALC
Andrew Smith	Worimi LALC
Cr Helen Brown	PSC
Cr Sally Dover	PSC
Paul Procter	PSC
Cliff Johnson	PSC
Jason Linnane	PSC

#### Apologies:

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Janice MacAskill	Worimi LALC
Cr Ron Swan	PSC
Peter Gesling	PSC
Stewart Murrell	PSC
David Broyd	PSC
Mike Trigar	PSC
Scott Anson	PSC
Amanda Gale	PSC

Cr Brown chaired and opened the meeting at 1:25pm

# 1. MINUTES OF PREVIOUS MEETING

The minutes of the previous meeting held on 11 September 2006 were accepted.

# 2. BUSINESS ARISING FROM PREVIOUS MINUTES

#### Item 1: Referring of Development Applications to LALCs for Comment

Amanda Gale has indicated to Paul Procter that in recent months Council has done a lot of work on reviewing and improving DA processes in terms of information and its accessibility and consultation / referrals to appropriate authorities and other relevant groups. The Local Aboriginal Land Councils are a key stakeholder in this process.

The map which Council's Principle Property Adviser is developing in collaboration with WLALC will be a great tool in the assessment process as it will identify the main areas where cultural issues are more relevant and will assist in preparing any consultation / referral processes to the Local Aboriginal Land Councils.

Paul Procter presented WLALC with several hardcopies of Council's new DA Lodgment Guidelines that have been developed as part of Council's current review of the DA assessment process. This is part of Council's continuous improvement process along with

the introduction of the new DA Tracker. Council's Section Manager Development & Building has indicated that he would like to attend a meeting with WLALC to give an update on the review process and the new DA Tracker. The new DA Tracker which is accessible on Council's website allows people to locate and track DAs lodged with Council on a locality basis.

WLALC indicated that given the impact upon their staff resources in terms of making time to appropriately advise on DAs as part of the proposed process, they would like to ensure that WLALC is appropriately remunerated for their services through an agreed fee. WLALC also want to ensure that any DA's that may impact upon known 'Women's Areas' are dealt with in a culturally appropriate manner.

Actions:	1.	Council's Principal Property Adviser will meet with WLALC CEO and WLALC Site Officers to progress the development of the map.
	2.	Following the above meeting, Paul Procter to organise a meeting between WLALC, Council's Principal Property Adviser and relevant Development & Building Officers to progress process for consideration of Aboriginal cultural issues in Council's assessment of Development Applications.
	3.	Paul Procter to invite Council's Development & Building Section Manager to next meeting to update progress on review of DA referral process and to provide an overview of new DA Tracker.

# Item 2: Middens at Birubi Headland

WLALC have received funds to pay for their labour costs to carry out the remediation works of the middens using materials supplied by Council.

# Item 3: Land Acquisition for Fingal Bay Link Rd

Council's Principle Property Adviser has been delegated responsibility for handling the negotiations for the proposed land acquisition. WLALC have asked that Council's Principle Property Adviser meet with WLALC members to communicate what is proposed and to clarify the associated issues and known history of the site.

Action:	1.	Council's Principle Property Adviser to attend a meeting of WLALC
		members to brief them on proposed land acquisition for link rd and to
		discuss associated issues.

# Item 4: Aboriginal Project Fund

At the Ordinary meeting of Council in February 2007 the recommendations of the ISC for the allocation of available Aboriginal Project Funds were unanimously endorsed.

# Item 5: Aboriginal Employment Strategy

Paul Procter indicated that Council does not maintain records about the cultural background of staff nor does it set specific targets for the number of staff to be employed who are Aboriginal and/or Torres Strait Islander. Council recruits staff in accordance with its EEO Policy. Staff are recruited on a merit basis, based on the essential and desirable skills, qualifications and experience required to carry out a particular job.

That said, in light of current school retention and completion rates amongst Port Stephens young people (Aboriginal and non-Aboriginal), consideration should be given to what role

could large employers within Port Stephens (including Council) could play in creating a more even playing field by providing opportunities for young people to gain skills and experience to assist them in getting a hand up in securing employment. A program operates at Kempsey with years 11 and 12 students, which reportedly has produced some great outcomes. WLALC suggested a starting point might be to undertake an audit of local year 11 and year 12 Aboriginal students to ascertain what their career goals are which in turn will assist in defining the areas of focus for a training and experience based program.

Action:	1.	WLALC in collaboration with KLALC and Paul Procter will formulate a
		proposal for a youth based work training program for consideration by the ISC.

# Item 6: Cultural Awareness Training

Paul Procter is formulating a proposed framework for cultural awareness training for relevant Council staff and Councillors.

Action: 1.	Paul Procter will provide an update at next meeting.	
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# 3. GENERAL BUSINESS

#### 3.1 2007 Joint ISC Meeting

This year's joint meeting will be held on 17 July 2007. In terms of a guest speaker ISC have expressed a desire for Council to try to secure Kelvin Kong.

Action:	1.	Paul Procter will extend an invitation to Kelvin Kong to attend this
		year's joint meeting as guest speaker.

# 3.2 Naidoc Week 2007

In regards to this year's Naidoc Week, the ISC would like to see Council's Naidoc Week funds along with available Aboriginal Project Funds allocated to a special event in Raymond Terrace that encompasses children, schools and the broader community. The ISC's vision is to have a march down William St culminating in a special celebration event at Riverside Park that could also include a banner competition.

Action:	1.	Paul Procter will establish a working party comprising of
		representatives from WLALC and KLALC along with Council's
		Cultural Development Officer and Child-friendly Communities Project
		Officer to formulate a proposal and funding strategy.
	2.	Subject to funds required for this event, an application may be sought
		under Council's Aboriginal Project Fund to assist.

# National Local Government Awards 2006

Paul Procter presented WLALC with a framed copy of the 'Commendation Award' and presentation photograph that Council received in November 2006 in recognition of its Indigenous Program. Framed copies have also been prepared for KLALC.

# 3.4 Committee Name Change

The ISC fully supports the proposed name change of the ISC to ASC (ie; Aboriginal Strategic Committee) citing that this is more culturally appropriate than the generic use of the term Indigenous.

Action:	1.	Paul Procter to present a report to Council recommending the name
		of the ISC be changed to Aboriginal Strategic Committee.

# 3.5 Motions from 2006 NSW Local Government Aboriginal Network Conference

Paul Procter tabled copies of the motions arising from the 2006 NSW Local Government Aboriginal Network Conference. Will be discussed further at the next meeting.

#### 4. NEXT MEETING

The next meeting will be the joint meeting on 14 May 2007 at 1pm at Murrook.

# INFORMATION ITEM NO 5

# **COUNCIL WARD FUNDS**

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#### REPORT OF: JUNE SHINE – EXECUTIVE MANAGER, CORPORATE MANAGEMENT FILE: PSC 2007-0183

# BACKGROUND

The purpose of this report is to provide the current Ward Funds expenditure and the balance as at 27 March 2007.

# ATTACHMENTS

- 1) Ward Funds
- 2) Minor Works

# **ATTACHMENT 1**

2006/2007ALLOCATIONS OF COUNCILLOR	WARD		
FUNDS WARDS	EAST	CENTRAL	WEST
ESTIMATED BALANCE B/FWD FROM 30 JUNE 2006	138,436	1,940	170,927
FUNDS REALISED IN 2005-2006	0	0	0
TOTAL AVAILABLE 1 JULY 2006	138,436	1,940	170,927
ALLOCATED TO:-			
From Original Budget	45.000		
Corlette SES	15,000		45.000
Contribution to RT Comm & Policing Services Rental assi CM372/05	stance		15,000
Karuah Main Street Bypass			0
Fingal Bay Link Road	0		
Footpath Construction Central Ward		0	
Cycleway Mustons Road Karuah			0
Footpath Construction East Ward	0		
Pedestrian Acess Mobility Plan			0
Cycleway Medowie		0	
Raymond Terrace Senior Citizens Centre			35000
Medowie Community Centre Car Park			0
Anzac Park Car Park	0		
Sabre Jet Monument			0
N B Tennis Court			0
Lakeside Sportsfield Grandstand			0
Medowie Skate Park		77000	
Ferodale Park Drainage		0	
Anna Bay Fire Station		0	
Dunns Creek Fire Station			0
Wallaroo Hill aerial	0		
From Revotes and Carry Forwards			
Shelly Beach Amenities	25000		
King Park Landscaping			7000
Anna Bay Oval Upgrade		1697	
Anna Bay Pony Club		-10251	
Bowthorne Park Upgrade			21000
Tomaree Sports Complex - New Water Service	70000		
Little Beach Disability Access ramp	33904		
Raymond Terracs CCC		I	19108
,			

Tilligerry Creek Erosion Study Cycleway Construction Brockelsby Road Medowie Cycleway Construction Mustons Road Karuah Bus Facilities Construction Medowie Bus Facilities Construction Anna Bay Bus Facilities Construction LTP Karuah Main Sreet		5000 22744 18571 11299 3314	0 7894
From Budget Reviews Port Stephens Community Arts Centre CM 222/05 Salt Ash Sports Ground CM 434/06	10,000	35,000	
TOTAL ALLOCATED BALANCE	153,904 -15,468	164,374 -162,434	105,002 65,925

# **ATTACHMENT 2**

WARDS	EAST	CENTRAL	WEST
BALANCE B/FWD FROM 30 JUNE 2006	0	0	0
2006/2007 BUDGET ALLOCATION FROM REVENUE	20,000	20,000	20,000
TOTAL AVAILABLE 1 JULY, 2006	20,000	20,000	20,000
ALLOCATED TO:-			
Previously Allocated funds paid this Financial year			
Tilligerry Lions and Habitat Arts Festival CM 578/06		500	
Glen Oak School of Arts CM 578/06			339
Allocated 2006/2007 Financial Year		110	
Medowie Scout Group CM 618/06	2 500	110	
Rotary Club of Nelson Bay CM 618/06	2,500		
Shoal Bay Public School CM 618/06	869		
Shoal Bay Public School CM655/06	395		
Access Comm of Port Stephens CM 794/06	595		
1st Tilligerry Scout Group CM 794/06	1000	722.5	
P S Fellowship of Auatralian Writers CM 679/06	1000		
Hunter River High School CM 679/06			200
Irrawang Public School CM 734/06			200
Glen Oak School of Arts CM734/06			2000
Port Stephens Music Festival CM 734/06	93.2		
1st Paterson Bolwarra Scouts Group CM 761/06			200
Nelson Bay Senior Citizens Hall Clr req 05-1181	3000		
Thou Walla Family Centre CM 031/07			2000
Royal Volunteer Coastal Patrol Car Park CM 031/07	3190		
PS Community Care Senior Expo CM 031/07			1000
Raymond Terrace Water Polo CM 031/07			500
TRT and District tennis Club CM 031/07			1250
Whale and Dolphin Watch (Skyle Bertoli) CM 031/07	500	500	500
	40.440	4 000	0 400
TOTAL ALLOCATED	12,142	1,833	8,189
BALANCE AVAILABLE	7,858	18,168	11,811
PLUS Expected Property Profits Funds (30%)	0	0	0
TOTAL AVAILABLE as at 27.3.07	7,858	18,168	11,811

# STRATEGIC COMMITTEE RECOMMENDATIONS

# ITEM NO. 1

#### FILE NO: PSC 2005-2681

# FINANCIAL ASSISTANCE FOR THE DISPOSAL OF WASTE IN PORT STEPHENS

#### **REPORT OF: MICK LOOMES – MANAGER ENGINEERING SERVICES**

# RECOMMENDATION IS THAT COUNCIL:

1) Adopt the new policy for financial assistance for the disposal of waste in Port Stephens.

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#### STRATEGIC COMMITTEE MEETING – 3 April 2007

#### **RECOMMENDATION:**

That the Recommendation be adopted.

#### ORDINARY MEETING OF COUNCIL – 24 April 2007

RESOLUTION:				
106	Councillor Tucker	That the Recommendation be adopted.		
	Councillor Brown			

# BACKGROUND

# The purpose of this report is to respond to Council's resolution (Minute 268) for a review of Financial Assistance for the Disposal of Waste in Port Stephens.

A review has been completed on the program the results of which show the following points.

- The program currently permits charitable, not for profit and benevolent organisations to dispose of waste at Salamander Bay Waste Transfer Station, Lemon Tree Passage Waste Transfer Station, and the Bedminster Waste Processing Plant at no cost to that organisation. To qualify for the program the groups must demonstrate that they provide a service to the community that would be considered to be a normal function of Council.
- The program also permits one off waste disposal costs for school working bees.
- This program, which was approved by Council in August 2000 was linked to the 'Donations' Policy which has since been redrafted.
- Approximately 45 groups are currently approved to receive financial support under this program.
- The cost of the program in 2006/07 is expected to be \$45,000.

The review recommends adoption of a new policy for the Financial Assistance for the Disposal of Waste in Port Stephens Council. By adopting a new policy Council will be approving changes to the selection criteria. It is expected that the changes to the selection criteria will assist in managing the cost implications of this program.

#### LINKS TO CORPORATE PLANS

This program links to the Environmental Strategic Direction 'Preserve and enhance our heritage, biodiversity, and environmental health' in the 2005-2008 Council Plan.

#### FINANCIAL/RESOURCE IMPLICATIONS

It is proposed that the new policy and its programs will be funded by the Waste Budget. Variations to this budget item will be reviewed during the monthly budget forecast process.

#### LEGAL AND POLICY IMPLICATIONS

The Financial Assistance Program for the Disposal of Waste in Port Stephens is required to comply with section 356 of the Local Government Act 1993. This section of the act allows Council to grant financial assistance for the purpose of carrying out its functions.

There are no other legal implications to Council in adopting this policy.

#### Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 8) Effective use of facts, data and knowledge leads to improved decisions
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders

# SUSTAINABILITY IMPLICATIONS

#### SOCIAL IMPLICATIONS

Council will continue to provide this popular service to charitable, not for profit and benevolent organisations. By relieving these organisations of the cost of waste disposal, they will be able to focus more of their activities on community programs.

#### **ECONOMIC IMPLICATIONS**

Approved groups will be able to direct cost savings back into other aspects of their organisation.

#### ENVIRONMENTAL IMPLICATIONS

This policy enables organisations to dispose of waste which is illegally dumped on their premises, or around clothing bins in various areas of Port Stephens.

#### CONSULTATION

Consultation was undertaken with the Department of Environment and Conservation regarding criteria requirements.

Consultation was also undertaken with current approved organisations – Port Stephens Salvation Army and St. Vincent De Paul to discuss proposed changes to the program as well as ideas to help reduce waste disposal.

# **OPTIONS**

- 1) Adopt the policy
- 2) Reject the policy

# ATTACHMENTS

1) Financial Assistance for the Disposal of Waste in Port Stephens Policy

# **COUNCILLORS ROOM**

Nil

# TABLED DOCUMENTS

Nil

**ATTACHMENT 1** 



POLICY

Adopted: Minute No: Amended: Minute No:

FILE NO: PSC2005-2681

# TITLE: FINANCIAL ASSISTANCE FOR THE DISPOSAL OF WASTE IN PORT STEPHENS

# BACKGROUND

The financial assistance program allows charitable, not for profit and benevolent organisations to dispose of waste as Salamander Bay and Lemon Tree Passage Waste Transfer Stations and the Bedminster Waste Processing Plant at no cost to the organisation.

The program was developed and adopted in 2000 under the Donations Policy and Section 356 of the Local Government Act.

The intent of this policy is to formalise the program.

# OBJECTIVE

To lessen the financial burden of waste disposal for charitable organisations that provide bona fide community services.

# PRINCIPLES

- The Council is a publicly accountable statutory authority. While its funds are finite, the demands on it are unlimited.
- In all areas of expenditure, the Council needs to achieve the best value and return to all residents and ratepayers.

# **POLICY STATEMENT**

Port Stephens Council will provide Financial Assistance for the disposal of waste. To qualify for the financial assistance program, organisations must fulfil the following requirements:

• Organisations must be registered as a charitable, not for profit or a benevolent organisation. Supporting documentation is required.

- Organisations must apply for an exemption of the waste levy from the NSW Department of Environment and Conservation and supply this information to Council for use in determining requests for assistance.
- The waste generated by the organisation for disposal must be generated by a community service and that service must be considered a bona fide function of Council.
- Organisations are required to reduce waste to landfill and meet waste recovery targets by sorting waste into recyclable and non recyclable items and by adopting procedures to reduce the amount of waste they generate or receive.
- Schools which conduct volunteer working bees may be approved for one off waste disposal vouchers.

# **RELATED POLICIES**

Nil

# SUSTAINABILITY IMPLICATIONS

#### SOCIAL IMPLICATIONS

This policy enables Council to provide a service to charitable, not for profit, and benevolent organisations. By relieving these organisations of the cost burden of waste disposal, they will be able to focus more of their activities on other community programs.

#### ECONOMIC IMPLICATIONS

Approved organisations will be able to direct costs savings back into other aspects of their organisation.

#### ENVIRONMENTAL IMPLICATIONS

This policy enables organisations to dispose of waste which is illegally dumped on their premises or around clothing bins in various areas of Port Stephens.

# **RELEVANT LEGISLATIVE PROVISIONS**

The Financial Assistance Program for the Disposal of Waste in Port Stephens is required to comply with section 356 of the Local Government Act 1993. This section of the act allows Council to grant financial assistance for the purpose of carrying out its functions.

# **IMPLEMENTATION RESPONSIBILITY**

The Waste Services team is responsible for the implementation of the financial assistance program.

# **REVIEW DATE**

This policy will be reviewed within the first year of a new Council term.

# ITEM NO. 2

# FILE NO: PSC 2005-4282

# TILLIGERRY CREEK CATCHMENT MANAGEMENT PLAN

**REPORT OF: BRUCE PETERSEN – MANAGER ENVIRONMENTAL SERVICES** 

RECOMMENDATION IS THAT COUNCIL:

1) Approve in principle the timetable of actions arising from the Tilligerry Creek Catchment Management Plan.

#### STRATEGIC COMMITTEE MEETING – 3 April 2007

#### **RECOMMENDATION:**

That the Recommendation be adopted.

#### ORDINARY MEETING OF COUNCIL – 24 April 2007

RESOLUTION:		
107	Councillor Nell	That the Recommendation be adopted.
	Councillor Dingle	

MATTER ARISING:		
108	Councillor Dingle Councillor Swan	It was resolved that Council consider the formation of Tilligerry Creek Catchment Management Consultative Group.

That the Matter Arising be adopted.

#### BACKGROUND

The purpose of this report is to provide information on a number of matters raised by Council at its Ordinary Meeting of 27<sup>th</sup> February 2007 in relation to the Management of the Tilligerry Creek Catchment Plan and to seek endorsement of the timetable of actions arising from the Tilligerry Catchment Management Plan.

At Council's Ordinary Meeting of 27 February 2007 the Draft Tilligerry Catchment Management Plan was discussed and adopted and the following was resolved:

1. That a report be prepared on the Reasons for recommending "Wisconsin mounds" as opposed to the pump out systems recommend in the 1998 report on catchment management.

# 2. That a timetable be provided to Council against the action in the Tilligerry Creek Catchment Management Plan.

In 2004 the Port Stephens/ Myall Lakes Coastal and Estuary Committee recommended the development of a catchment management plan for Tilligerry Creek. The over riding objective of the plan was to address the sustainable use of Tilligerry Creek as an important estuarine ecosystem that supports oyster harvesting, aquaculture research, tourism and recreational activities.

A consultant (Earth Tech Pty Ltd) was engaged by Council in 2005 to prepare the study.

The study found that ongoing land use pressures have resulted in a decline of habitat quality within the catchment and this has resulted in impacts on water quality, biodiversity, and adversely affected recreational and commercial activities.

The report provides a number of recommendations including:

- The need to repair and upgrade some floodgates and modify others
- The installation of trash racks, wetlands and pollutant traps in areas subject to high pollutant loads.
- Audits of catchment activities including commercial premises to monitor pollution controls on those premises.
- Better management of vegetation particularly along creek banks.
- Weed control and revegetation of degraded areas and the banks of creeks.
- Better management of stock including their removal from saltmarsh areas and from waterways.
- Buyback of marginal agricultural land to reinstate salt marsh and help provide additional fish breeding areas.
- The report did not look at septic system upgrade issues as this was the subject of other studies being undertaken by Council independently of this study.

#### CHRONOLOGY OF POLICY RESEARCH AND MANAGEMENT ACTIONS

To put the Draft Tilligerry Catchment Management Plan and Catchment issues into perspective, a chronology of events leading up to and following the discovery of viruses in Zone 5B of Tilligerry Creek and subsequent remedial actions undertaken by Council and other agencies has been developed.

Attached is a chronology of relevant policy, research and management actions in the Tilligerry Catchment since 1997.

#### RECOMMENDED ACTIONS FROM CATCHMENT MANAGEMENT PLAN

A summary table of recommended actions from the Draft Tilligerry Creek Catchment Plan (attached) has been developed with associated time lines for implementation, the responsible

authority/individual and funding sources. Many of the recommended actions relate to individual land holders and other Government Departments which are beyond the control of Council; these actions will therefore require cooperation from landholders and relevant Government Departments and funding bodies. Of the 24 recommended actions, Council has direct responsibility for 6 and shared responsibility for 2. Council is able to prioritise its own actions within this plan and allocate funding and resources to implement these actions within a reasonable time frame (as indicated in the table).

As many of the recommended actions rely on individual land holders or State Government Agencies to implement, Council will need to encourage a spirit of co-operation with these groups and assist land holders to gain State and Federal Government funding if actions are to be successfully implemented. It is proposed that the Action Timetable be released with the Draft Tilligerry Creek Catchment Management Plan for Public exhibition.

# CATCHMENT ASSESSMENT REPORT

The Catchment Assessment Program was initiated by Port Stephens Council and Great Lakes Council in 1997. A recommendation from that report suggested that all septic systems in Salt Ash and Bobs Farm be converted to pump out systems. Although the majority of recommendations from that report were implemented, the recommendation to install pump out systems was not taken up by Council due to the high annual pump out costs (up to \$3000 per property per year), and the wide spread abuse of these systems by landholders. In 1998, the NSW Government gazetted new amendments to the Local Government Act relating to septic systems and also produced guidelines to complement these new amendments. The NSW guidelines state that "pump out systems are not a viable option in the long term due to the high cost of effluent pump out services and the wide spread illegal discharge from these systems to land and waterways" and instead recommend other options for treating waste water.

Based on the Australian Standards (AS1546.1 and AS/NZ 1547-2000) for On-Site Wastewater Management Systems, NSW State Government guidelines on septic systems and a report prepared by Whitehead and Associates (design standards for on-site systems in Port Stephens), Council decided to utilise Wisconsin Mounds and aerated waste water systems with sub surface irrigation for septic systems in the Salt Ash and Bobs Farm area. These systems are widely recognised as appropriate systems for areas with a high water table and sandy soils.

# ISSUES

The purpose of developing Plans, such as the Tilligerry Catchment Management Plan, includes the following:

- 1. Before State and Federal Government Agencies (responsible for Natural Resource Management Funding) provide grants for estuary and catchment related activities, they require comprehensive Reports to be developed at a Local level with relevant stake holder input. The development of the Tilligerry Catchment Management Plan by the Estuary Management Committee is an example to this approach to Natural Resource Management Funding.
- 2. Plans of this type help to avoid duplication of effort by multiple State, Federal and Local Government bodies when dealing with broad natural resource management issues.

3. Council's role in relation to catchment management is one of co-ordination. Clearly, Council is not responsible for implementing all natural resource management initiatives within its area of operations. The State and Federal Governments recognise Council's role in this regard and if sought (in the appropriate manner), will provide funding to assist Council and other Agencies to implement on ground actions.

It is intended that, once Council endorses the Tilligerry Catchment Management Plan Action timetable, that it will be released with the draft Catchment Management Plan for public exhibition and the Community will be encouraged to provide comments.

The Federal Government has advised that they will not be able to provide funding for initiatives raised in the Catchment Management Plan until it has gone through to public exhibition and been endorsed by Council. Council will need to lobby the relevant State and Federal Government Politicians and Agencies to ensure that adequate funding is provided to help implement the recommended actions from the Tilligerry Catchment Management Plan.

# LINKS TO CORPORATE PLANS

Links to the Council Plan Key Result Area 8.3.

# FINANCIAL/RESOURCE IMPLICATIONS

To implement all of the recommendations in this report would cost Council a considerable amount. Rather than attempting to fund all recommendations, it is proposed to work on priority areas and seek State or Federal funding to address these areas over time.

A number of the priority issues identified in the report will be dealt with as part of the agricultural program that is underway at the present time.

# LEGAL AND POLICY IMPLICATIONS

There are no significant legal issues arising out of this report. One area of policy that may be affected will be the management of floodgates.

#### Australian Business Excellence Framework

This aligns with the following ABEF Principles. (Please delete what is not applicable)

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions
- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 4) to improve the outcome, improve the system and its associated processes

- 5) The potential of an organisation is realised through its people's enthusiasm, resourcefulness and participation
- 6) Continual improvement and innovation depend on continual learning
- 7) All people work <u>IN</u> a system; outcomes are improved when people work <u>ON</u> the system
- 8) Effective use of facts, data and knowledge leads to improved decisions
- 9) All systems and processes exhibit variability, which impacts on predictability and performance
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society

# SUSTAINABILITY IMPLICATIONS

#### SOCIAL IMPLICATIONS

There will be some longer -term positive social outcomes associated with the recommendations in this report, particularly where water quality issues are concerned. Many recreational and commercial activities within Tilligerry Creek are affected by poor water quality including oyster farming, swimming, boating and tourism.

Improvements in the Tilligerry catchment will result in improvements in aquaculture operations, tourism related activities and recreation within the creek.

#### ECONOMIC IMPLICATIONS

Improvements in the quality of the Tilligerry Creek catchment will lead to economic improvements, including a positive impact on oyster farming and tourism. Often negative issues within Tilligerry Creek can have impacts outside .the catchment area including negative media coverage, which then affects tourism and oyster harvesting in other parts of Port Stephens.

Land values can also be affected by the amenity of an area and it is anticipated that over time land values will increase as the quality of the Tilligerry catchment improves.

#### ENVIRONMENTAL IMPLICATIONS

There will be many opportunities for environmental improvements arising from this report, including the revegetation of waterways, water quality improvements, aesthetic enhancements and many more. The most significant improvements are expected to be associated with water quality, which in turn will lead to healthier waterways, increased biodiversity, and improved habitat for fish and oysters.

Many of the recommendations call for improvements in land management practices including better management of stock, the revegetation of buffer zones along waterways to address poor water quality and the installation of pollution traps and wetlands to filter faecal contaminants.

# CONSULTATION

The issues raised in this report were discussed with a number of stakeholders by the consultant in the Tilligerry catchment as the report was being developed. Further consultation was undertaken with the Port Stephens/ Myall Lakes Coastal and Estuary Committee and Council staff on a number of occasions.

# **OPTIONS**

- 1) Adopt the Tilligerry Creek Catchment Management Plan Action Timetable.
- 2) Adopt the Tilligerry Creek Catchment Management Plan Action Timetable with changes and place it on public exhibition during May 2007.
- 3) Reject the Tilligerry Creek Catchment Management Plan Action Timetable.

#### **ATTACHMENTS**

- 1) Chronology of Policy, Research and Management Actions in the Tilligerry Catchment
- 2) Summary table of recommended actions from the Draft Tilligerry Creek Catchment Plan

#### **COUNCILLORS ROOM**

1) Draft Tilligerry Creek Catchment Management Plan

# TABLED DOCUMENTS

Nil

# ATTACHMENT 1

# CHRONOLOGY OF POLICY, RESEARCH AND MANAGEMENT ACTIONS IN THE TILLIGERRY CATCHMENT

#### 1997/1998 - CATCHMENT ASSESSMENT PROGRAM

- Initiated by Council in partnership with Great Lakes Council, Department of Land & Water Conservation, Hunter Water Corporation and NSW Fisheries and Port Stephens Shellfish QAP in 1997.
- Commencement of Catchment Assessment Program and auditing of household on site sewage management systems predated the introduction of State Government on site sewage management regulations for Councils.
- Recommendations of Catchment Assessment Program relevant to Tilligerry Creek included a recommendation that all septic systems in Salt Ash and Bobs Farm be converted to pump out systems.
- The majority of recommendations from this report were implemented. The recommendation to install pump out systems however was not taken up by Council due to the annual pump out costs and the abuse of these systems by landholders.

#### 1998- STATE GOVERNMENT GUIDELINES FOR ON SITE SYSTEMS

- On 6<sup>th</sup> March 1998 the NSW Government gazetted new amendments to the Local Government Act relating to the operation and licensing of On Site Sewage Management Systems.
- The State Government also produced guidelines to compliment the new amendments to the Local Government Act.
- The NSW guidelines state that pump out systems are not a viable option in the long term due to the high cost of effluent pump out services and the widespread illegal discharge from these systems to land and waterways and instead recommend other options for treating wastewater.

#### 1998 - ESTABLISHMENT OF ON SITE SEWAGE MANAGEMENT PROGRAM

- Port Stephens was one of first Councils in the state to establish On Site Sewage Management Program following introduction of the amendment to the Local Government Act
- Two officers were employed to undertake regular inspections of on site sewerage management systems in Port Stephens to ensure compliance with operating standards contained in the new State Government Regulation. This program includes community education.

#### 2000- 2002 - CSIRO MARINE RESEARCH STUDY

- Results for Tilligerry Creek reveal that `faecal contamination in Tilligerry Creek was generally much lower than the river sites (Karuah, Myall, Wallamba, Coolongolook & Wang Wauk Rivers) and was also more variable. Most of the faecal contamination was determined to originate from diffuse sources,
- The study also determined that `faecal contamination of Wallis Lake / Port Stephens is from a range of sources that impact on these waterways either as a nutrient impact

or as a possible disease source. No one method can address all the issues and therefore a `whole of catchment ' management approach needs to be adopted'.

# 2003 ON SITE TREATMENT SYSTEM FAILURE AND SHELLFISH CONTAMINATION IN PORT STEPHENS, NSW – REPORT PREPARED BY PHIL GEARY – UNIVERSITY OF NEWCASTLE.

- The principal aim of this project was to examine whether there is a possible link between the performance of individual septic systems in Port Stephens and whether the contaminants from those systems could reach surface and groundwaters, and possibly lead to impacts on estuarine oyster growing waters.
- Conclusions of the study included:

In coastal locations where there are sandy soils and high groundwater tables, failing on site wastewater systems are likely to contribute a number of contaminants to surface and ground waters.

It is clear that the estuary, which is used for aquaculture does receive large numbers of faecal bacteria on occasions.

Better management of these agricultural land uses, as well as improved management of un-sewered urban development, is clearly required if sensitive aquaculture industries requiring high quality water are to be maintained. In particular, the appropriate disposal of faecal material generated by all land use needs to be better to ensure that the risk of contaminating shellfish growing areas is minimised.

# 2004 - APPROVAL OF ON SITE SEWAGE MANAGEMENT SYSTEMS IN THE SALT ASH - BOBS FARM AREA.

- Approvals for installation of OSSM system in new developments in the Salt Ash / Williamtown / Bobs Farm in general require the installation of a secondary treatment system (or equivalent) with disposal to either a Wisconsin Mound or appropriate irrigation disposal area that meets regulatory requirements.
- Where systems are being upgraded, they are required to install a Wisconsin Mound System due to the elevated ground water table.
- All property owners operating septic tank and absorption trench systems in the area were informed in 2004 that this type of system is no longer environmentally appropriate due to the nature of the catchment. As these systems fail Council required that these be replaced with an environmentally appropriate system as outlined above.

# 2004-2005 port stephens council water quality testing program and closure of zone $5\mathrm{B}$

- Approval of Port Stephens Environment Levy enabled implementation of a water quality-testing program for Port Stephens waterways in 2004. It was not possible to fund this type of program without the Levy contributions.
- The program includes water quality testing at regular locations within Tilligerry Creek. Testing identified higher levels of faecal contamination in October 2004 and so additional testing was undertaken in response to high pollution readings. The additional testing was undertaken in drains between Williamtown and Salt Ash to try and determine the source of faecal pollution. This process identified a network of

connected drains that appeared to be a primary contributor to faecal pollution in the creek. Testing by oyster farmers as part of their Quality Assurance Program (QAP), identified high faecal contamination entering Tilligerry Creek from these drains.

- Faecal sterole analysis was undertaken of samples from this drain in January / February 2005. The first results from the drain sample were received in February 2005 by Council. These showed that the faecal contamination was neither human nor herbivore.
- The first faecal sterole results that indicated high levels of human faecal pollution were received by Council in March 2005. These results were notified to the Port Stephens Shellfish QAP at its meeting on 5<sup>th</sup> April 2005.
- QAP notified NSW Food Authority of the result who undertook virus testing in April and May which detected the presence of human strain viruses.
- Council hosted workshop on 20 June with Council staff, oyster growers, NSW Food Authority & Phil Geary (University of Newcastle) to identify the issues and possible solutions. **Zone 5B was closed on this day by the NSW Food Authority.**

#### 2005 – Premiers Task Force

- The NSW Premieres Department initiated a Task Force to Co-ordinate the activities of all government agencies involved in the contamination issue including DPI Fisheries, Hunter Water, Department of Lands, Hunter Water, and Council.
- The Task Force has helped to co-ordinate all studies and investigations undertaken since the closure of zone 5B.

#### 2005 – Intensive Inspection and upgrade program for Failing Septic Systems in Salt Ash/ Bobs Farm.

Following the discovery of human viral matter in oysters within zone 5B of Tilligerry Creek, an intensive inspection program commenced in the study area. Of the 560 septic systems in the area, 50 were found to be visibly failing and orders were served by Council on owners to repair or upgrade those systems. By June 2006 the majority had been repaired or upgraded to Council requirements.

# 2006 - TILLIGERRY CATCHMENT MANAGEMENT PLAN

- Funding allocated in 2004/2005 in the Port Stephens Environment Levy and a grant received through the NSW Government Coastal Program to prepare a Catchment Management Plan for the Tilligerry Catchment.
- The plan is an initiative of the Coastal and Estuary Committee and the purpose of this plan was to develop a strategy to ensure the long-term sustainable future of the natural resources and activities including recreation, tourism, aquaculture and agriculture within the Tilligerry Creek Catchment.
- Consultants were appointed to prepare the plan in April 2005 and completed the draft in 2006, which was adopted by the Coastal and Estuary Committee. The plan, once adopted by Council, will go on public exhibition.

#### 2006 - Research project by the University of Newcastle to evaluate the nutrient/ microbial export from the unsewered area of Salt Ash to Tilligerry Creek.

• Results to date show that contaminants are not travelling through the ground water but are confined to surface drains.

# 2006 -Hunter Water Feasibility Study into sewerage options for Salt Ash and Bobs Farm

This report is still in draft form but it indicates that a reticulated sewerage system for this area will not be feasible for at least 10 to 15 years and relies on the connection of Williamtown sewer to the Raymond Terrace sewerage system. It recommends keeping on site systems.

# 2006 –University of Newcastle- Snapshot of Water Quality in Tilligerry Creek and Major Surface Drains

This study is ready to commence as soon as a significant rainfall event occurs in the Tilligerry catchment.

# **ATTACHMENT 2**

# TILLIGERRY CREEK CATCHMENT MANAGEMENT PLAN ACTIONS- SUMMARY TABLE

Priority	Water Management Actions	Approximate Timeline for Implementation	Responsible Authority/Funding Sources
1	Action 7: De-regulate tidal flushing regime at Tilligerry Creek (Salt Ash)	Council is not the responsible consent authority but will work with DNR and pursue this through the Port Stephens Coast and Estuary committee in late 2007. This is also funding dependent.	Department of Natural Resources (DNR)
		It is anticipated that this will not be completed until 2009/10.	
2	Action 8: Construct wetland at Salt Ash to treat waste	As this action is on private land Council is currently discussing a number of options with the landholder to treat their runoff. Government funding in the Community Water grants is one funding source. It is anticipated that this action can be completed in 2007 subject to funding from the Federal Government and suitable agreement from the landholder.	Private Landholder. Federal Government Funding will be required under the Community Water Grants.
3	Action 4: Repair or replace floodgates along Marsh Road	Council is not the responsible consent authority but will work with the private landholder and DNR and pursue this through the Port Stephens Coast and Estuary committee in late 2007. This is also funding dependant and will not be completed until at least 2015 depending on DNR and private landholders.	Private Landholders own the gates. DNR would be the responsible authority. This is a difficult recommendation to implement due to multiple ownership
4	Action 6: Introduce opening and closing regime for floodgates at Fullerton Cove	Council is not the responsible consent authority but will work with DNR and the public works dept and pursue this through the Hunter Coast and Estuary committee. Based on experience in other catchments, this could take until 2017 to complete.	issues. DNR, Public works/Dept of Commerce
5	Action 9: Protect foreshore from erosion and other damage	As the majority of the land involved in this action is on private land Council will discuss this action with the landholders and encourage them to apply for state govt funding in 2007/08 financial year. This action could be very time consuming as there are multiple landholders along the creek. Many of theses works should be completed by 2008/09 with the majority by 2011.	Individual Landholders
6	Action 5: Introduce opening and closing regime for floodgates along Lemon Tree Passage Road	Gates are owned by Council and will work with private landholders who currently manage the gates, and with DNR, and pursue this through the Port Stephens Coast and Estuary committee in late 2007. This is also funding dependent.	Gates owned by Council and managed by Private Landholders. Funding will be

			sought from the State and Federal Governments.
7	Action 3: Install trash rack at Williamtown commercial airport drainage outlet	A copy of the management plan will be forwarded to the airport with information about funding opportunities in mid 2007.	Newcastle Airport Corporation. Council will assist the Corporation to identify funding opportunities.
8	Action 1: Install Gross Pollutant Trap in Tanilba Bay commercial centre	At present in the IWP funding is not allocated until 2011, however if other funding becomes available this could be brought forward to 2007/08.	Council.
9	Action 2: Install stormwater quality treatment device and small wetland in Lemon Tree Passage industrial area	Discussions between Council and Lemon Tree Passage Industrial Estate will commence in mid 2007. This should be installed by 2009.	Lemon Tree Passage Industrial Estate and <b>Council.</b>
Priority	Cleaner Production Actions		
1	Action 10: Audit and enforce land use maintenance practices	Septic systems are already inspected though the onsite sewage management system, a number of systems have been required to update over the last 18 months. This is currently in place.	Council
	This action includes septic systems.		
2	Action 11: Targeted initiative to ensure implementation of service station spill procedures	An audit program is already in place and has been commenced. The Tilligerry Catchment will be completed in mid 2008.	Council
3	Action 12: Conduct compliance audit of car yards	An audit program is already in place and has been commenced. The Tilligerry Catchment will be completed in mid 2008.	Council
Priority	Habitat Management Actions		
1	Action 13: Remove stock from saltmarsh	This is a voluntary action. It is not illegal to allow stock onto saltmarsh areas in the Tilligerry Catchment. Community education activities will be commenced in mid 2007. It could take up to 10 years for this action to be implemented i.e., by 2017.	Private Landholders
2	Action 14: Remove juvenile mangroves from saltmarsh communities	Approval required from DPI Community education activities will be commenced in mid 2007 to encourage landholders to undertake this action. It is anticipated that this will be a long process and will not be significantly carried out until 2010.	Private Landholders and Department of Primary Industry (DPI)
3	Action 15: Install Large Woody Debris to increase aquatic habitat diversity	This action will rely on the DPI and Drainage Union. It will take at least 5 years i.e., by 2012.	DPI and Dept Lands drain management
4	Action 17: Strategic and co- operative control of Alligator weed	Council currently conducts Alligator Weed control in the catchment. More funds are required to provide better control. This will not be achieved without significant funding and landholder involvement. It will	Council for waterways, DPI and, Landholders for on the land.

	(Control on land is the landholder's responsibility)	be a case of minimisation rather than total control as this weed is so extensive and difficult to control. This will be ongoing.	Funding for Alligator Weed control is very difficult to obtain from the State or Federal Governments.
5	Action 18: Moving existing fences 10–20m from top of bank (Voluntary)	Council has engaged an agricultural consultant to work closely with landholders to achieve this. It will take until at least 2011 to get the majority of the significant landholders to fence their creek frontages.	Private Landholders. Community Water Grants and Landcare funding will be used to support this initiative.
6	Action 16: Construct habitat enhancement boxes along central floodplain	Community education activities will be commenced in mid 2007 to encourage landholder participation. The uptake of this recommendation will rely on the good will of landholders. It is anticipated that a number of the larger landholders will be interested. At least 50 should be able to be installed by 2010.	Individual Landholders

Priority	Corridor Improvement Actions		
1	Action 19: Fence and revegetate high priority corridor linkages (Voluntary)	Council has engaged an agricultural consultant to assist with this. With landholder support and funding from the State or Federal level this should be carried out for key areas by 2012.	Individual Landholders/ Catchment Management Authority (CMA)
2	Action 20: Fence and revegetate medium priority corridor linkages	Community education activities will be commenced in mid 2007 to encourage this activity. It is anticipated that this will be completed by 2015	Individual Landholders/CMA
3	Action 21: Fence and revegetate low priority corridor linkages	Community education activities will be commenced in mid 2007 to encourage this activity. It is anticipated that this activity can be completed by 2016.	Individual Landholders/CMA

Priority	Policy Actions		
1	Action 22: LEP Amendments for unprotected bushland	As per LEP review process and timeline, by 2011.	Council
2	Action 23: Water Sensitive Urban Design (WSUD) and biodiversity policy for all new developments	As per DCP and Community Settlement Strategy. This is already proposed in the consolidated DCP.	Council
3	Action 24: Buyback marginal agricultural land and re- establish tidal influence and saltmarsh communities	Funding dependant, more investigation on this is required to determine area and costs. Investigation to start late 2008.	Council with funding from the State and Federal Government.

#### ITEM NO. 3

#### FILE NO: PSC 2006-0038

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# **REVIEW OF COUNCIL'S AIRCRAFT NOISE EXPOSURE POLICY**

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

# RECOMMENDATION IS THAT COUNCIL:

- 1) Exhibit Draft Chapter B13 Aircraft Noise of Port Stephens Development Control Plan 2007 (Aircraft Noise).
- 2) Amend information provided on Planning Certificates issued under Section 149(5) of the Environmental Planning and Assessment Act 1979 to include the wording "All areas of the Port Stephens Local Government Area are now, or are forecast to be, affected by aircraft noise from time to time. Further information concerning the degree of impact of noise from aircraft can be obtained from the Council's Sustainable Planning Group and you are advised to make further enquiries".
- 3) Provide notation on Planning Certificates issued under Section 149(2) of the Environmental Planning and Assessment Act that land within ANEF contours is affected by Chapter B13 Aircraft Noise of Port Stephens Development Control Plan 2007 (Aircraft Noise) upon adoption of that chapter.

#### STRATEGIC COMMITTEE MEETING – 3 April 2007

#### **RECOMMENDATION:**

- 1. Exhibit draft chapter b13 aircraft noise of port stephens development control plan 2007 (aircraft noise) for a period of 8 weeks.
- 2. Amend information provided on planning certificates issued under section 149(5) of the environmental planning and assessment act 1979 to include the wording "All areas of the port stephens local government area are now, or are forecast to be, affected by aircraft noise from time to time. Further information concerning the degree of impact of noise from aircraft can be obtained from the council's sustainable planning group and you are advised to make further enquiries".
- 3. Provide notation on planning certificates issued under section 149(2) of the environmental planning and assessment act that land within anef contours is affected by chapter b13 aircraft noise of port stephens development control plan 2007 (aircraft noise) upon adoption of that chapter.

RESOLUTIO	N:		
109	Councillor Westbury Councillor Brown	That the Strategic Committee Recommendation be adopted	

#### ORDINARY MEETING OF COUNCIL – 24 April 2007

# BACKGROUND

# The purpose of this report is to recommend changes to Council's approach to land use planning and decision-making concerning the issue of aircraft noise, following a review of Council's current approach.

Noise from military aircraft associated with the use of the Williamtown RAAF Base and Salt Ash Air Weapons Range is an ongoing issue in the Port Stephens LGA. A review of Council's approach to managing the issue has been undertaken including:

- Reviewing and revising the content of the current policy Aircraft Noise Exposure in Port Stephens for its incorporation as a chapter within the Port Stephens Development Control Plan 2007; and
- Reviewing the information provided on Planning Certificates issued under Section 149(2) and (5) of the Environmental Planning and Assessment Act 1979.

Council's current policy was adopted on 16<sup>th</sup> December 2003. The policy is based on applying *Australian Standard 2021-2000 Acoustics-Aircraft noise-Building siting and construction* (Australian Standard 2021-2000) in conjunction with 2012 Australian Noise Exposure Forecast (ANEF) maps endorsed by the Department of Defence.

#### Need for Review

Council resolved on 27 June 2006 as follows:

That a moratorium be placed on further bed and breakfast development applications in 25-30 ANEF zones until the review of Council's policies in relation to ANEF zones is complete. The Manager Sustainable Planning be required to complete this review as a matter of priority

This directly arose from the mismatch of the current policy and a recent Development Application at Salt Ash where there was inconsistency between the policy and Australian Standard 2021-2000. A number of meetings, and a tour of affected areas, have been conducted with Department of Defence representatives. Also, a recent court case concerning aircraft noise has highlighted the need to strengthen Council's policy approach on addressing aircraft noise associated with Development Applications.

The need to modify the policy has been identified and suggested modifications include:

- Identifying more types of development as either acceptable, conditionally acceptable within each ANEF contour to provide greater clarity to proponents of development;
- Refining the acceptability of development types and adopting the indoor sound design levels of Australian Standard 2021-2000 so that the provisions of Australian Standard 2021-2000 are more closely adhered to;
- Inserting a flow chart outlining how the process of addressing aircraft noise works to outline the process more clearly;
- Inserting a copy of the 2012 ANEF maps into the policy so that more information on aircraft noise is accessible in one document; and
- A provision that prevents the use of applications for bed and breakfast establishments to overcome restrictions which apply to dwelling houses within the 20-25 ANEF contours.

Development Control Plan

A recommendation of the review is to address aircraft noise policy as a chapter in Port Stephens Development Control Plan 2007. The reason is to provide better access to information on development control matters through a single development control plan and provide greater statutory weight to decisions made in respect to the issue of aircraft noise. Legal opinion (attached) has been provided that supports the inclusion of addressing aircraft noise within a development control plan in this respect. A draft chapter for insertion into the Port Stephens Development Control Plan 2007 has been prepared and is attached to this report.

#### Planning Certificates

The information provided by Council on Planning Certificates issued under 149(2) and 149(5) of the Environmental Planning and Assessment Act 1979 has also been considered as part of the review and legal advice sought on this matter. Recommendations on changes to the information supplied on Planning Certificates are set out in the following paragraphs.

#### 149(2)

Planning Certificates issued under Section 149(2) currently identify if an allotment of land is affected by the policy Aircraft Noise Exposure in Port Stephens. Land is affected by the Policy if it is located within ANEF contours. Legal advice recommends that notation be made on 149(2) Planning Certificates that land within ANEF contours is subject to Chapter B13 Aircraft Noise of Port Stephens Development Control Plan 2007 in the event of that draft chapter being adopted by Council.

#### <u>149(5)</u>

149(5) Planning Certificates issued at this time provide no additional information with respect to aircraft noise. This is despite all areas of Port Stephens being affected by aircraft noise from military aircraft from time to time, including land outside of ANEF contours. Legal advice suggests the following wording for inclusion on 149(5) Planning Certificates:

"All areas of the Port Stephens Local Government Area are now, or are forecast to be, affected by aircraft noise from time to time. Further information concerning the degree of impact of noise from aircraft can be obtained from the Council's Sustainable Planning Group and you are advised to make further enquiries."

The intention is to make all purchasers aware that all areas of the Port Stephens LGA are affected by aircraft noise from time to time. The *Environmental Planning and Assessment Act 1979* provides that a Council shall not incur any liability in respect of any advice provided in good faith on 149(5) Planning Certificates.

It will be necessary for staff to inform people who make further enquiries that Council bases its approach to planning for aircraft noise on applying Australian Standard 2021 in conjunction with ANEF contour charts, and that Council has no control over the flight paths taken by military aircraft.

# LINKS TO CORPORATE PLANS

The Draft Chapter B13 Aircraft Noise would be included as an additional chapter in the Port Stephens Development Control Plan 2007.

# FINANCIAL/RESOURCE IMPLICATIONS

There are no immediate financial or resource implications of the proposed changes.

# LEGAL AND POLICY IMPLICATIONS

Planning decisions made under a Development Control Plan made under the Environmental Planning and Assessment Act are likely to have greater statutory weighting than those made under a policy made under the Local Government Act, particularly if the Development Control Plan is advertised and applied consistently. The recommended Development Control Plan chapter on aircraft noise also reflects Australian Standard 2021-2000 to a greater extent compared to the current policy. These matters should have positive legal implications for Council.

The legal opinion sought by Council on providing a notation on 149(5) Planning Certificates, as stated in this report, suggests that there are no legal ramifications in doing this as long as the information provided in the notation is not erroneous.

Addressing aircraft noise as a chapter within a consolidated Development Control Plan is consistent with the State Government's aim of reducing the number of Development Control Plans applying to a parcel of land. The attached draft chapter on aircraft noise for inclusion in the Port Stephens Consolidated Development Control Plan 2007 is essentially a revised version of the existing policy that is more closely aligned with the provisions of Australian Standard 2021-2000.

Following exhibition and insertion of Chapter B13 Aircraft Noise into Port Stephens Development Control Plan 2007, the current policy Aircraft Noise Exposure in Port Stephens will be repealed.

#### Australian Business Excellence Framework

This aligns with the following ABEF Principles:

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions
- 4) to improve the outcome, improve the system and its associated processes
- 7) All people work <u>IN</u> a system; outcomes are improved when people work <u>ON</u> the system
- 8) Effective use of facts, data and knowledge leads to improved decisions
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders

#### SUSTAINABILITY IMPLICATIONS

#### SOCIAL IMPLICATIONS

Implementing the review will make information on planning for the management of aircraft noise more accessible to the community to enable them to make more informed choices when considering the purchase of a dwelling in the Port Stephens LGA.

#### ECONOMIC IMPLICATIONS

There are no economic implications associated with the review of Council's approach to managing aircraft noise issues.

#### **ENVIRONMENTAL IMPLICATIONS**

Future land use decisions made in accordance with Chapter B13 Aircraft Noise of the Port Stephens Development Control Plan 2007 (Aircraft Noise) will result in a consistent approach to managing the impact of aircraft noise.

#### CONSULTATION

Department of Defence was consulted and the Department supports this recommended approach.

Council's Legal Officer and an external Barrister have been consulted in the review of this matter. Their advice has formed the basis for the recommendations in this report.

#### OPTIONS

- 1) Proceed and place the draft Development Control Plan chapter on public exhibition as recommended.
- 2) Not proceed and maintain current policy framework concerning aircraft noise issues in the Port Stephens LGA.

#### **ATTACHMENTS**

- 1) Draft Chapter B13 Aircraft Noise of Port Stephens Development Control Plan 2007
- 2) Memorandum of Advice Mr Andrew Pickles, Barrister 6<sup>th</sup> February 2007
- 3) Comment Department of Defence Chris Bee 9<sup>th</sup> January 2007.

#### **COUNCILLORS ROOM**

Nil

#### **TABLED DOCUMENTS**

Nil

# **ATTACHMENT 1**

### DRAFT CHAPTER B13 AIRCRAFT NOISE OF PORT STEPHENS DEVELOPMENT CONTROL PLAN 2007

### WHERE DOES THIS PART APPLY?

This Part applies to all land identified within the Australian Noise Exposure Forecast (ANEF) contours as identified in *Figure B13.1*.

It should be noted that all areas of the Port Stephens Local Government Area experience noise from civilian or military aircraft from time to time. Applicants who apply for development consent outside of the ANEF contours should make an independent decision and assessment of whether noise attenuation measures are required.

### BACKGROUND

The Port Stephens Local Government Area is subject to aircraft noise from military jets operating from the Royal Australian Air Force base at Williamtown and the associated use of the Salt Ash Air Weapons Range facility. Noise generated by military jets is a continuous issue within the local government area.

To assist in managing the impacts of noise from the operation of military jet aircraft, the Department of Defence endorses ANEF contour charts that indicate land area most affected by aircraft noise and the likely level of exposure. The ANEF charts are used in conjunction with *Australian Standard 2021-2000 – Acoustics – Aircraft Noise Intrusion – Building Siting and Construction* to determine the acceptability of different types of development within the ANEF contours. This forms the basis of Council's approach to the management of exposure to aircraft noise.

### PRINCIPLES AND DEVELOPMENT CONTROLS

Managing the impacts of aircraft noise within the Port Stephens local government area is based upon the following principles:

### PRINCIPLES

- B13.P1 Proponents should acquaint themselves with the level of aircraft noise that may be experienced from time to time on a property that is situated within the Port Stephens LGA;
- B13.P2 Council needs to take into consideration the likely impact of aircraft noise when assessing and determining development applications;

### STRATEGIC COMMITTEE - 24 APRIL 2007

- B13.P3 *Australian Standard 2021-2000* is the recognised document for assessing the impact of aircraft noise on development and determining what measures might be employed to reduce the impacts and provide acceptable indoor sound levels;
- B13.P4 Applying *Australian Standard 2021-2000* relies on the availability of ANEF contours as well as actual flight path and noise levels of operating aircraft;
- B13.P5 ANEF contour charts provide a broad-scale planning tool for identifying areas affected by aircraft noise and the degree to which areas are affected. Depending on the degree of impact development may be acceptable, conditionally acceptable or unacceptable;
- B13.P6 ANEF contour charts must be considered in conjunction with *Australian Standard 2021-2000* and the Defence Aircraft Indicative Noise Level Tables (available from Council and the Department of Defence).
- B13.P7 The Department of Defence advises that noise level should always be confirmed on site.
- B13.P8 For the purpose of indoor design sound level refer to Table 3.3 *Indoor Design Sound Levels for Determination of Aircraft Noise Reduction* of Australian Standard 2021-2000.
- B13.P9 The effect of aircraft noise on outdoor spaces associated with any development type must be considered in a development application.
- B13.P10 Nothing prevents a person from lodging a development application in spite of this Part. Under the provisions of the *Environmental Planning and Assessment Act 1979* such a development application would be assessed on its planning merits.

### DEVELOPMENT CONTROLS

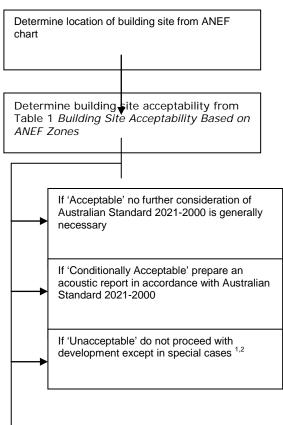
C2.C1 Table 1 *Building Site Acceptability Based on ANEF Zones* shows the acceptability of different types of development and their acceptability based on Australian Standard 2021-2000. It specifies the detail required to be submitted with development applications for each type of development. When a development application is received for a type of development that is not listed Council will exercise its discretion as to whether an acoustic report is required.

Where Table 1 specifies that a development application is 'Conditionally Acceptable', an acoustic report must be submitted that is signed and endorsed by an acoustic engineer. The report must demonstrate that Australian Standard 2021-2000 has been considered in the design of the building and any proposed attenuation measures must be incorporated into the design and conditions of the consent.

- C2.C2 ANEF contour charts must address Australian Standard 2021-2000 and the *Defence Indicative Noise Level Tables* (available from the Department of Defence).
- C2.C3 Indoor sound design levels must be consistent with Table 3.3 *Indoor Sound Design Levels for Determination of Aircraft Noise Reduction* of Australian Standard 2021-2000.

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### HOW TO APPLY THIS PART



<sup>1</sup>Australian Standard 2021-2000 does not recommend development in unacceptable areas. However, where the planning authority determines that any development may be necessary within existing built-up areas (areas zoned residential) designated as unacceptable, it is recommended that such development should achieve the aircraft noise reduction (ANR) in accordance with Australian Standard 2021-2000.

<sup>2</sup>No new development should take place in greenfield sites deemed unacceptable because such development may impact airport and weapon range operations.

# STRATEGIC COMMITTEE – 24 APRIL 2007

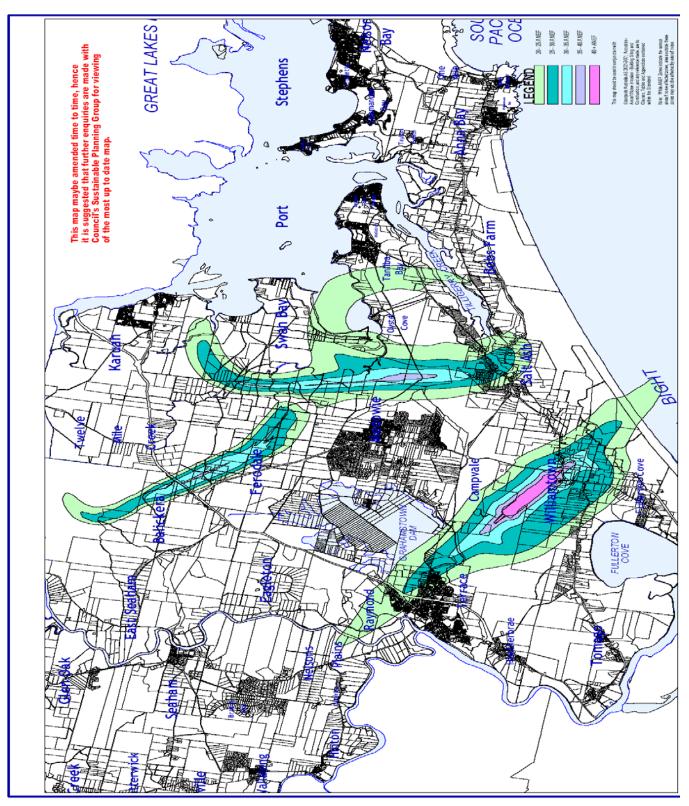


Figure B13.2 ANEF Chart

# STRATEGIC COMMITTEE – 24 APRIL 2007

Type of development	20-25 ANEF	25-30 ANEF	30-35 ANEF	35-40 ANEF	40+ ANEF
Abattoir Acceptable		Acceptable	Acceptable	Acceptable	Acceptable
Idition to existing velling Acceptable 40%increase in GFA)		Acceptable	Conditionally Acceptable	Conditionally Acceptable	Conditionally Acceptable
Addition to existing dwelling (>40%increase in GFA)	Conditionally Acceptable	Conditionally Acceptable	Conditionally Acceptable	Conditionally Acceptable	Conditionally Acceptable
Airport and heliport (terminal buildings)	Acceptable	Acceptable	Conditionally Acceptable	Conditionally Acceptable	Conditionally Acceptable
Bed and breakfast establishment (forming part of an existing approved dwelling)	Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable
Bed & breakfast establishment (forming part of a new dwelling)	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable	Unacceptable
Boarding house	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable	Unacceptable
Brothel	Acceptable	Conditionally Acceptable	Conditionally Acceptable Unacceptable		Unacceptable
Bulky goods sales room or showroom	Acceptable	Conditionally Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable
Camp or caravan site	Camp or caravan site Conditionally Acceptable		Unacceptable Unacceptable		Unacceptable
Child care centre	ild care centre Unacceptable		Unacceptable	nacceptable Unacceptable	
Club Acceptable		Conditionally Acceptable	Conditionally Acceptable		
Commercial premises Acceptable		Conditionally Acceptable			Unacceptable
Community facility Conditionally Acceptable		Conditionally Acceptable	Unacceptable Unaccep		Unacceptable
Depot Acceptable		Acceptable Acceptable		Acceptable	Acceptable
Dual occupancy Conditionally Acceptable		Unacceptable Unacceptable		Unacceptable	Unacceptable
Dwelling house	Dwelling house Conditionally Acceptable		Unacceptable Unacceptable		Unacceptable
Educational establishment	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable	Unacceptable
Exhibition home	Conditionally Acceptable	Unacceptable Unacceptable		Unacceptable	Unacceptable
Hazardous industry Acceptable		Acceptable	Acceptable Acceptable		Acceptable
Type of Development	20-25 ANEF	25-30 ANEF	30-35 ANEF	35-40 ANEF	40+ ANEF

Table 1 Building Site Acceptability Based on ANEF Zones

# STRATEGIC COMMITTEE – 24 APRIL 2007

Health care professional	Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable
Health consulting rooms	Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable
Home employment	Acceptable	Conditionally Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable
Home occupation	Acceptable	Conditionally Acceptable	Conditionally Conditionally		Unacceptable
Hospital	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable	Unacceptable
Hotel	Acceptable	Conditionally Acceptable	Unacceptable <sup>2</sup>	Unacceptable <sup>2</sup>	Unacceptable <sup>2</sup>
Industry and industrial- type development in the 4(a) zone (excluding those types of industrial development listed elsewhere in this table)		Acceptable	Conditionally		Unacceptable
Institution	Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable
Materials recycling facility	Acceptable	Acceptable Conditionally Acceptable		Conditionally Acceptable	Unacceptable
Medical centre	ical centre Acceptable		nditionally Unacceptable ceptable		Unacceptable
Motor showroom	otor showroom Acceptable		Conditionally Acceptable Unacceptable		Unacceptable
Offensive industry	Offensive industry Acceptable		Acceptable	Acceptable	Acceptable
Offensive storage Acceptable		Acceptable	Acceptable	Acceptable	Acceptable
Outdoor spaces associated with a development - verandahs , pergolas, outdoor enclosures, swimming pools and the like		Acceptable <sup>1</sup>	Acceptable <sup>1</sup>	Acceptable <sup>1</sup>	Acceptable <sup>1</sup>
Place of assembly	Conditionally Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable
Place of public worship	Conditionally Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable
Recreation facility (building)	facility Acceptable		Conditionally Acceptable	Conditionally Acceptable	Unacceptable
Type of Development	20-25 ANEF	25-30 ANEF	30-35 ANEF	35-40 ANEF	40+ANEF
Replacement of dwelling	Conditionally Acceptable	Conditionally Acceptable	Conditionally Acceptable	Conditionally Acceptable	Conditionally Acceptable

# STRATEGIC COMMITTEE - 24 APRIL 2007

Restaurant	Acceptable	Conditionally Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable
Restricted premises	Acceptable	Conditionally Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable
Retail plant nursery (building only)	Acceptable	Acceptable	Conditionally Acceptable	Conditionally Acceptable	Unacceptable
Road transport terminal	Acceptable	Acceptable	Acceptable	Acceptable	Acceptable
Service station	ice station Acceptable		Conditionally Acceptable	Conditionally Acceptable	Unacceptable
Shop	Acceptable	Conditionally Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable
Subdivision of residential land	Conditionally acceptable	Unacceptable	Unacceptable	Unacceptable	Unacceptable
Tourist facility	Acceptable	Conditionally Acceptable	Unacceptable <sup>2</sup>	Unacceptable <sup>2</sup>	Unacceptable <sup>2</sup>
Urban housing	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable	Unacceptable
Veterinary hospital	Acceptable	Conditionally Acceptable	Unacceptable	Unacceptable	Unacceptable
Warehouse	Acceptable	Acceptable	Conditionally Acceptable	Conditionally Acceptable	Unacceptable

The effect of aircraft noise on outdoor spaces associated with any development type must be considered in a development application.

<sup>2</sup>Except if located within Newcastle Airport Area, as illustrated in Attachment 1, where such a use may be conditionally acceptable. In such instances an acoustic report is required with noise levels to be confirmed on site.

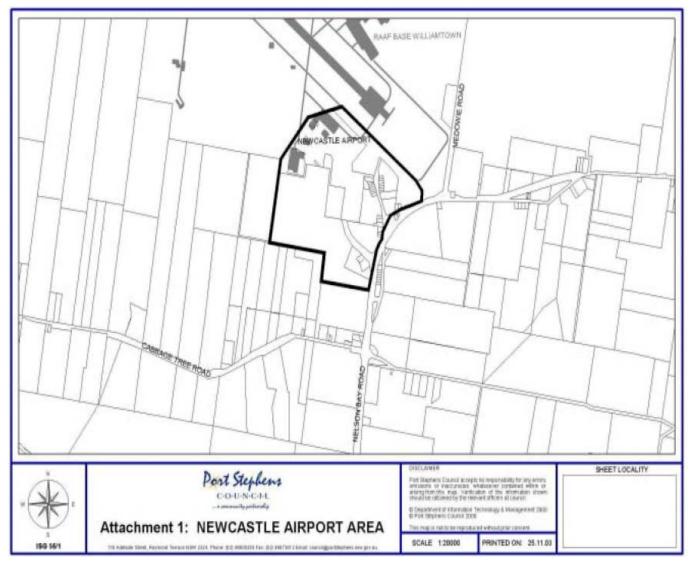


Figure B13. 1: Newcastle Airport Area

### **ATTACHMENT 2**

### **MEMORANDUM OF ADVICE – MR ANDREW PICKLES, BARRISTER**

PORT STEPHENS COUNCIL – AIRCRAFT NOISE EXPOSURE IN PORT STEPHENS POLICY REVIEW

MEMORANDUM OF ADVICE

Port Stephens Council DX 21406 RAYMOND TERRACE

Attention: Ms Lisa Marshall

Liability limited by a scheme approved under Professional Standards Legislation

#### PORT STEPHENS COUNCIL AIRCRAFT NOISE EXPOSURE IN PORT STEPHENS

### POLICY REVIEW

#### MEMORANDUM OF ADVICE

### Instructions

- 1. I am instructed by the Council's in-house legal officer to provide advice in relation to the Council's intention to do the following:
  - Incorporate the Council's aircraft noise policy as a chapter within the draft Port Stephens Development Control Plan 2007;
  - Align Council's draft DCP 2007 provisions relating to aircraft noise more closely with Australian Standard 2021-2000 Acoustics – Aircraft Noise Intrusions – Building Siting and Construction;
  - Insert aircraft noise warnings into s149 certificates under the Environmental Planning & Assessment Act ("EP&A Act") for all properties, even outside the ANEF contours for the Port Stephens Local Government area.
- 2. My advice is sought on the Council's intended course of action, and in particular in relation to questions set out in Council's letter of instruction. In addition a draft wording for insertion into the s149 certificate for all parts of the Council's area is also provided for my comment. The particular questions upon which my advice is sought are set out below and the relevant answers provided with those questions.

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### Question 1

Does the inclusion of aircraft noise development standards within a DCP under the Environmental Planning & Assessment Act provide more legal weight to that provided by Council policy prepared under the Local Government Act?

- 3. The decision of McClellan CJ in Stockland Development Pty Limited v Manly Council (2004) 136 LGERA 254 established that a relevant policy which was not a Development Control Plan ("DCP") could be given weight in a decision of the Council to grant or not to grant development consent and by the Court on appeal. The weight to be given to a particular policy, which was not a DCP, would depend, amongst other things upon the extent to which the policy had been the subject of public consultation. It follows, that although a stand alone policy not forming part of a DCP might be given weight for the purposes of determining development applications in areas affected by aircraft noise, the inquiry that would be undertaken as to the weight that ought to be given to the policy would depend upon a number of matters. This is to be compared with the position of a DCP made in accordance with the EP&A Act, which is required to be advertised and goes through a statutory public consultation period. In these circumstances the same inquiries do not necessarily arise.
- 4. Nevertheless, a DCP adopted after consultation with the affected community will be given significantly more weight than a policy or DCP that has been adopted with little or no community consultation. Similarly, a DCP that has been consistently applied by a Council will also be given greater weight than a policy which has been selectively applied and a DCP which is underpinned by appropriate Australian standards or policy outcomes at a State or regional level can be given greater weight than one which does not<sup>1</sup>.

<sup>&</sup>lt;sup>1</sup> See Stockland Development Pty Limited v Manly Council at [87]-[92]

5. In my opinion, it is appropriate that the Council incorporate its aircraft noise policy into its DCP which is in the course of preparation. This is because the DCP is a detailed planning document which reflects the Council's expectations for its area in a number of respects, not only in relation to aircraft noise, but in relation to development generally. Given the ramifications that aircraft noise has for development and the appropriateness of development within the Council's area, it is entirely appropriate that the policy be incorporated into the DCP. The process of preparation of a DCP will ensure that the aircraft noise policy, forming part of the DCP is afforded greater weight than a policy that has not had a level of public consultation.

### Question 2

What are the legal implications if the Council were to issue all s149 certificates for properties located outside the ANEF contours as being affected from time to time by aircraft noise associated with the RAAF base at Williamtown?

6. The answer to this question in part depends upon what type of certificate is applied for. Certificates applied for pursuant to s149(2) of the EP&A Act are required to provide information that is prescribed by the Act and the Regulations. Schedule 4 of the EPA Regulation 2000 ("EPAR") specifies the matters which are to be incorporated into a s149(2) certificate. Once the Council makes its DCP which incorporates the aircraft noise policy the identification of the DCP as required by cl1 of Schedule 4 of the EPAR will automatically incorporate a reference to the DCP of which the aircraft noise policy component of the DCP being specifically brought to the attention of the reader unless the Council also decides to attach extracts of it to the certificates.

 However, the other part of the s149(2) certificate which might relevantly raise matters of aircraft noise is cl7 of Schedule 4, that is:

"Whether or not the land is affected by a policy:

- (a) adopted by the Council, or
- (b) adopted by any other public authority and notified to the Council for the express purpose of its adoption by that authority being referred to in planning certificates issued by the Council,

that restricts the development of the land because the likelihood of landslip, bushfire, flooding, tidal inundation, subsidence, acid sulphate soils or any other risk."

The effect of clause 7 is that the Council would make a reference to its aircraft noise policy or DCP incorporating such a policy if that policy specifically restricts development of the <u>land</u> the subject of the certificate. It follows, that s149(2) certificates would only identify a risk of exposure to noise for land which is affected by the aircraft noise contours, or which is affected by the Council's policy.

- For properties which are not located within the ANEF contours or on any land affected by the Council's policy, such notation would have to be furnished through a s149(5) certificate.
- 9. I can think of no particular legal implications from including a general notation on all s149(5) certificates to the effect of that set out in my instructions, or the version I have suggested below. Some people may regard the information as having a potentially negative effect on property values, but the Council has a wide discretion to include whatever matters it thinks fit on s149(5) certificates and I do not think there are any particular legal ramifications unless the Council gives erroneous information.

- 10. One of the benefits of the type of general information proposed by the Council is that it is unlikely to be misleading. One of the reasons why the Council was unsuccessful in its defence of the certificates in the Fisherman's Village Resort proceedings was that the Council had endeavoured to provide more information than it needed to or was obliged to. Had the Council given a more generalised warning, such finding as made by Sidis J and the NSW Court of Appeal may not have been open.
- 11. However, an indirect consequence of the proposed notation is that members of the public will be induced to seek out further information of the Council. In these circumstances, the Council will need to have careful procedures for the provision of additional information over the counter. In addition, it is not clear to me what further information will be provided to a person who is concerned with land not located within the ANEF contours.

### **Question 3**

What are the legal implications or, and what would be the most appropriate location for, inserting noise information under either s149(2) or s149(5)?

- 12. The answer to this question is partly provided in answer to question 2 above, but for more abundant clarity the matters for which the Council is required to provide information in s149(2) are prescribed by clause 279 and Schedule 4 of the EPAR. Those are the only matters which the Council should include in its certificates pursuant to s149(2).
- 13. I note that in its letter to the Council dated 9 January 2007 the Department of Defence questions how the Council proposes to include the wider notification under s149(2). As indicated above, I do not think there is a role for the general warning in certificates under s149(2) because the EPAR prescribes the matters to be contained in such certificates. In contrast, under s149(5),

Council may advise on such other relevant matters affecting the land as it may be aware. This gives the Council the opportunity to provide all applicants for certificates within the Council's area with an appropriate warning in relation to aircraft noise exposure.

- 14. In my view the appropriate course is as follows:
  - For properties within aircraft noise exposure contours: These properties will be notified of aircraft noise exposure the notification will occur in three ways:
    - (i) indirectly by reference to the DCP pursuant to cl1 of Schedule 4 of the EPAR 2000 in the s149(2) certificate; and
    - (ii) by reference to the adoption of a policy to restrict development by reason of exposure to aircraft noise pursuant to cl7 of Schedule 4 of EPAR 2000 in the s149(2) certificate; and/or
    - (iii) by the general noise exposure warning in the s149(5) certificate.
  - For properties located outside the aircraft noise exposure contours notification will occur in two ways:
    - (i) indirectly by reference to the DCP referred to and required to be referred to by cl1 of Schedule 4 of EPAR 2000 in the s149(2) certificate; and
    - (ii) by reference to the general noise warning in a certificate issued under s149(5).
- 15. In addition to all of the above, the ramifications for notification in accordance with the suggestions above are that where the Council has furnished

information under s149(2), the Council is required to provide accurate and detailed information in accordance with the EPAR Schedule 4. There is no "good faith" statutory protection for the Council of pursuant to s149(6) in respect of such information. The general noise warning provided by s149(5) might benefit from the "good faith" defence under s149(6). However, as the Council well appreciates from the litigation concerning the Fisherman's Village Resort, the opportunities for relying on such a defence may be narrow given the Council's knowledge of aircraft noise exposure.

### **Question 4**

What are the implications for incorporating aircraft noise within a consolidated DCP with respect to s149(2) certificates?

- 16. The Council has indicated in respect of this question that there is a concern that if the aircraft noise policy is incorporated into a consolidated DCP, the issue will not be specifically stated in the s149(2) certificate. For reasons already stated above, as the Council ought to identify the aircraft noise policy component of the DCP pursuant to cl 7 of Schedule 4 of the EPAR, the aircraft noise policy will be identified specifically in s149(2) certificates for properties that are located within the ANEF. Further, there is no reason why the Council could not include, as an annexure to the s149 certificate, the relevant parts of the DCP relating to aircraft noise for properties which are located within the ANEF contours. This is no different to the approach which the Council has taken to cl14, 19, 34 and 35 of the Port Stephens LEP 2000 and the way in which the Council has annexue annexure A to s149 certificates for properties for properties which are affected by those clauses.
- 17. It follows that there should be no concern that properties which are affected by aircraft noise will be appropriately notified pursuant to s149(2), provided that the Council notifies of its policy to restrict development pursuant to cl7 of Schedule 4 of the Regulations for property affected by that policy.

### Appropriate wording for s149 certificates

 In respect of the notation on s149(5) certificates for all land within the Council's area, I recommend the following amended wording:

> "All areas of the Port Stephens Local Government Area are now, or are forecast to be, affected by aircraft noise from military aircraft, from time to time. Further information concerning the degree of impact of noise from aircraft can be obtained from the Council's Sustainable Planning Group and you are advised to make further enquiries."

- 19. The wording above overcomes the concern in the Fisherman's Village case that in some cases, although aircraft may not be evident now, they may be affected by noise in the future.
- 20. I have also endeavoured to draft the warning to make it clear that the further information that will be made available concerns the degree of impact from aircraft noise rather than suggesting that the Council will provide more information in relation to "all areas" that are affected by noise.

### Conclusion

- 21. In summary:
  - I recommend that the Council incorporate its aircraft noise policy into its consolidated DCP.
  - Information concerning the aircraft noise component of the DCP should be referred to in s149(2) certificates in areas that are within ANEF contours - specifically in answer to clause 7 of Schedule 43 of the Regulation.

contours - specifically in answer to clause 7 of Schedule 43 of the Regulation.

- Information concerning the aircraft noise aspects of the DCP can also be included as attachments to the s149(2) certificate for affected properties, if the Council wishes to do so.
- A general noise notation may be provided in all certificates issued pursuant to s149(5).

de. that

<u>A. M. Pickles</u> Chambers 6 February 2007

### **ATTACHMENT 3**

### DEPARTMENT OF DEFENCE ADVICE





Chris Bee Assistant Secretary Strategic Planning and Estate Development BP3-2-A001 Department of Defence CANBERRA ACT 2600 chris.bee@defence.gov.au

Tel: 02 6266 8002 Fax: 02 6266 8044

ASSPED/OUT/2007/ & 2002/18317/3

Mr Trevor Allen Port Stephens Council PO Box 42 RAYMOND TERRACE NSW 2324

Dear Mr Allen

### **RE: AIRCRAFT NOISE EXPOSURE IN PORT STEPHENS POLICY REVIEW**

Thank you for the opportunity to comment on the *Aircraft Noise Exposure in Port Stephens Policy Review* (Policy Review). Department of Defence (Defence) acknowledges the importance of the Policy Review for assessing and addressing aircraft noise impacts within the Port Stephens Council Local Government Area (LGA).

Defence commends Council for updating the aircraft noise policy and the intention to incorporate it into Council's draft development control plan. Council is also commended for its review of information provided on planning certificates with respect to aircraft noise. Defence strongly supports Council's intent to place a notation on Section 149 certificates within the LGA, notifying that the land may be subject to noise from military aircraft from time to time. It is requested that Council provide further information on how this will be achieved under Section 149(2).

Defence supports the use of the Australian Standard 2021-2000 – Acoustics – Aircraft Noise Intrusion – Building Siting and Construction (AS2021-2000) to assess and address the impact of aircraft noise on development applications. However, these tools have limitations when utilised for land use planning around military airfields. Land beyond the 20 ANEF should not be misinterpreted as land unaffected by aircraft noise. Defence's noise measurements show that land beneath low altitude established flight paths is affected by high levels of aircraft noise from time to time. Hence, to enable Council to more comprehensively assess and address aircraft noise impacts on development applications, Defence is investigating ways to identify aircraft noise associated with low altitude established flight paths. It is envisaged that this information could be provided to Council in early-mid 2007 with a view to its incorporation into the noise section of Council's draft development control plan.

Also, in your letter you requested advice on the relevance of the buffer zone around Defence's engine run-up facility. The buffer zone is designed to indicate land exposed to aircraft noise generated on the ground as this is not addressed by AS2021-2000, nor the ANEF system.

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Defence intends to update the buffer zone, and it is expected that this information will also be available to Council in early 2007. It is recommended that this area also be included in the policy.

In addition to the above, Defence has reviewed the draft policy and submits the following amendments and comments:

- 1. Insert a new principle Proponents should acquaint themselves with the level of aircraft noise that may be experienced from time to time on their property.
- C2.2, Paragraph 2 should read '...Department of Defence produce ANEF contour charts that define illustrate land area most likely affected...'.
- 3. C2.3, C1.P5 Defence is concerned with Council's approach to use the *Indicative Noise Levels Tables for the Hawk and Hornet Aircraft* (which should be referred to as the *Defence Aircraft Indicative Noise Level Tables*). These tables should be interpreted in conjunction with flight path information. In addition they do not remove the need for actual on-site noise level assessment because they are indicative only. This needs to be made clear.
- 4. C2.3 Principles It is noted that the principles to manage aircraft noise policy do not include impacts on outdoor amenity. Independently treating the interior acoustic environment of dwellings fails to mitigate impacts on the use and enjoyment of outdoor private and public recreation spaces that are an integral part of the Australian lifestyle. Therefore, the reliance on planning decisions in areas affected by aircraft noise purely on the technical application of AS 2021-2000 with disregard to outdoor amenity assessment does not holistically address quality of life for future residents. Hence, Defence recommends that the impacts of aircraft noise on outdoor amenity are addressed in the policy.
- 5. C2.4 Figure 1 –Defence requests modifications to clarify the process as detailed below:
  - If 'Conditionally Acceptable', prepare an acoustic report in accordance with AS 2021-2000 including analysis of the *Defence Aircraft Indicative Noise Level Tables*.
    - If analysis indicates that external noise levels at the site are likely to be 70dBA or less, then proceed with acoustic report.
    - If analysis indicates that external noise levels at the site are expected to exceed 70dBA, then actual, on-site noise measurements are required to complete the acoustic analysis.
  - If 'Unacceptable', do not proceed with development except in special cases<sup>2</sup>. The footnote is to tie it back into your criteria for special cases as outlined on page C2-6.
    - If deemed a special case, an acoustic report is to be prepared in accordance with AS 2021-2000 including analysis of the *Defence Aircraft Indicative Noise Level Tables* and incorporating actual, on-site noise measurements.
- 6. Table 1: Building Site Acceptability Based on ANEF Zones -
  - Bed and Breakfast Establishment: should be deemed as unacceptable in a 25-30 ANEF as for urban housing.
  - Home Occupation and Home Employment: should be deemed as unacceptable in a 25-30 ANEF and 30-35 ANEF as for urban housing.

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- Childcare Centres: should be deemed as unacceptable in a 20-25 ANEF. It is Defence's view that this type of land use is sensitive to aircraft noise. In addition, it could be reasonably expected that this use would also include use of outdoor areas which are not addressed by AS2021-2000.
- Medical Centres and Veterinary Hospitals: Again this is viewed as a sensitive land use and should be deemed as unacceptable in a 20-25 ANEF due to possible disruptions with medical procedures/equipment and/or source of annoyance for distressed patients/animals.
- Outdoor Spaces Outdoor Spaces should be further investigated. Close attention must be paid to outdoor activities that occur on a regular basis where aircraft noise could be a source of disruption and/or annoyance. It is reminded that AS2021 does not address outdoor amenity.
- Subdivision of Residential Land Should be classified as unacceptable in all ANEF zones. As found by the August 2006 Independent Review Panel for the Queanbeyan Land Release Inquiry, "allowing residential development in areas subject to significant aircraft noise is not considered an intrinsically sound planning outcome where other options exist".
- Attachment 1 How was the 'Newcastle Airport Area' boundary determined? Please advise.

Should you wish to discuss the content of this submission further, please contact Natasha Davies, Acting Director Land Planning & Spatial Information, on telephone (02) 6266 8186 or by email <u>Natasha Davies@defence.gov.au</u>.

Yours sincerely

Chris Bee ASSPED

January 2007

cc. Defence Support - CN-NSW, Regional Manager

Defending Australia and its National Interests

# STRATEGIC COMMITTEE INFORMATION PAPERS



Councillor Baumann left the Chambers are 6.11pm during Item 3 and returned at 6.14pm during Item 3.

ITEM NO. 4

# **INFORMATION PAPERS**

### **REPORT OF: JUNE SHINE – EXECUTIVE MANAGER, CORPORATE MANAGEMENT**

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### **RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 3 April, 2007.

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No: Report Title

1 Demolition of buildings greater than 50 years of age

\_\_\_\_\_

### STRATEGIC COMMITTEE MEETING – 3 April 2007

### **RECOMMENDATION:**

That the Recommendation be adopted.

### ORDINARY MEETING OF COUNCIL - 24 April 2007

RESOLUTION:				
110	Councillor Hodges	That the Recommendation be adopted.		
	Councillor Brown			

# **INFORMATION ITEM NO.** 1

# DEMOLITION OF BUILDINGS GREATER THAN 50 YEARS OF AGE

# REPORT OF: JENNIFER SMITH – COMMUNITY PLANNING MANAGER

# FILE: PSC2006-0039

### BACKGROUND

The purpose of this report is to investigate the possibility of amending Port Stephens Local Environmental Plan 2000 and thereby require consent for demolition of buildings over 50 years old.

The Council resolved on 9 March 2004 to:

"request staff to investigate the possibility of amending PS LEP 2000 and thereby require consent for demolition of buildings over 50 years old".

The primary purpose of the amendment would be to identify the heritage significance of buildings aged more than 50 years that are proposed to be demolished.

The age of a building does not automatically indicate that the building is warranted for investigation for heritage values. Rather, a building may be of heritage value because of its design and construction or association with certain people or groups. In this respect, requiring development consent for a building simply because it was constructed more than 50 years ago appears onerous.

Buildings aged over 50 years, at present, encompass all buildings constructed prior to the early 1960s. It is reasonable to infer that this would constitute a significant number of buildings within the LGA. Any development application for demolition will require the use of limited Council and ratepayer resources that could be directed to other matters. Additionally, owners of buildings will have to meet additional Council requirements (i.e. lodge a development application) to demolish a building that, in all reasonable likelihood, may not have heritage significance. The need to lodge a development application may therefore be interpreted as a 'red-tape' measure.

Council already has mechanisms in place to identify and protect items of heritage significance. At present there are a large number of heritage items listed in LEP 2000 as being of State or local significance. It is reasonable to conclude that items of heritage significance in the LGA that require protection have already been identified.

Presently all heritage items and buildings within a Heritage Conservation Area, listed in LEP 2000, require development consent for demolition (clauses 55 and 49 of LEP 2000). This effectively implements the amendment that is being considered, albeit only for already identified items and areas.

In February 2007, Council submitted draft Amendment 26 to the Port Stephens Local Environmental Plan 2000 to the Minister to be made. The Amendment provides that development consent is required for demolition involving:

- a) A building that is a heritage item, or
- b) A building adjoining a heritage item, or
- c) A building within a Heritage Conservation Area, or
- d) A building within Zone No 3 (a) General Business.

This provides a level of protection for potential buildings proposed for demolition within Heritage Conservation Areas or adjacent to a heritage item.

A preferred approach to protecting heritage is to identify buildings that are of significance regardless of whether demolition is proposed, and regardless of the age of the building. This has already occurred through the investigation and listing of heritage items and areas in the Port Stephens Local Environmental Plan 2000. Council's Heritage Advisory Committee is also proactive in identifying and investigating items of heritage significance for protection. Furthermore, any member of the public may request that Council consider an item for heritage protection.

Council's Development and Building Section are also able to assist in the identification of buildings greater than 50 years old that are of potential heritage significance when development applications are lodged for demolition. The advice of Council's Heritage Advisor can then be sought internally on the potential heritage significance of a building.

It is considered that Council already has adequate measures to identify potential heritage items without the need for a further amendment to Port Stephens Local Environmental Plan 2000 that requires consent for the demolition of buildings over 50 years old. A further amendment to the LEP requiring consent for demolition of buildings greater than 50 years old will require that the formal plan-making process be followed. This is unjustified and considered unnecessary given the mechanisms that are already in place to protect heritage within the LGA.

Council has the opportunity to further investigate this matter and include it as part of the wider review of the Port Stephens LEP 2000, to be completed by March 2011 as required by the NSW State Government.

# ATTACHMENTS

Nil

COUNCILLORS ROOM

TABLED DOCUMENTS Nil

# GENERAL MANAGER'S REPORTS

### ITEM NO. 1

### FILE NO: 16-2000-380-10

# POLICY IMPLICATIONS ASSOCIATED WITH SECTION 96 MODIFICATION TO DEVELOPMENT CONSENT FOR AN URBAN HOUSING DEVELOPMENT AT NO.11 – 13 CHURCH STREET, NELSON BAY

### **REPORT OF: SCOTT ANSON – MANAGER, DEVELOPMENT & BUILDING**

### **RECOMMENDATION IS THAT COUNCIL:**

- 1. Not support the Section 96 Modification Application due to excessive height, density, floor space ratio and other non-compliances.
- 2. Delegate determination of the Section 96 Modification Application 16-2000-380-1 for 11-13 Church Street, Nelson Bay to the General Manager noting the conclusion to the report that the Section 96 modification should be refused based upon the draft reasons for refusal shown in Attachment 3.
- 3. Note that the review of the *Height of Tall Buildings Study* will form part of a comprehensive Planning Strategy for the Nelson Bay / Shoal Bay districts.

### ORDINARY MEETING OF COUNCIL – 24 APRIL 2007

MOTION:		
111	Councillor Hodges Councillor Jordan	It was resolved that Council re-exhibit the amended plans and a further report be submitted to Council.

MOTION:		
112	Councillor Baumann	It was resolved that the Motion be put.
	Councillor Jordan	

That the Motion on being put was carried.

### BACKGROUND

This report was considered at the March Operations Committee meeting and deferred to allow staff to assess the amended plans submitted by the applicant on 13 March 2007, including re-advertising, and that the matter be brought back to the April Operations Committee, if possible. Details of the assessment can be found in Supplementary Information Report.

This Section 96 application has been called to Council at the request of Councillors Westbury and Dover. Following extensive consultation with East Ward Councillors this report seeks Council's direction on proposed, significant departures from current development standards contained in the Port Stephens Local Environmental Plan 2000 associated with the assessment of this S96 modification.

This report is not a fully comprehensive assessment of the proposed S96 modification under the Environmental Planning and Assessment Act 1979. The purpose of the report is to enable Council to provide clear direction in respect to the key policy issues of height, density and floor space ratio for development on this site and the Nelson Bay Central Business District in general.

Council has closely considered whether the current proposal can be reasonably considered under Section 96 of the EP&A Act 1979 rather than requiring a new development application. Council's current legal advice indicates that Council can determine the current Section 96 application on merit. If a new application was lodged based on the significant departures proposed the Department of Planning would be the consent authority for a new Development Application.

### LEGAL/POLICY IMPLICATIONS

There are significant legal and policy implications for Council relating to this Section 96 application. The proposal is inconsistent in a number of areas with established Council Policy. The proposal involves significant departures to all development standards set out in Clause 19 of Local Environmental Plan 2000 (ie. density, floor space ratio and height limit).

The ramifications of supporting the proposal, in particular the height departure alone, will undermine a long standing Council policy adopted and implemented in the mid 1980's known as the *Height of Tall Buildings Study*. The previous Local Environmental Plan 1987 and the current Local Environmental Plan 2000 set down a maximum height limit of 15.0 metres for Residential 2(c) zoned land. The consistent application of the adopted height limit, including some minor variations, has reinforced existing and adopted desired future development patterns in the Nelson Bay area. This current proposal is contrary to Council's consistent approach and is considered an overdevelopment of the site. If the proposal is supported it would set an undesirable precedent for future development outcomes within the Nelson Bay further undermining public expectations of a predictable and orderly built environment.

### **Original Development Consent and Section 96 Modification Applications**

The original Development consent was granted on 29 May 2000 pursuant to the requirements of Local Environmental Plan 1987. The approved development was configured in two separate building blocks – Block A & B with associated services and facilities provided on the site. The approved 25 unit development consisted of 14 x 2 bedroom units and 11 x 3 bedroom units.

Since the original development consent was granted, a total of eight (8) modified consents (ie. Section 102 and Section 96 applications) have been submitted and subsequently approved for this development. Provided in Attachment 4 is a chronology of the major elements previously submitted in these modification applications. The current development consent, as modified, consists of 25 units with maximum height of approximately 18.0 metres.

The current Section 96 application, (Modification No.9) was lodged on 15 February 2006. Notices of Intent to Refuse the application were issued by the Sustainable Planning Group on two occasions, 28 April 2006 and 30 November 2006. During the assessment and the Intent to Refuse process, the application was called to Council for determination. The latest revised proposal generally consists of:-

- Density increase from 25 to 42 units;
- Floor Space Ratio increase from 1.9:1 to 2.5:1;
- Height increase from approximately 18.0 metres to 24.0 metres (as measured from Natural Ground Level only);
- Revised design of roofline and upper storey levels of buildings Block A & B;
- Revised access/carparking arrangements to accommodate additional carparking onsite;
- Minor changes to Site Coverage and Garbage Bin storage;

### Key Issues

The key issues associated with this Section 96 modification are as follows:

- Height
- Density
- Floor Space Ratio
- Carparking
- Other (including individual penthouse offices, Construction Certificate, drainage and stormwater management and recommended re-notification).

### New Development Application v Section 96 Modification Application

Prior to lodgement of the Section 96 application, the applicant made inquiries with Council in respect to the proposal. Council's initial advice questioned the appropriateness of lodging a Section 96 for the extent of variations proposed and suggested consultation with the Department of Planning in respect to lodgement of a new development application. Council also expressed concern over the extent of departures from Council's planning instrument (ie. LEP 2000), and that it was unlikely these variations would receive support from Council.

Following consultation with the Department of Planning, the applicant proceeded to lodge a Section 96 application on 15 February 2006 with Council, the subject of this report. Upon lodgement of the Section 96 application, Council sought legal advice on two points. Firstly, whether the development is considered substantially the same development and therefore, legally able to be considered under a Section 96 application, and secondly, whether the Department of Planning have a concurrence role in respect to height under the provisions of the Hunter Regional Environmental Plan 1989. The Section 96 application was also referred during assessment to the Department of Planning for their assessment and concurrence.

Given conflicting opinions from both the Department of Planning and Council's legal advisors, the need existed to seek further clarification on these two points. The current position is that both Council's legal advisors and the Department concur that there is no legal requirement for concurrence to be obtained from the Department of Planning for a Section 96 application. However, there remains a difference of opinion in regards to whether it is appropriate to be dealing with such variations under a Section 96 application, rather than requiring lodgement of a new Development application.

Council's legal advisors remain of the opinion that Council is able to deal with the current Section 96 application based on recent Land & Environment Court decisions, and consider there are merit grounds for refusal of the application. The Department of Planning maintain a different opinion in that *"the proposed modification represents a significant departure from the original approved Development application"*, with specific reference to additional storeys and units, and have stated that *"the Coastal Assessments Branch has advised that in these circumstances the Department's normal practice would be to require a fresh DA to be lodged"*. The Department also recognised that ultimately it is the consent authority's decision whether or not to accept the lodgement of a Section 96 application.

In conclusion, Council has proceeded to assess the Section 96 application based on legal advice received, however on-going reservations at the assessment level and the opinion of the Department of Planning, further questions the appropriateness of assessing the magnitude of variation under a Section 96 application. The Department of Planning would be the consent authority for a new Development Application.

### Merit Assessment

A comprehensive assessment under Section 79C of the Environmental Planning & Assessment Act 1979 has not been undertaken. This report focuses on the key development standards and proposed variations to these standards. Council has a legal obligation to assess the Section 96 application under the provisions of the current LEP 2000 and not under the provisions of LEP 1987.

In undertaking a merit assessment of the Section 96 application the key areas of noncompliance relate to density, floor space ratio, height and other non-compliances or inconsistencies and are discussed below.

Attribute	Proposed	Required	Complies	Variation sought
Height	24.0 metres	15.0 metres	No	+ 9.0 metres Or 60%
Density	1 unit / 60m <sup>2</sup> ( 42 units)	1 unit / 150m <sup>2</sup>	No	+ 90m <sup>2</sup>
Floor Space Ratio	2.5: 1	1.8:1	No	+ 0.7:1
Carparking	69 spaces	70 spaces	No	- 1 spaces (minimum)

Table - Summary of key areas of non-compliance

### Discussion

<u>Height</u>

### Proposed:

The proposal seeks a variation to height and suggests maximum heights of each building, proposed in the order of Block A - 21.4m (northern end) and Block B - 21.8m (south eastern corner) measured from Natural Ground Level (NGL).

### Comment:

The current development consent, as modified provides for a maximum height of approximately 18.0 metres. The height limit pursuant to both LEP 1987 and LEP 2000 is a maximum of 15.0 metres. This height limit has been in existence circa 1987 and was determined through the *Height of Tall Buildings Study* commissioned in the mid 1980's.

For the purposes of assessment, the proposed increase in height needs to be considered in the context of the 15.0 metre height limit within the Residential 2( c) Zone pursuant to Clause 19 of LEP 2000, with consideration given to the existing approved height of 18.0 metres. This development has received approval for an incremental creep in respect to the maximum height from 15.0 metres to 18.0 metres (3.0 metres above the limit) and is now proposing a further variation from 18.0 metres to 24.0 metres (9.0 metres above the 15.0 m limit).

The assessment does not concur with the documentation submitted with the Section 96 application, which suggests maximum heights of each building, proposed in the order of Block A – 21.4m (northern end) and Block B – 21.8m (south eastern corner) measured from Natural Ground Level (NGL). It is also noted that the justification submitted in support of the height increase is primarily based on how it is measured and viewed from street level, in particular the higher street level taken from the lower side of the lot and between each building and from adjoining properties, with no demonstrated justification as to how it will be viewed from any public place including the waterway. It is also difficult to determine the accuracy of the Shadow/Streetscape Diagram submitted.

The assessment of height (as required), based on the limitations of information submitted to Council has been taken from Natural Ground Level only, (not Finished Ground Level) with maximum heights as follows:-

- Block A 24.15m (north eastern corner of building), 23.75m (northern ridgeline) and 21.85m (southern ridgeline).
- Block B 24.15m (north eastern corner of building) and 23.7m (northern ridgeline) and 21.8m (southern ridgeline).

The proposal represents a 60% or 9.0 metre increase/variation to Council's 15.0 metre height limit, and 40% or 6.0 metre increase/variation to the existing approved height of approximately 18.0 metres. Whilst, it is acknowledged that variations to the 15.0 metre height limit have been granted to both the subject development and surrounding developments (including adjoining Commercial 3(a) zoned land), in comparison these variations are considered minor. The proposed height variations currently before Council, in either context are considered significant departures to Council's planning instrument with no sound planning grounds, nor merit to support further increases in height proposed under this application.

To support these variations will also have ramifications to Council's 15.0 metre height limit requirements within the adjoining Commercial 3(a) zoned land given similar development pressures being experienced within this zone, not unlike development in the Residential 2( c)

Zone. The proposal is also considered contrary to the public interests and expectations, of an orderly and predictable built environment.

In conclusion, it is considered that overall, the 15.0 metre height limit has generally achieved acceptable results for Council, the community and developers during this period of time and whilst it is acknowledged that variations above this 15.0 metre limit have been supported, development has generally occurred within the character of the area. To support this proposal with extensive departure in height is considered contrary to these achievements, with height a contributing factor to unacceptable bulk and scale and an over development of the site. Therefore, it is recommended that the Section 96 application not be supported with height a key reason for refusal as outlined in this assessment. It is also recommended that in the context of the Nelson Bay central area, height has continued to be of major community concern and with continued development pressure to undermine Council's policy, a review of the *Height of Tall Buildings Study* and preparation of a comprehensive Master Plan for the Nelson Bay central area is thought necessary to deal with these broader policy issues.

### <u>Density</u>

### Proposed:

The Section 96 application lodged proposed an increase in density from 25 units to 41 units. During assessment of the application, the density was revised and reduced to 40 units with plans submitted. However, the latest proposal consists of 42 units based on current plans (Block A – 20 & Block B – 22) with floor plans clearly providing for 42 numbered units.

### Comment:

The current development consent relates to approval for a 25 unit development. The subject site has a total site area of 2,516m2. Based on the density provisions of 1 unit / 100m2 pursuant to Local Environmental Plan 1987, the development, as approved, complied with Council's density requirements (gaining approval for the maximum density potential on the site).

A merit assessment of the proposal has been undertaken on the basis of proposed increase from 25 to 42 units (current plans submitted). The density variation is being considered on its merits, based on the current density provisions of 1 unit / 150m<sup>2</sup> pursuant to the requirements of Local Environmental Plan 2000. Whilst the current Local Environmental Plan 2000 has a different density standard to that under which the original consent was granted (ie. LEP 1987), the development, was approved for the maximum density potential of 25 units, based on total site area. The current requirements of LEP 2000, has a maximum density potential of 16 units, based on total site area. This reduction in density potential between LEP 1987 and LEP 2000 shows a clear decision or policy change introduced in LEP 2000. This policy change should not be undermined without reasonable merit or justification.

The existing approval for 25 units is the maximum density potential under LEP 1987, representing a 9 unit difference between LEP 1987 and current LEP 2000. The proposal represents a 26 unit increase to Council's current density standard, and a 17 unit increase to the existing approved density of 25 units. There is also a proposed Security/Caretaker accommodation unit, which potentially should be considered as an additional unit.

Notwithstanding Council's obligation to assess this proposal under LEP 2000, in either context the proposed variations are considered significant and unacceptable departures to

Council's requirements (past and present), with no merit to support the proposal for 42 units. This represents a density proposal of 1 unit / per  $60m^2$ , where the current maximum density potential under LEP 2000 is 1 unit / 150m2.

It is considered that any further variation to density on this site, and to the extent of 42 units, has no sound planning grounds when considering Council's past and present planning instruments, nor merit to support the extent of variation. The density departure is considered a major element contributing to the unacceptable bulk and scale and over development of the site. Further, it is likely to be inconsistent with the densities proposed/approved within the adjoining Commercial 3(a) Zone, where there is no actual density standard existing. In this regard, Council when assessing these developments with residential components above ground level, is guided by the Residential 2(c) density provisions to aid in achieving acceptable forms of development and acceptable residential living standards.

### Floor Space Ratio

Proposed:

The Section 96 application, as indicated on plan suggests a maximum FSR of 2.2:1.

Comment:

Council's Floor Space Ratio (FSR) requirement has remained the same in both LEP 1987 and LEP 2000 with a maximum of 1.8:1. The current development consent, as modified provides for a total Floor Space Ratio (FSR) of approximately 1.9:1.

However, an assessment has been undertaken and has identified that this ratio is higher than stated in supporting documentation with FSR calculated at 2.5:1. This variation is considered to be a contributing factor to the unacceptable bulk and scale and over development of the site and therefore, should not be supported by Council.

### Access and Carparking Provision on-site

Proposed:

The proposed plans provide for a total of 69 carparking spaces on-site, with access to 59 spaces via the northern access/entry point and access to the remaining 10 spaces via the southern access/entry point.

Comment:

An assessment of carparking provision has been finalised and based on the number of units and bedroom numbers carparking required is calculated as follows:-

Block A: 11 x 2 Beds Units = 11 spaces and 9 x 3 plus Beds Units = 18 spaces (Total = 29)

(Note: Potential of 3 extra spaces required depending on room use)

Block B: 13 x 2 Beds Units = 13 spaces and 9 x 3 plus Beds Units = 18 spaces (Total = 31)

(Note: Potential of 2 extra spaces required depending on room use)

Residential unit occupants parking = 60 spaces;

Security / Caretaker unit = 1 space; Visitor parking = 9 spaces;

### Total = 61 residential spaces and 9 visitor spaces (Overall Total = 70 spaces)

Note: These calculations exclude the units that have Study Rooms noted above.

An shortfall of 1 carparking space has been identified. Notwithstanding, this initial shortfall, there are a number of spaces (out of the 69 spaces provided on plan) that do not appear to comply with Council requirements and the Australian Standard: Parking facilities for off-street parking and therefore, the potential for greater than 1 spaces is evident as outlined below (areas of non-compliance):-

- A <u>total of 6 spaces</u> out of the 59 spaces identified as accessible via the northern access/entry point, would appear not to comply and the carparking arrangement in this regard suggests that the 2 way access/traffic flow is no longer achievable, whereby reducing traffic flow to 1 way only being physically achievable.
- A total of 2 spaces out of the 10 spaces identified as accessible via the southern access/entry point, would appear not to comply.
- A <u>further 6 spaces</u> are considered marginal to complying with requirements.
- The northern access/entry-exit is required to be one combined access point.

Therefore, based on an assessment of 42 units and a security/caretaker's area a total of 70 carparking spaces is required to be provided on-site (ie. 61 for occupant carparking / security guard & 9 for visitor parking). Based on the above areas of non-compliance, it is likely that an additional shortfall of up to 14 spaces above the initial 19 space do not comply.

The assessment concludes that due to the increase in density proposed, there has been an inability to provide the required carparking, appropriately located on-site, accessible and without compromise to the two-way traffic flow within the site and vehicles being able to enter/leave the development in a forward direction as required. Therefore, this further suggests that the proposal is an over-development of the site and should be amended accordingly to enable required carparking provision on-site.

It is noted that whilst the Section 94 Contributions Plan - Tomaree Peninsula has a carparking contribution for Nelson Bay, it would be inappropriate to accept payment for any shortfall for residential development. Council's continued efforts of enforcing the need to strictly comply with Council's carparking requirements for residential development demonstrates no sound planning justification for a variation in this instance and suggests an over-development of this site.

### <u>Other</u>

There are a number of other issues, which have been identified in finalising assessment and the report to Council. These are discussed below and include the following:-

- Individual Penthouse Unit Office Areas located on Level 2 Ground Floor Level;
- Construction Certificate;
- Drainage needs to be further explored; and

- Re-notification warranted given extent of changes over time.
- Individual Penthouse Unit Office Areas located on Level 2 Ground Floor Level

Clarification is required confirming that these individual offices are to be used exclusively as private offices for each Penthouse, without any use as commercial premises or conducting external business activities whereby members of the public attend the premises.

• Construction Certificate

Council was appointed to determine the original Construction Certificate and undertake inspections. An application for an amended Construction Certificate has not been lodged at this stage. Preliminary assessment of the plans submitted to amend the development consent revealed some areas of non-compliance with the deemed to satisfy provisions of the Building Code of Australia and these issues may require further assessment and consideration.

• Drainage needs to be explored further

It would appear that drainage can be achieved regardless of the extent of changes. However, further information is needed to enable a more detailed assessment to be undertaken, prior to any support of the application.

• Re-notification warranted given the extent of changes over time

The Section 96 application has been publicly exhibited with 3 submissions received raising objection to the original proposal in approximately July 2006. The main areas of concern relate to:-

- Is the development substantially the same development, based on current changes proposed and number of previous modifications made to this development;
- increase in height warrants greater setbacks;
- > over-shadowing impacts (insufficient information submitted to determine impacts);
- insufficient information provided to enable objectors to respond;
- > undesirable precedent if variations are supported by Council;
- extra height only wanted due to loss of water view by surrounding developments, is not good justification to vary the height limit;
- to continue to support variations to density and height will have major impacts on streetscape, traffic and the character of this area of Nelson Bay.

However, it should be noted that during the course of this assessment, the applicant has submitted various sets of revised plans and documentation, which have not all been publicly exhibited, in particular the current revised plans and documentation. Therefore, it is strongly recommended that the current plans and information be publicly exhibited prior to any consideration of support being given to this application in accordance with the requirements of Council's Advertising Policy.

# LINKS TO CORPORATE PLANS

This report relates to the Goal in the Assessment and Approvals program of Council's Management Plan, which is an ordered and predictable built environment in Port Stephens.

### FINANCIAL/RESOURCE IMPLICATIONS

The recommendation to undertake a review of the *Height of Tall Building Study* and need for the preparation of a comprehensive Master Plan for Nelson Bay will have both financial and resource implications.

### Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions
- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 8) Effective use of facts, data and knowledge leads to improved decisions
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders

### SUSTAINABILITY IMPLICATIONS

### SOCIAL IMPLICATIONS

Approving the variations proposed under this Section 96 modification (ie. Height, Density, Floor Space and carparking shortfall) will establish an undesirable precedent whereby future proposed development/modifications will most likely seek similar concessions.

Community concern exists throughout the Local Government Area and in particular the Nelson Bay area, and generally relates to varying any of the development standards contained in Council's planning instrument. However, it is noted that height in particular is of major concern along with the concern that Council are continually pressured by development to support variations to Council policy.

Other non-compliances such as carparking also contribute to an over-development of the site and suggest that the proposed increase in density is unachievable based on site area. Further, it is noted that in supporting such a proposal, is likely to result in an increase in overall community concern for these inconsistencies with Council policy, and in time, will potentially be to the detriment of residential amenity in the Nelson Bay central area. Therefore, the proposal is considered contrary to the public interests and expectations of a predictable and orderly built environment.

### ECONOMIC IMPLICATIONS

An orderly and predictable built environment based on consistent application of landuse controls and standards is required to support economic and investment decisions within

Nelson Bay central business district and surrounding areas. Variations to policies and standards can lead to increased speculation and development pressures on Residential 2 (c) zoned land seeking major departures from established planning controls and raised inequities with other developments.

### ENVIRONMENTAL IMPLICATIONS

Approving the extensive departures to Council policy will not only undermine these requirements but will set a precedent within the Nelson Bay central area and in other areas of the Local Government Area and create even greater uncertainty of the public interests and expectations, of an orderly and predictable built environment.

### CONSULTATION

The Section 96 application has been publicly exhibited with 3 submissions received raising objection to the original proposal in approximately July 2006. However, it should be noted that during the course of this assessment, the applicant has submitted various sets of revised plans and documentation, which have not all been publicly exhibited, in particular the current revised plans and documentation. Therefore, it is strongly recommended that the current plans and information be publicly exhibited prior to any consideration of support being given to this application to ensure compliance with Council's Advertising Policy.

Apart from the public exhibition process there was a need to undertaken consultation with other parties including Sparke Helmore Solicitors, Department of Planning and East Ward Councillors. The reasons for this consultation are outlined below:-

<u>Sparke Helmore solicitors</u> – Council sort legal advice in respect to the appropriateness of a Section 96 application, as opposed to a new Development Application and in relation to the concurrence role of the Department of Planning.

<u>Department of Planning</u> – Council referred the Section 96 application to the Department seeking their concurrence for proposed height pursuant to Clause 58 – Tall Buildings: Hunter Regional Environmental Plan 1989. The Department advised they do not have a concurrence role in respect to a Section 96 application and that in their opinion, a new Development Application would seem more appropriate given the extent of departures to Council's requirements.

<u>East Ward Councillors</u> – several rounds of consultation took place with Ward Councillors to provide information on both this development and surrounding developments in this area of Nelson Bay. Councillors Westbury and Dover called the Section 96 application to Council for determination.

### OPTIONS

- 1) Adopt the recommendation.
- 2) Reject or amend the Recommendations to provide "in principle" support of the Section 96 Modification Application.

### ATTACHMENTS

1) Locality Plan

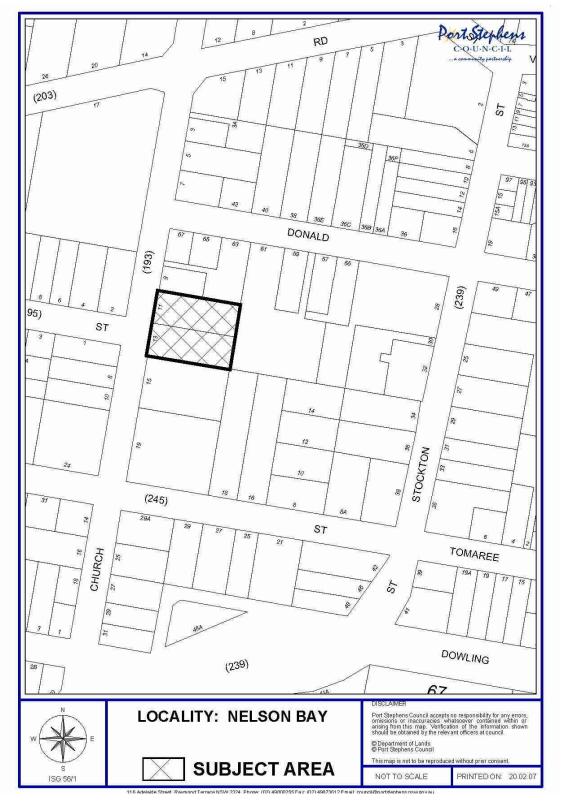
- 2) Reasons for Refusal
- 3) Extract of Sparke Helmore advice summary of modifications

### COUNCILLORS ROOM

- 1) Plans
- 2) Statement of Environmental Effects

### TABLED DOCUMENTS

Nil.



ATTACHMENT 1 LOCALITY PLAN

### **ATTACHMENT 2**

### **DRAFT REASONS FOR REFUSAL**

- 1. The development does not comply with Council's Height limit development standard pursuant to Clause 19 of Port Stephens Local Environmental Plan 2000, with the extent of variation to the standard considered unacceptable.
- 2. The development does not comply with Council's Minimum Area per Dwelling (ie. density) development standard pursuant to Clause 19 of Port Stephens Local Environmental Plan 2000, with the extent of variation to the standard considered unacceptable.
- 3. The development is contrary to the public interests and expectations, of an orderly and predictable built environment.
- 4. The development does not comply with both Council's Parking and Traffic Development Control Plan PS2 and Australian Standard: Parking facilities for offstreet parking. The development does not comply with the required number of access carparking spaces. The development does not provide for carparking, appropriately located and without compromising compliance with adequate turning and passing areas on site.

### **ATTACHMENT 3**

### **EXTRACT FROM SPARKE HELMORE ADVICE – SUMMARY OF MODIFICATIONS**

#### **Modification 1**

- On 29 May 2000, an application to modify the Original Consent was lodged.
- The amendments included the provision of additional carparking, addition of ensuites to 12 units, a 500mm increase to the setback at the southern boundary, one apartment changed to a three bedroom apartment, slight extensions to the apartment blocks to the west/south/north, increase in balcony areas for all units, as well as an increase in the roof deck size.
- Council approved the application by notice dated 17 April 2001.

#### **Modification 2**

- On 8 June 2001, a further application to modify the Original Consent was lodged with Council. The amendments included a change to the internal layout of the units, alteration to the front radius of Block A and B, the addition of a sauna and spa to three apartments and the addition of a small courtyard area to two apartments.
- Council approved the application by notice dated 18 June 2001.

#### **Modification 3**

- On 6 August 2001, a further application to modify the Original Consent was lodged with Council. The amendments included the addition of a green house, sundeck and roof over the pool, 350mm added to the roofline for Block A and B.
- Council approved the application by notice dated 11 October 2001.

#### Modification 4

- On 7 February 2002, a further application to modify the Original Consent was lodged. The amendments included minor amendments to balconies & sauna areas, lift/foyer areas, as well as the carpark.
- Council approved the application by notice dated 18 February 2002.

#### **Modification 5**

On 7 May 2002, a further application to modify the Original Consent was lodged. The amendments included various internal amendments, minor balcony alterations, and a change in the 25 units from  $14 \times 2$ bedroom units to  $7 \times 2$  bedroom units, and from  $11 \times 3$  bedroom units to  $18 \times 3$  bedroom units.

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19 February 2007

• Council approved the application by notice dated 26 August 2002.

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#### **Modification 6**

- On 3 July 2003, a further application to modify the Original Consent was lodged with Council.
- The amendments included the addition of small balconies to the south, adjustments to the swimming pool, modification to balconies to west/north/east, alteration to common building and a change in the swimming pool shape.
- Council approved the application by notice dated 11 September 2003.

#### **Modification** 7

- On 13 November 2003, a further application to modify the Original Consent was lodged with Council.
- The amendments included an alteration to the roof plan, decrease in roof pitch, change in the balcony shape of common areas of two apartments, addition of pergola to an outdoor living area, and the roof plan of the swimming pool was altered.
- Council approved the application by notice dated 10 February 2004.

#### **Modification 8**

- On 22 November 2004, a further application to modify the Original Consent was lodged with Council.
- The amendments included the relocation of one unit from Level 5 on Block A to Level 5 on Block B, change to lift shaft, addition of column at the north to increase structural stability, change in shape of front balcony from curved edge to straight edges and the enclosure of the north facing balconies.
- Council approved the application by notice dated 21 April 2005.

#### **Modification 9 – Current Application**

- On 15 February 2006, the application to modify the Original Consent which is the subject of this advice was lodged with Council.
- The amendments proposed by this application consist of the following:
  - (a) An increase in the number of units from 25 to 41 units. This will entail an increase in the number of units on levels 4-6 from 1-2 to 3 units per floor.

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(b) An increase in the height of the buildings by approximately 5 metres (ie from approx 18 metres to 23.5 metres) to accommodate increase in ceiling height of 100mm per floor.

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(c) Conversion of two first floor apartments into parking spaces, resulting in the development increasing from five to seven storeys.

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- (d) Addition of balconies to the southern side.
- (e) The building footprint is to remain the same.

### ITEM NO. 2

### FILE NO: PSC2005-5185

### **REQUEST FOR FINANCIAL ASSISTANCE**

REPORT OF: JUNE SHINE – EXECUTIVE MANAGER, CORPORATE MANAGEMENT

### **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) Lemon Tree Passage RSL \$500 (Mayoral Funds)
  - b) Hunter Koala Preservation \$1000 (Mayoral Funds)
  - c) Irrawang High School \$500 (West Ward)
  - d) Lemon Tree Passage RFS \$1000 (Mayoral Funds)
  - e) Hunter Region Botanic Gardens \$1335 (West Ward)
  - f) Glen Oak School of Arts \$256 (West Ward)
  - g) Karuah Patchwork & Quilters \$60 (West Ward)
  - h) Mount Kanwary Public School \$1000 (West Ward)

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### ORDINARY MEETING OF COUNCIL – 24 APRIL 2007

RESOLUTION:		
113	Councillor Jordan	That the Recommendation be adopted.
	Councillor Westbury	

Councillor Robinson left the Chambers during discussion of the General Managers reports at 6.53pm.

### BACKGROUND

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 Council's policy gives Councillors a wide discretion to either grant or to refuse any requests.

The Council regularly receives requests for financial assistance from community groups and individuals. However, 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.

Council's policy for financial assistance has been developed on the basis it is "seed" funding and that there is benefit to the broader community. Funding under Council's policy is not intended for ongoing activities.

The requests for financial assistance are shown below:-

### MAYORAL DONATIONS

Lemon Tree Passage RSL	RSL Activities	\$500
Hunter Koala Preservation	Repairs to shed	\$1000
Lemon Tree Passage RFS	28 <sup>th</sup> Annual Market & Fair Day	\$1000

### WEST WARD – Crs Brown, Francis, Hodges & Jordan

Irrawang High School	Fire & Ice Cheerleading Squad	\$500
Raymond Tce Primary Schools	Sporting Equipment	\$1000
Hunter Region Botanic Gardens	Reimbursement of DA Fees	\$1335
Glen Oak School of Arts	Reimbursement of Waste Fees	\$256
Karuah Patchwork & Quilters	Reimbursement of Hall hire fees	\$60
Mount Kanwary Public School	Contribution towards costs to attend the	\$1000
	State Primary School Choral Festival	

### LINKS TO CORPORATE PLANS

The Council's Management Plan does not have any program or stated goal or objective for the granting of financial assistance.

### FINANCIAL/RESOURCE IMPLICATIONS

Council Ward Funds are the funding source for all financial assistance.

### LEGAL AND POLICY IMPLICATIONS

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

The policy interpretation required is whether the Council believes that:

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

The policy has other criteria, but these have no weight as they are not essential. These criteria are:

- a) a guarantee of public acknowledgment of the Council's assistance
- b) the assistance encouraging future financial independence of the recipient
- c) the assistance acting as 'seed' funding with a multiplier effect on the local economy.

### Australian Business Excellence Framework

This aligns with the following ABEF Principles:

- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders.

### ITEM NO. 3

### **INFORMATION PAPERS**

**REPORT OF: JUNE SHINE – EXECUTIVE MANAGER, CORPORATE MANAGEMENT** 

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### **RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the General Manager's Information Papers listed below being presented to Council on 24 April, 2007.

No:	Report Title
1.	Hunter Councils Inc Minutes of Board Meeting 22 February 2007
2.	Port Stephens Council v Robinsons Anna Bay Sand Pty Limited – Land and Environment Court Prosecution
3.	Department of Local Government Practice Note Copyright Issue

### ORDINARY MEETING OF COUNCIL - 24 April 2007

RESOLUTION:		
114	Councillor Hodges	That the Recommendation be adopted.
	Councillor Baumann	

Councillor Nell left the Chambers at 7.14pm during Item 3.

# GENERAL MANAGER'S INFORMATION PAPERS

### INFORMATION ITEM NO. 1

### HUNTER COUNCILS INC MINUTES OF BOARD MEETING – 22 FEBRUARY 2007

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### REPORT OF: PETER GESLING – GENERAL MANAGER FILE: A2004-0026

### BACKGROUND

The purpose of this report is to provide Council with a copy of the Hunter Councils Inc Board Meeting Minutes of 22 February 2007.

### ATTACHMENTS

1) Hunter Councils Inc Board Meeting Minutes of 22 February 2007.

### **ATTACHMENT 1**

### HUNTER COUNCILS INC BOARD THURSDAY 22 FEBRUARY 2007 CESSNOCK CITY COUNCIL **VINCENT STREET, CESSNOCK**

### MINUTES

#### Item 1. Attendance

David Evans Keith O'Learv Peter Gesling Cr Jeff Maybury Cr Margaret Flannery Cr Julie Lyford Cr John Chadban Cr Peter Blackmore Cr John Douglas Cr Keith Parsons Cr Geoff Robinson Cr Mercia Buck

Maitland City Council Great Lakes Council Port Stephens Council Cessnock City Council Dungog Shire Council Gloucester Shire Council Great Lakes Council Maitland City Council Muswellbrook Shire Council Newcastle City Council Port Stephens Council Lake Macquarie City Council

Bernie Mortomore Craig Deasey Steve McDonald Cr Steve Low AM Cr Glenn Wall Cr Ian Shaw Cr Leigh Vaughan Cr Vicki Woods Cr Ian McKenzie Cr Ron Swan Cr Bruce Scott

Cessnock City Council Dungog Shire Council Muswellbrook Shire Council **Dungog Shire Council** Dungog Shire Council Gloucester Shire Council Great Lakes Council Maitland City Council Newcastle City Council Port Stephens Council Cessnock City Council

Staff: Barbara Penson, Graham Dean, Meredith Laing, Steve Wilson

### **Apologies**

Daryl Dutton	Upper
Steven McGrath	Single
Cr Catherine Parsons	Cessn
Cr John Byrne	Greate
Cr Paul Scarfe	Lake M
Cr Wendy Harrison	Lake M
Cr John Colvin	Muswe
Cr Sonia Hornery	Newca
Cr Barry Rose	Upper
Cr Deidre Peebles	Upper
Norm McLeod	Glouce
Bronte Dupen	Greate
Cr Eddie Loftus	Greate
Cr Fred Harvison	Single
Cr Greg Piper	Lake N

Hunter Shire Council eton Shire Council nock City Council er Taree City Council Macquarie City Council Cr Kay Fraser Macquarie City Council Cr Bob Geoghegan ellbrook Shire Council astle City Council Hunter Shire Council Hunter Shire Council ester Shire Council er Taree City Council er Taree City Council eton Shire Council Macquarie City Council

Brian Bell Janet Dore Cr Barry Ryan Cr Barry Johnston Cr John Tate Cr Helen Brown Cr Nat Doonan Cr Tony McNamara Cr John Dugas Cr David West Cr Michael Valantine Cr John Clarence

Lake Macquarie City Council Newcastle City Council Gloucester Shire Council Lake Macquarie City Council Lake Macquarie City Council Maitland City Council Newcastle City Council Port Stephens Council Upper Hunter Shire Council Singleton Shire Council Gloucester Shire Council Greater Taree City Council Muswellbrook Shire Council Cessnock City Council

#### Item 2 Acceptance of the Minutes from 30 November 2006

Seconded: Cr Geoff Robinson Moved: Cr P. Blackmore Carried

#### Item 3 Presentation

Mr Ben Chard, Premier's Department, Hunter Region gave a presentation on the State Plan. He brought attention to the principle that Local Government will be required to align requests for additional funding to the goals of the Plan. He encouraged Councils to consider the document and come back to Premier's Department regarding its potential impact.

Concern from Delegates was aired with regard to the lack of Infrastructure Funds and the poor relationship between State and Local Government.

Mr Deasey referred to the concern of his council (Dungog) regarding both the principle and process of the notification of the Tilegra Dam Project.

Cr Lowe from Dungog Shire Council expressed concern regarding the quantum and timing of the Rural Fires Levy. Cr Lowe and Mr Deasey are to provide Mr Chard with detailed information.

### Item 4 Business Arising from Minutes of Meeting 30th November 2006

4.1 HNEAH Advisory Group

Mr Terry Clout, CEO of HNEAH had previously addressed the Board and had undertaken to ensure that Local Government was appropriately represented on the Health Advisory Group.

The matter has not been clarified or resolved and the CEO was requested to write to Mr Clout seeking further information about the Advisory Group/s and who might currently be representing Local Government.

Moved: Cr J Maybury Seconded Cr. I Shaw Carried

4.2 Hunter Tourism - Hunter Councils Nominee

Subject to Cr Piper being willing that he is nominated as the Hunter Councils' delegate to Hunter Tourism Board.

Moved: Cr P. Blackmore Seconded: Cr. S. Lowe Carried

4.3 Vice Chairmen - Hunter Councils Inc

Cr. Greg Piper and Cr. John Colvin were nominated for these positions at the AGM subject to their acceptance and a completion of the Nomination form. These have now been completed and the nominees be confirmed in these positions.

Moved: Cr. J Maybury Seconded Cr. J Douglas Carried

### Item 5. Community Updates

5.1 Hunter Tourism

David Evans reported on the structure of the Board which has now been endorsed. The meetings will now occur in each product zones.

Subject to his willingness to accept the role Cr Greg Piper was nominated as the Hunter Councils Board nominee in lieu of the Chairman.

Moved: Cr P Blackmore Seconded: Cr. S. Lowe Carried

### 5.2 Westpac Helicopter

Cr Margaret Flannery reported that the major issue facing the organisation was a replacement for the helicopter that was damaged in the accident at Tamworth. Currently they are seeking short term replacements and working to secure a longer term resolution.

### 6. Financial Report

The Account spoke to the Financial Report noting the increase in activity in each area. The report was accepted.

Moved: Cr. G. Robinson Seconded: Cr. M. Buck Carried

### 7. Hunter Councils Ltd Report

The CEO reported on the status of the Hunter Records Storage business which was tracking the business plan and indeed is experiencing considerable growth and enquiries from potential customers. She advised that the business was on track to 'break even' on operations in the coming financial year.

The Board congratulated all the staff involved in this success and note the favourable report.

Moved: Cr. G. Robinson Seconded: Cr. L. Vaughan Carried

### Item 8 General Business

8.1 Department of Local Government Position Paper

The paper was discussed and a motion received that the Recommendations be adopted with the addition of a clause which reflected concerns relating to Peer Reviews and cluster models.

Moved: Cr. S. Lowe Seconded: Cr. P. Blackmore Carried

8.2 LGSA Policy Platform for March 2007 State Election

The following proposal was put:

That Hunter Councils Inc acknowledges and supports the statement issued by the LGSA but have also expressed concern that the document requires some comment with regard to how Local Government will meet the shortfall of funding for infrastructure.

Moved: Cr. S. Lowe Seconded: Cr. I McKenzie Carried

### 8.3 CEO Report

The CEO gave a presentation on the breadth and depth of activities now being undertaken by Hunter Councils. The Board congratulated the CEO on her presentation and the performance of the staff in all the areas in the report.

The Chairman undertook to write to each member council encouraging them to invite the CEO to their council meeting to give this presentation to assist in promulgating the activities of the organisation.

The Chairman would undertake at the appropriate time, to seek to make the presentation to the Minister for Local Government to demonstrate the achievements from the collaboration and shared services of the members.

The CEO was requested to make the presentation available to all Hunter Council delegates.

Moved: Cr. J. MayburySeconded: Cr. G. Robinson Carrie	I: Cr. G. Robinson Carried
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8.4 Climate Change and the Hunter

The Hunter Councils Environment Director gave a presentation on the Climate Change project currently being undertaken by the Division which will ultimately demonstrate the likely impacts of climate change in this region. She has also been successful in being awarded a \$1.4 million dollar grant to promulgate the learning's from the project to the community.

The Director was congratulated on the relevant work and was requested to make the presentation available on the Hunter Councils website.

Item 9 Next meeting - Thursday 31st May To be held at Upper Hunter Shire Council

The Chairman suggested that Delegates may wish to travel the night before the meeting to join at dinner. Further information will be distributed.

The meeting closed at 1pm.

### INFORMATION ITEM NO. 2

### PORT STEPHENS COUNCIL V ROBINSONS ANNA BAY SAND PTY LIMITED – LAND AND ENVIRONMENT COURT PROSECUTION

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### REPORT OF: PETER GESLING – GENERAL MANAGER FILE: PSC2006-1315

### BACKGROUND

The purpose of this report is to inform Councillors of the outcome of a recent prosecution by Council in the Land and Environment Court regarding development without consent.

The proceedings were heard in the Court on Wednesday, 11 April 2007. Judgment and sentencing were handed down the same day.

Council as prosecutor alleged the defendant, Robinsons Anna Bay Sand Pty Limited (RABS), breached the *Environmental Planning and Assessment Act* by carrying out sand extraction without development consent on land at Anna Bay. The land from which the sand was extracted is Crown land administered by State Land services. No licence had been issued by the Crown to RABS for sand extraction nor were any royalties paid to the Crown by RABS for the sand extracted.

Council was first made aware of the sand extraction in April 2005 when it received a complaint from a representative of the NSW Department of Lands about the unauthorised extraction. From investigations into the matter, it appears the extraction commenced sometime in 2002 and continued into 2005, with the total amount of sand extracted estimated to be around 385,000 tonnes (240,000 cubic metres). The Council prosecution concentrated on a seven month period from September 2004 to April 2005 during which there were at least 130 separate instances of the defendant extracting sand from the lands.

In early September 2006, after investigating the matter and seeking legal advice, Council commenced proceedings against RABS in the Class 5 (prosecutions) jurisdiction the Land and Environment Court. A summons was served on the company soon after.

In early November 2006, RABS entered voluntary administration and, later that month, voluntary liquidation. The company had been registered since 1982. Council's case had already been prepared and, as a matter of principle, it was determined Council should continue with the prosecution.

Neither the defendant nor a representative of the defendant appeared at the hearing and it was dealt with ex parte (in the defendant's absence) by Justice Lloyd. His Honour found the offence proved beyond reasonable doubt and convicted the defendant, fined the defendant \$100,000 and ordered the defendant to pay Council's costs. The penalty imposed by the Court in part reflected the objective seriousness of the offence, the substantial environmental harm caused by the offence and the fact the defendant avoided having to pay the costs

associated with obtaining development consent from the Council and a licence from the Department of Lands (therefore profiting from the carrying out of the offence).

While this matter has been successfully prosecuted by Council, the question remains as to whether or not Council can recover from RABS the fine imposed and the costs order given the company has gone into voluntary liquidation. The majority of Council's costs in this matter were expended prior to RABS going into voluntary administration and liquidation. Until that point, Council had no way of knowing the company was intending to go through the process of winding up. Council's case was assessed as being very strong and the prosecution was commenced and continued as a matter of public policy and principle. Council has tried to limit its costs since being informed of the company's voluntary liquidation.

Council is considering its options for recovery of the fine and costs awarded by the Court.

### ATTACHMENTS

1) Nil

### INFORMATION ITEM NO. 3

### DEPARTMENT LOCAL GOVERNMENT PRACTICE NOTE COPYRIGHT ISSUE

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### REPORT OF: JUNE SHINE – EXECUTIVE MANAGER CORPORATE MANAGEMENT FILE: A2004-0125

### BACKGROUND

The purpose of this report is to inform Council of the Department of Local Government Meeting Practice Note No. 16. A copy of the full Practice Note has been provided to Councillors in the past.

The Department of Local Government Meeting Practice Note No. 16 raises the issue of copyright law in particular to development plans associated with development applications. As detailed in ATTACHMENT 1 Council should not reproduce development plans in the business paper due to privacy and copyright laws. This also extends to any reproduction of plans, consultants report and in general terms and material or document that does or may hold copyright protection. Such documents/plans can only be reproduced with the consent of the copyright owner. The issue for Council is that the owner/applicant is not always the copyright owner.

Council staff has explored the possibility of applicants providing sufficient copies just in case a development application is called to Council, however it was deemed that this was unreasonable for all applications. Where an application is called to Council the applicant will be required to supply additional documents sufficient for councillors and to table at the meeting

As from May 2007 meeting cycle Council business papers will not longer contain the development plans or any other document that may hold copyright. Councillors or any person may make an appointment with staff to view plans should they wish to become more informed about the matter at hand, whether it be a development application or some other matter.

### ATTACHMENTS

1) Extract from the Department of Local Government Meeting Practice Note No. 16.

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### **ATTACHMENT 1**

Meetings practice note | Part 1 — Before the meeting

### Should development plans be included in the business paper?

Applications for development consent, called 'development applications', must come with different types of plans under the *Environmental Planning and Assessment Act* 1979 (NSW).

The Act does not require a council to make copies of these plans available in its business papers. Because of privacy and copyright issues, development plans should not be included in the business papers. Instead, interested members of the public should be allowed to view these plans at the council's office. The plans could also be brought to council and committee meetings by council staff.

Copyright raises some very complex issues for councils, particularly in the area of development applications. Copyright in development plans ('a work') is usually held by the person who drew them. Copyright may be breached when a document is copied and given out, but not when it is viewed or placed on public exhibition.

The Environmental Planning and Assessment Act 1979 (NSW) and other State legislation does not allow a council to ignore copyright law when it is dealing with development plans. It would be unwise for a council to give out copies of plans unless the copyright owner has given permission to do so.

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# NOTICES OF MOTION

# NOTICE OF MOTION

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ITEM NO. 1

FILE NO: 3150-029

### MEDOWIE STRATEGY

### **COUNCILLOR: BAUMANN**

### THAT COUNCIL:

1) Extend the consultation period for the Medowie Strategy by 4 weeks

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### ORDINARY MEETING OF COUNCIL - 24 April 2007

RESOLUTION:		
115	Councillor Baumann	That the Recommendation be adopted.
	Councillor Dingle	

Councillor Robinson returned to Chambers at 7.16pm during Item 1. Councillor Nell returned to Chambers at 7.16pm during Item 1.

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

### BACKGROUND

The draft Medowie Strategy has generated extensive reaction. Some written submissions seeking extension to the exhibition period have been received.

An extension of four weeks is reasonable to ensure adequate public opportunity to make submissions.

A longer extension than four weeks is recommended as being undesirable given the need to resolve planning issues at Medowie within reasonable time.

# NOTICE OF MOTION

ITEM NO. 2

FILE NO: 3150-029

### **RECOGNITION OF SANDY ZELL**

### COUNCILLOR: FRANCIS

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### THAT COUNCIL:

 Acknowledge the achievements of Sandy Zell – the 2007 recipient of the CAYAS Award for Visionary Service to Youth in developing and maintaining an international literacy project.

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### ORDINARY MEETING OF COUNCIL - 24 April 2007

RESOLUTION:		
116	Councillor Francis	That the Recommendation be adopted.
	Councillor Nell	

Councillors Baumann and Robinson called for a Division.

Those for the Motion were Councillors Baumann, Robinson, Westbury, Nell, Dover, Swan, Dingle, Tucker, Brown, Francis, Jordan and Hodges.

Those against the Motion were Nil.

### **BACKGROUND REPORT OF: PETER GESLING – GENERAL MANAGER**

### BACKGROUND

Sandy Zell from the Parkland Spanaway Library in Washington State USA has been selected as the 2007 recipient of the CAYAS Award for Visionary Service to Youth for her efforts in promoting literacy amongst children throughout Australia and abroad.

In the past Sandy has been involved with the Sister Cities partnership between Bellingham (USA) and Port Stephens and although no longer living in Bellingham continues to promote Port Stephens through the "We Share A Story 2007 International Art/literacy connection."

In November 2007, author Margaret Lippert, who's book "Head, Body, Legs" is used by Sandy in her "We Share A Story" program will be in Port Stephens to present her story and accompanying art component to Australian students, visiting Tomaree, Anna Bay, Shoal Bay, Raymond Terrace, Medowie & Bobs Farm schools. Local radio stations and newspapers have covered the "We Share a Story" events during previous visits.

There being no further business the Meeting closed at 7.45pm.

I certify that pages 1-170 of the Ordinary Minutes of Council dated 24 April 2007 were confirmed by Council at its Meeting held on Tuesday 22 May 2007.

Cr Ron Swan MAYOR