

## Minutes 14 August 2007



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 14 August 2007, commencing at 10.33pm.

**IT SHOULD BE NOTED THAT ALTHOUGH THE FOLLOWING MINUTES HAVE BEEN CONFIRMED AS BEING TRUE AND CORRECT BY COUNCIL, THEY STATE THAT CR RON SWAN WAS "PRESENT" WHEN IN FACT, AS NOTED IN THE RESOLUTION NUMBERED 206, CR SWAN WAS AN APOLOGY.**

## Minutes 14 August 2007



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 14 August 2007, commencing at 10.33pm.

**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; Acting General Manager; Executive Manager – Corporate Management, Facilities and Services Group Manager; Acting Sustainable Planning Group Manager; Business and Support Group Manager.

206	Councillor Robinson Councillor Nell	It was resolved that the apology from Cr Baumann, Cr Swan and Peter Gesling be received and noted.
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# MAYORAL MINUTES

# MAYORAL MINUTE

ITEM NO. 1

FILE NO: PSC 2006-0029

## DRAFT MEDOWIE STRATEGY – ESTABLISH REVIEW PANEL

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### THAT COUNCIL:

- 1) Select from those residents nominated to be on the Draft Medowie Strategy Review Panel to participate in the review of the Draft Strategy;
  - 2)
  - 3) Endorse the Review Panel Program for Draft Medowie Strategy outlined below.
- 

### BACKGROUND

During the public exhibition of the draft Medowie Strategy (April/March 2007) Council officers made the undertaking that a review panel would be established to review the submissions made and make recommendations to Council's Community Planning Section to amend the draft strategy. The Panel is to include nominated representatives of the local community and number between 5 and 10 persons.

Nominations for residents to be members of the Panel were accepted during community consultation and are now placed before Council for 5 members and 3 reserve members to be randomly selected to participate in a two day program.

In its entirety, the Review Panel will consist of the following members:

- Medowie residents x 5
- Medowie Concerned Residents Action Group and the Medowie Progress Association x 1 each
- Urban Development Institute of Australia x 1
- Property Council of Australia x 1
- Port Stephens Council Comprehensive Koala Plan of Management Steering Committee x 1
- Central Ward Councillors x 4
- Port Stephens Council Representatives
  - Flooding and Drainage x 1
  - Environmental Services x 1
  - Recreation Services x 1
  - Engineering Services x 1
  - Transport Engineer x 1
  - Community Planning x 2 (including Chair)

The Review Panel, consisting of up to 21 persons, will be facilitated by an independent person to be appointed by Council's Acting Community Planning Manager. Once Council has selected the 5 resident members and the 3 reserve resident members, contact will be made with all other parties to confirm representative, attendance and Review Panel program details.

## MINUTES FOR ORDINARY MEETING – 14 AUGUST 2007

### REVIEW PANEL PROGRAM

Subject to Council endorsement of this minute, the intended program for the Panel is as follows:

#### **Proposed Day 1** - Wednesday 29 August 2007.

Participants will be forwarded a summary of submissions to familiarise themselves with issues raised during public exhibition. Whilst still to be resolved in detail, Day 1 will involve:

- Discussion of submission content;
- Discussion on the integration of economic, environmental, social and cultural issues in sustainable planning and development;
- Discussion on balancing economic, environmental, social and cultural issues raised by the submissions relative to the proposed outcomes for Medowie identified in the draft strategy;
- Recommendations to amend the Draft Strategy.

#### **Proposed Day 2** - Wednesday 17th October 2007.

- Present revised draft Strategy to the Panel;
- Discussion on the level and appropriateness of proposed changes relative to outcomes of Day 1;
- Recommendations to progress Draft Strategy.

It is intended that a report will be submitted to Council's Strategic Committee in either November or December 2007 detailing the results of the exhibition of the draft Strategy, including the process and outcomes of the Review Panel, and subsequent amendments to the Draft Medowie Strategy.

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## **ORDINARY MEETING OF COUNCIL – 14 August 2007**

### **RESOLUTION:**

<b>207</b>	<b>Cr Tucker (Deputy Mayor) Cr Hodges</b>	<b>1. That the review panel include a Business Representative from the Medowie Community.</b> <b>2. That the following 5 representatives and 3 reserve representatives were elected following a draw from the hat:</b>  <b>(a) Ian Buhler</b> <b>(b) R. Belcher</b> <b>(c) Christine Worthington</b> <b>(d) Andrew Jeffreys</b> <b>(e) C Ireland</b>  <b><u>RESERVES:</u></b> <b>(i) Russell Lunney</b>
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<b>MINUTES FOR ORDINARY MEETING – 14 AUGUST 2007</b>
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		<p>(j) Bob Stewart; and (k) Lou Cassar.</p> <p>3. The recommended membership of the Review Panel for the Medowie Strategy (comprising 22 members) be referred back to Council for approval at the Ordinary Council Meeting to be held on 28 August 2007.</p>
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# MOTIONS TO CLOSE



ITEM NO. 1

FILE NO:PSC2006-0246

## MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: JUNE SHINE – EXECUTIVE MANAGER CORPORATE MANAGEMENT

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### RECOMMENDATION:

- 1) That pursuant to section 10A(2)(d)(i) of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Operations Committee agenda namely **T10-2007 SURF LIFESAVING RESCUE SERVICES**
  - 2) That the reasons for closing the meeting to the public to consider this item be that:-
    - (i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
    - (ii) In particular, the report includes confidential pricing information in respect of the **T10-2007 SURF LIFESAVING RESCUE SERVICES**
  - 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
  - 4) That the report and minutes of the closed part of the meeting are to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179 of the Local Government (General) Regulation 2005.
- 

### OPERATIONS COMMITTEE MEETING – 14 August 2007

That the Recommendation be adopted.

### ORDINARY MEETING OF COUNCIL – 14 August 2007

RESOLUTION:		
208	Cr Hodges Cr Nell	That the Recommendation be adopted.

**ITEM NO. 2**

**FILE NO: 2005-0829**

**MOTION TO CLOSE MEETING TO THE PUBLIC**

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

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2)(b) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely **RATES FINANCIAL ASSISTANCE – TILLIGERRY CREEK OYSTER FARMERS**.
  - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information concerning the personal hardship for the four oyster farmers with land based facilities in the closed farmland zones.
  - 3) That the report remain confidential but the minutes be released.
- 

**OPERATIONS COMMITTEE MEETING – 14 August 2007**

That the Recommendation be adopted.

**ORDINARY MEETING OF COUNCIL – 14 August 2007**

**RESOLUTION:**

<b>209</b>	<b>Cr Hodges Cr Nell</b>	<b>That the Recommendation be adopted.</b>
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# OPERATIONS COMMITTEE REPORTS



**ITEM NO. 6**

**FILE NO: PSC2005-2892**

**LOCAL GOVERNMENT ASSOCIATION ANNUAL CONFERENCE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Nominates delegates for the Local Government Association Conference.
  - 2) Endorses the proposed motions shown at ATTACHMENT 2.
- 

**OPERATIONS COMMITTEE MEETING – 14 August 2007**

That the Recommendation be adopted.

**ORDINARY MEETING OF COUNCIL – 14 August 2007**

**RESOLUTION:**

<b>210</b>	<b>Cr Hodges Cr Jordan</b>	<b>1. That Council nominate Cr Jordan, Cr Hodges, Cr Brown, and Cr Nell as delegates for the Local Government Association Conference; and 2. Endorses the proposed motions set out below:  <u>MOTION:</u>  The Local Government Association express appreciation to the NSW Attorney General and Chief Judge of the Land &amp; Environment Court for the response to the 2006 resolutions; Express support to the Court for increased emphasis on alternative dispute resolution; Respectfully request that the rules and procedures of the Court be revised so as to discontinue proceedings where applicants are seeking to make substantial amendments to the development application originally referred to the Court and for the Court to direct that the development application be resubmitted as an amended development application or newly lodged development application to the relevant Council;</b>
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		<p>Respectfully request that the Court use discretion to refuse development applications that are clearly demonstrated to the court by the relevant Council to be supported by highly inadequate information – particularly if this recurs on two or more occasions.</p> <p><b><u>MOTION</u></b> That the NSW Minister for Planning, the Honourable Frank Sartor, be strongly and respectfully requested:</p> <p>a) to urgently convene and consult a Reference Group of Directors of Planning from a number of Sydney and regional Councils, representatives of the Local Government Association and Local Government &amp; Shires Association to more collaboratively work on the planning reform agenda; - in particular, to resolve:</p> <p>i) criteria for Ministerial “call ins” for Major Projects;</p> <p>ii) the respective responsibilities of the LEP Panel and Regional Offices of the Department of Planning;</p> <p>iii) the valid and accurate means and reporting of performance monitoring of development assessment; and</p> <p>iv) more specific criteria/Heads of Consideration for the Minister to appoint a planning administrator or panel;</p> <p>v) legislative changes to improve the NSW Planning system.</p> <p><b><u>MOTION</u></b> That the Association call on the State Government to increase the pensions rate rebate to \$350 with an indexed CPI.</p>
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## **BACKGROUND**

**The purpose of this report is to advise Council that Local Government Association Annual Conference is scheduled to be held in Coffs Harbour from 20 October to 24 October 2007.**

This year the theme of the conference is *“Anchoring the Future”*.

As a member of the Association, Council is eligible to have four voting delegates attend. Notices of Motion for consideration at the Conference will be received up until 5:00 pm, Friday 10 August 2007 and Late Motions will be received 5 October 2007. Motions should seek to introduce new policy or alter existing policy, through the addition of new elements or deletion of existing elements. Attached are proposed motions on three issues raised.

This Conference establishes policy of the Local Government Association, which is the principle advocate for Port Stephens Council in the State sphere of government.

## **LINKS TO CORPORATE PLANS**

Through Council's involvement with the Local Government Association Conference Council is able to ensure that Council has a voice in the industry and provide the avenue to implement the community services and organisational function contained in the Council Plan.

## **FINANCIAL/RESOURCE IMPLICATIONS**

Attendance by Councillors and the General Manager is determined by the Council. Budget provision is available.

## **LEGAL AND POLICY IMPLICATIONS**

Nil

### **Australian Business Excellence Framework**

This aligns with the following ABEF Principles.

- 2) Mutually agreed plans translate organisational direction into actions
- 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 & ECONOMIC IMPLICATIONS**

The opportunity to debate policy issues, including sustainability, to meet with elected and senior staff from other Councils, and to provide a further perspective when considering decisions at a local level.

**ENVIRONMENTAL IMPLICATIONS**

Nil

**CONSULTATION**

Not applicable

**OPTIONS**

- 1) Adopt the Recommendation
- 2) Amend the Recommendation

**ATTACHMENTS**

- 1) Information Paper for Councils on 2007 Local Government Association Conference.
- 2) Proposed Motions

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil

ATTACHMENT 1

Local Government  
Association of NSW



***“Anchoring the Future”***  
**Coffs Harbour**

**20 - 24 October 2007**

**Information for Councils**

- Submission of motions • Voting delegate entitlements
  - Year 2009 conference venue
- Conference and social programs • Elections
- Supply of printed material • Outstanding Service awards

Local Government Association of NSW  
GPO Box 7003  
Sydney NSW 2001  
tel: (02) 9242 4000  
fax: (02) 9242 4111  
website: <https://www.lgsa.org.au/>



**1. Registration**

Michelle Aubert of the Coffs Harbour Visitor Information Centre will be handling arrangements for delegates, observers and partners attending this year's annual conference in relation to:

- registration for business sessions
- registration for social functions and partners' tours.

All registration payments are to be made direct to Coffs Harbour Visitor Information Centre.

**2. Accommodation**

All hotel bookings are being managed by Coffs Harbour Visitor Information Centre. If you have not yet confirmed your accommodation booking please contact Michelle Aubert on 02 6652 1522 or 1300 369 070 and mention that you are attending the LGA 2007 Conference.

**3. Voting – Delegates & Nominations to Host the 2009 Conference**

The Local Government Association should be contacted in relation to:

- voting delegate entitlements
- nominations to host the 2009 annual conference

The contact at the LGA is Peter Coulton on 9242 4030 or [peter.coulton@lgsa.org.au](mailto:peter.coulton@lgsa.org.au).

**4. Additional Conference Printed Material**

For additional conference material please contact Karen Rolls on 9242 4050 or [karen.rolls@lgsa.org.au](mailto:karen.rolls@lgsa.org.au).

**5. Submitting Motions**

MOTIONS MUST BE RECEIVED BY 5.00 PM on Friday 10 AUGUST 2007 to enable us to meet business paper production deadlines. Please note all motions submitted must be adopted by council before submission to the Association.

Motions should seek to alter existing policy, through the addition or deletion of elements, or to introduce new policy. To guide this process, the Association's current policy statements (resulting from the 2006 conference business paper) is available on the LGSA website at [www.lgsa.org.au/lgaconference](http://www.lgsa.org.au/lgaconference). Policy statements will not be discussed during the course of debate, except by way of motions which propose specific amendments.

Motions seeking to vary existing policy or to address new or emerging policy issues will be classified as Category One and scheduled for debate at the conference.

Motions reaffirming existing policy, or calling for actions to be taken within existing policy, will be classified as Category Two. Motions in Category Two will be included in the Business Paper and may be individually brought forward to be debated with the agreement of the conference. Otherwise, they will be referred to the Executive of the Association for consideration. Where appropriate, some may be actioned prior to conference.

Motions should be emailed directly to the Association as a Word attachment to [lgaconference@lgsa.org.au](mailto:lgaconference@lgsa.org.au). Please set up your email system to give a confirmation receipt when sending the email so you can be sure the motions have been received by the Association. For inquiries regarding submission of motions please contact Karen Rolls on 9242 4050 fax 9242 4111.

## Motions should be submitted in:

From (Name of council)

Subject

Motion text: That the Association

.....  
 .....  
 .....  
 ♦ Note from Council: *explaining the reason for submitting the motion and how it alters or adds to existing policy. Please summarise due to limited space in business paper.*

## Details supporting the case

This should be on a separate page and give reasons for raising the issue. It will be used by the Association to progress the matter once the conference has dealt with it.

## 6. Late Motions

Any motions received after 13 August will be considered late motions. Late Motions received up until COB 5 October 2007 will be included in a special edition of the Weekly to be published 12 October 2007. Late motions will be dealt with at the conference after all other business has been concluded. Late motions will NOT be accepted at the conference, however the President or office Bearers shall have the right at any time to introduce any matter considered emergent to be put before the conference.

Late motions will not be included in the business paper but will be dealt with at the conference after all other motions have been dealt with.

## 7. Voting Delegate Entitlements

Councils are entitled to nominate voting delegates on a population basis.

The current constitution of the Association provides for voting delegates to conference according to the following clause:

"13. (a) The Annual Conference shall consist of the Executive Committee of the Association and delegates from each council appointed in accordance with the scale as under, such delegates to be sitting members of a constituent council. Each member of the Executive Committee of the Association and each delegate from a council which is an ordinary member shall have one vote.

Group No.	Population	Delegates
(1)	Less than 10,000	1
(2)	10,000 - 20,000 and associate members	2
(3)	20,000 - 50,000	3
(4)	50,000 - 100,000	4
(5)	100,000 - 150,000	5
(6)	Over 150,000	7
(7)	County councils and Aboriginal Lands Councils	2
(8)	Regional Waste Boards	1

Note that member councils currently under administration may have one vote only. Administrators are recognised under the constitution as delegates.

The population numbers are determined by the Association using the Australian Bureau of Statistics publication 3218.0 (latest figures 2004–05). Councils unsure of their allowed delegate numbers should call Peter Coulton, Director Corporate Services.

Please forward to the LGA the details of your council's delegates no later than **Monday 1 October 2007**. Delegate voting cards will be issued to all eligible voting delegates **only** at the conference on registration.

#### **8. Changing Voting Delegates**

All changes to the names of voting delegates both before and during the conference must be made in writing by either the Mayor or General Manager. This ensures that voting lists are up to date and avoids the embarrassment of disputes about who may or may not vote.

Where changes are made to delegates before the conference **new voting cards will be available for collection** from the LGA desk at the conference on **Monday 22 October**. Original voting delegate cards are to be returned to the LGA desk at the conference when collecting replacement cards.

Changes of delegates during the conference should be reported to the LGA office. Our staff will help you with the procedures.

#### **9. 2009 Conference Host Venue**

Nominations for the 2009 annual conference venue will be called for in the Local Government Weekly issue 25 dated 6 July 2007 and will be received until 5pm Friday 24 August 2007. Copy of the Hosting Guide can be downloaded from the Associations website.

#### **10. Draft Conference Program**

Following is the draft program. It will be finalised when all invited speakers are confirmed. The conference venue will be Coffs Ex-Services Club.

##### **Draft conference program (as at 18 June)**

##### **Delegates' program**

##### **Saturday 20 October**

12.00pm – 5.00pm	Registration opens at Ex-Services Club
1.30pm – 4.30pm	Forum: Auditorium Ex-Services Club
	Local Government Forum: Global Problem, Local Solutions. - leadership on climate change. Quentin Dempster instigates a conversation with Hon Malcolm Turnbull MP and Mr Peter Garrett (invited)

##### **Sunday 21 October**

9.00am – 5.30pm	Registration opens at Ex-Services Club
2.00pm- 3.00pm	Church service, Saint Augustines
3.00pm – 4.00pm	Afternoon tea in Ex-Services Club
4.00pm – 5.30pm	Official Opening Ceremony, Auditorium, Ex-Services Club
	Mayoral procession
	National Anthem

## MINUTES FOR ORDINARY MEETING – 14 AUGUST 2007

	Indigenous welcome
	Welcome from Mayor, Cr Keith Rhoades, Coffs Harbour City Council
	Welcome address by Cr Genia McCaffery, President LGA
	Presentation of Outstanding Service Awards
5.30pm – 7.00pm	President's welcome reception, Trade Display area, Ex Services Club
<b>Monday 22 October</b>	
9.00 am	Conference Opening of Business Session
	Hon Morris Iemma MP, Premier of New South Wales (invited)
9.30am	Hon Paul Lynch MP, Minister for Local Government (invited)
	Ministers Morning:
10.00am	Hon Frank Sartor MP, Minister for Planning (invited)
10.30am	Hon Kristina Keneally MP, Minister for Ageing and Disability Services (invited)
	(Morning tea concurrent)
11.00am	Dr Graeme Pearman, Interim Director, Monash Sustainability Institute
11.30am	Adoption of Standing Orders
	Presentation and adoption of Treasurer's Report
	Consideration of motions
12.15pm	Hornsby Shire Council 'Hornsby Earthwise – Triple Bottom Line Sustainability Case Study'
12.30pm	Lunch
1.30pm	Consideration of Motions
3.00pm	(Afternoon tea concurrent)
4.00pm	Conference adjourns for Happy Hour in trade exhibition
5.00pm	Happy Hour concludes.
7.00pm	Social Night A Night with Grace (optional)
<b>Tuesday 23 October</b>	
8.30am	Ballot to host 2009 LGA Conference opens
9.00am	Hon Richard Torbay MP, Speaker, Legislative Assembly (invited)
9.30am	Hon Chris Hartcher MP, Shadow Minister for Local Government
10.00am	Hon Eric Roozendaal MLC, Minister for Roads (invited)
10.30am	Opening of Business Session
	Consideration of motions
	Ballot for 2009 Conference Host closes
	(Morning Tea concurrent)
11.00am	Consideration of motions
12.15pm	Dubbo City Council 'Greenhouse Initiatives of a Regional Council' Case Study
12.30pm	Lunch
1.30pm	Consideration of motions
3.30pm	(Afternoon tea concurrent)
4.00pm	Conference adjourns for Happy Hour in trade display
	Draw Prizes from trade display
5.00pm	Happy Hour concludes
7.00pm	Gala dinner Bonville Golf Club sponsored by Country Energy
<b>Wednesday 24 October</b>	
9.00am –	Opening of Business Session
	Broken Hill 2008 presentation
9.15am	North Sydney Case Study: 'Buying Green' (invited)

## MINUTES FOR ORDINARY MEETING – 14 AUGUST 2007

9.30am	Consideration of motions
10.30am	(Morning Tea concurrent)
12noon	Drawing of prizes. Submission of conference evaluation forms closed.
12.15pm	Closing ceremony

Associated Events - Wednesday 24 October, Ex-Services Club

1.00pm	Free Mini Councillor workshops
	Workshop One - Media Skills in times of a Crisis for Councillors
	Workshop Two – Conflict of Interest and Code of Conduct
	Workshop Three - Probing Questioning Techniques – How to ask hard financial questions!
3.00pm	Close

### 11. Social Program

Full details of the social program and partners program will be described in registration material distributed by Coffs Harbour Visitor Information Centre.

### 12. Elections

Elections will take place this year for all positions on the LGA Executive. The timetable of voting and elections will be printed in the official conference program distributed prior to the conference.

### 13. Printed Material for the Conference

The Business Paper/Action Report package will be distributed to registered participants for business sessions a month before the conference. All registered participants will receive a copy of the Record of Decisions to be posted within a month of the conclusion of the conference. Additional copies of material can be ordered by faxing in the form on Page 8. The information will be on the website [www.lgsa.org.au](http://www.lgsa.org.au) in due course.

### 14. Outstanding Service Awards

Outstanding Service Awards will be **presented at the official opening ceremony** to those who have given outstanding service to Local Government. To enable the processing of awards, councils are asked to advise the Association whether or not nominees for the award will be attending the conference. A letter confirming the presentation will be sent to your General Manager, if you do not receive confirmation please contact the Karen Rolls on 92424 050. The eligibility criteria for the awards are that intended recipients must have completed a cumulative total of at least 20 years service in Local Government in NSW as an elected person. For those who continue to serve, and at retirement have completed 25 or more years a bar to be affixed to the original medal is available (at no additional cost) with the total number of years served inscribed upon it.

The Outstanding Service Award set comprises four pieces (medal for men or bow for women, miniature, lapel badge and citation A5 in size) featuring the Association's coat of arms and is finished in 24ct gold and presented in a gold embossed presentation case. On the reverse side of the medal will be inscribed the recipient's name and the year the award was presented. The nomination form is to be found on Page 8.

**ATTACHMENT 2**

**PROPOSED MOTION**

**MOTION**

The Local Government Association express appreciation to the NSW Attorney General and Chief Judge of the Land & Environment Court for the response to the 2006 resolutions;

Express support to the Court for increased emphasis on alternative dispute resolution;

Respectfully request that the rules and procedures of the Court be revised so as to discontinue proceedings where applicants are seeking to make substantial amendments to the development application originally referred to the Court and for the Court to direct that the development application be resubmitted as an amended development application or newly lodged development application to the relevant Council;

Respectfully request that the Court use discretion to refuse development applications that are clearly demonstrated to the court by the relevant Council to be supported by highly inadequate information – particularly if this recurs on two or more occasions.

**Background**

**Land & Environment Court**

At the meeting of 8 August 2006, Council resolved to submit the following motion regarding the Land & Environment Court to the Local Government Association Conference that took place on 28 October to 1 November 2006:

**MOTION TO LGA CONFERENCE OF 2006**

That the Chief Judge of the Land & Environment Court be respectfully requested to review the rules and procedures of the Court so as to:

- (a) Discontinue proceedings where applicants are seeking to make substantial amendments to the DA originally referred to the Court, and
- (b) Enable Court discretion to refuse DA's clearly demonstrated to the Court by the relevant Council to be supported by highly inadequate information - being information clearly sought/required by legislation and/or Council legal and planning documents.

**Background to the Motion to the LGA Conference 2006**

There are aspects of the Land & Environment Court rules and procedures that incur significant costs to Councils that should be sought to be reviewed by the Chief Judge and the NSW Attorney General including:

Applicants enjoy the leniency of the Court in terms of being able to make substantial amendments to development applications and still have the proceedings left "on foot" while those major revisions are prepared and rescinded.

Some applicants trigger the deemed refusal after 40 or 60 days for development applications that are supported by highly inadequate information. The quality of processing of development applications is dependent upon the combined professionalism of practice and adequacy of information of applicants and Councils as the consent authorities. If applicants do not respond with adequacy of such information and practice, then they should have the relevant applications formally refused by the Court at its discretion at an early stage.

The Attorney General and the Chief Judge have responded with certain initiatives as reflected in the letter from the NSW Attorney General of 29 November 2006.

Also, at a recent seminar conducted by the Land & Environment Court, it was advised that:

The Court wants to place much more emphasis on "case management" in the early stages and on alternative dispute resolution before any matter/appeal is the subject of formal proceedings in the court before a Commissioner or Judge;

The Court is intending to be more rigorous in not accepting major amendments to applications after an appeal is lodged with the Court – with potential referral back to Councils as amended or newly lodged development applications rather than the process being maintained within the Court's jurisdiction;

The Court is foreshadowing penalties – financial and/or procedural -against parties to proceedings in the Court that do not accord with Court directions.

## **PROPOSED MOTION**

### **MOTION**

That the NSW Minister for Planning, the Honourable Frank Sartor, be strongly and respectfully requested:

- a) to urgently convene and consult a Reference Group of Directors of Planning from a number of Sydney and regional Councils, representatives of the Local Government Association and Local Government & Shires Association to more collaboratively work on the planning reform agenda; - in particular, to resolve:
  - i) criteria for Ministerial “call ins” for Major Projects;
  - ii) the respective responsibilities of the LEP Panel and Regional Offices of the Department of Planning;
  - vi) the valid and accurate means and reporting of performance monitoring of development assessment; and
  - vii) more specific criteria/Heads of Consideration for the Minister to appoint a planning administrator or panel;
  - viii) legislative changes to improve the NSW Planning system.

### **Background**

The NSW Minister for Planning has:

- a) initiated major changes to the respective responsibilities for planning between himself, the NSW Department of Planning and Local Government – essentially centralising more decision making and control over rezonings;
- b) recently made an Order that sets up Heads of Consideration as the potential basis for him to replace a Council with a planning administrator or panel for “unsatisfactory performance”. (Planning Circular PS07-010) of 1 August 2007: “Heads of Consideration for the Minister to Appoint a Planning Administrator or Panel for Unsatisfactory Performance” is Attachment 1;
- c) “called in” developments and Major Projects without there being clear and consistent criteria formalised;
- d) increasingly centralised the decision making for Local Environmental Plans in the LEP Panel rather than Regional Offices of the Department of Planning and, whilst this has improved consistency on a statewide basis, it has led to less awareness of local strategic planning and community expectations of some rezonings;
- e) announced the Local Government Performance Monitoring Report on development assessment to which this Council has already responded in terms of clarifying the significant improvements in 2006/07 compared to the quoted data by the Minister that related to 2005/06.



## **ATTACHMENT 1 OF THE MOTION**



NSW GOVERNMENT  
Department of Planning

## PLANNING circular

### PLANNING SYSTEM

#### Local planning

Circular	PS 07-010
Issued	1 August 2007
Related	

## Heads of consideration for the Minister to appoint a planning administrator or panel for unsatisfactory performance

This circular is to advise of the gazettal of heads of consideration for the exercise of power under section 118 of the *Environmental Planning and Assessment Act 1979* to appoint a planning administrator or panel to exercise the functions of a council where there is unsatisfactory performance in dealing with planning and development matters.

### Introduction

The *Environmental Planning and Assessment Act 1979* (EP&A Act) has long provided for the appointment of a planning administrator to perform all or part of a council's functions, where a council has been responsible for technical breaches of State planning law.

A new provision was included in the EP&A Act in 2006 to also allow the Minister for Planning to appoint a planning assessment panel to undertake a council's consent authority role or to prepare environmental planning instruments. This provision is to ensure satisfactory and appropriate performance by local councils in their undertaking of legislative functions that relate to planning and development matters. This is essential in the public interest for good environmental, social and economic outcomes.

Under section 118 of the EP&A Act the Minister for Planning may appoint a planning administrator or panel, or both, if:

- council has failed to comply with its obligations under the planning legislation, or
- performance of a council in dealing with planning and development matters is unsatisfactory, or
- council agrees to the appointment, or
- the Independent Commission Against Corruption recommends it because of serious corrupt conduct by any councillors.

### Appointment where the performance of a council in dealing with planning and development matters is unsatisfactory

Section 118(1)(b) of the EP&A Act allows the Minister for Planning to appoint a planning administrator or a panel to exercise the functions of a council if the Minister is of the opinion that the performance of a council in dealing with planning and development matters (or any particular class of such matters) is unsatisfactory because of the manner in which the council has dealt with those matters, the time taken or in any other respect.

Under section 118(9) of the EP&A Act, the Minister for Planning may only appoint a planning administrator or panel under section 118(1)(b) if the Minister has gazetted 'heads of consideration' and taken them into account before making a decision.

On 19 July 2007, the Minister for Planning made the *Environmental Planning and Assessment (Unsatisfactory Council Performance) Order 2007* (Order). The Order sets out the heads of consideration for the purposes of section 118 of the EP&A Act and will take effect on 1 August 2007.

The heads of consideration include:

- The nature of findings or recommendations as a result of a review, investigation or inquiry made by the NSW Ombudsman, the Department of Local Government, the Independent Commission Against Corruption or a person or persons appointed by the Minister for Planning or the Minister for Local Government.
- In respect of local environmental plans (LEPs) and development control plans (DCPs):
  - the number of LEPs proposed for spot rezonings and/or minor amendments
  - the time a council takes in exercising its functions in making LEPs or DCPs
  - the nature and extent of classes of development identified as exempt and complying development in LEPs and DCPs
  - how a council considers and responds to public submissions on draft LEPs and DCPs.
- In respect of development applications and modification applications:
  - the time a council takes to assess and determine those applications
  - the number and percentage of those applications determined under delegation
  - the nature and extent of determinations that do not comply with relevant development standards
  - how a council complies with the relevant advertising and notification requirements for those applications
  - how a council considers and responds to public submissions
  - the nature and extent of determinations that are contrary to recommendations made by council staff or an advisory/independent panel
  - the number and outcome of reviews undertaken pursuant to section 82A of the EP&A Act.
- The number, cost and nature of legal proceedings or orders issued under section 121B of the EP&A Act concerning planning and development matters and how a council ensures conditions of development consent are complied with.
- The nature and extent of the systems, policies, procedures and resources which support a council's administration of planning and development matters.
- Whether a council has complied with:
  - State environmental planning policies and regional environmental plans
  - other strategies and policies endorsed by the NSW Government, the Minister for Planning or the Department of Planning concerning planning and development matters

- directions issued by the Minister for Planning under section 117 of the EP&A Act.

- Whether a council has complied with requirements in the EP&A Act concerning the levying, collection and management of development contributions.
- The manner in which a council or councillors manage conflicts of interests concerning planning and development matters.
- The time and manner in which a council provides information to the Department of Planning in accordance with any program for local development performance monitoring.
- The public interest.

### **How panels will be established**

Section 118AA provides that planning assessment panels will consist of three to five members, appointed by the Minister, who have relevant skills and knowledge in planning and development matters. The Minister will appoint a chairperson for each panel, and the panel members may appoint a deputy chairperson.

To establish a panel, the Minister will list the panel in Schedule 5B of the EP&A Act by Order published in the Gazette.

Under section 118, a panel may not exercise a council's functions for more than five years continuously. A panel's appointment and functions is to be reviewed (in consultation with the Minister for Local Government, the Local Government and Shires Associations and other relevant industry organisations) after it has been in place for more than two years.

### **Appointment where council agrees to the appointment**

In addition to the appointment of a panel or administrator by the Minister under section 118(1)(b), a council may request the appointment of a planning administrator or panel under section 118(1)(c).

Such a request might arise where the appointment of a planning panel or administrator would assist in achieving State planning objectives or where the council has conflict of interests in relation to planning and development matters.

Department of Planning circular PS 07-010

#### Further information

Attached for your information is a copy of the gazetted Order. (Note the Special Supplement Government Gazette No. 93 of 20 July 2007 is included in the Government Gazette for 27 July 2007.)

The *Environmental Planning and Assessment Act 1979* is available on the Parliamentary Counsel Office's website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) (see 'Browse A to Z In Force').

Note: This and other Department of Planning circulars are published on the web at [www.planning.nsw.gov.au/planningsystem/practicenotes.asp](http://www.planning.nsw.gov.au/planningsystem/practicenotes.asp).

#### Authorised by:

Sam Haddad  
Director General

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#### Important note

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

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**ENVIRONMENTAL PLANNING AND ASSESSMENT (UNSATISFACTORY COUNCIL PERFORMANCE) ORDER 2007**

under the

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

I, FRANK SARTOR, the Minister for Planning, in pursuance of section 118 of the *Environmental Planning and Assessment Act 1979*, make the following Order.

Dated, this 19th day of July 2007.

FRANK SARTOR, M.P.,  
Minister for Planning

**Explanatory note**

The object of this order is to provide for the heads of consideration that the Minister is to take into account in determining whether to appoint a planning administrator or planning assessment panel to exercise the functions of a council because the performance of a council in planning and development matters is unsatisfactory.

This Order is made under section 118 of the Environmental Planning and Assessment Act 1979.

**Environmental Planning and Assessment (Unsatisfactory Council Performance) Order 2007**  
under the

**Environmental Planning and Assessment Act 1979**

**1. Name of Order**

This Order is the Environmental Planning and Assessment (Unsatisfactory Council Performance) Order 2007.

**2. Commencement**

This Order commences on 1 August 2007.

**3. Definitions**

(a) In this Order:

*the Act* means the *Environmental Planning and Assessment Act 1979*.

**councillor** has the same meaning it has in the *Local Government Act 1993*.

**DCP** means development control plan.

**development contribution** means any contribution imposed or obtained by a council under Part 4, Division 6 of the Act.

**LEP** means local environmental plan.

**modification application** means an application to modify a development consent under sections 96 and 96AA of the Act.

(b) Words used in this Order have the same meaning as words used in the Act.

**4. Heads of Consideration for Appointment of Planning Administrator or Panel**

The heads of consideration for the Minister to take into account before appointing a planning administrator or planning assessment panel under section 118(1)(b) are:

(a) The nature of any findings or recommendations as a result of a review, investigation or inquiry made by:

(i) the New South Wales Ombudsman,

(ii) the Department of Local Government,

(iii) the Independent Commission Against Corruption, or

(iv) a person or persons appointed by the Minister for Planning, or

(v) the Minister for Local Government.

NEW SOUTH WALES GOVERNMENT GAZETTE No. 93

- (b) For LEPs and DCPs:
  - (i) the number of local environmental plans a council determines to prepare under section 54 of the Act, publicly exhibits under section 66 of the Act or submits to the Director-General under section 68 of the Act which comprise minor amendments of a principal LEP or a spot rezoning,
  - (ii) the time a council takes in exercising its functions in making LEPs or DCPs
  - (iii) the nature and extent of the classes of development identified as exempt and complying development in LEPs and DCPs, and
  - (iv) how a council considers and responds to public submissions on draft LEPs and DCPs.
- (c) For development applications and modification applications:
  - (i) the time a council takes to assess and determine those applications,
  - (ii) the number and percentage of those applications determined under delegation,
  - (iii) the nature and extent of determinations of development applications that do not comply with relevant development standards,
  - (iv) how a council complies with the relevant advertising and notification requirements for those applications,
  - (v) how a council considers and responds to public submissions on those applications,
  - (vi) the nature and extent of determinations that are contrary to recommendations made by council staff or an advisory or independent panel, and
  - (vii) the number and outcome of reviews of development applications under section 82A of the Act.
- (d) the number, cost or nature of legal proceedings or orders issued under section 121B of the Act concerning planning and development matters and how a council exercises its functions to ensure conditions of development consent are complied with.
- (e) the nature and extent of the systems, policies, procedures or resources which support a council's administration of planning and development matters.
- (f) whether a council has complied with:
  - (i) State Environmental Planning Policies and Regional Environmental Plans,
  - (ii) other strategies and policies endorsed by the New South Wales Government, the Minister for Planning or the Department of Planning concerning planning and development matters, and
  - (iii) directions issued by the Minister for Planning under section 117 of the Act.
- (g) whether a council has complied with requirements in the Act concerning the levying, collection and management of development contributions.
- (h) the manner in which a council or councillors manage conflicts of interests concerning planning and development matters.
- (i) the time and manner in which a council provides information to the Department in accordance with any program for local development performance monitoring.
- (j) the public interest.

## PROPOSED MOTION

### MOTION

#### **Pensioner Rebate Scheme**

That the Association call on the State Government to review the existing Pensioner Rate Rebate Scheme.

### Background

This subject was raised at the Local Government Conference in 2005 and again in 2006. The response from the State Government is not applicable with Councils also making contributions to the rebates provided to pensioners within their respective Local Government area. Comments from the State Government that the Scheme is already very generous and with the ageing population the Scheme is unable to be increased is not applicable to Local Government as Local Government itself will also be in the same situation with respect to the ageing population.

# CONFIDENTIAL ITEMS



*In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of council, councillors, staff or council property and matters that could be prejudice to the maintenance of law.*

*Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.*

## **ORDINARY MEETING OF COUNCIL – 14 August 2007**

### **RESOLUTION:**

<b>211</b>	<b>Cr Hodges Cr Nell</b>	<b>That Council move into Confidential Session.</b>
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There being no further business the meeting closed at 10.56pm.

*I certify that pages 1-31 of the Ordinary Minutes of Council dated 14 August 2007 were confirmed by Council at its meeting held on 25 September 2007.*

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**Cr Steve Tucker**  
**DEPUTY MAYOR**