

## Minutes 22 July 2008



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 22 July 2008, commencing at 5.35pm.

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

Note Cr Robinson entered the meeting at 5.43pm

177	Councillor Dingle Councillor Hodges	Resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 24 <sup>th</sup> June, 8 <sup>th</sup> July & 15 <sup>th</sup> July 2008 be confirmed.
-----	----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## INDEX

SUBJECT

PAGE NO

### **OPERATIONS COMMITTEE RECOMMENDATIONS .....5**

1. DEVELOPMENT APPLICATION FOR SINGLE STOREY DWELLING AT NO. 20 NOBLES ROAD NELSONS PLAINS .....6
2. REVIEW OF DEVELOPMENT APPLICATION FOR HOME EMPLOYMENT (EARTH MOVING & ENGINEERING) PURSUANT TO SECTION 82A ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AT NO 774 MARSH ROAD BOBS FARM.....20
3. ROAD CLOSURE PART NEWLINE ROAD AT RAYMOND TERRACE .....58
4. 355(B) COMMITTEES ANNUAL FINANCIAL STATEMENT .....61
5. MAKING OF RATES AND CHARGES FOR 2008/2009 .....65
6. MAYOR AND COUNCILLOR FEES 2008/09 .....66
7. NEW MODEL CODE OF CONDUCT FOR COUNCILS IN NSW .....68
8. CROSS BOUNDARY S94 PLAN FOR VILLAGE IN GREAT LAKES COUNCIL LOCAL GOVERNMENT AREA ADJACENT TO KARUAH.....112
9. INFORMATION PAPERS .....113

### **OPERATIONS COMMITTEE INFORMATION PAPERS ..... 114**

1. MINUTES OF TOURISM JOINT VENTURE COMMITTEE MEETING 20 MAY 2008 .....115
2. ACCESS COMMITTEE MINUTES .....118
3. KIDS WHO READ SUCCEED.....122
4. HARDSHIP ASSISTANCE – INTEREST FREE LOANS .....124
5. CASH AND INVESTMENTS HELD AT 31 MAY 2008 .....125
6. ACCESS TO INFORMATION – SECTION 12 LOCAL GOVERNMENT ACT 1993 .....129
7. DETERMINED AND UNDETERMINED DEVELOPMENT APPLICATIONS .....131

### **STRATEGIC COMMITTEE RECOMMENDATIONS ..... 154**

1. REVIEW OF PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000.....155
2. INFORMATION PAPERS .....168

### **STRATEGIC COMMITTEE INFORMATION PAPERS..... 169**

1. NEW FOOD SURVEILLANCE PROCEDURES AND FEES UNDER THE “FOOD REGULATION PARTNERSHIP” WITH NSW FOOD AUTHORITY .....170

### **GENERAL MANAGER’S REPORT ..... 174**

1. ORGANISATIONAL STRUCTURE.....175
2. INFORMATION PAPERS .....188

## ORDINARY MEETING MINUTES – 22 JULY 2008

### GENERAL MANAGERS INFORMATION PAPERS ..... 189

1. GENERAL MANAGER’S PERFORMANCE REVIEW – JULY TO DECEMBER 2007 .....190

### NOTICES OF MOTION..... 191

1. FINGAL BAY LINK ROAD .....192
2. ESTABLISHMENT OF AN OFFICE ON TOMAREE PENINSULA .....193
3. BANNING OF SMOKING IN SPORTING FIELDS AND PLAYGROUNDS .....194
4. PREPARATION OF A DRAFT LOCAL ENVIRONMENTAL PLAN FOR TAYLORS BEACH..  
.....197

**ORDINARY MEETING MINUTES – 22 JULY 2008****COMMITTEE RECOMMENDATIONS**

The Committees met on the 1<sup>st</sup> & 8<sup>th</sup> July, 2008 and make the following recommendations to Council.

<b>COMMITTEE</b>	<b>PRESENT</b>	<b>TIME</b>
Strategic Committee	Councillors Swan, Nell, Tucker, Francis, Robinson, Jordan, Dingle, Westbury, Dover, Hodges & Brown, and Messrs Gesling, Trigar & Broyd & Ms Shine Apology: John Flannery	1 <sup>st</sup> July, 2008 Commenced: 6.14pm Concluded: 7.05pm
Operations Committee	Councillors Swan, Nell, Tucker, Francis, Robinson, Jordan, Dingle, Westbury, Dover, Hodges & Brown, and Messrs Gesling, Flannery, Trigar & Broyd & Ms Shine Apology: Nil	8 <sup>th</sup> July, 2008 Commenced 6.03pm Concluded 7.20pm

# OPERATIONS COMMITTEE RECOMMENDATIONS

**ITEM NO. 1**

**FILE NO: DA 16-2008-291-1**

**DEVELOPMENT APPLICATION FOR SINGLE STOREY DWELLING  
AT NO. 20 NOBLES ROAD NELSONS PLAINS**

**REPORT OF: SCOTT ANSON - MANAGER DEVELOPMENT & BUILDING**

---

**RECOMMENDATION IS THAT COUNCIL:**

Refuse Development Application 16-2008-291-1 for the following reasons:

1. The proposed development is inconsistent with the provisions of the *Hunter Regional Environmental Plan 1989* (Clauses 52-54) by being an inappropriate land use since it will increase the number of people susceptible to the effects of inundation.
2. The proposed development is inconsistent with the provisions of *Port Stephens Local Environmental Plan 2000*, in particular, the Rural 1(a) Zone objectives and planning considerations for development on flood prone land.
3. The proposed development is located on a Floodplain identified as being an area of *Extreme Hazard* and the *Lower Hunter Valley Floodplain Risk Management Study* (November 2001) recommends that no additional dwellings should be permitted in this location.
4. The proposed development is considered an inappropriate land use under the *Floodplain Development Manual 2005*.
5. Approving additional dwelling houses in an *Extreme Hazard* flood area places further demand on the already limited resources of the State Emergency Service due to domestic property protection, evacuation and/or re-supply.
6. Approval of this application would have an undesirable cumulative effect by increasing the community's susceptibility to flooding in terms of social, economic and environmental/ecological consequences.
7. It is not possible to implement an evacuation plan which provides permanent, fail safe, maintenance free measures to ensure the timely, orderly and safe evacuation of occupants.

---

**OPERATIONS COMMITTEE MEETING – 8 JULY 2008**

**RECOMMENDATION:**

That this item be deferred for a site inspection

---

**ORDINARY MEETING OF COUNCIL – 22 July 2008**

**RESOLUTION:**

178	Councillor Brown Councillor Francis	That Council defer a decision on this development pending a report on further information and advice from the Williams River Floodplain Management Committee on the recently received Flood Study.
-----	----------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## BACKGROUND

**The purpose of this report is to present a development application to Council for determination in an area subject to flooding.**

On 1 August 2005 Council refused a development application DA 16-2002-712-1 proposing to erect a single storey dwelling upon an earth mound located at the abovementioned property. The current application DA 16-2008-291-1 proposes the construction of a single storey dwelling house upon an earth mound situated. The earth mound is situated fifty (50) metres from the western boundary addressing Nobles Road, seventy (70) metres from the Hunter River and eight hundred (800) metres from the eastern boundary addressing Seaham Road.

The subject site is zoned 1(a) – Rural Agriculture, which is described in *Port Stephens Local Environmental Plan 2000* (LEP). The subject site is identified as flood prone land and Clause 37 of the LEP addresses development on flood prone land.

*The Lower Hunter Valley Floodplain Risk Management Study (November 2001)* indicates that the subject property is located in an area of “**Extreme Hazard**” where it is recommended that no additional residential dwellings should be permitted and should be actively discouraged in areas where the natural surface is below the level of the 5% AEP (1 in 20 year) flood. The 5% AEP flood level varies from 4.6 metres AHD near Green Rocks to 3.2 metres AHD at the downstream end of the Zone. Sound planning and engineering practice does not support habitable dwellings on land below the level of the 5% AEP flood level. The subject land is typically below 4 metres AHD.

Large areas of this *floodplain management* zone are exposed to extreme hazard during large floods. Flood depths of greater than 4 metres typically occur in the 0.2% AEP flood. *Aspect Development & Survey Pty Ltd* have identified a surface level of 2.6 metres AHD at the base of the existing earth mound and an approximate height of 4.2 metres AHD. Based upon these figures it is expected that this property could be inundated by floodwater to a depth of approximately 6.6 metres AHD. Plans submitted with the application show a Finished Floor Level (FFL) for the habitable rooms of the proposed dwelling of 5.3 metres AHD. To achieve this floor level, the applicant proposes to introduce a further 715-865mm of fill onto the existing mound increasing the height of the earth mound to approximately 5.0 metres AHD. The proposed dwelling and earth mound will have a maximum height of approximately 10.3 metres AHD to the ridge of the roof.

On 11 June 2007, the most recent flooding event occurred. This flood event was calculated to be approximately a 5% Annual Exceedance Probability (AEP) flood event. This flood event was estimated in the order of a 1 in 20 year or 1 in 15 year flood.

The nearest flood free land available to the subject land is situated approximately 3 kilometres to the north at the intersection of Hinton and Seaham roads and 3 kilometres to the south to Raymond Terrace. If approved, the introduction of an additional dwelling and potential planning precedent for further dwellings in the locality will place further pressure on emergency service resources in a known floodway and excessive depth zone.

Although flood inundation gives rise to temporary/intermittent impacts, the introduction of additional people and dwellings onto a known floodplain is not supported and is contrary to the provisions of the *New South Wales Floodplain Development Manual 2005*. Refusal of this application is recommended due to an extreme risk of flooding on the subject land. The level of risk is determined by flood depths and velocities, flood frequency, isolation, emergency response and the cumulative effect of permitting the construction of additional dwellings with

the resultant increase in occupant numbers placed at risk. These contributing factors are discussed further in the assessment.

Refusal of this application is recommended based on the level of flood risk upon the proposed development and not as a consequence of advice received by the SES. It is strongly recommended that this application be refused based upon the expected level of flood risk and associated social, economic and environmental impacts.

## **LINKS TO CORPORATE PLANS**

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

The following goals are considered applicable in this case:

**G4. Safety**

To provide programs and planning instruments that enhance the safety of individuals and the community whilst preserving social amenity and discouraging social isolation.

**G5. Housing**

To provide for an increase in diversified, affordable and sustainable housing stock across the Local Government Area.

**G13. Environmental Protection**

To protect the unique Local Government Area environmental heritage and mitigate the effects of climate change and population growth on the environment.

**G17. Strategy and Planning**

Plan for sustainability and allow for balanced growth in the community.

**G18. Knowledge and Information**

All decision-making will be based upon unbiased, well-researched data.

**G25. Infrastructure and Services**

To provide sustainable facilities and services to the community of Port Stephens now and into the future.

The links to the 2007-2011 Council Plan are:-

**SOCIAL SUSTAINABILITY –** *Council will preserve and strengthen the fabric of the community, building on community strengths.*

**CULTURAL SUSTAINABILITY –** *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*

**ECONOMIC SUSTAINABILITY –** *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*

**ENVIRONMENTAL SUSTAINABILITY –** *Council will protect and enhance the environment while considering the social and economic ramifications of decisions.*

**BUSINESS EXCELLENCE –** *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*



## **FINANCIAL/RESOURCE IMPLICATIONS**

Nil

## **LEGAL AND POLICY IMPLICATIONS**

Council may become legally liable in cases of property damage and/or loss of life where approval has been given to construct residential dwellings in flood prone areas whilst being specifically aware of the risks.

The Councillors attention is specifically drawn to Sections 733(1) and 733(4) of the Local Government Act 1993 relating to exemption from liability with respect to flood prone land and the basis of “good faith” defence established in legal case law.

Council's solicitors Harris Wheeler Lawyers advise:

“This defence (Section 733[1] of the Local Government Act 1993) will be less easily established if the consent is not issued substantially in accordance with the principles established in the Floodplain Management Manual notified under s.733 (5). The Manual provides, in effect, that a site specific evacuation plan is ineffectual and should not be the basis of a consent. Accordingly, simply imposing a condition, including a deferred commencement condition, that an applicant obtain the SES's approval of a site specific evacuation plan, runs the risk that the consent is not in accordance with the Manual. In addition, it is understood that the SES is refusing to approve such plans, having no statutory authority or role in doing so. Accordingly, any such condition would be incapable of being satisfied and is, for that reason, also inappropriate.”

If Council approves the subject application, Council will be establishing a significant planning and environmental precedent in this locality and other flood prone areas within Port Stephens LGA, effectively encouraging residential development in known flood prone areas adjoining an environmentally sensitive water body (the Hunter and Williams rivers). This raises the potential for liability against which the Council is not protected as referred to in Section 733 (1).

Further, Gadens Lawyers report that a recent decision of the NSW Land and Environment Court in *Walker v Minister for Planning [2007]* NSWLEC 741 confirmed that planning authorities must consider the potential impact of climate change and rising sea levels on future developments.

The consequences of the Court's decision demonstrates it's consideration of the significance of “global” environmental factors such as greenhouse emissions and climate change on project assessments. In making his decision, Biscoe J comprehensively outlines the relevancy of Environmentally Sustainable Development (ESD) principles and the scientific data available which supports the existence of pending climate change.

The Walker decision has implications specifically for applications to develop or expand developments in coastal and flood liable areas. Consequently, in relation to these applications, it is recommended that proponents and councils make an assumption that there is the potential for greater flooding or inundation than is presently the case (ie due to climate change).

Where there is a failure to consider these matters, the Court has demonstrated that it is not hesitant to declare the approval void. Should this application be refused, the applicant has the right of appeal.

The development application is inconsistent with Council's *Areas Affected by Flooding and/or Inundation Policy* originally adopted on 27 January 1998 and most recently amended by Council on 25 September 2007. The objectives of this policy include:

**OBJECTIVES**

- To manage the development of land subject to or affected by the likelihood of flooding and/or tidal inundation defined as flood prone land in the Port Stephens Local environmental Plan 2000.
- To base the nature of the restriction applied to an affected site on the principles of the NSW Floodplain Development Manual 2005, the Port Stephens Foreshore (Floodplain) Management Study and Plan 2002, the Paterson River Floodplain Management Study and Plan 2001, the draft Lower Hunter Valley Floodplain Management Study 2001, the Williamstown Salt Ash Flood Study and any further flooding information available to Council at the time.
- To ensure that decision in relation to the acquisition and development of land are made having regard to the best flooding information available
- To ensure that Council complies with the provision of S733 of the Local Government Act 1993 - Exemption from liability – flood liable land and land in coastal zone.

Specifically the policy states that:

“3(a) If Council determines that a comprehensive flood report is required to support the development application, then this shall be prepared by an experienced Flood Engineer”.

The applicant has not provided a comprehensive flood report in respect to this development application. Given that the subject land is identified as being subject to Extreme Hazard affectation it is considered highly unlikely that the applicant will be able to satisfactorily demonstrate that the proposal is consistent with the provisions of the *Floodplain Management Manual* adopted by the NSW Government.

**Business Excellence Framework**

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*

- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

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**

Approval of this application increases the community's susceptibility to the effects of flooding and the associated consequences. The effects of flooding may be distinguished between social, economic and environmental implications

### **SOCIAL IMPLICATIONS**

The social implications directly attributable to flood inundation include but are not limited to risks to public safety, community disruption, direct and indirect damages caused by floodwaters, (property damage, loss of goods and personal possessions), emotional, mental and physical health costs, provision of food and accommodation for evacuees, loss of wages and opportunity cost to the public caused by the closure or limited operation of public facilities.

### **ECONOMIC IMPLICATIONS**

Introducing additional dwelling houses into known high flood risk areas is not desirable. Refusal of this application may have an immediate economic impact upon the property owner but, in the long term, reduces private and public losses attributed to flooding.

### **ENVIRONMENTAL IMPLICATIONS**

The temporary and intermittent impacts of unsuitable development on flood prone land contribute to environmental pollution through erosion, waterborne debris, residual debris, structural failure of dwellings, fences, outbuildings and other domestic/rural infrastructure, and possible effluent pollution (from onsite sewage treatment systems in instances where the occupant chooses not to evacuate).

There are no flora and fauna issues associated with this application.

## **CONSULTATION**

The current development application has been assessed on its merits with due regard to background information contained in the previous application and report from Council's Flooding Engineer.

The State Emergency Service (SES) has advised that it has no statutory authority to endorse or reject development applications and/or private flood evacuation plans. The SES considers

## **ORDINARY MEETING MINUTES – 22 JULY 2008**

that approving the construction of dwelling houses in known flood plain areas is undesirable, placing additional demand upon already limited resources attending to property and infrastructure protection, evacuation and/or re-supply. The preparation of private evacuation plans may reduce the demand upon SES resources however these plans are usually ineffective during significant flood events and are not to be relied upon. Refusal of this application is recommended based on the level of flood risk upon the proposed development and not as a consequence of advice received by the SES.

### **OPTIONS**

- 1) Adopt the recommendation.
- 2) Reject or amend the recommendation.
- 3) Council express its support in principle for the Development Application and request the Group Manager, Sustainable Planning to draft Conditions of Consent for the next Ordinary Meeting of Council in the event that Council resolves to determine the Application in terms of Conditional Consent.

### **ATTACHMENTS**

- 1) Locality Plan
- 2) Assessment

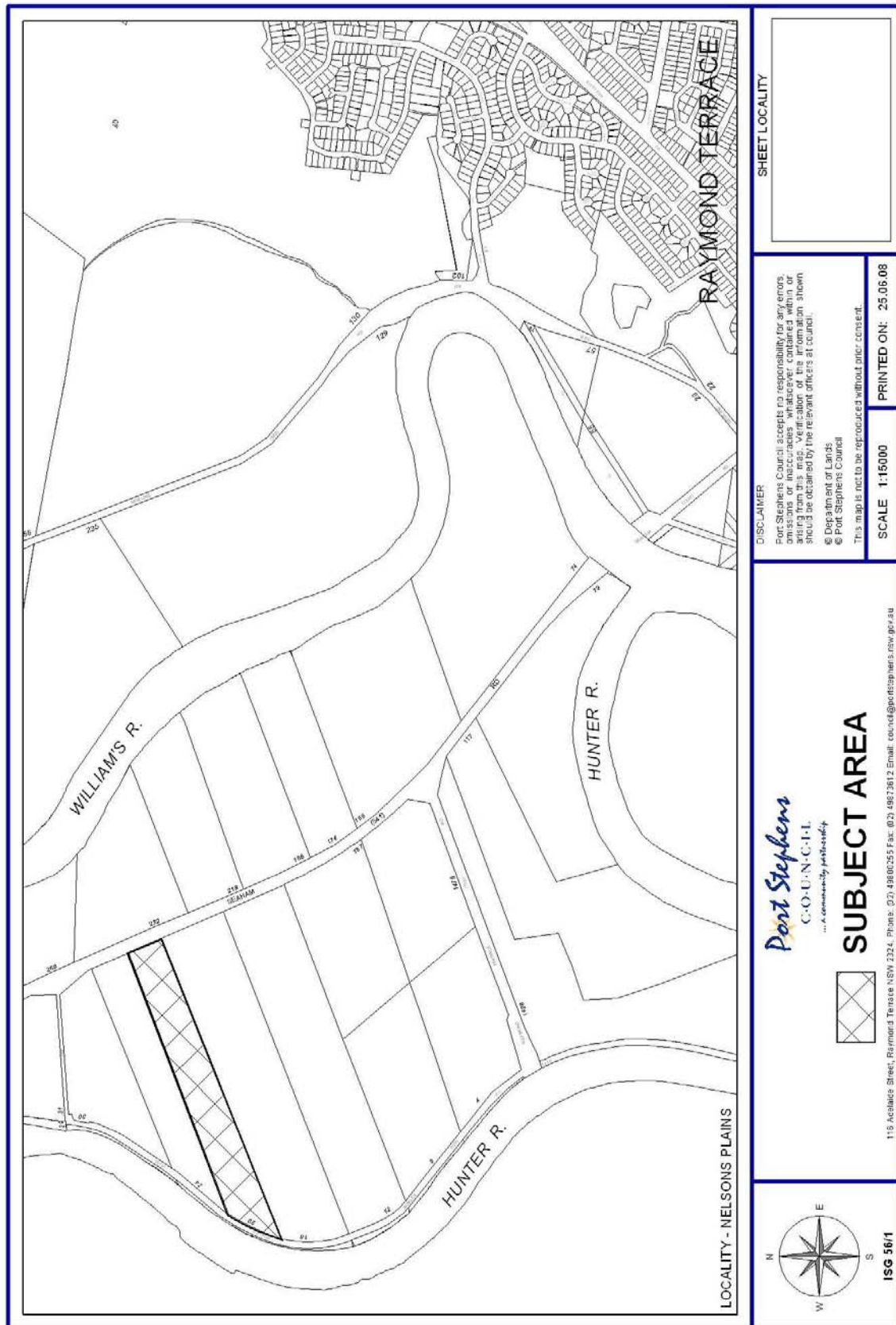
### **COUNCILLORS ROOM**

- 1) Plans and elevations
- 2) Council Policy - *Areas Affected by Flooding and/or Inundation*
- 3) S733(4) Local Government Act 1993 Exemption from liability – flood liable land and land in coastal zone

### **TABLED DOCUMENTS**

Nil

ATTACHMENT 1



## **ATTACHMENT 2**

### **ASSESSMENT**

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

#### **THE PROPOSAL**

The applicant seeks approval to construct a single storey dwelling house on an elevated earth mound located approximately 50 metres to the east of Nobles Road, Nelsons Plains and 800 metres from the western boundary (Seaham Road). The Hunter River is approximately 70 metres to the west of the raised mound. The dwelling consists of a lounge/dining/kitchen/family/rumpus/study area, four (4) bedrooms and associated bathroom/ensuite and a two vehicle garage with attached workshop.

The application proposes to construct a habitable floor level at 5.300 metres AHD.

#### **THE APPLICATION**

Owner	Mr Noel Martin
Applicant	Mr Noel Martin c/- Mr G K Lindsay
Detail Submitted	Development plans which include site and floor plans and elevations.

#### **THE LAND**

Property Description	Lot 2, DP 784901
Address	Number 20 Nobles Road, NELSONS PLAINS
Area	10.21 Hectares
Characteristics	The land is generally level with an average elevation of approximately 2.00 metres AHD. The dwelling is proposed to be constructed upon an earthen mound located approximately 3 kilometres distance from flood free land in the townships of Osterley and/or Raymond Terrace. The top of the existing earthen mound is generally 4.00 metres AHD. The submitted plans indicate that the applicant proposes to raise the height a further 715–865mm to a final level of approx 4.90 metres AHD.

#### **THE ASSESSMENT**

##### **1. Planning Provisions**

LEP 2000 – Zoning	Rural 1(a) RURAL AGRICULTURAL “A”
Relevant Clauses	Clause 11 (2)(e) and Clauses 37 and 38 (including “ <b>Objectives for development on flood prone land</b> ”)
Development Control Plan	Port Stephens Development Control Plan 2007 (Adopted 31 May 2007). Application received 21 April 2008.
State Environmental Planning Policies	Not applicable.

## ORDINARY MEETING MINUTES – 22 JULY 2008

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
<b>LEP Requirements</b>			
Minimum area per dwelling	10.21 Hectares (102,100 m <sup>2</sup> )	4000 m <sup>2</sup> minimum	Yes
Floor Level (Flood Prone Land)	5.30 metres AHD	Flood Planning Level 5.30m AHD	Yes *
<b>EXTREME HAZARD ZONE</b>	New dwelling	No dwelling	No **
<b>DCP Requirements</b>			
Building Line Setback	Approx 50 metres from West boundary (Nobles Road)	12 metres from West boundary (Nobles Road)	Yes
Side Boundary Setbacks	44 metres (North Boundary) and 52 metres (South Boundary)	900mm	Yes
BASIX Requirements	Water Score 40 Energy Score 48	Target 40 Target 40	Yes Yes

\* *Flood Planning Level (FPL). Flood levels selected for planning purposes which should be based on an understanding of the full range of flood behaviour and the associated flood risk, including the social, economic and ecological consequences associated with floods of different severities. Different FPL's may be appropriate for different categories of land-use and for different flood plans.*

\*\* *The proposal is not consistent with Clause 52 of Hunter Regional Environmental Plan, Clauses 37 and 38 Port Stephens LEP 2000, Flood Management Manual 2001 or the Lower Hunter Valley Floodplain Risk Management Study 2001 and is the primary basis for recommending refusal in this instance. In a 1% Annual Exceedance Probability flood event, the proposed dwelling will be physically isolated due to severe flood inundation. The nearest flood free land in proximity to the subject land is located at Mount Osterley and/or Raymond Terrace, placing further pressure upon emergency services and potentially placing dwelling occupants and volunteer emergency personnel at risk. The June 2007 flood event was calculated as approximately a 5% Annual Exceedance Probability flood event.*

### Discussion

The proposed development is inconsistent with the provisions of:

- Hunter Region Environmental Plan
- Port Stephens Local Environmental Plan 2000
- Floodplain Management Manual 2001
- Lower Hunter Valley Floodplain Risk Management Study 2001

### Hunter Region Environmental Plan (REP)

*The Hunter Regional Environmental Plan (REP) aims to achieve the balanced development of the region by the optimum utilisation of resources, whilst facilitating the improvement of the urban and rural environments. Port Stephens Local Environmental Plan 2000 (LEP) gazetted on 29 December 2000 is consistent with the provisions of the REP and reinforces its aims and regional policies.*

Clause 52 of the REP requires Councils to develop strategies to control developments on flood prone land and encourage floodplain management practices which ensure maximum personal safety whilst at the same time encouraging appropriate land uses.

*The Lower Hunter Valley Floodplain Risk Management Study (2001)* indicates that the subject property is located in an “**Extreme Hazard Zone**” where it is recommended that no additional dwelling houses should be permitted.

The proposed dwelling house is an inappropriate land use since it increases the number of persons susceptible to the effects of flooding.

### **Port Stephens Local Environmental Plan 2000**

The subject land is zoned Rural 1(a) and under the provisions of *Port Stephens Local Environmental Plan 2000*, dwelling houses are permissible with development consent.

The proposal is inconsistent with the Rural 1(a) zone objective to maintain the rural character of the area and to promote the efficient and sustainable utilisation of rural land and resources.

New developments should not increase the community's susceptibility to flood inundation and related impacts. In this instance, the construction of a dwelling house in a high flood risk area increases the social, economic and environmental consequences caused by flooding.

Clause 37 outlines the factors to be considered by Council in the assessment of a development on flood prone land. These are outlined as follows:-

- (a) The extent and nature of the flooding or inundation hazard affecting the land.
- (b) Whether or not the proposed development would increase the risk or severity of flooding or inundation affecting other land or buildings, works or other land uses in the vicinity.
- (c) Whether the risk of flooding or inundation affecting the proposed development could be reasonably mitigated and whether conditions should be imposed on any consent to further the objectives of this plan.
- (d) The social impact of flooding on occupants, including the ability of emergency services to access, rescue and support residents of flood prone areas.
- (e) The provisions of any floodplain management plan or development control plan adopted by the Council.

This proposed development is located in an extreme flood risk area (**Extreme Hazard**) as identified by the *Lower Hunter Valley Floodplain Risk Management Study (2001)*, where the 1% Annual Exceedence Probability (AEP) flood level is recorded at 5.3 metres AHD, with a velocity between 0.8 and 3.0 metres per second. Based on a natural ground level of 2.5 metres AHD, the land will be inundated by floodwater to a depth of 2.8 metres. Even in moderate floods, for example, the 5% AEP in this location is 4.9 metres AHD, the property will be inundated by floodwaters to a depth of 2.4 metres.

It is not possible to condition this application to mitigate the effects of flooding. The applicant could prepare an evacuation plan but this would need to demonstrate to Council that there are permanent, fail safe, maintenance free measures available to ensure the timely, orderly and safe evacuation of occupants should flooding occur. The SES has advised that private evacuation plans are usually ineffective thereby placing additional demand upon limited SES resources.



Without a permanent fail safe evacuation plan addressing the approval of additional dwelling houses in high flood risk areas, the adverse social implications discussed throughout this report can be expected.

Council has not yet adopted a floodplain management plan however the *Lower Hunter Valley Floodplain Risk Management Study (2001)* recommends that additional residential dwellings should not be permitted in these areas.

Based on the abovementioned considerations, this application is inconsistent with the provisions of *Port Stephens Local Environmental Plan 2000*.

### **Floodplain Development Manual 2005**

The primary objective of the *Floodplain Management Manual* is to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone properties and to reduce private and public losses as a result of flooding.

*The Lower Hunter Valley Floodplain Risk Management Study (2001)* has been prepared in accordance with this manual and it stipulates appropriate land use management policies. As already mentioned in this report, the Study recommends that no additional residential dwellings be permitted in this locality.

*The Floodplain Management Manual (2001)* provides interim guidelines for determining appropriate land uses in flood prone areas (refer Appendix I). Under these guidelines, the subject land is categorised as an **Extreme Hazard Area** generally inundated by more than 1 metre depth of floodwater.

Floodways are those areas where a significant volume of water flows during floods and are often aligned with obvious natural channels. They are areas that, even if only partially blocked, would cause a significant increase in flood levels and/or a significant redistribution of flood flow, which may in turn adversely affect other areas

Flood storage areas are those parts of the floodplain that are important for the temporary storage of floodwaters during the passage of the flood. If the capacity of a flood storage area is substantially reduced by, for example, the construction of levees or by landfill, flood levels in nearby areas may rise and the peak discharge downstream may be increased. Substantial reduction of the capacity of a flood storage area can also cause a significant redistribution of flood flows.

The Manual suggests that the property owner be required to demonstrate that the proposed development will not increase the flood damage or flood hazard to other properties or adversely affect flood behaviour. A detailed report by an appropriately qualified consulting engineer and a detailed study assessing the social, environmental and ecological impacts should be required in support of a development application. This has not been requested at this point in time so as not to impose additional costs upon the applicant.

The proposed development should be refused since it increases the community's susceptibility to flooding. There is no permanent, fail safe evacuation plan in place to ensure a timely, orderly and safe evacuation of occupants. In an emergency, evacuation of occupants would only be possible by boat or helicopter, which may place rescuers/operators at risk.

### **Lower Hunter Valley Floodplain Risk Management Study (2001)**

*The Lower Hunter Valley Floodplain Risk Management Study (2001)* defines *Floodways* as those areas of the floodplain where a significant discharge of water occurs during floods. They are often aligned with naturally defined channels. Floodways are areas which, even if

only partially blocked, would cause a significant redistribution of flood flow, or a significant increase in flood levels. Floodways are often areas of deeper flows or areas where higher velocities occur. As for flood storage areas, the extent and behaviour of floodways may change with flood severity. Areas that are benign for small floods may cater for much greater and more hazardous flows during larger floods. An objective of the study is to prevent intensification of the use of floodways and, wherever possible, allow for their conversion to natural waterway corridors.

The Floodway and Excessive Depth Zone identifies that part of the floodplain where there is considered to be no potential to implement ameliorative measures and/or allow for any structures or intensive activity at a level of risk which would be considered acceptable to the community. Floodways are areas conveying a significant proportion of the flood flow and where partial blocking will adversely affect flood behaviour to a significant and unacceptable extent. The principal risk criterion in this zone exists when flood water velocities exceed levels which may threaten the integrity of built structures or the safety of persons. The threat to personal safety and to gross structural damage caused by floods, depends largely upon the speed and depth of floodwaters. These, in turn, are dependent upon both the size of the flood and the hydraulic characteristics of the river and its floodplain. If the flood velocity is significant, buildings can be severely damaged (even destroyed). The build up of debris and the impact of floating logs can cause significant structural damage to buildings. Consequently, the property owner should demonstrate that any building or structure can withstand the force of flowing floodwater, including debris and buoyancy forces as appropriate. A detailed report from an appropriate consulting structural engineer should be required in support of a development application. This has not been requested as part of this assessment so as not to impose additional costs upon the applicant at this point in time.

## **2. Likely Impact of the Development**

As discussed throughout this report, the approval of this application increases the community's susceptibility to the effects of flooding in terms of social, economic and environmental consequences.

### Rural Amenity

The proposed development maintains an acceptable level of residential amenity in regards to visual appearance boundary setbacks and visual and acoustic privacy.

The single storey dwelling and earth mound will have a total height of 10.280 metres AHD. This is considered compatible with existing dwellings located upon the floodplain.

### Access

The surrounding road system is sufficient to accommodate vehicular traffic associated with the proposed development. However, in moderate floods, the access roads will be inundated by floodwaters, rendering the occupants isolated and reliant upon the SES for property protection, evacuation and/or supplies.

### Emergency Response

SES advised that it is undesirable to increase the number of dwellings and occupants susceptible to flooding since it places an excessive demand on already limited SES resources due to the ineffectiveness of private evacuation plans.

In this locality, the awareness of property owners/occupants is hampered by the lack of a telemetered flood warning system and the Bureau of Meteorology does not advise of predicted flood levels. The *Lower Hunter Valley Floodplain Risk Management Study 2001*

suggests that a telemetered flood warning system be developed for the Lower Hunter with specific provisions for the mostly rural lands between Green Rocks and Raymond Terrace.

#### Cumulative Effect

Approval of this application further increases the number of people susceptible to the effects of flooding in this locality. The problem arises when the cumulative impact of developments that have individually small (or even no impact), but which collectively have significant affects on flood behaviour. The most common examples of this are:

- blocking of floodways and flowpaths by individual developments and levees;
- loss of flood storage due to filling of floodplain areas for individual developments and the consequential rise in flood levels; and
- increase over time in the at-risk population living and working on flood prone land and their impacts on emergency management resources or the capacity of evacuation routes.

Whilst it is true that each development by itself may not lead to a significant increase in flood levels, risk, evacuation needs or potential damage, the increase occasioned by the cumulative effects of a number of such developments is often unacceptable. Land use on a floodplain should be compatible with and able to withstand the effects of flooding.

### **3. Suitability of the Site**

The subject land is considered unsuitable for rural-residential development taking into account the level of flood risk and likely social, economic and environmental consequences.

### **4. Submissions**

This application is not subject to Council's policy regarding advertising and notification.

### **5. Public Interest**

This proposal is contrary to the public interest in that it has the potential to further exacerbate the impact of flooding and private and public losses in this locality, the potential to increase demand upon emergency services and an unnecessary and unreasonable demand on limited SES resources. Development should not detrimentally increase the potential flood displacement onto other development/properties within this area.

Note: Cr Robinson entered the meeting at 5.43pm during Item 1

**ITEM NO. 2**

**FILE NO: DA 16-2006-246**

**REVIEW OF DEVELOPMENT APPLICATION FOR HOME EMPLOYMENT (EARTH MOVING & ENGINEERING) PURSUANT TO SECTION 82A ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AT NO 774 MARSH ROAD BOBS FARM**

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

---

**RECOMMENDATION IS THAT COUNCIL:**

Refuse the Section 82A review of Development Application 16-2006-246-1 for the following reasons:

- 1) The development is inconsistent with the objectives of the 1(a) Rural Agriculture zone pursuant to Port Stephens Local Environmental Plan 2000;
  - 2) The development is inconsistent with the definition of home employment pursuant to Port Stephens Local Environmental Plan 2000 in that it will adversely interfere with the amenity of adjoining properties and the immediate locality;
  - 3) The development is inconsistent with the home employment requirements of Development Control Plan 2007;
  - 4) The development is considered to be out of character with the immediate locality and will detract from the rural setting and residential amenity;
  - 5) The development poses an unacceptable acoustic and vibration impact associated with the earth moving component;
  - 6) The development poses an unacceptable social impact on properties in the locality;
  - 7) The development is contrary to the public interest and expectations of an orderly and predictable environment.
- 

**OPERATIONS COMMITTEE MEETING – 8 JULY 2008**

**RECOMMENDATION:**

Refuse the Section 82A review of Development Application 16-2006-246-1 for the following reasons:

- 1) The development is inconsistent with the objectives of the 1(a) Rural Agriculture zone pursuant to Port Stephens Local Environmental Plan 2000;
- 2) The development is inconsistent with the definition of home employment pursuant to Port Stephens Local Environmental Plan 2000 in that it will adversely interfere with the amenity of adjoining properties and the immediate locality;
- 3) The development is inconsistent with the home employment requirements of Development Control Plan 2007;
- 4) The development is considered to be out of character with the immediate locality and will detract from the rural setting and residential amenity;
- 5) The development poses an unacceptable acoustic and vibration impact associated with the earth moving component;
- 6) The development poses an unacceptable social impact on properties in the locality;

**ORDINARY MEETING MINUTES – 22 JULY 2008**

- 7) The development is contrary to the public interest and expectations of an orderly and predictable environment.

**ORDINARY MEETING OF COUNCIL – 22 July 2008**

**RECOMMENDATION:**

	Councillor Hodges Councillor Tucker	1) That Council adopt the recommendation and advise Hay Enterprises that it is open to the company to lodge a new development application for a suitably scaled <i>home employment</i> use for a two (2) year time limited period over Lot 10 DP 1071458 and Lot 11 DP 1071458 consistent with the environmental and acoustic recommendations and undertakings contained within <i>Planning Report on the Capability and Suitability for the Development of a proposed Depot and Workshop – Nelsons Bay Road BOBS FARM Lot 10 in DP 1071458</i> prepared by Tattersalls Surveyors Pty Ltd dated June 2008.
--	----------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**AMENDMENT**

179	Councillor Nell Councillor Dingle	<p>Refuse the Section 82A review of Development Application 16-2006-246-1 for the following reasons:</p> <ol style="list-style-type: none"> <li>1) The development is inconsistent with the objectives of the 1(a) Rural Agriculture zone pursuant to Port Stephens Local Environmental Plan 2000;</li> <li>2) The development is inconsistent with the definition of home employment pursuant to Port Stephens Local Environmental Plan 2000 in that it will adversely interfere with the amenity of adjoining properties and the immediate locality;</li> <li>3) The development is inconsistent with the home employment requirements of Development Control Plan 2007;</li> <li>4) The development is considered to be out of character with the immediate locality and will detract from the rural setting and residential amenity;</li> <li>5) The development poses an unacceptable acoustic and vibration impact associated with the earth moving component;</li> </ol>
-----	--------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**ORDINARY MEETING MINUTES – 22 JULY 2008**

		6) The development poses an unacceptable social impact on properties in the locality; 7) The development is contrary to the public interest and expectations of an orderly and predictable environment.
--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

The amendment on being put became the motion which was carried

**FORESHADOWED AMENDMENT:****MOTION:**

	Councillor Dover Councillor Tucker	That Council defer the decision on Hay Enterprises until Council is provided with a report requested in June 2006 about inclusion of depots into Rural 1(A) zone.
--	---------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------

The motion on being put was lost

**RESOLUTION:**

180	Councillor Dover Councillor Tucker	That a division be called for.
-----	---------------------------------------	--------------------------------

Those for the motion: Crs Brown, Francis, Jordan, Dingle, Nell, Westbury and Swan

Those against the motion: Crs Tucker, Robinson, Dover & Hodges

**MATTER ARISING:****RESOLUTION:**

181	Councillor Francis Councillor Nell	It was resolved that  1) Council be provided with a report regarding a request in June 2006 on the inclusion of depots in Rural 1(A) zone. 2) Council be provided with a report detailing the process around responses to Council's requests for reports. 3) Council be provided with details explaining the reason why depots were removed from inclusion in Rural 1(A) zones.
-----	---------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**MATTER ARISING:****RESOLUTION:**

182	Councillor Jordan Councillor Dover	It was resolved that a report be prepared on resolutions that have not been acted on in this term of Council.
-----	---------------------------------------	---------------------------------------------------------------------------------------------------------------

Note: Cr Hodges left the meeting at 6.42pm during Item 2 and returned at 6.43pm during Item 2

## **BACKGROUND**

**The purpose of this report is to present a Section 82A review application to Council for determination.**

Development Application 16-2006-246-1 was refused by Council on 27 June 2006. The owner operator has lodged a Section 82A review seeking a formal review of Council's determination. Council previously considered a detailed report in this matter on 8 April 2008 at the Operations Committee Meeting (refer Attachment 1). Following a late submission from the proponent Mr Alan Hay on 21 April 2008, Council considered a supplementary memo on this proposal at the Ordinary Council Meeting on 22 April 2008 and the resolution was:

1. *Defer determination of Section 82A review for one (1) month to enable the applicant to investigate the feasibility of relocating the engineering fabrication and earthmoving business to adjoining land Lot 10 DP 1071458 and submit a report to Council addressing the following issues:*
  - *Confirmation of ownership or option to purchase Lot 10 DP 1071458;*
  - *Confirmation of ability to secure right of way (r.o.w) access over adjoining land;*
  - *Documentation from Roads and Traffic Authority (RTA) confirming in-principle support for proposed left in/left out access from Nelson Bay Road subject to detail engineering design*
  - *Documentation from a qualified engineer confirming practical access suitable for heavy vehicles can be achieved via the existing track; and*
  - *Submission of preliminary planning report addressing capability and suitability of Lot 10 DP 1071458 for the proposed use as the basis for rezoning the site subject to accepted land use and locational criteria for siting a depot*
2. *The applicant to submit the planning report by no later than 22 May 2008*
3. *Council requests a further report in July 2008 to enable consideration of the Section 82A review and the applicants planning report concurrently.*
4. *That Council not undertake legal action whilst the site investigation occurs subject to an undertaking from Hays Enterprises to restrict the number of heavy plant on site to two (2) at any one time and to relocate all other heavy plant to work sites where practical.*

On 27 May 2008 Council considered a Mayoral Minute providing a progress report on the investigation and preliminary planning report prepared by the proponent seeking to relocate the depot and engineering manufacturing business onto adjoining land (refer Attachment 3) subject to a landuse rezoning to permit this use.

In response to Council's resolution on 22 April 2008 the proponent has submitted a *Planning Report on the Capability and Suitability for the Development of a proposed Depot and Workshop – Nelsons Bay Road BOBS FARM Lot 10 in DP 1071458* prepared by Tattersalls Surveyors Pty Ltd dated June 2008. The abovementioned report includes a proposal to rezone adjoining Lot 10 DP 1071458 to permit a depot and engineering fabrication business. This rezoning request is considered in Attachment 4 of this report.

The alternate proposal investigated by the applicant seeks to rezone the adjoining land Lot 10 DP 1071458 to permit a depot. The current zoning is Rural 1(a) and "depots" are

specifically prohibited in this Rural 1(a) Zone as per the existing situation applying to Lot 11 DP 1071458. Lot 10 DP 1071458 is a land locked parcel owned by the Roads and Traffic Authority. of NSW (RTA). The land is currently leased by Hay Enterprises Pty Ltd and the lessee has approached the RTA to purchase the land. The subject land has been previously used as a temporary (~ 15months) construction site (compound/depot/headquarters) for the reconstruction of the adjoining Nelson Bay Road. The proponent contends that the alternate site (Lot 10) is capable of accommodating a depot and is also suitable for this purpose.

In accordance with Council resolution on 22 April 2008 the Section 82A application is resubmitted for Council's consideration to enable the Section 82A review and the applicants planning report to be considered concurrently.

#### **Assessment Comment - S82A Review**

The social, economic and environmental implications have been addressed in considerable detail in the Operations Committee Report dated 8 April 2008, Supplementary Information Report dated 22 April 2008. The proposed relocation of the depot onto adjoining land relies on access via Marsh Road, Bobs Farm. The planning report and accompanying acoustic and vibration report proposes to seal the internal access road and relocate potential noise/vibration structures from Lot 11 DP 1071458 to Lot 10 DP 1071458. In respect to the S82A review the proximity of the existing depot on Lot 11 DP 1071458 to the adjoining Bobs Farm School is still considered to result in an unacceptable impact on the learning environment of the students.

#### **Assessment Comment – Proposed Rezoning of Lot 10 DP 1071458 to permit a depot**

The "Planning Report" submitted by the proponent indicates that relocating the depot further away from the school will reduce the acoustic and vibration impacts associated with the operations of a depot and engineering manufacturing business upon the school and adjoining residences. Further the proponents' report concludes that the environmental attributes and values of the alternative site can be managed and typical impacts associated with a depot use can be minimised and/or mitigated on the alternative site.

The "Planning Report" demonstrates that there are potential technical solutions and responses to the issues identified in the Section 82A review relating to DA 16-2006-246-1 and applicable to the current rezoning proposal for Lot 10 DP 1071458. The planning reports and evaluation by Council Departments generally conclude that the environmental attributes and values of the alternate site can be managed and typical amenity impacts associated with a depot use can be minimised and/or mitigated on the alternative site.

However the underlying constraint statutory constraint and planning provisions applying to the current and proposed site remain, namely the 1(a) Rural zone. This requires a "spot rezoning" to enable a depot to be a permitted use on the subject land, conflicts with Council's current strategic planning policy and has not been fully considered in the context of Council's proposed Rural Lands Study and Major LEP review. Further it is arguably contrary to the policy of the NSW Department of Planning as expressed through feedback being received from the NSW Governments LEP Panel. A detailed explanation and appraisal of the alternate proposal is provided in Attachment 4 to this report.

Whilst the proposed approach, efforts and intent of the proponent to relocate the depot and engineering fabrication business to an alternate site is acknowledged, the alternate proposal requires the subject land to be rezoned in the first instance, followed by a merit assessment of a new development application covering both Lot 10 DP1071458 and Lot 11 DP1071458. This will enable the alternative proposal to be examined in accordance with the provisions of



the Environmental Planning and Assessment Act 1979 and the proposal determined on merit.

## **LINKS TO CORPORATE PLANS**

The links to the 2008-2012 Council Plan are:-

- SOCIAL SUSTAINABILITY –** *Council will preserve and strengthen the fabric of the community, building on community strengths.*
- CULTURAL SUSTAINABILITY –** *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*
- ECONOMIC SUSTAINABILITY –** *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*
- ENVIRONMENTAL SUSTAINABILITY –** *Council will protect and enhance the environment while considering the social and economic ramifications of decisions.*

## **FINANCIAL/RESOURCE IMPLICATIONS**

If approved, the proposal is likely to generate continued complaints to Council from surrounding neighbours, particularly the adjoining Bobs Farm Public School. These complaints are likely to generate significant demand on Council's limited development compliance resources. Council has expended significant financial and staff resources attempting to mediate an outcome for the existing depot on 774 Marsh Road, Bobs Farm.

## **LEGAL AND POLICY IMPLICATIONS**

### *Section 82A Review*

The proposal is inconsistent with the definition for home employment pursuant to Port Stephens Local Environmental Plan 2000 in that it will adversely interfere with the amenity of adjoining properties and the immediate locality. The proposal is not consistent with Council's adopted Development Control Plan 2007, specifically Section B10 Home Employment in terms of numbers of employees, hours of operation and number of vehicles/plant.

### *Proposed Rezoning*

The proposed rezoning is inconsistent with Council's LEP and strategic landuse planning policy. The proposal attempts to find an alternative site to relocate the existing depot in order to mitigate and/or remove impacts upon adjoining properties and land uses. This approach requires the land to be rezoned and as identified within this report the proposal is inconsistent with Council's LEP and strategic land use policy. In the absence of an alternative site for the depot the business will be required to either reduce in scale to comply with the home employment provisions within the Port Stephens LEP 2000 or cease operation. If a remedy is not identified Council may be forced to legally restrain the unlawful landuse.

## **Business Excellence Framework**

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

## **SUSTAINABILITY IMPLICATIONS**

The social, economic and environmental implications have been addressed in considerable detail in the Operations Committee Report dated 8 April 2008. The proposed relocation of the depot onto adjoining land relies on access via Marsh Road Bobs Farm. The planning report and accompanying acoustic and vibration report proposes to seal the internal access road and relocate potential noise/vibration structures from Lot 11 DP 1071458 to Lot 10 DP 1071458. In respect to this S82A review the proximity of the existing depot on Lot 11 DP 1071458 to the adjoining Bob Farm public school is still considered to result in an unacceptable impact upon the learning environment of students.

A comprehensive appraisal of the sustainability implications of the alternate proposal over Lot 10 DP 1071458 and Lot 11 DP 1071458 would be undertaken as part of any rezoning process and/or new development application submitted on the subject land.

## **CONSULTATION**

Council's Environmental Services and Integrated Planning Sections were consulted in the respect to the preliminary planning report submitted in support of the proponent's proposal to rezone the adjoining land to enable a depot and engineering fabrication use to be located on the subject land (refer Attachment 4). If Council supports the rezoning proposal in principle there is a need for Council to formally consult with adjoining land owners and the local community.

## **OPTIONS**

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

## ORDINARY MEETING MINUTES – 22 JULY 2008

- 3) Adopt the recommendation and advise Hay Enterprises that it is open to the company to lodge a new development application for a suitably scaled *home employment* use for a two (2) year time limited period over Lot 10 DP 1071458 and Lot 11 DP 1071458 consistent with the environmental and acoustic recommendations and undertakings contained within *Planning Report on the Capability and Suitability for the Development of a proposed Depot and Workshop – Nelsons Bay Road BOBS FARM Lot 10 in DP 1071458* prepared by Tattersalls Surveyors Pty Ltd dated June 2008.
- 4) Adopt the recommendation and advise Hay Enterprises that it is open to the company to lodge a formal request to rezone the subject land and concurrently lodge a new development application for a depot and engineering manufacturing use over Lot 10 DP 1071458 and Lot 11 DP 1071458 consistent with the environmental and acoustic recommendations and undertakings contained within *Planning Report on the Capability and Suitability for the Development of a proposed Depot and Workshop – Nelsons Bay Road BOBS FARM Lot 10 in DP 1071458* prepared by Tattersalls Surveyors Pty Ltd dated June 2008.

### ATTACHMENTS

- 1) Section 82A Review - Report to Council dated April 2008
- 2) Supplementary Memo dated April 2008
- 3) Mayoral Minute dated 27 May 2008
- 4) Outline of capability and suitability report (prepared by Tattersalls Surveyors Pty Ltd) and assessment comments.

### COUNCILLORS ROOM

*Planning Report on the Capability and Suitability for the Development of a proposed Depot and Workshop – Nelsons Bay Road BOBS FARM Lot 10 in DP 1071458.*

Prepared by Tattersalls Surveyors Pty Ltd June 2008

### TABLED DOCUMENTS

Nil

**ATTACHMENT 1**

**SECTION 82A REVIEW - REPORT TO COUNCIL DATED APRIL 2008**

**ITEM NO. 2**

**FILE NO: 16-2006-246-1**

**REVIEW OF DEVELOPMENT APPLICATION FOR HOME EMPLOYMENT (EARTH MOVING & ENGINEERING) PURSUANT TO SECTION 82A ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AT NO 774 MARSH ROAD BOBS FARM**

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

---

**RECOMMENDATION IS THAT COUNCIL:**

Refuse the Review of Development Application 16-2006-246-1 for the following reasons:

- 1) The development is inconsistent with the objectives of the 1(a) Rural Agriculture zone pursuant to Port Stephens Local Environmental Plan 2000;
- 2) The development is inconsistent with the definition of home employment pursuant to Port Stephens Local Environmental Plan 2000 in that it will adversely interfere with the amenity of adjoining properties and the immediate locality;
- 3) The development is inconsistent with the home employment requirements of Development Control Plan 2007;
- 4) The development is considered to be out of character with the immediate locality and will detract from the rural setting and residential amenity;
- 5) The development poses an unacceptable acoustic and vibration impact associated with the earth moving component;
- 6) The development poses an unacceptable social impact on properties in the locality;
- 7) The development is contrary to the public interest and expectations of an orderly and predictable environment.

---

**BACKGROUND**

**The purpose of this report is to present a review of the Development Application pursuant to Section 82A of the Environmental Planning and Assessment Act to Council for determination.**

Council has previously received noise, dust, odour and traffic complaints from persons in the locality relating to the use of the subject land. Council's investigations revealed that the site appears to have been operating as an earthmoving business and depot for a number of years without development consent. In an attempt to regularise the operation, the applicant submitted a development application for home employment (DA 16-2006-246-1). The subject development application was refused by Council on 27 June 2006. Council and the owner/operator subsequently entered into mediation to address Council's concerns and issues raised in public submissions. As an outcome of that mediation process, the owner/operator has lodged a Section 82A application seeking a formal review of Council's determination. In addition, a detailed chronology is provided in **Attachment 1**.

At the time of original determination, Development Control Plan PS5 applied. Development Control Plan 2007 now applies to any Section 82A in accordance with the savings provisions contained in the current DCP. A detailed comparison of the controls is provided in this report in **Attachment 3**.

In the assessment of this Section 82A review and revised proposal, determining weight is given to the resultant unreasonable and unacceptable impacts upon the adjoining Bobs Farm Public School. The impacts associated with this development are exacerbated by the overall scale of the proposal. In addition, the Statement of Environmental Effects submitted with the original application states that there will be a maximum of 10 vehicle movements per day. The Management Plan submitted with the 82A Review indicates 30 vehicle movements per day. In this regard, the proposal is not reduced in scale. Accordingly, the Section 82A application and revised proposal is recommended for refusal.

## **LINKS TO CORPORATE PLANS**

The links to the 2007-2011 Council Plan are:-

<b>SOCIAL SUSTAINABILITY –</b>	<i>Council will preserve and strengthen the fabric of the community, building on community strengths.</i>
<b>CULTURAL SUSTAINABILITY –</b>	<i>Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.</i>
<b>ECONOMIC SUSTAINABILITY –</b>	<i>Council will support the economic sustainability of its communities while not compromising its environmental and social well being.</i>
<b>ENVIRONMENTAL SUSTAINABILITY –</b>	<i>Council will protect and enhance the environment while considering the social and economic ramifications of decisions.</i>
<b>BUSINESS EXCELLENCE –</b>	<i>Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey</i>

## **FINANCIAL/RESOURCE IMPLICATIONS**

If approved, the proposal is likely to generate continued complaints to Council from surrounding neighbours, particularly the adjoining Bobs Farm Public School. These complaints are likely to generate significant demand on Council's limited development compliance resources.

## **LEGAL AND POLICY IMPLICATIONS**

The proposal is inconsistent with the definition for home employment pursuant to Port Stephens Local Environmental Plan 2000 in that it will adversely interfere with the amenity of adjoining properties and the immediate locality. The proposal is not consistent with Council's

adopted Development Control Plan 2007, specifically Section B10 Home Employment in terms of numbers of employees, hours of operation and number of vehicles/plant.

### **Australian Business Excellence Framework**

This aligns with the following ABEF Principles.

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

## **SUSTAINABILITY IMPLICATIONS**

### **SOCIAL IMPLICATIONS**

This proposal will have a detrimental impact on the amenity of surrounding properties in addition to impacting on the learning environment of the adjoining Bobs Farm Public School. These impacts include noise and vibration from the heavy vehicles and their impact on the condition of Marsh Road and its users, specifically school children accessing the adjoining school.

The Department of Education and Bobs Farm Public School have expressed strong concerns about the development and its on-going impact on the school. The subject school opened in July 1918, some 67 years prior to the time when the applicant claims to have commenced using the site as an earthmoving depot circa 1985.

### **ECONOMIC IMPLICATIONS**

The proposal will generate employment for 15 people. It is noted that this represents a reduction of seven (7) employees on site, from that proposed in the development application refused by Council. If the proposal is not supported by Council, it is acknowledged that there will be a potential negative impact on employment unless an alternative site or operational arrangements are identified for this use.

### **ENVIRONMENTAL IMPLICATIONS**

This proposal will have a detrimental impact on the amenity of surrounding properties in addition to impacting on the learning environment of the adjoining Bobs Farm Public School. The storage of fuel and chemicals associated with the proposal in close proximity to residences and the school is problematic. If Council proposes to approve the proposal, it is strongly recommended that a condition be placed on the development requiring all fuel and chemical storage to be suitably bunded including an emergency management plan. Storage structures should be located to comply with relevant Australian Standards, Department of Environment and Climate Change and Work Cover guidelines and requirements given proximity to residences and the school.

## **CONSULTATION**

The application was exhibited in accordance with Council policy, and adjoining property owners/parties who previously made a submission were notified. Five submissions were received. These are discussed in **Attachment 3**.

## **OPTIONS**

- 1) Adopt the recommendation.
- 2) Reject or amend the recommendation.
- 3) Council indicates support for the engineering contracting component of the home employment comprising a metal fabrication and welding business to be undertaken in the proposed shed subject to appropriate conditions of consent. Council indicates its intention to refuse the earthmoving component of the home employment unless the proposal is reduced in scale and generally consistent with the home employment definition and requirements under DCP 2007 contained in **Attachment 3**.

### *Comment*

An appropriately scaled home employment use could be supported on the subject land. The engineering fabrication component could be scaled to generally satisfy the scope of home employment requirements in terms of numbers of employees and is supported in principle subject to appropriate conditions of consent. The scale and impacts associated with the earthmoving component is problematic in terms of the unreasonable and unacceptable impacts on the adjoining school.

- 4) Council indicates its support for the application and requests the Group Manager Sustainable Planning to bring forward conditions of consent in the event that Council determine to give conditional approval to this application.

### *Comment*

Approving the development at the scale proposed may require a review of home employment provisions contained in DCP 2007.

## **ATTACHMENTS**

- 1) Chronology of Events
- 2) Locality Plan
- 3) Assessment

## **COUNCILLORS ROOM**

- 1) Site Plan
- 2) Elevation Plan for Proposed Shed
- 3) Landscape Plan
- 4) Management Plan

## **TABLED DOCUMENTS**

Nil

**ATTACHMENT 1**

*BELONGING TO SECTION 82A REVIEW - (REPORT TO COUNCIL DATED APRIL 2008)*

**CHRONOLOGY OF EVENTS**

**REFUSAL OF DEVELOPMENT APPLICATION TO ASSESSMENT OF S82A REVIEW**

- **27 June 2006** - Ordinary Meeting of Council refused DA 16-2006-246-1 for Home Employment (Earth Moving and Engineering) for the following reasons:
  1. The development is inconsistent with the objectives of the 1 (a) Rural Agriculture Zone pursuant to Port Stephens Local Environmental Plan 2000.
  2. The development is inconsistent with the requirements of Development Control Plan PS No. 5 "Home Employment Guidelines".
  3. The development is considered out of character with the immediate locality and will detract from the rural setting and residential amenity.
  4. The development poses an unacceptable acoustic impact because of the activities associated with the Engineering Contracting business and proposed operating hours of the Earth Moving Business.
  5. The development poses an unacceptable social impact on properties in the locality.
  6. The development is contrary to the public interests and expectations of an orderly and predictable environment.
- **25 July 2006** – Rescission Motion in relation to this resolution was considered at the Council meeting and was lost.
- **15 August 2006** - Letter to this effect was sent to the landowner, Hay Enterprises.
- **30 August 2006** – In response, Hay Enterprises submitted a letter seeking Council's support for a rezoning of the property to enable the subject business activities to be legitimised.
- **12 September 2006** – After consultation with Council, Sparke Helmore sent a letter requiring cessation of business activities and a Letter of Undertaking from the land owner to this effect within 7 days.
- **18 September 2006** - A reply was received requesting an additional 14 days to formally respond to Council and claiming that Port Stephens Council has regularly engaged the services of Hays Enterprises over the past eighteen years, to the extent that in the twelve months prior to February 2006 Council repeatedly contracted Hays Enterprises on numerous occasions.

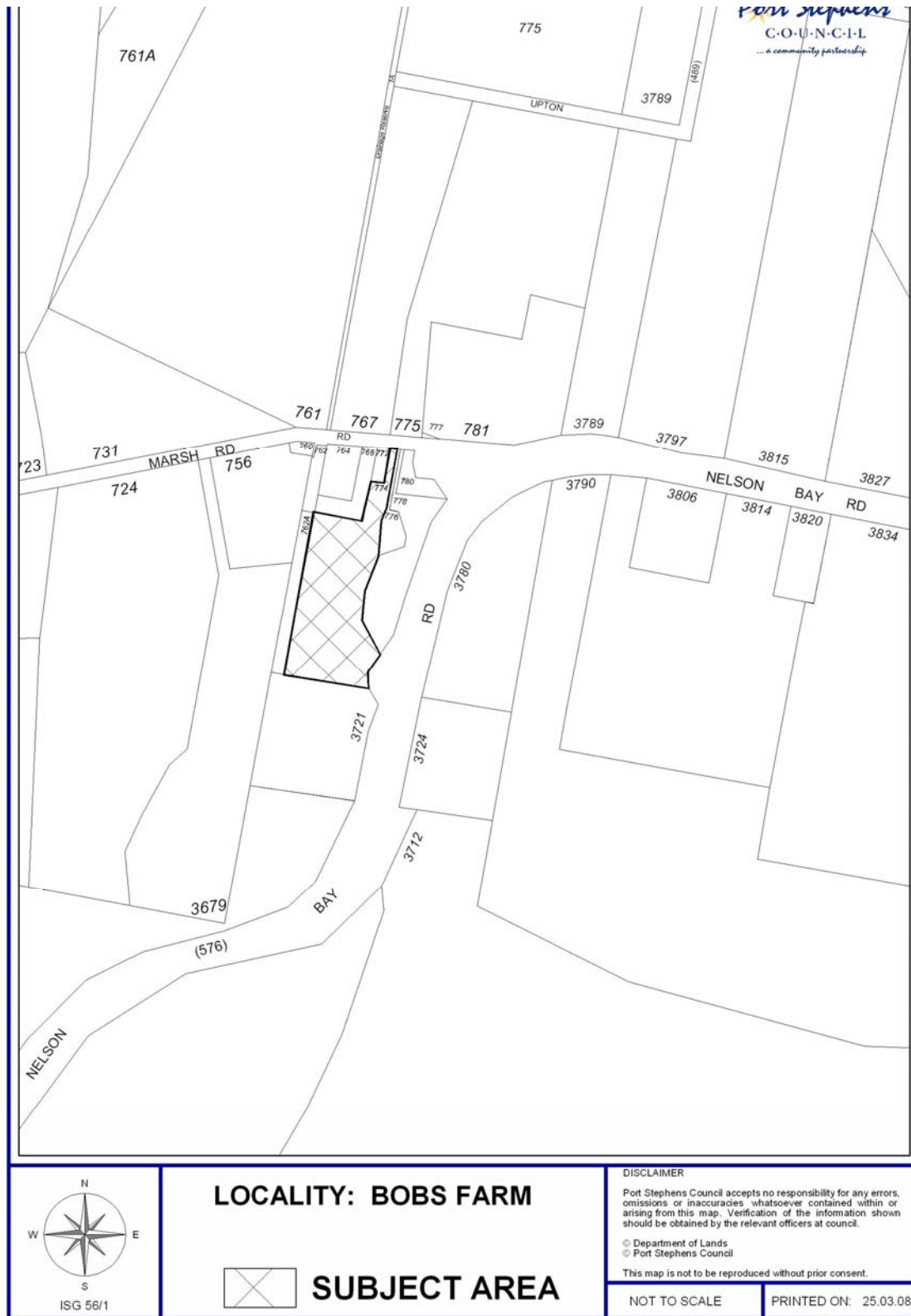


## ORDINARY MEETING MINUTES – 22 JULY 2008

- **10 October 2006** - Council resolved to defer legal proceedings and any further action for 28 days to enable the preparation of a submission regarding existing use rights and/or the scaling down of the business to seek to meet the definitional and policy statements link within Port Stephens LEP 2000 and DCP on Home Employment Guidelines.
- **6 November 2006** - Hunt and Hunt Solicitors for Hay Enterprises made a submission in regard to existing use rights, which was referred to Sparke Helmore for advice. Existing use rights were not proven by Hunt and Hunt Solicitors on behalf of Hay Enterprises and there was no other information/advice to hand to impede Council from initiating action in the Land and Environment Court in this matter.
- **28 November 2006** - Ordinary Meeting of Council resolved to provide further opportunity for Hunt and Hunt, Solicitors for Hays Enterprises, to make submissions regarding existing use rights until 8 December 2006.
- **30 January 2007** - Hunt and Hunt sent documents to support their client's claim.
- **19 June 2007** - After consideration of this submission and detailed research of Council's records, Council was still not satisfied that the use carried on by Hay Enterprises on the subject site has existing use rights, and instigated a Mediation Conference. At this conference Hay Enterprises agreed to address Council's concerns about the operation of the business, by a reduction in scale and arranging for a Section 82A review to be lodged.
- **1 August 2007** - Hay Enterprises lodged an application under Section 82A for review of the determination, which was deficient in a number of areas. There were no notification plans, the site plan lacked detail and dimensions and was not drawn to scale. There was no landscaping plan, and the management plan also lacked detail and was incomplete.
- **10 September 2007** - Voicemail messages were left with Hunt and Hunt advising of the outstanding information.
- **12 September 2007** - A representative of Hunt and Hunt advised that the outstanding information would be lodged with Council shortly.
- **14 November 2007** - Letter sent to Hays Enterprises and Hunt and Hunt, reiterating Council's previous verbal request for the additional information.
- **18 December 2007** - Council wrote to Hunt and Hunt, advising that unless the information is provided by 14 January 2008 that the application would be refused.
- **14 January 2008** - Further submission was received. While of a higher standard than that previously lodged, the Site Plan and Plan of Management still lacked detail, the Landscape Plan was inadequate and the Advertising Plans were not fully legible.
- **22 January 2008** –Council sent a letter advising of the deficiencies. These issues were rectified in a submission received by Council, allowing for the application to be notified and assessed.

**ATTACHMENT 2  
LOCALITY PLAN**

*BELONGING TO SECTION 82A REVIEW - REPORT TO COUNCIL DATED APRIL 2008*



**ATTACHMENT 3****ASSESSMENT*****BELONGING TO SECTION 82A REVIEW - REPORT TO COUNCIL DATED APRIL 2008***

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

**THE PROPOSAL**

The proposal is seeking development consent for Home Employment. The Home Employment consists of the operation of two businesses, namely Engineering Contracting and Earth Moving Contracting. The development includes the following components:

- The "Engineering Contracting" component of the Home Employment comprises a Metal Fabrication and Welding Business, to be undertaken in the proposed shed.
- The existing rural shed that currently houses the Metal Fabrication and Welding business is to be used for storage associated with the businesses.
- The "Earth Moving" component of the Home Employment seeks to utilise the site for the storage of vehicles, plant and machinery in an open, unsealed area, and an area for the temporary stockpiling of material. Maintenance and repairs of vehicles/plant/machinery to be undertaken in the proposed shed.

**THE APPLICATION**

Owner	Mr Allan & Mrs Evelyn Hay
Applicant	Mr Allan Hay
Detail Submitted	Site Plan Landscape Plan Management Plan

**THE LAND**

Property Description	Lot 11 DP 1071458
Address	774 Marsh Road BOBS FARM
Area	2.892 hectares
Characteristics	The battle-axe allotment is irregular in shape and is located on the southern side of Marsh Road, Bobs Farm.

**THE ASSESSMENT****1. Planning Provisions**

LEP 2000 – Zoning    1 (a) Rural Agriculture

Relevant Clauses    Clause 11

Development Control Plan    DCP 2007 – Section B10 Home Employment  
(Applicable to S82A in accordance with savings provisions of DCP 2007)  
DCP No 5 Home Employment Guidelines  
Applicable to development application at time of determination)

Regional Environmental Planning Policies    Hunter REP1989

State Environmental Planning Policies    Nil

## ORDINARY MEETING MINUTES – 22 JULY 2008

ATTRIBUTE	PREVIOUSLY REQUIRED UNDER DCP PS5	PROPOSED IN ORIGINAL DEVELOPMENT APPLICATION	PROPOSED IN 82A REVIEW	REQUIRED UNDER DCP 2007	DOES 82A APPLICATION COMPLY with DCP 2007
<b>Total Floor Area (internal operations only)</b>	50 square metres	Engineering 50 square metres *	Engineering 450 square metres  Site Office for Earth Moving 45 square metres  TOTAL 495 SQUARE METRES	50 square metres for trucking operations (truck and vehicle parking/storage may be considered in addition to this area)	<b>Yes</b>
<b>No of employees</b>	2	22	15	2	<b>No</b>
<b>Hours of Operation</b>	Mon-Fri 8-6 Sat 9-5	Mon-Fri 7-5 Sat 8-5	Mon-Fri 7-5.30 Sat 8-4	Mon-Fri 8-6 Sat 9-5	<b>No</b>
<b>Vehicle Movements/ day</b>	Not specified	10	30**	Not specified	<b>No requirement (see below)</b>
<b>No Prime Movers/Heavy Equipment</b>	2 trucks/prime movers	Not specified	12 Excavators/trucks	2 trucks/prime movers	<b>No</b>

\* The previous Council report noted that in the circumstances of this proposal this requirement would be very difficult to regulate and ensure compliance. This provision is now superseded by DCP 2007

\*\* The Statement of Environmental Effects submitted with the original application states that there will be a maximum of 10 vehicle movements per day. The Management Plan submitted with the 82A Review indicates 30 vehicle movements per day. In this regard, the proposal is not reduced in scale.

### Discussion

The land is zoned for agricultural use under the provisions of the LEP 2000. Although the applicant has applied for home employment, the proposed use would be more suitable in an industrial setting. The site has not been zoned for industrial use and the site is not suitable for this purpose.

Port Stephens Local Environmental Plan (LEP) 2000 applies to the subject land. The land is zoned Rural 1(a) Agriculture under the provisions of the LEP. Under the previous planning instrument LEP 1987 and initially LEP 2000, depots were a permitted land use within the Rural 1(a) Agriculture zone.

However, Council resolved to remove a number of inappropriate land uses permissible within the rural agriculture zone, which included prohibiting depots within the 1(a) Rural Agriculture zone. This amendment was gazetted on the 5th September 2003.

Exhibition of the proposed review of Development Application proposal has generated four (4) letters of objection, raising concerns in relation to heavy vehicles including noise and vibration, the impact on Marsh Road and the subsequent diesel fumes.

It is acknowledged that this locality supports a mix of land uses, including some that are not typical in a rural setting and generate noise eg go-kart track. However the number of vehicle/truck movements associated with this development (10 vehicle movements per day in original application now increasing to 30 vehicles per day in the 82A Review) is still

anticipated to have a significant impact on the amenity of surrounding residences and the adjoining school.

The proposal is recommended for refusal as it is contrary to long established landuse zoning principles and sound planning practice. In this regard, the proposal results in land use conflict between what in essence is an industrial use and the adjoining school and surrounding dwellings. Whilst some impacts are capable of being mitigated through conditions of consent, significant adverse and unacceptable impacts, particularly on the school. These impacts are exacerbated by the overall scale of the proposal. Therefore the development is contrary to the public interest and expectation of an orderly and predictable environment. As such, the development as proposed and revised in the Section 82A application is still considered incompatible with the surrounding land uses and should not be supported.

## **2. Likely Impact of the Development**

Given the history of complaints Council has received in relation to this business, it is anticipated that these would continue if the proposal was approved.

The proposal is likely to generate a number of adverse impacts on surrounding residents and the adjoining school. These impacts include:

- Damage to Marsh Road
- Noise/vibration
- Odour/fumes
- Safety concerns associated with children accessing the public school

The applicant maintains that the business should be supported on the basis that it satisfies the relevant provisions of “Home Employment” pursuant to Local Environmental Plan 2000 and Development Control Plan PS5 Home Employment Guidelines, and that it has operated over many years in a satisfactory manner. The scale and intensity has been reduced and it is suggested that consent conditions can be imposed to ensure compliance with the relevant requirements in this regard. In order to comply with Home Employment provisions would include a reduction in staff numbers from fifteen (15) to two (2) and a reduction in trucks and heavy machinery from twelve (12) to two (2).

### **2.1 Hunter Regional Environmental Plan 1989 (HREP)**

During the assessment and review of this 82A application it was noted that the subject land is identified on Department of Primary Industry maps as being Prime Agricultural Land.

Clauses 24-28 of the HREP relate to rural land. These clauses seek to:

- (a) protect prime crop and pasture land from alienation, fragmentation, degradation and sterilisation,
- (b) to provide for changing agricultural practices, and
- (c) to allow for the development of small rural holdings and multiple occupancy on land capable of such developments in appropriate locations.

Clause 27(2) requires that Council take account of the views of the Department of Primary Industries (on the effect on the productive potential of the land and on the productive use and potential of adjoining lands) prior to granting consent to a development application for development, other than commercial farming on such land. These views have not been sought as the proposal is recommended for refusal. If Council proposes to approve the development then formal consultation with the Department of Primary Industries would be required prior to determination. The DPI would need to consider the subject lands agricultural

productivity, viability with due regard to adjoining land uses which include the school and residences.

## **2.2 Port Stephens Local Environmental Plan 2000 (LEP 2000)**

Pursuant to LEP 2000, Home Employment “means the use of any land or buildings within an allotment on which a dwelling is located, for any office, industry or business, but only where such use:

- (a) is undertaken by the permanent residents of the dwelling, whether or not others are also employed, and
- (b) does not interfere with the amenity of adjoining properties or the locality in which it is situated, and
- (c) does not involve exposure to view from any adjacent premises or from any public place of any unsightly matter, and
- (d) does not require the provision of any essential service main of a greater capacity than that available in the locality.”

The business is not considered to fully satisfy the provisions of LEP 2000, particularly (b) and (c) above. Over the last three years Council has received numerous complaints in regard to this operation and its impact on the amenity of adjoining property. Site inspections have been conducted by Council officers in response to these documented complaints.

The most recent inspection was carried out at approximately 3.00pm on 25 February 2008, by Council’s Senior Development Planner and Development Compliance Officer accompanied by the Site Manager. There was no activity occurring on the site at that time and there was no stockpiles observed. There was no plant visible and while there were several cars parked on the site, there appeared to be no employees on the site other than the site manager and a receptionist in the office. Fresh tyre marks were noted on the extensive unsealed hardstand area. During this inspection, the site manager advised Council officers in attendance that the owner is proposing additional landscaping to that included on the development plans, to screen the business from his residence on the site.

## **2.3 Port Stephens Development Control Plan 2007 (DCP 2007)** **Section B10 Home Employment**

DCP 2007 became effective on 31 May 2007. Despite not being in force when the application was initially determined, section A1.2 of the DCP states that it applies to applications for review of determination under section 82A of the Act that are made after its commencement. The review of development application has been assessed under the provisions of section B10 (Home Employment) of DCP 2007.

Section B10.1 states *“in determining a development application for home employment, Council will give consideration to the type of business activity proposed, the hours of operation of the activity on adjoining neighbours, and the location of the activity on the property. The intention is to permit small scale home employment activities in rural and residential areas where they are compatible with the surrounding land use and will not interfere with, or reduce the amenity of, adjoining neighbours.”*

For the purpose of assessment it is noted that this review of development application includes:

- Reduction in staff numbers from 22 to 15,
- Erection of a new shed to move the Engineering Contracting component of the business away from the surrounding dwellings,
- Provision for dust control,
- Insulation of the compressor to minimise noise,
- Screen planting to property boundaries for privacy and noise attenuation
- Fencing on the boundary to the north of the existing shed,
- Internal signage for speed limits, and an undertaking that no trucks are to pass the school during drop off and pick up times.

Despite the revisions proposed above, this development is essentially an industrial use, contrary to the provisions of the HREP 1989, LEP 2000, DCP 2007 and the previous DCP PS5. Noise, vibration and other issues associated with a home employment use comprising a maximum of two (2) trucks operating on the site (as permitted under DCP 2007) in a rural setting would generally be considered to be an acceptable impact subject to standard conditions of consent. The substantial departures from DCP 2007 in relation to the number of employees and the number of heavy plant/vehicles involved in the business indicate that the business is beyond the scale of home employment envisaged in the DCP...

The development is considered to be contrary to the provisions of DCP 2007, which states that *“where the activity could potentially reduce the amenity of the area, the activity may be required to be confined within a suitably treated building, or may be required to be located in a more appropriate area (such as a commercial or industrial area).”* Whilst the engineering contracting component is more capable of satisfying this requirement the DCP clearly suggests that the earthmoving component would be more appropriately located on an industrial site based on the scale of the proposed operation.

#### **2.4 Development Control Plan PS5 Home Employment Guidelines (PS5)**

For the purposes of comparison DCP PS5 was in force at the time when the original development application was lodged for this development and therefore the review of development application has been assessed under the provisions of this plan.

Similarly to DCP 2007, PS5 states that its intention is to encourage the operation of non-intrusive businesses within rural and residential areas, where appropriate, of a minor scale which will not interfere with the amenity of the surrounding area. The establishment of any business or industry at home should not be used as a substitute for the operation of that business from a commercial or industrial premise where it may be more appropriate.

Clause 12 of PS5 requires the floor space to be used for a home employment activity not to exceed 50 square metres (excluding truck and vehicle parking/storage areas) of internal floor space. It was maintained in the original application that no more than 50m<sup>2</sup> of internal floor space would be utilised in operation of the business. This review of development application acknowledges that some 450m<sup>2</sup> of internal floor space is required for the business. The substantial departure to this requirement further reinforces that the business would be more appropriately located in the industrial zone.

### **3. Suitability of the Site**

The land is zoned for agricultural use pursuant to LEP 2000. Although the review of development application is for Home Employment, the use is more appropriately defined as a depot pursuant to LEP 2000 as follows:

**depot** means a building or place used for the servicing, repair and storage of any plant, machinery, motor vehicles or stock of materials or spare parts used in the course of any one

*business or industrial undertaking or public utility undertaking, but does not include any part of the building used for sales by retail, wholesale or otherwise.*

The site has not been zoned for this type of activity and is not considered suitable given the proposed scale of the operation.

The surrounding land includes a number of rural dwellings to the north east, Bobs Farm Public School to the north-west and a go-kart track to the east. The impacts associated with the development are further compounded by existing lot layout and the location of surrounding dwellings and the school. The Department of Education and Bobs Farm Public School have objected to this review of development application, in addition to a number of complaints to Council during the last three years, raising concern about the depot being operated in a rural zone and the significant impact on the school and the learning environment for the students due to noise, dust, odour and other activities, characteristic of an industrial development.

There is a pocket of vegetation adjoining the area nominated for the Home Employment.

If Council proposes to approve the proposal it is strongly recommended that a condition be placed on the development to screen the land area used for home employment use to the satisfaction of Council and the NSW Rural Fire Service in respect to bushfire management and visual impact.

The site is also potentially affected by Class 3 Acid Sulfate Soils, for which a consent condition can be included requiring the necessary reports prior to excavation beyond one (1) metre below ground level.

The site is flood prone to the extent that any habitable buildings require a minimum floor height of 2.5m AHD. This is not applicable to the subject proposal as there are no new habitable buildings proposed.

#### **4. Submissions**

The application was notified in accordance with Council policy until 27 February 2008. Reasonable extensions of time were granted to parties who had previously made submissions to enable them to address the revised proposal. Council received five (5) submissions. Four (4) submissions object to the proposal and one (1) submission supports the proposal as amended.

The letter of support states that there is no objection to the continued operation of the business as there will be changes that will maintain privacy and reduce noise.

The objection letters raised concerns about a number of issues including:

- Drainage
- Pollution – groundwater and Tilligerry Creek
- Belongs in an Industrial zone
- Doesn't satisfy Home Employment Guidelines
- Air pollution/Dust/Diesel fumes
- Contamination of tank water
- Noise/vibration
- Proximity of diesel tanks to boundary with school
- Trucks damaging Marsh Road as it has a 3 tonne limit
- Conflict with school children and heavy vehicles
- Quiet ambience destroyed



#### **4.1 Bobs Farm Public School**

The school has raised concerns about the site becoming a large depot, which does not comply with Council's LEP and DCP and the subsequent dust and air pollution (including smoke generated during burning off). The noise caused by heavy vehicles, compressors and grinders, and the vibration from heavy vehicles is said to affect student learning within classrooms and during outdoor classes such as PE.

The school also claims that their tank water, which is used for drinking, is compromised due to dust and contaminants. Diesel tanks are located close to the common boundary, creating a potential explosion or leak hazard.

The weight limit on Marsh Road is 3 tonnes and the school estimates that the weight of the vehicles used in the subject business would be 20-30 tonnes, when carrying a load. The continuous breach of the weight limit damages Marsh Road and creates potholes. There is also a potential safety conflict with heavy vehicles and school children walking or riding their bikes on Marsh Road, to and from school.

The NSW Department of Education and Training has made a separate submission reinforcing the objections raised by the Bobs Farm Public School and Bobs Farm Parents and Citizens Association (P&C). The issues raised are similar to those raised in the submission received from the school, including noise and vibration from industrial equipment and the movement of heavy trucks and machinery on and off the site.

Concern has also been raised in relation to diesel fumes and dust pollution, and the impact of heavy vehicle traffic on both the physical condition of Marsh Road given its 3 tonne limit, and other road users (particularly students and parents).

##### *Assessment Comment*

The application has proposed measures to address dust concerns, including mulching of the yard to prevent dust in driveway areas and wet down before trucks and equipment arrive at the yard. A 50mm bore water sprinkler has been installed on the site for this purpose.

In respect to airborne pollution the main options to minimise impact may involve:

- Provision of appropriate setbacks between uses to maximise opportunity for dispersion
- Avoid concentration of heavy plant in one area, or being used at any one time, limit operating times or a combination of all of the above

It is acknowledged that the S82A application includes revisions to propose operating times and the organisation of plant, stockpiles, storage and fabrication on site. The following spatial details are relevant to this assessment.

- The battle axe handle that provides access to the subject site from Marsh Road is located adjacent to the school's eastern boundary.
- The site also adjoins the southern (rear) boundary of the school.
- The school's oval is located in this south eastern corner, with the existing machinery storage and handling area for the Home Employment adjacent to the south, approximately thirty (30) metres away from the closest school building. The former shed, now proposed as storage, is approximately 39 metres away from the closest school building across the school oval.
- The existing residence on the subject land is approximately sixty two (62) metres from the proposed storage compound.

Whilst the noise generated by compressors and grinders may be confined to the proposed shed, which could be conditioned to incorporate acoustic treatment, there is limited

opportunity to ameliorate the noise and vibration resulting from the heavy vehicles using this part of the site.

Whilst two (2) heavy vehicles may cause some minor interference, the number of heavy vehicles to be used in the business has an unacceptable impact in this regard.

Diesel tanks are regulated by the Department of Environment and Conservation (the Environmental Protection Authority) and must comply with relevant Australian Standards (*AS 1940-2004: Storage and Handling of Flammable and Combustible Liquids*). This can be imposed as a consent condition should the development be approved.

In respect to potential damage to Marsh Road from heavy vehicle use associated with this development the development could be conditioned to upgrade that trafficable portion of Marsh Road to the intersection with Nelson Bay Road.

Safety conflicts between school children walking or riding their bikes and heavy vehicles can be minimised as per the applicant's suggestion for no trucks to pass the school during drop off and pick up times (8.15am - 9.15am and 2.45pm – 3.45pm). Should consent be issued it is suggested that this time be extended to 8.00am – 9.30am and 2.30pm – 4.00pm, in accordance with the 40km/hr speed limit times specified by the Roads and Traffic Authority.

NSW Rural Fire Service (RFS) has jurisdiction for bushfire hazard reduction permits and this may occur on the site regardless of its land use.

#### **5. Public Interest**

Given the nature, scale and extent of the proposed development in this location and on going complaints from surrounding properties, the proposal is not considered in the public interest.

## ATTACHMENT 2

# Supplementary Information



TO: All Councillors & Executive Group

FROM: Scott Anson  
Manager, Development & Building

DATE: 22 April 2008

RE: Supplementary information for April Ordinary Meeting

FILE No: 16-2006-246-1

ITEM No: Operations item 1

REPORT TITLE: Review of Development Application for Home Employment (Earth Moving & Engineering) Pursuant to Section 82A Environmental Planning and Assessment Act at No 774 Marsh Road Bobs Farm

---

### PURPOSE

The purpose of this memo is to advise Councillors of a site inspection undertaken on 21 April 2008 by the Acting Group Manager Sustainable Planning and Manager Development & Building accompanied by Mr Alan Hay and his representative. At the site inspection Mr Hay identified a proposal to relocate the engineering fabrication and earthmoving business the subject of the current S82A review to the adjoining property 3721 Nelson Bay Road, Bobs Farm (Lot 10 DP 1071458).

### BACKGROUND

Council is currently considering a Section 82A review for a home employment comprising an engineering fabrication and earthmoving business. Council's Operation Committee has recommended that the application for home employment as proposed be refused. Council is not in receipt of any documentation supporting the applicant's option to relocate and this memo attempts to outline the key aspects of the proposal discussed on site.

#### **Proposal to relocate engineering fabrication and earthmoving business to 3721 Nelson Bay Road, Bobs Farm (Lot 10 DP 1071458)**

- The applicant proposes to relocate the business to Lot 10 DP1071458.
- There is an existing cleared area on the subject site and there is an existing shed/building.

- The cleared area can be accessed via existing Hay's premises (774 Marsh Road Bobs Farm) or via a rugged track accessed over an adjoining property via Nelson Bay road.
- The applicant proposes a left in/left out driveway access on Nelson Bay Road
- The existing track will need to be formalised and a right of way secured over what appears to be 3631 Nelson Bay Road (Pt254 DP 753204) and constructed to a suitable standard for heavy vehicles and plant to access 3721 Nelson Bay Road, Bobs Farm.
- It is understood that 3721 Nelson Bay Road is currently owned by the NSW Roads and Traffic Authority (RTA) and was purchased for road widening. Mr Hay advised that the land is currently leased by Hay Enterprises.
- The existing shed on Hay's premises would be retained as a buffer to adjoining residence, however all engineering fabrication and earthmoving operations are proposed to be conducted from Lot 10 DP 1071458
- The applicant's preference is to retain the subject land in separate titles.
- The applicant claims that securing a site in an existing industrial estate is cost prohibitive.
- The applicant has stated that the adjoining site is conveniently located to existing dwelling and premises for supervision.

#### **Comment**

Council is not in receipt of any documentation supporting the applicant's proposal discussed on site. The comments provided below are preliminary only and no detailed appraisal of ecological, drainage, bushfire management, access, or any other constraint has occurred at this time.

#### *Existing Statutory Situation*

- The proposal would still be defined as a depot which is prohibited in the Rural 1(a) zone.
- The subject site would need to be rezoned for the intended purposes.
- The practice of the NSW Government's LEP Panel has been to not accept spot rezoning proposals. If any rezoning for the subject land was to proceed it would need to be included in a "batch" for consideration by the panel or as part of the comprehensive review of LEP 2000. If the applicant can conclusively demonstrate the subject land is capable and suitable of supporting the proposed use in terms of accepted landuse planning and locational criteria for siting depots then it open to the elected Council support a rezoning.
- Notwithstanding this approach the LEP Panel has rejected a similar request and Council resolution in recent times.

#### *General Observations*

- The alternate site appears to be more favourable than the existing site due to physical separation from the existing school and rural dwellings. This alternate location increases the opportunity to ameliorate amenity impacts associated with noise, vibration, dust and the like. However these impacts need to assessed in detail and is subject to public consultation.
- The subject lot is situated next to the Nelson Bay Road.

- The existing clearing is generally equidistant from existing adjoining land uses which appears to include rural dwellings and associated uses.
- The proposed site is generally screened from view from adjoining properties, land uses and road users travelling along Nelson Bay Road.
- The proposed site will require a driveway and approach/departure lanes suitable for heavy vehicles accessing the site.
- The proposed access appears to be shared with other rights of way for nearby properties. It is premature to advise Council whether this proposal would meet with objection or support from the properties in the immediate vicinity. This would naturally need to be determined via Council's advertising and notification process.

## **RECOMMENDATION**

- 1      Defer determination of Section 82A review for one (1) month to enable the applicant to investigate the feasibility of relocating the engineering fabrication and earthmoving business to adjoining land Lot 10 DP 1071458 and submit a report to Council addressing the following issues:
  - Confirmation of ownership or option to purchase Lot 10 DP 1071458;
  - Confirmation of ability to secure right of way (r.o.w) access over adjoining land;
  - Documentation from Roads and Traffic Authority (RTA) confirming in-principle support for proposed left in/left out access from Nelson Bay Road subject to detail engineering design;
  - Documentation from a qualified engineer confirming practical access suitable for heavy vehicles can be achieved via the existing track; and
  - Submission of preliminary planning report addressing capability and suitability of Lot 10 DP 1071458 for the proposed use as the basis for rezoning the site subject to accepted landuse and locational criteria for siting a depot
- 2      The applicant to submit the planning report by no later than 22 May 2008
- 3      Council requests a further report in July 2008 to enable consideration of the Section 82A review and the applicants planning report concurrently.
- 4      That Council not undertake legal action whilst the site investigation occurs subject to an undertaking from Hays Enterprises to restrict the number of heavy plant on site to two (2) at any one time and to relocate all other heavy plant to work sites where practical.

## ATTACHMENT 3

# MAYORAL MINUTE

ITEM NO. 1

FILE NO: 16-2006-246-1

### REVIEW OF DEVELOPMENT APPLICATION FOR HOME EMPLOYMENT (EARTH MOVING & ENGINEERING) PURSUANT TO SECTION 82A ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AT NO 774 MARSH ROAD BOBS FARM

---

#### THAT COUNCIL:

1. Note the submission of the preliminary planning report from the proponent
2. Call for a detailed report to Committee and Council in July 2008 addressing the S82A review and preliminary planning report in accordance with the Council Resolution dated 22 April 2008.

---

106

Councillor Swan

There being no objections it was resolved  
that the Mayoral Minute be adopted.

---

#### BACKGROUND

Council, at its meeting on 22 April 2008, resolved to:

1. *Defer determination of Section 82A review for one (1) month to enable the applicant to investigate the feasibility of relocating the engineering fabrication and earthmoving business to adjoining land Lot 10 DP 1071458 and submit a report to Council addressing the following issues:*
  - *Confirmation of ownership or option to purchase Lot 10 DP 1071458;*
  - *Confirmation of ability to secure right of way (r.o.w) access over adjoining land;*
  - *Documentation from Roads and Traffic Authority (RTA) confirming in-principle support for proposed left in/left out access from Nelson Bay Road subject to detail engineering design*
  - *Documentation from a qualified engineer confirming practical access suitable for heavy vehicles can be achieved via the existing track; and*
  - *Submission of preliminary planning report addressing capability and suitability of Lot 10 DP 1071458 for the proposed use as the basis for rezoning the site subject to accepted land use and locational criteria for siting a depot*
2. *The applicant to submit the planning report by no later than 22 May 2008*
3. *Council requests a further report in July 2008 to enable consideration of the Section 82A review and the applicants planning report concurrently.*
4. *That Council not undertake legal action whilst the site investigation occurs subject to an undertaking from Hays Enterprises to restrict the number of heavy plant on site to two (2) at any one time and to relocate all other heavy plant to work sites where practical.*

In response to this Resolution, Council is in receipt of a preliminary planning report on Lot 10 DP

## ORDINARY MEETING MINUTES – 22 JULY 2008

107458 prepared by Tattersall Surveyors, investigating the site's capability and suitability for a depot subject to rezoning the land. The report considers the following elements

- surrounding land uses
- proposed land zoning
- environmental and ecological issues (preliminary only detailed - assessment to be submitted prior to July 2008 report to Council)
- provision of buffers to adjoining land to resolve noise, vibration and dust issues associated with the business (preliminary advice only - detailed assessment to be submitted prior to July 2008 report to Council)
- access to the land

The following dot points summarise the key issues identified in the preliminary planning report

- The proposal relies on access via Marsh Road following correspondence received from the NSW Roads and Traffic Authority advising that access via Nelson Bay Road is not suitable for heavy vehicles.
- The proponent advises that the subject land has been previously used as a temporary construction site for the recent reconstruction of adjoining Nelson Bay Road by the civil contractors.
- Hay Enterprises is currently leasing the land from the RTA and the land will be subject to the RTA's usual disposal process for land surplus to requirements.
- The proponent is of the view that the ecological, landuse, noise, vibration and dust issues can be dealt with in a satisfactory manner

Based on an initial review of the submitted documentation, the following points require clarification and/or further investigation prior to reporting the matter to Committee and Council in July 2008:

### *Bushfire management*

- Consideration of any asset protection zone requirements for the proposed use and consideration of any associated ecological impacts associated with bushfire management requirements
- Consideration of fuel tanks in terms of bushfire management including appropriate bunding and the like.

### *Internal access arrangements*

Right of way benefiting Lot 10 DP 107458 providing access across Lot 11 DP 107458.

### *Consolidated description of proposal and plan*

Consolidated plan depicting the proposed development over both lots confirming what elements will be retained, relocated or removed

### *Noise*

The proponent has been requested to provide details of any noise complaints associated with the temporary construction site situated on Lot 10 DP a107458 associated with the reconstruction of Nelson Bay Road

### *Consultation*

The preliminary planning report has been referred to the following Council Departments for advice:

- Environmental Services - ecological and acoustic/vibration issues
- Integrated Planning - landuse issues
- Development & Building - bushfire management

### *Adjoining Land*

The proponent has been encouraged to consult with all property owners adjoining Lot 10 DP 107458 and address any concerns raised in the detailed addendum reports to be submitted prior to the July 2008 report to Committee and Council.

## **ATTACHMENT 4**

### **OUTLINE OF CAPABILITY AND SUITABILITY REPORT PREPARED BY TATTERSALLS SURVEYORS PTY LTD AND ASSESSMENT COMMENTS**

In response to this resolution Council is in receipt of a preliminary planning report on Lot 10 DP 107458 prepared by Tattersall Surveyors. The report has investigated the site's capability and suitability for a depot subject to rezoning the land. The report has considered the following elements:

- Surrounding land uses
- Proposed land zoning
- Environmental and ecological issues
- Provision of buffers to adjoining land

In response to requests for further clarification the proponent has submitted additional details in respect to the following issues:

- Bushfire management
- Internal access arrangements
- Detailed acoustic and vibration report
- Detailed ecological report
- Onsite Waste Water and Trade Waste Disposal
- Onsite Stormwater disposal
- Consultation with adjoining property owners

#### **Description of Proposal**

Lot 10 DP 1071458 is a land locked parcel owned by the Roads and Traffic Authority of NSW (RTA). The land is currently leased by Hay Enterprises Pty Ltd and the lessee has approach the RTA to purchase the land.

With respect to the subject land, Nelson Bay Road adjoins on its eastern side, Lot 11 DP 1071458 is to the north, vacant Crown Land to the south and Lot 51 DP 1015671 to the west.

The proposal before Council is to allow the subject land to be rezoned to accommodate a Depot Site. The current zoning is Rural 1(a) and "Depots" are specifically prohibited in this Rural 1(a) Zone.

The subject land has been previously used as a temporary (~ 15months) construction site (compound/depot/headquarters) for the reconstruction of the adjoining Nelson Bay Road by civil contractors (Daracon). Parts of the land still carry physical evidence of the previous occupation but there is currently no evidence that this previous or current occupation has resulted in any off site impacts.

The current site contains disturbances caused by:-

- Footings of a dwelling that have been partially constructed.
- Brick workshed that is considered suitable only for demolition or significant refurbishment (including the current septic disposal unit that has not been assessed in this matter).



- Large concrete water tank (~100,000 litres).
- Small stockpiles of rock.
- Isolated mounds of old road material (inert).
- Access tracks, reasonably well constructed to the north, east and south.
- Associated clearing.

Hay Enterprises is currently carrying out some minor activity (stockpiling of rocks) on the land.

### **Surrounding Land uses**

Land to the west is currently being used for rural purposes. Land to the south is vacant Crown Land which is the subject of a State Aboriginal Land Claim, further to the south is Lot 254 DP 753204 (being the lot that was originally proposed to provide access off Nelson Bay Road and in part access to the subject land). Land to the north is Lot 11 DP 1071458 (zoned Rural 1(a) and being used as a depot site and the subject of current Council consideration) and Lot 12 DP 1071458 is Rural 1(a) zoned land being used for an approved recreational Go-kart track. Appendix 2 indicates the relationship with adjoining occupations and land uses.

### **Proposed Land Zoning**

The intended use of the subject site is specifically encompassed by the definition of “Depot” under the PSC LEP, which will require that the land be rezoned as 4(a) General Industrial:-

*“depot means a building or place used for the servicing, repair and storage of any plant, machinery, motor vehicles or stock of materials or spare parts used in the course of any one business or industrial undertaking or public utility undertaking, but does not include any part of the building or place used for sales by retail, wholesale or otherwise.”*

The current operations being undertaken on Lot 11 DP 1071458 to the north clearly fall into the classification of “Depot” and it is intended that all activities currently being undertaken on Lot 11 will be transferred to Lot 10.

*The Industrial General “A” Zone caters for a range of industrial development including the retailing of bulky goods that require large areas for handling and storage and goodloading facilities. Premises of a commercial and retail nature are limited in the industrial zone.*

*The objectives of the Industrial General “A” Zone are:*

- (a) to enable the development of a wide range of industrial, service and storage activities and a limited range of business and retail activities, and*
- (b) to allow industrial development only after comprehensive hazard analysis and risk assessment provide adequate safeguards designed to protect the surrounding environment and ecological balance, and*
- (c) to regulate industries in proximity to urban localities and to ensure that adequate buffers are provided in the vicinity of adjacent zones, so that activities near the boundary of an adjacent zone will not have a significant detrimental effect on the amenity of that zone, and*
- (d) to enable the most efficient and effective industrial development of waterfront*

*industrial land by encouraging associated waterfront land uses sympathetic to the environment and ecology of the waterfront lands, and*  
*(e) to allow commercial, retail, residential, or other development only where it is associated with, ancillary to, or supportive of, industrial development, and*  
*(f) to limit development for the purpose of bulky goods salesrooms or showrooms, and*  
*(g) to encourage a high standard of design and amenity in industrial areas.*

### **Environmental & Ecological Issues**

An ecological constraints assessment has been undertaken by Wildthing Environmental Consultants. The ecological assessment provides a detailed view of the recorded ecological constraints encountered on the site. Clearly some parts of the land are constrained by the adjoining wetlands to the immediate northwest of the Depot site, but as it is proposed that the Depot be contained generally to the current cleared area (with some minor operational adjustments to existing vegetation), and to the eastern portion of the land. It is not considered that the adjoining wetland part of the land will be threatened by any activities that could be carried out on the area that will be subjected to the Depot site. Care to ensure that the wetland is protected and improved with the future removal of weeds should be considered by Council as a future outcome of any DA consent.

The assessment has found that one Endangered Ecological Community (EEC) being Swamp Sclerophyll Forest on Coastal Floodplains and one threatened fauna species being *Miniopterus australis* or Little Bentwing-bat, were detected on site. The Swamp Forest is intact with extensive peripheral weed incursions, generally by *lantana*, was also recorded. The Little Bentwing-bat requires caves or culverts for roosting and no suitable habitat is available on site.

The main clearing currently in existence has been subject to extensive modification. Indicated above, the site contains some minor imported material (rock and some road material), the footings of what appears to be a proposed dwelling house, a large brick shed (nearly derelict), access tracks and associated infrastructure (water tank and septic system etc). The previous use as a construction depot/ compound for the construction of Nelson Bay Road has provided an opportunity to utilise the land for a more formal depot site without significant detrimental ecological issues being invoked. Proposed minor clearing for operational reasons within the site is feasible and can be carried out without significant environmental impacts.

A formalised depot site within the land can be confined to a distinct portion of the land and, given the current vegetation cover available, well screened from Nelson Bay Road and adjoining neighbours. Embellishment of noise mounds with additional targeted native species should be considered by Council for any Depot approval.

Wildthing Environmental Consultants have made a series of recommendations and these relate to:-

- Drainage and Erosion –generally to be directed away from the EEC. Note that naturally this is currently the arrangement.
- Erosion and Sediment Control to be in place for the establishment of the

sealing of the access track.

- Weed control be undertaken on the peripheral areas of the EEC.
- Control of stockpiling of unclean material brought into the site.
- Limits on clearing operations, generally to that indicated on the layout plan
- Ecologist control of any clearing operations.
- Installation of suitable nest boxes as replacement hollows.
- Restrictions on clearing any Swamp Mahogany – Paperbark Forest.  
(Note that no clearing is required or is to be undertaken in this area)
- Fencing restrictions.

#### **Provision of Buffers to Adjoining Land to resolve Noise, Vibration, Dust & Visual Issues**

Reverb Acoustics has assessed the potential impacts of relocating a depot and fabrication workshop to the proposed site and to make recommendations to allow the proposed activity to be undertaken without causing offsite impacts to adjoining owners and occupiers. Attachment 5 includes an aerial photograph which indicates that the distances to all relevant adjoining dwellings.

The land currently contains an earth mound to the east that can be supplemented and provided with additional plantings. Issues of noise from shed activities is considered unlikely as the openings in the shed will face south and constructed noise mounds to the east will be enhanced. Noise and vibration from truck movements will be restricted by the use of mounds, restrictions for servicing within the proposed shed and maintenance of the significant vegetation to the east and west of the site will ensure that the rural residential amenity enjoyed by the four closest (includes the owner of Hay Enterprises) dwellings will be assured.

Vibrations that are currently affecting the adjoining owners are generally caused by the existing rumble bars that adjoin the existing shed. This erosion control device will be relocated to the commencement of the sealed road and well away from any potential impact on adjoining owners.

It is noted that the site was previously used for a similar purpose during the construction of Nelson Bay Road and the issue of noise/trucks did not raise concern for an extended period of time as confirmed by the RTA civil construction contractor. It is also noted that on the Rural 1(a) land to the immediate north that is being used as a Go-kart Track.

Advice from Reverb Acoustics has indicated that the common sources of noise and vibration associated with the proposed land use are likely to be:-

- **Trucks moving from Marsh Road to the proposed Depot site through the existing Lot 11.**
- **Workshop activity noise from the main depot site.**

Reverb Acoustics has recommended the following measures:

- Sealing of the access track.
- Speed restrictions (already in place).
- An acoustic fence 3300mm high needs to be constructed along the entrance road to shield the existing owner that fronts Marsh Road.
- Earth mounds to the east of the Depot Site.
- Orientation of the shed to be to the south.
- Time restrictions on internal shed work between the hours of 10pm-7am.
- Internal lining of the workshop shed and ceilings.
- Care in the locating of ventilation openings, compressors and extraction outlets.
- An education program for employees to make them aware of the neighbours concerns and the operational measures that are to be in place.

In respect to visual and scenic amenity issues visual buffers from the land are already in place and need only minor embellishment to completely encompass the future activities from active or passive surveillance.

#### **Access to the land**

The Port Stephens LEP 2000 has a restriction on the use of arterial roads and access to land. This restriction is contained within Clause 42 of the LEP.

The subject site is land locked and potential access via the north-eastern corner of Lot 254 DP 753204 have been being investigated and rejected by the RTA. The RTA have advised that the proposed access from the south is unacceptable and only access from Marsh Road will be supported.

Accordingly access to the depot side is being proposed via the existing Hay Enterprise operation off Marsh Road. Given that the issues of noise, dust and vibration are specifically related to the current activities adjoining the School, and the fact that the new proposed depot site is to be located well away from any close adjoining owner, it is considered that the current access arrangements are reasonable and should be acceptable to Council.

Reverb Acoustics has investigated the proposed access from an acoustical point of view has determined that the proposal has noise and vibration compliance, subject to the installation of a noise barrier.

#### **Bushfire Management**

Tattersall Surveyors has prepared a Bushfire Hazard Assessment. The report concludes that there are no perceived threats from the north, east or west.

There is a significant threat from the south and the requirements for a 40m Asset Protection Zone in this direction is easily achieved within the proposed layout for the future Depot development. Tattersall Surveyors have provided a plan depicting the Asset Protection Zone required for this proposal under the current bushfire requirements.

### **Onsite Waste Water and Trade Waste Disposal**

The site is serviced by a standard septic tank with a standard transpiration trench arrangement. These facilities have been in place for many years and were used by the civil contractors during the Nelson Bay Road upgrade. Up to 25 employees used the facilities during the road construction and no adverse impacts were detected. This matter can be addressed as part of a development application.

Issues of trade waste will be addressed with the capture and separation using a grease and oil separator that would be designed and located prior to any stormwater infiltration system. A formal truck washing bay will form part of a development application.

### **Onsite Stormwater disposal**

The proposed Workshop and Office will be directing all roof and gutter flows to tank water storages. On site there is already in place several above ground tanks storages as well as a 100,000 litre below ground concrete tank. Detailed calculations for the required tank water storage have not yet been undertaken but it is reasonable to assume that there is sufficient capacity already available for the intended development options. Should this not be the case there is available space to accommodate additional storages without any further issues.

In regard to the potential for the mitigation of stormwater flows from any hardstand areas that will need to be provided for the truck or associated earthmoving equipment, it is suggested that the flows will be directed towards the south east, and away from the wetland, into a detention/infiltration arrangement that incorporates a grease and oil separator.

The proposed arrangements will ensure that at no time will concentrated flows be directed towards the wetlands, generally as the land, subject to the Depot activity footprint, naturally falls towards the southeast, and infiltration will be used to dispose of any concentrated flows.

### **Proponents Conclusion**

The proposal to develop Lot 10 DP1071458 as a Depot and Workshop site has been undertaken and it is generally concluded that the impacts on the environment, adjoining neighbours and the site itself are reasonable and acceptable. Specific recommendations relating to items detailed in the Wildthing Environmental Consultants report, the Reverb Acoustics Assessment and Tattersall Surveyors Bushfire Report and Layout plans need to be considered and indicate that the option of the use of the land as a Depot is feasible and presents Council with little risk in a rezoning proposal.

The proponent considers that the submitted reports and recommendations are appropriate and indicate that the future use of the land as a depot site is a reasonable and viable option. It is further recommended by the proponent that Council consider an application for the future Depot Workshop Shed, as well as associated infrastructure, prior to or in conjunction with any rezoning proposals so that the facilities can be in place and ready to operate. Specifically, the introduction of the noise barrier to the

adjoining residential property off Marsh Road would seem to be a reasonable interim matter that could help resolve the present complaints situation that Council has indicated as being of prime concern.

**Specific requirements of Council resolution dated 22 April 2008**

The proponent has confirmed that the land is currently leased from the NSW Roads and Traffic Authority (RTA). The RTA has advised the proponent that the land is subject to the RTA's usual surplus land disposal process.

In respect to access via Nelson Bay Road the RTA has advised that the proposed access is not considered suitable for heavy vehicle movements associated with the proposed depot. As a consequence the confirmation of a legal right of way and engineering advice concerning construction of a driveway and access via a right of way from the south is redundant.

**Review of Port Stephens LEP 2000 – Depots in Rural 1(a) zone**

Council considered a report on 5 December 2006 in relation to the review of the Port Stephens Local Environmental Plan 2000. As part of this report Council considered a potential "batch" of Draft LEP amendments to present to the NSW Department of Planning LEP Review Panel. One issue considered in this report related to making depots permissible in the Rural 1(a) zone.

**Comment – Integrated Planning**

Depots are currently prohibited in the 1(a) Rural Agriculture Zone, the 4(a) Industrial General zone would enable the Depot activities to occur.

It would not be strategically sound to rezone a pocket of land in isolation to 4(a) Industrial General. The site is located away from other industrial lands and would not reinforce the existing industrial areas and in turn not provide positive strategic outcomes. It is understood that there are operations on the adjoining land which would constitute a Depot however, building on/reinforcing/encouraging the areas already zoned 4(a) would strategically provide a better outcome.

In addition to the above, the site is located within an area identified as Proposed Conservation Lands on the Lower Hunter Regional Strategy (LHRS) Map 2006. This map identifies among other things the existing employment hubs and proposed employment lands areas. The subject site is not located within the employment lands. The LHRS is intended to guide development/rezoning request in a strategic manner and the NSW Department of Planning does not look favourably upon spot rezoning requests especially something that falls outside that of the LHRS.

However, having said this it should be noted that as identified in the Sustainable Planning Managers report to the December 2006 Strategic Committee meeting, enabling Depots in the 1(a) Rural Agriculture Zone in light of existing activities will require further consideration. The Depot matter will be considered as part of the Port Stephens LEP 2000 "Mini Review". Further, consideration needs to be given to the standard template LEP definition which will apply to any future rezoning. The standard template and current Port Stephens LEP definitions are reproduced below.

**Standard Template LEP definition**

**depot** means a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use.

PS LEP 2000 definition

**depot** means a building or place used for the servicing, repair and storage of any plant, machinery, motor vehicles or stock of materials or spare parts used in the course of any one business or industrial undertaking or public utility undertaking, but does not include any part of the building or place used for sales by retail, wholesale or otherwise;

### **Comment – Environmental Services**

#### *Noise and Vibration*

Council's Environmental Health and Regulation Coordinator has identified that the major noise impacts would be truck movements- noise from the workshop is minimal in would have negligible impact in that location. In regard to truck movements, the RTA's refusal to allow access off Nelson Bay Road is problematic and access via Marsh Road needs to address issues of noise, vibration and dust. Accessing the site from Marsh Road through Hays private property may also cause problems down the track if properties change hands.

In respect to the detailed acoustic assessment report the recommendations appear technically feasible. The report states that the overall noise impacts, if all recommendations are followed would represent a lower design noise impact than the existing situation due to noise from the road and other activities in the area.

If this proposal is to be approved a condition should be included that the development be constructed in accordance with all recommendations included in the acoustic report prepared by Reverb Acoustics.

#### Onsite Waste Water and Trade Waste

Council's Environmental Health and Regulation Coordinator has advised that this can be conditioned but it would be necessary for the issues to be considered and more detail provided in regard to -

- The type of OSSM already installed/proposed.
- Method of collection of contaminants and runoff from truck parking areas, the workshop, truck washing, Materials storage. Being a new depot it would be expected that it be constructed with hardstand area for truck parking. Runoff would need to be collected, treated and disposed of.

The above issues have been clarified in the additional information submitted by the applicant and can be satisfactorily dealt with through a future application.

#### Ecological

Council's Natural Resources Coordinator has advised that provided that the recommendations contained in the Wild thing Ecological report are carried out the ecological impacts of the proposed re-zoning/ development are manageable.

In particular:

- That the development is predominately constrained to the cleared area
- That no *E.robusta* trees are removed

- That any substantial habitat trees are compensated with the installation of nest boxes, and that an ecologist is on site during their removal
- Appropriate erosion and weed control mechanisms are put in place both during and after construction.
- That the EEC to the NW of the site is avoided.
- Ensure that the APZ is contained within the existing cleared area
- Provision of a 100m buffer between this development and the EEC and to ensure that the drainage of the site is done in such a way to ensure that no pollutants end up in the wetland/EEC area. This could either be done by re-directing the drainage or putting filtering mechanisms in place before the wetland.

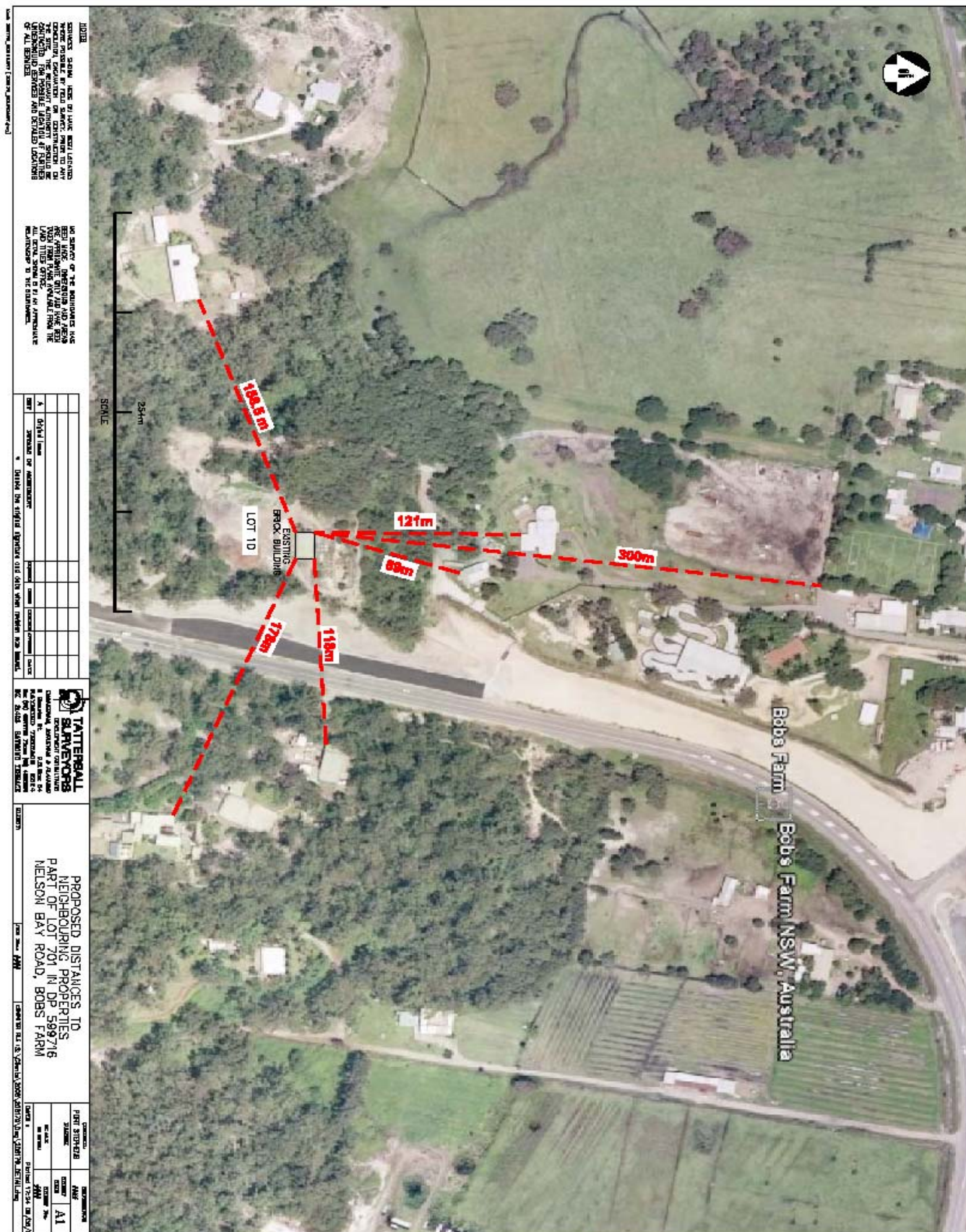
The above issues have been addressed in the additional information submitted by the applicant and can be satisfactorily dealt with through a future application.

### **Conclusion – Manager Development & Building**

Whilst the proposed approach, efforts and intent of the proponent to relocate the depot and engineering fabrication business to an alternate site is acknowledged, the alternate proposal requires the subject land to be rezoned in the first instance, followed by a merit assessment of a new development application covering both Lot 10 DP1071458 and Lot 11 DP1071458. This will enable the alternative proposal to be examined in accordance with the provisions of the Environmental Planning and Assessment Act 1979 and the proposal determined on merit. The planning report demonstrates that there are potential technical solutions and responses to the issues identified in the Section 82A review relating to DA 16-2006-246-1 and applicable to the current rezoning proposal for Lot 10 DP 1071458. The planning reports and evaluation by Council Departments generally conclude that the environmental attributes and values of the alternate site can be managed and typical amenity impacts associated with a depot use can be minimised and/or mitigated on the alternative site. However the underlying constraint statutory constraint and planning provisions applying to the current and proposed site remain, namely the 1(a) Rural zone. This requires a rezoning to enable a depot to be a permitted use on the subject land which is contrary to Council's strategic planning policy and arguably the policy of the NSW Department of Planning as expressed through the LEP Panel.



**ATTACHMENT 5**  
**SITE PLAN OF LOT 10 DP 1071458**



**ORDINARY MEETING MINUTES – 22 JULY 2008****RESOLUTION:**

183	Councillor Swan Councillor Hodges	It was resolved that Item 1 of the Strategic Committee be brought forward and dealt with prior to Item 3 of the Operations Committee.
-----	--------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------

**ITEM NO: 3****FILE NO: PSC2005-1500****ROAD CLOSURE PART NEWLINE ROAD AT RAYMOND TERRACE****REPORT OF: JOHN FLANNERY - ACTING GROUP MANAGER, BUSINESS & SUPPORT****RECOMMENDATION IS THAT COUNCIL:**

- 1) Grants authority to affix the Council Seal and Signatures to an 88B Instrument.

**OPERATIONS COMMITTEE MEETING – 8 JULY 2008****RECOMMENDATION:**

That the recommendation be adopted.

**ORDINARY MEETING OF COUNCIL – 22 July 2008****RESOLUTION:**

185	Councillor Jordan Councillor Hodges	It was resolved that the recommendation be adopted.
-----	----------------------------------------	-----------------------------------------------------

**BACKGROUND**

The purpose of this report is for the authority to affix the Council Seal and Signatures to an 88B Instrument relating to the road.

The proposed closure of the road has been approved by Council at its meeting dated 4<sup>th</sup> April 2006. The process is continuing and Energy Australia requires a section 88B Instrument. The 88B instrument requires Councils Seal and Signatures.

**LINKS TO CORPORATE PLANS**

The links to the 2008-2012 Council Plan are:-

**ENVIRONMENTAL  
SUSTAINABILITY –**

*Council will protect and enhance the environment while considering the social and economic ramifications of decisions.*

**FINANCIAL/RESOURCE IMPLICATIONS**

Nil

## LEGAL AND POLICY IMPLICATIONS

Nil

### Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

## SUSTAINABILITY IMPLICATIONS

### SOCIAL IMPLICATIONS

Nil – area not used by pedestrians or vehicular traffic.

### ECONOMIC IMPLICATIONS

Nil

### ENVIRONMENTAL IMPLICATIONS

Nil

## CONSULTATION

Applicant  
Energy Australia  
Property Unit

## OPTIONS

- 1) Accept Recommendation
- 2) Refuse Consent

## ATTACHMENTS

- 1) Plan showing proposed easement.

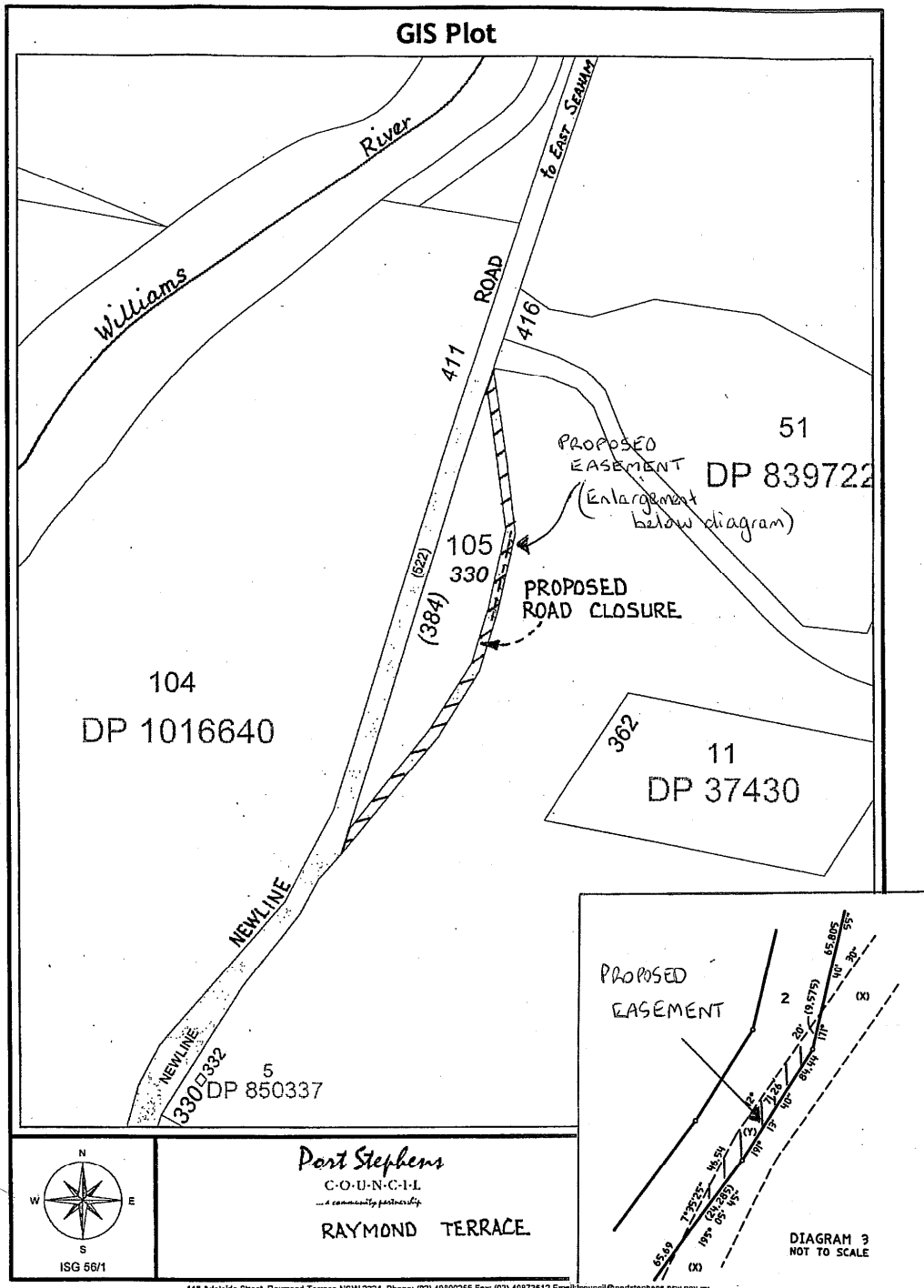
## COUNCILLORS ROOM

Nil

## TABLED DOCUMENTS

Nil

ATTACHMENT 1



**ITEM NO. 4****FILE NO: PSC2005-3572****355(B) COMMITTEES ANNUAL FINANCIAL STATEMENT****REPORT OF: JASON LINNANE - RECREATION SERVICES MANAGER****RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive the 355(b) Committees Annual Financial Statement for the period 1 January 2007 to 31 December 2007.

**OPERATIONS COMMITTEE MEETING – 8 JULY 2008****RECOMMENDATION:**

- 1) Receive the 355(b) Committees Annual Financial Statement for the period 1 January 2007 to 31 December 2007.
- 2) **Council congratulate staff in Recreation Services Section for their efforts working with Council's 355(b) Committees over the past 12 months**

**ORDINARY MEETING OF COUNCIL – 22 July 2008****RESOLUTION:**

<b>186</b>	<b>Councillor Westbury Councillor Dingle</b>	<b>It was resolved that the recommendation be adopted.</b>
------------	--------------------------------------------------	----------------------------------------------------------------

**BACKGROUND**

**The purpose of this report is to recommend Council receive the 355(b) Committees Annual Financial Statement for 2007 allowing \$1,000 subsidies to be paid to eligible committees.**

Section 355(b) of the Local Government Act, 1993, allows Council to delegate certain functions. A section 355(b) committee is an entity of Port Stephens Council and as such is subject to the same legislation, accountability and probity requirements as Council.

Funds administered by 355(b) committees must meet Council's standards of compliance, management and transparency and are required to comply with standard record keeping practices, including submission of report by due dates.

355(b) committees use a cash book style financial record keeping system (format supplied by Council in the form of a carbonised book or Excel Spreadsheet), which is set up to record income, expenditure, GST and reconciliations in a simple format. The cash book is completed each month and the original forwarded to Council with copies of tax invoices, tax input receipts and bank statements. The totals of each month are entered into the Annual Summary Reporting page, which is forwarded to Council annually.

The system was developed in line with recommendations/requirements of Council's auditors to provide a uniform format and transparent auditing of committee financial transactions, which meet the requirements for accountability and GST reporting. The system provides

## ORDINARY MEETING MINUTES – 22 JULY 2008

committees with a simplified financial process and staff support through the Facilities & Services Finance Co-ordinator. The Cash Book System provides a process that minimises risk to both Council and committees.

The Annual Financial Statement Spreadsheet for 1 January 2007 to 31 December 2007 for 355(b) Committees can be found in (ATTACHMENT 1).

The total amount of funds held by committees at 30 December 2007 was \$715,340. Out of this total amount \$437,636 (61%) was held by ten committees. The majority of these funds were allocated to projects underway or contributions to scheduled construction of facilities.

The remaining funds totalled \$277,704 (39%).

The total funds held are \$42,491 more than at 30 December 2006.

### LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

**SOCIAL SUSTAINABILITY** – *Council will preserve and strengthen the fabric of the community, building on community strengths.*

**CULTURAL SUSTAINABILITY** – *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*

**ECONOMIC SUSTAINABILITY** – *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*

### FINANCIAL/RESOURCE IMPLICATIONS

The investment of time by staff and committee treasurers has provided a strong foundation for 355(b) committee financial management.

The Cash Book System has provided committees with a simplified financial process and the means to achieve their objectives and meet compliance requirements

### LEGAL AND POLICY IMPLICATIONS

Section 355(b) of the Local Government Act, 1993, allows Council to delegate certain functions. A section 355(b) committee is an entity of Port Stephens Council and as such is subject to the same legislation, accountability and probity requirements as Council.

Funds administered by 355(b) committees must meet Council's standards of compliance, management and transparency and committees are required to comply with standard record keeping practices, including submission of reports by due dates

In accordance with 355(b) committee constitutions, financial statements are required to be forwarded to Council monthly and a full Annual Financial Statement annually.

The Cash Book System provides the means for effective management, reporting and accountability of Council funds administered by delegated committees, which meets legislative and corporate requirements.

### Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what makes markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

## **SUSTAINABILITY IMPLICATIONS**

### **SOCIAL IMPLICATIONS**

Council establishes community committees to undertake projects, and to assist in the management of parks, reserves, services and facilities. This is part of Council's commitment to community partnerships and provides opportunities for the community to be involved with the management of the facilities they use.

### **ECONOMIC IMPLICATIONS**

The activities and projects undertaken by committees are often those not financially possible for Council without this assistance.

### **ENVIRONMENTAL IMPLICATIONS**

Committees work under direction from Council staff to ensure their activities are performed in accordance with recognised practices.

## **CONSULTATION**

Facilities & Services Finance Co-ordinator  
Volunteer Strategy Co-ordinator

## **OPTIONS**

- 1) Recommendation
- 2) Reject financial statements



**ATTACHMENTS**

Nil

**COUNCILLORS ROOM**

- 1) 355(b) Committees Annual Financial Statement Spreadsheet for 2007

**TABLED DOCUMENTS**

- 1) 355(b) Committees Annual Financial Statement Spreadsheet for 2007



**ITEM NO. 5**

**FILE NO: A2007-3507**

**MAKING OF RATES AND CHARGES FOR 2008/2009**

**REPORT OF: JEFF SMITH, FINANCIAL SERVICES MANAGER**

---

**THIS MATTER WAS DEALT WITH AT THE EXTRA ORDINARY MEETING OF COUNCIL  
HELD ON 15<sup>TH</sup> JULY 2008.**

**ITEM NO. 6****FILE NO: A2004-0266****MAYOR AND COUNCILLOR FEES 2008/09****REPORT OF: JUNE SHINE – EXECUTIVE MANAGER, CORPORATE MANAGEMENT****RECOMMENDATION IS THAT COUNCIL:**

- 1) Determine the fees for the Mayor and Councillors for the period 1 July 2008 to 30 June 2009.

**OPERATIONS COMMITTEE MEETING – 8 JULY 2008****RECOMMENDATION:**

That Council adopt the maximum allowance for the Mayor and Councillors as per the Local Government Remuneration Tribunal determinations for a category 3 Council.

**ORDINARY MEETING OF COUNCIL – 22 July 2008****RESOLUTION:**

<b>187</b>	<b>Councillor Francis Councillor Westbury</b>	<b>It was resolved that the recommendation be adopted.</b>
------------	---------------------------------------------------	----------------------------------------------------------------

**BACKGROUND**

The purpose of this report is to determine the fees payable to the Mayor and Councillors for 2008/2009 financial year.

Pursuant to Section 241 of the Local Government Act 1993, the annual fees to be paid in each of the categories determined under Section 234 to Councillors and Mayors of Councils during the period 1 July 2008 to 30 June 2009.

Port Stephens Council is currently classified category 3 and the Tribunal has determined the range of fees payable as those in the following table.

	<b>Minimum</b>	<b>Maximum</b>		<b>Minimum</b>	<b>Maximum</b>
Councillor	\$6,870	\$15,120	Mayor	\$14,610	\$33,010

The Mayor receives the fee payable as a Councillor with the additional fee as the Mayor. ie. Minimum \$21,480 - Maximum \$48,130.

Council's past practice has been to pay the maximum fees as determined by the Tribunal. In 2007/08 these amounted to \$46,280 for the Mayor and \$14,540 for Councillors.

**LINKS TO CORPORATE PLANS**

The links to the 2008-2012 Council Plan are:-

**BUSINESS EXCELLENCE –** *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

**FINANCIAL/RESOURCE IMPLICATIONS**

The 2008/09 Budget adopted by Council allowed for \$33,011 for the Mayoral Allowance and \$15,121 for Councillors (\$15,121 x 12 = \$181,452).

**LEGAL AND POLICY IMPLICATIONS**

Annual fees must be paid to Councillors and Mayors in accordance with Section 241 of the Local Government Act, 1993. Council may set the fees anywhere between the minimum and maximum determined by the Tribunal.

**Business Excellence Framework**

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated

leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

## **SUSTAINABILITY IMPLICATIONS**

### **SOCIAL IMPLICATIONS**

The Remuneration Tribunals report again rejects the notion that Councillors and Mayors in particular should be paid commensurate to the time and commitment required to carry out their statutory functions. The Tribunal is still of the view that the primary interest of people who become councillors is local government and not remuneration. The report rejects the argument that increased fees will attract better candidates.

### **ECONOMIC IMPLICATIONS**

The fee allows Councillors and the Mayor to effectively carry out their responsibilities as members of the Council and as community representatives without suffering financial hardship.

### **ENVIRONMENTAL IMPLICATIONS**

Nil

### **CULTURAL IMPLICATIONS**

Nil

## **CONSULTATION**

General Manager  
Executive Manager – Corporate Management

## **OPTIONS**

1. Adopt the maximum allowance for the Mayor and Councillors as per the Local Government Remuneration Tribunal determinations for a Category 3 Council.
2. Choose to pay fees within the range set by the Local Government Remuneration Tribunal for category 3.

## **ATTACHMENTS**

Nil

## **TABLED DOCUMENTS**

Nil

**ITEM NO. 7****FILE NO: A2004-0984****NEW MODEL CODE OF CONDUCT FOR COUNCILS IN NSW****REPORT OF: JUNE SHINE – EXECUTIVE MANAGER, CORPORATE MANAGEMENT**

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the new Model Code of Conduct.
  - 2) Authorise the General Manager to investigate with Hunter Councils the option of a regional approach to the membership of the Conduct Review Committee.
- 

**OPERATIONS COMMITTEE MEETING – 8 JULY 2008****RECOMMENDATION:**

That the recommendation be adopted.

---

**ORDINARY MEETING OF COUNCIL – 22 July 2008****RESOLUTION:**

<b>188</b>	<b>Councillor Brown Councillor Westbury</b>	<b>It was resolved that the recommendation be adopted.</b>
------------	-------------------------------------------------	----------------------------------------------------------------

**BACKGROUND**

**The purpose of this report is to advise Council of the new Model Code of Conduct received from the Department of Local Government on Friday 20 June 2008.**

The new Model Code of Conduct is effective from 20 June 2008, with any current matters before the Conduct Committee to be dealt with under the current Code and all new matters after the 20 June 2008 to be dealt with under the new Model Code of Conduct.

The revised Model Code of Conduct was as a result of the review of the current Code undertaken by the Department of Local Government after 18 months of implementation.

Council adopted the original Code of Conduct on 26 July 2005 with a review of the Code on 27 November 2007 following the roll out of training to all staff and councillors. As Councillors would be aware at the time of the original adoption of the Code, Council enhanced the Code to reflect the way we do business at Council. However Council was required to ensure that any changes to the Code were not inconsistent with the Model Code of Conduct.

The new Model Code seeks to provide a much clearer definition in a number of areas such as conflict of interests, relationship between council officials, personal benefit, access to information and council resources and reporting of breaches. A further major change to the Model Code is the removal of the Mayor and General Manager from the Conduct Committee. The Conduct Committee under the current Code comprised of the Mayor, General Manager and Council's legal service provider.

The new Model Code removes the Mayor and General Manager from the Conduct Committee, making the new Conduct Review Committee totally independent of Council. One option under the Model Code is for Council to work with Hunter Councils to develop a

regional approach to the membership of the new Code Review Committee. This is an avenue for Council to ensure independence and consistency with other local government bodies.

Given the urgency for Council to adopt the new Model Code of Conduct it is proposed that following consultation with Hunter Councils a further report be presented to Council on the investigation with Hunter Councils and to allow for the Model Code to be enhanced to reflect the additions similar to those in the original Code adopted by Council. It is anticipated that a further report would be adopted by the new Council.

## **LINKS TO CORPORATE PLANS**

The links to the 2008-2012 Council Plan are:-

**BUSINESS EXCELLENCE** – *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

## **FINANCIAL/RESOURCE IMPLICATIONS**

The original Model Code of Conduct required Council to provide training to all Council officials as part of the compliance with the Code. The Department is still updating the Education package to include the changes to the Model Code, therefore the costs associated with the changes is not known. It is a possibility that Council will be required to provide awareness training to all Council officials. This training has not been budgeted for and it is expected to be in the vicinity of \$20,000.

## **LEGAL AND POLICY IMPLICATIONS**

It is a requirement of the *Local Government Act 1993*, that Council adopt the Model Code of Conduct.

### **Business Excellence Framework**

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*

## **SUSTAINABILITY IMPLICATIONS**

### **SOCIAL IMPLICATIONS**

Nil

**ECONOMIC IMPLICATIONS**

Nil

**ENVIRONMENTAL IMPLICATIONS**

Nil

**CONSULTATION**

General Manger  
Executive Team

**OPTIONS**

- 1) Adopt the recommendation
- 2) Amend the recommendation

**ATTACHMENTS**

- 3) Department of Local Government Circular No. 08-38
- 4) Model Code of Conduct for Local Council in NSW

**COUNCILLORS ROOM**

- 1) Nil

**TABLED DOCUMENTS**

- 1) Nil

ATTACHMENT 1

dlg | circular to councils

Circular No. 08-38  
Date 20 June 2008  
Doc ID. A118731

Contact Lyn Brown  
02 4428 4161  
lyn.brown@dlg.nsw.gov.au

**REVISED MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW**

The Model Code of Conduct for Local Councils in NSW (Model Code) first came into effect on 1 January 2005 and applies to general purpose councils and county councils.

Under section 440 of the Local Government Act 1993 councils must adopt a code of conduct that incorporates the provisions of the Model Code (or is consistent with the Model Code). In addition, councils were required to establish conduct committees to consider relevant complaints about the conduct of councillors and/or the general manager.

The Department of Local Government has now completed a review of the Model Code that included the establishment of a reference group to assist with the review, a call for written submissions, a survey of councils for feedback on the implementation of the Model Code and consultation through focus groups and telephone interviews with local council representatives and specific industry groups.

The outcome of the review is a revised Model Code that will take effect from 20 June 2008. This is achieved by an amendment to the *Local Government (General) Regulation 2005* that prescribes the Model Code. The amendment to the Regulation will appear in the Government Gazette on 20 June 2008.

A separate email will be sent to all councils and county councils with a word version copy of the Model Code to assist councils with the changes to their codes.

The Model Code is available on the Department's website.

[http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Model\\_Code\\_of\\_Conduct\\_June\\_2008.pdf](http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Model_Code_of_Conduct_June_2008.pdf)

**Changes to the Model Code**

The following are the main changes to the Model Code:

**Overall:**

- The Code has been organised in three Parts: Context, Standards of Conduct and Procedures.

Department of Local Government  
5 O'Keefe Avenue NOWRA NSW 2541  
Locked Bag 3015 NOWRA NSW 2541  
T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209  
E [dlg@dlg.nsw.gov.au](mailto:dlg@dlg.nsw.gov.au) W [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au) ABN 99 567 863 195

**2**

- Additional sections have been added on complaint handling, complaint assessment criteria, and operational guidelines for conduct review committees/reviewers. These sections are contained in Part 3, Procedures.
- Aspirational language is now only contained in the Part 1 section of the Model Code. The provisions in Part 2, Standards of Conduct, are now phrased in operational language.
- Administrators have been added to the provisions that apply to councillors and included in the definition of council officials.

**Specific sections and Parts:**

**Part 1: Context**

- The introduction has been amended to include a reference to the relationship of the Model Code to section 440 of the Act.
- Additional definitions have been added for the conduct review committee, conduct reviewer, conflict of interests, misbehaviour, person independent of council and personal information.
- The definition of delegates of council has been amended to clarify that it applies to individual members of bodies that exercise a function delegated by council.
- The key principle of 'objectivity' has been amended to 'impartiality'.
- Guide to ethical decision making has been moved from the general conduct obligations section into the context Part of the Model Code.
- The guide to ethical decision making now includes additional information to assist council officials with political donations and conflict of interests situations.

**Part 2: Standards of Conduct**

- Council officials are reminded of the sanctions for failure to comply with an applicable provision of the standards of conduct.

**General Conduct Obligations**

- Previous clause 5.1 (now clause 6.1) has been worded so that it applies to all council officials and not just councillors. It is consistent with Schedule 6A of the Act.
- An additional clause has been added (6.4) that requires councillors to comply with council resolutions requiring them to take action as a result of a breach.

**Conflict of Interests**

- This section of the Model Code has been substantially rewritten. The clauses have been re-ordered and duplicate clauses removed.
- New provisions relating to non-pecuniary conflicts of interests include the addition of a clause (7.12) to provide that the political views of a councillor do not constitute a private interest and a clause (7.11) that provides that the matter of a conduct review committee/reviewer report to council is not a private interest.
- The code provides a clearer definition of significant non-pecuniary conflicts of interests – clause 7.16.



**3**

- The code now clarifies the action that is required to be taken if a council official has a non-pecuniary conflict of interest. This provides actions for significant and less than significant non-pecuniary conflict situations, clauses 7.17 and 7.18.
- (New) clause 7.19 provides that council staff should manage any non-pecuniary conflicts of interests in consultation with their managers.
- The political donations provisions now require councillors to treat a political donation in excess of \$1000 in the same way as a significant non-pecuniary conflict of interest. Councillors are required to determine whether or not contributions below \$1000 create a significant conflict of interest.

**Personal Benefit**

- This section of the Model Code has also been substantially rewritten. The clauses have been re-ordered and duplicate clauses removed.
- Definitions of token gifts and benefits and gifts and benefits of value have been provided at the beginning of the section. These have been substantially rewritten to provide greater clarity around what is and what is not a gift/benefit of value or of token value.
- (Old) clauses 7.1, 7.2, 7.3 and 7.5 have been rewritten into (New) clause 8.3.
- (Old) clause 7.10 has been removed as the declaration of gifts totalling over \$500 by councillors and designated persons is a requirement in the Act and does not need to be replicated in the Model Code.

**Relationship Between Council Officials**

- The first four inappropriate interactions (clause 9.7) have been collapsed into two that advise about approaches between councillors, administrators and staff in relation to individual staffing matters and allow for discussion on broad industrial policy issues.
- An additional interaction has been provided that advises that it is inappropriate for councillors and administrators to make personal attacks on council staff in a public forum.
- Language has been changed to make it clear that inappropriate interactions are a breach of the code – this was previously implicit only.
- The clause on the role of the Mayor has been removed as it is no longer seen as necessary.

**Access to Information and Council Resources**

- (Old) clauses 9.1 to 9.13 have been tidied up to ensure they are clear.

**Reporting Breaches**

- The content of this section has changed. This section only contains provisions that relate to the reporting of allegations of breaches of the code of conduct. The previous section included complaint handling and sanction information. That information is now contained in Part 3 of the Model Code.
- A provision has been added to make it clear that anyone can make a complaint alleging a breach of the code of conduct.

4

- The protected disclosures clauses have been modified to ensure that they are consistent with the Protected Disclosures Act.

**Part 3: Procedures**

This is a new part of the Model Code. This Part contains the complaint handling procedures, complaint assessment criteria and the operating guidelines for the conduct review committee/reviewer.

The complaint handling requirements and the complaint assessment criteria now provide for the use of a range of methods for the resolution of complaints, give clearer guidance about the referral of complaints to the conduct review committee/reviewer, clarify the role of the Mayor and the general manager in relation to complaint management and provide for annual reporting to council by the general manager on a summary of complaints under the code of conduct.

Councils can now have conduct review committees or individual reviewers undertake enquiries into breach allegations. Members of these committees or the sole reviewers will now be independent of council and can act in the role for more than one council.

Conduct review committees/reviewers are required to act in accordance with the operating guidelines that are provided in the Model Code.

The general manager is now required to report annually to council on code of conduct complaints.

**Model Code Guidelines and Education Package Facilitator's Guide**

The Department is currently updating the guidelines that assist in interpreting the Model Code. These will be re-issued shortly.

The Model Code Education Package Facilitator's Guide will also be updated to incorporate the new provisions. Only the changed sections and CD will be re-issued to councils to update the current resource that was distributed to all councils in 2005.

**Transitional arrangements**

Councils will now need to review their codes of conduct to ensure that they adopt the provisions of the Model Code that is effective from 20 June 2008. Councils are reminded that their codes may include provisions that supplement the Model Code and provisions more onerous than those contained in the Model Code. However, any supplementary or more onerous provisions will have no effect to the extent that they are inconsistent with the Model Code.

Councils will need to deal with any complaints that are currently on foot in accordance with the procedures established in their current code of conduct. Once councils have adopted the provisions of the revised Model Code, any complaints received about conduct that occurred under their previous code of conduct will need to be dealt with in accordance with the standards that applied in the code at that time. However, councils may choose to use the new

5  
procedural arrangements for managing the complaints that are contained in the revised Model Code for those complaints.

A question and answer document is provided with this circular to assist councils in implementing the changes to the code of conduct complaint handling processes.

A handwritten signature in black ink, appearing to be 'Garry Payne', with a stylized flourish at the end.

**Garry Payne AM  
Director General**



REVISED MODEL CODE OF CONDUCT – JUNE 2008

QUESTIONS AND ANSWERS

***What standards of conduct have changed?***

The following standards have been added or changed in the revised Model Code:

***General conduct obligations:***

- An additional clause has been added that requires councillors to comply with council resolutions directing them to take action as a result of a breach.

***Conflict of interests obligations:***

The clauses have been re-ordered and duplicate clauses removed. Key changes include:

- New provisions relating to non-pecuniary conflicts of interests that provide that the political views of a councillor do not constitute a private interest; and the matter of a conduct review committee/reviewer report to council is not a private interest.
- Clarification of the action that is required to be taken if a council official has a non-pecuniary conflict of interest. This provides actions for significant and less than significant non-pecuniary conflict situations.
- A definition of "significant non-pecuniary conflict of interest".
- Provision that council staff should manage any non-pecuniary interests in consultation with their managers.
- Political donations provisions that require councillors to treat a political donation in excess of \$1000 in the same way as a significant non-pecuniary conflict of interest. Councillors must also determine whether or not contributions below \$1000 create a significant conflict of interest.

***Personal benefit obligations:***

The clauses have been re-ordered and duplicate clauses removed. The key change is:

- Definitions of token gifts and benefits and gifts and benefits of value have been included at the beginning of the section. These have been substantially rewritten to provide greater clarity around what is and is not, a gift/benefit of value or of token value.

***Relationship between council officials obligations:***

- Refinement of the provisions relating to inappropriate interactions that advise about interactions between councillors, administrators and staff in relation to individual staffing matters.
- The provisions allow for discussion on broad industrial policy issues.
- An additional provision that advises that it is inappropriate for councillors and administrators to make personal attacks on council staff in a public forum.
- Engaging in inappropriate interactions is now an express breach of the code.

***Reporting breaches:***

- A provision has been added to make it clear that anyone can make a complaint alleging a breach of the code of conduct.
- The protected disclosures clauses have been modified to ensure that they are consistent with the *Protected Disclosures Act 1994*.

***Who receives complaints?***

The general manager is the person responsible for receiving complaints alleging a breach of the code of conduct by councillors, council staff, council delegates or council committee members (clause 12.1).

The Mayor is the person responsible for receiving complaints alleging a breach of the code of conduct by the general manager (clause 12.2).

***How have the complaint handling procedures changed?***

Section 12 of the Model Code prescribes the complaint handling procedures to be used by the general manager, the Mayor and the conduct review committee/sole conduct reviewer.

The complaint handling procedures now provide a range of options for managing a complaint alleging a breach of the code of conduct (section 12). Alternate dispute resolution strategies are provided for. It is expected that the conduct review committee/sole conduct reviewer will deal with the more serious complaints and/or complaints about repeated conduct standards breaches.

In section 13, the Model Code prescribes a set of criteria that must be taken into account in determining how to deal with a complaint. The complaint assessment criteria are to be used by the general manager, the Mayor and the conduct review committee/sole conduct reviewer.

***When is the complaint assessment criteria used?***

The complaint assessment criteria are to be used by the general manager or Mayor when they first receive a complaint to determine the most appropriate course of action for handling the complaint (section 13).

Where it is assessed that the complaint shall be referred to the conduct review committee/sole conduct reviewer, then the conduct review committee/sole conduct reviewer must conduct its own assessment of the complaint using the criteria provided to determine the appropriate course of action.

***What are the changes to the conduct review committee process?***

The general manager or Mayor will no longer be members of the conduct review committee. They may only act in an advisory capacity to the conduct review committee or sole conduct reviewer.

Conduct reviewers must be independent, qualified persons of high standing in the community who are appointed by council.

The council must appoint 3 or more persons to act in the role as conduct reviewers.

A sole conduct reviewer can now be chosen from the appointed persons to review complaints alleging breaches of the code of conduct.

If a conduct review committee is formed, it must consist of at least 3 members.

The conduct review committee/sole conduct reviewer must undertake its activities in accordance with the operating guidelines provided in the Model Code.

***When are conduct reviewers appointed by council?***

Council should ensure that it undertakes a process to appoint conduct reviewers even though it does not have any complaints on foot. This will ensure that appropriately appointed conduct reviewers are available should a complaint arise which requires referral to a conduct committee/reviewer.

On appointing conduct reviewers, council should determine the term of appointment. This could be on an annual basis and determined in September each year when council confirms its committee memberships.

**Can conduct reviewers act for more than one council?**

Conduct reviewers may act in that role for more than one council.

Conduct reviewers do not need to be residents of the local government area of the council that has appointed them.

Councils may decide to work with their regional organisation of councils or strategic alliance partners to appoint conduct reviewers to act for the member councils. Each member council will need to appoint the conduct reviewers for their council.

**Should council appoint more than 3 conduct reviewers?**

Conduct review committees must consist of 3 or more members. Council should consider appointing more than 3 persons to act as conduct reviewers as circumstances may arise when one or more conduct reviewers are not available to participate in a matter, or may be precluded from considering a matter because of a conflict of interests or a reasonable apprehension of bias.

In such instances, if the council has only appointed 3 conduct reviewers, it will have insufficient persons available to form a conduct review committee. By appointing more than 3 conduct reviewers, the risk of these circumstances arising is minimised.

**Who decides who will comprise the conduct review committee or whether one reviewer will act as a sole conduct reviewer?**

The general manager or Mayor will decide if the review will be undertaken by a sole conduct reviewer or a conduct review

committee and will select the reviewers from the persons appointed by council.

The number of persons who will undertake the review will depend on the nature, complexity and seriousness of the allegations.

For example, a council may have appointed 5 persons to act as conduct reviewers. The general manager or Mayor may receive a complaint that is assessed as requiring referral for review by a conduct review committee or reviewer.

If the matter is serious, the general manager or Mayor may determine to appoint all 5 persons to the conduct committee to determine that particular matter.

If the general manager or Mayor assesses the alleged breach as a reasonably straightforward matter, the general manager may determine to refer the complaint to a sole conduct reviewer.

The general manager or Mayor may then choose, from the persons appointed by council, a reviewer with expertise in relation to the nature of the conduct complained about.

**Are conduct review committee members/sole conduct reviewers paid?**

This is a matter for council. Council may undertake an expression of interest process to call for interested and suitably qualified persons of high standing in the community to nominate to be appointed as conduct reviewers. Council should determine whether it is going to meet out of pocket expenses and/or pay a fee for the service.

**What happens if a conduct reviewer has a conflict of interests?**

When a conduct reviewer cannot participate in a matter because of a conflict of interests, then the general manager or Mayor will select another person to be a member of the conduct review committee or to act as a sole conduct reviewer from those appointed by council.

dlg 3

***How does the conduct review committee/sole conduct reviewer operate?***

The conduct review committee/sole conduct reviewer is required to undertake its enquiries in accordance with the operating guidelines provided in section 14 of the Model Code.

The general manager or Mayor may only attend conduct review committee meetings when invited and then in an advisory capacity only. Adequate resources must be provided to ensure that the committee/conduct reviewer can operate effectively.

***What should a report of the conduct review committee/sole conduct reviewer contain?***

Where the conduct review committee/sole conduct reviewer makes enquiries or causes enquiries to be made into a matter, then it must report its findings in writing to the council on completion of these deliberations.

The conduct review committee/sole conduct reviewer should be mindful that there may be a need to protect the identity of the person making the complaint when preparing the report to council.

The report should be a summary of the enquiries undertaken while providing sufficient information for the council to make a determination as to whether the councillor or the general manager has breached the code of conduct.

It is suggested that, as a minimum, the report should contain:

- The nature of the complaint and the standard of conduct that is alleged to have been breached.
- The process undertaken by the conduct review committee/conduct reviewer in assessing and enquiring into the complaint.
- The facts of the matter.
- The findings and the reasons for those findings.
- Any recommendations to council (this now includes any recommendations for a revision of council's policies, procedures and/or the code of conduct).

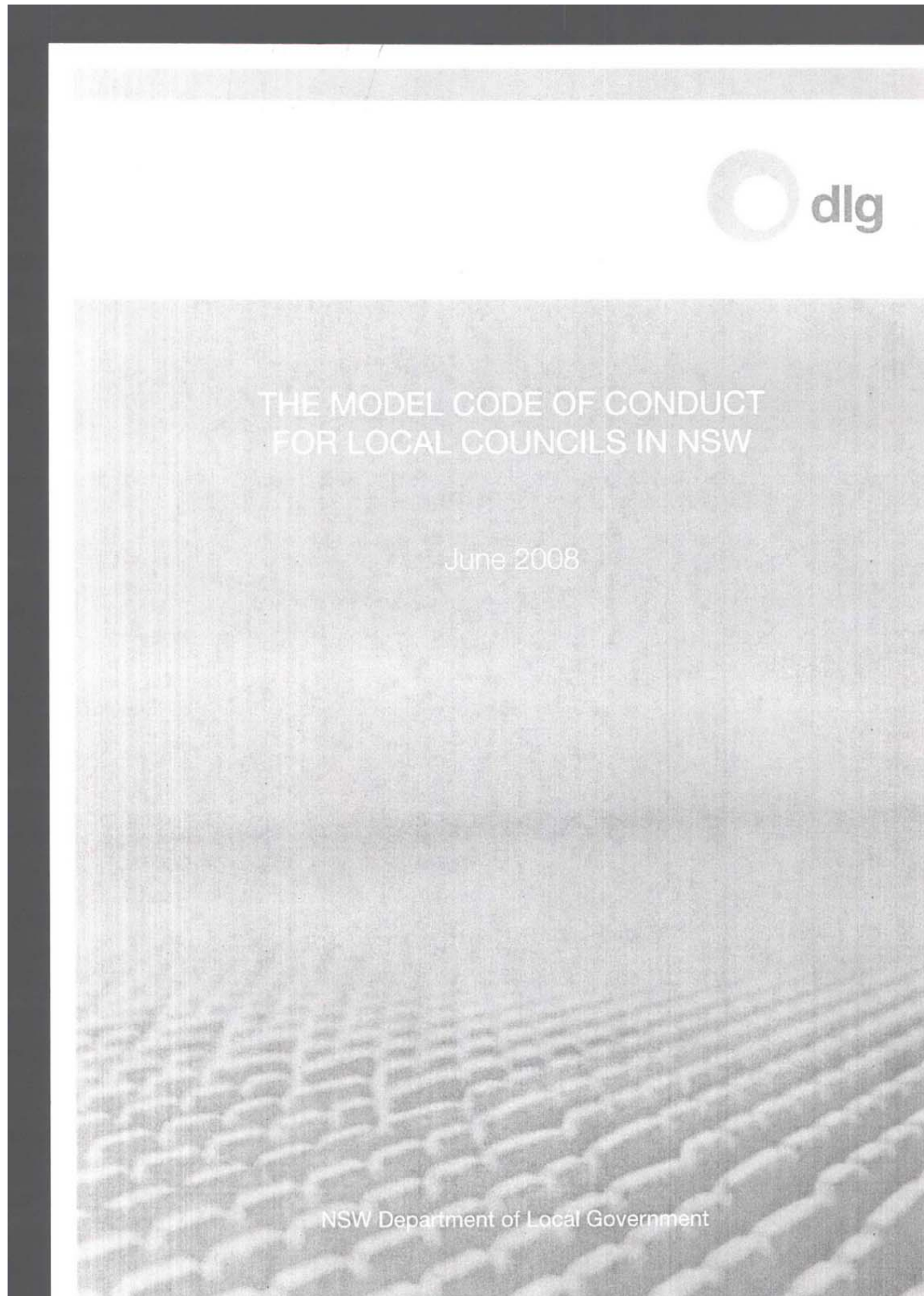
The report will generally be dealt with in open session of council. Council can only close a meeting to the public if the matter is one that meets the requirements of section 10A(2) of the Act. In most cases, a report from the conduct review committee/sole conduct reviewer will not meet those requirements.

***How are complainants kept informed?***

The complaint handling procedures in section 12 of the Model Code now require complainants to be kept informed in writing of the outcome of their complaint. Complainants must be advised when:

- enquiries are not to be made into the complaint and why
- the complaint is to be resolved by use of alternative strategies
- the complaint is to be referred to another body or person
- the conduct review committee/sole conduct reviewer has made its findings, the nature and reasons of those findings.

ATTACHMENT 2





## TABLE OF CONTENTS

PART 1: CONTEXT.....	3
1 INTRODUCTION.....	3
2 DEFINITIONS .....	4
3 PURPOSE OF THE CODE OF CONDUCT .....	5
4 KEY PRINCIPLES.....	5
5 GUIDE TO ETHICAL DECISION MAKING .....	6
PART 2: STANDARDS OF CONDUCT.....	8
6 GENERAL CONDUCT OBLIGATIONS.....	8
7 CONFLICT OF INTERESTS .....	10
8 PERSONAL BENEFIT .....	14
9 RELATIONSHIP BETWEEN COUNCIL OFFICIALS.....	16
10 ACCESS TO INFORMATION AND COUNCIL RESOURCES .....	18
11 REPORTING BREACHES .....	21
PART 3: PROCEDURES .....	23
12 COMPLAINT HANDLING PROCEDURES & SANCTIONS .....	23
13 COMPLAINT ASSESSMENT CRITERIA.....	28
14 CONDUCT REVIEW COMMITTEE/REVIEWER OPERATING GUIDELINES ..	29

**PART 1: CONTEXT**

*This Part of the Model Code establishes the purpose and principles that are used to interpret the standards in the Code. This Part does not constitute separate enforceable standards of conduct.*

**1 INTRODUCTION**

This Model Code of Conduct for Local Councils in NSW ("the Model Code of Conduct") is made for the purposes of section 440 of the *Local Government Act 1993* ("the Act"). Section 440 of the Act requires every council to adopt a code of conduct that incorporates the provisions of the Model Code. For the purposes of section 440 of the Act, the Model Code of Conduct comprises all Parts of this document.

The Code is made in three Parts: Context, Standards of Conduct and Procedures.

- Part 1: Context, establishes the purpose and principles that are used to interpret the standards in the Code. This Part does not constitute separate enforceable standards of conduct.
- Part 2: Standards of Conduct, set out the conduct obligations required of council officials. These are the enforceable standards of conduct.
- Part 3: Procedures, contains the complaint handling procedures, complaint assessment criteria and the operating guidelines for the conduct review committee/reviewer. This Part should be used to guide the management of complaints about breaches of the Code.

Councillors have two distinct roles under the *Local Government Act 1993*: as a member of the governing body of the council; and as an elected person. Councillors, as members of the governing body, should work as part of a team to make decisions and policies that guide the activities of the council. The role as an elected person requires councillors to represent the interests of the community and provide leadership. The Model Code sets the standard of conduct that is expected when council officials exercise these roles.

Councillors, administrators, members of staff of council, independent conduct reviewers, members of council committees including the conduct review committee and delegates of the council must comply with the applicable provisions of council's code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind. Council contractors and volunteers will also be required to observe the relevant provisions of council's code of conduct.

Failure by a councillor to comply with Part 2, the standards of conduct, of council's code of conduct constitutes misbehaviour. The *Local Government Act 1993* provides for suspension of councillors from civic office for up to six months for proven misbehaviour. For further information on misbehaviour refer to Sections 11 and 12 of this Code.

Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

A set of guidelines has also been developed to assist councils to review and enhance their codes of conduct. The guidelines support this Code and provide further information and examples on the provisions in this Code.

## 2 DEFINITIONS

In the Model Code of Conduct the following definitions apply:

the Act	the Local Government Act 1993
act of disorder	see the definition in clause 256 of the <i>Local Government (General) Regulation 2005</i>
conduct review committee	a committee of three or more persons independent of council who are selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14.
conduct reviewer	a person independent of council who is solely selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14.
conflict of interests	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
council official	includes councillors, members of staff of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and delegates of council
delegate of council	a person or body, and the individual members of that body, to whom a function of council is delegated
designated person	see the definition in section 441 of the Act
misbehaviour	see the definition in section 440F of the Act
personal information	information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion

person independent  
of council

a person who is not an employee of the council, has no current or ongoing contractual relationship with council in the nature of a contract for services, retainer or contract for the provision of goods of any kind, or is not an employee of any entity with such a contractual relationship.

The term "you" used in the Model Code of Conduct refers to council officials.

### 3 PURPOSE OF THE CODE OF CONDUCT

The Model Code of Conduct sets the minimum requirements of conduct for council officials in carrying out their functions. The Model Code is prescribed by regulation.

The Model Code of Conduct has been developed to assist council officials to:

- understand the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in the integrity of local government.

### 4 KEY PRINCIPLES

This Model Code of Conduct is based on a number of key principles. It sets out standards of conduct that meets these principles and statutory provisions applicable to local government activities. The principles underpin and guide these standards and may be used as an aid in interpreting the substantive provisions of the Code, but do not themselves constitute separate enforceable standards of conduct.

#### 4.1 Integrity

You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

#### 4.2 Leadership

You have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the council. *This means promoting public duty to others in the council and outside, by your own ethical behaviour.*

#### 4.3 Selflessness

You have a duty to make decisions in the public interest. You must not act in order to gain financial or other benefits for yourself, your family, friends or business interests. *This means making decisions because they benefit the public, not because they benefit the decision maker.*

**4.4 Impartiality**

You should make decisions on merit and in accordance with your statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. *This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of council's resources; considering only relevant matters.*

**4.5 Accountability**

You are accountable to the public for your decisions and actions and should consider issues on their merits, taking into account the views of others. *This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.*

**4.6 Openness**

You have a duty to be as open as possible about your decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. *This means recording, giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly.*

**4.7 Honesty**

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in such a way that protects the public interest. *This means obeying the law; following the letter and spirit of policies and procedures; observing the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.*

**4.8 Respect**

You must treat others with respect at all times. *This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.*

**5 GUIDE TO ETHICAL DECISION MAKING**

**5.1** If you are unsure about the ethical issues around an action or decision you are about to take, you should consider these five points:

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with council's policy and with council's objectives and the code of conduct?
- What will the outcome be for the employee or councillor, work colleagues, the council, persons with whom you are associated and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

**Conflict of interests**

5.2 If you are unsure as to whether or not you have a conflict of interests in relation to a matter, you should consider these six points:

- Do you have a personal interest in a matter you are officially involved with?
- Is it likely you could be influenced by a personal interest in carrying out your public duty?
- Would a reasonable person believe you could be so influenced?
- What would be the public perception of whether or not you have a conflict of interests?
- Do your personal interests conflict with your official role?
- What steps do you need to take and that a reasonable person would expect you to take to appropriately manage any conflict of interests?

**Political donations and conflict of interests**

5.3 Councillors should take all reasonable steps to identify circumstances where political contributions may give rise to a reasonable perception of influence in relation to their vote or support.

**Seeking advice**

5.4 Remember – you have the right to question any instruction or direction given to you that you think may be unethical or unlawful. If you are uncertain about an action or decision, you may need to seek advice from other people. This may include your supervisor or trusted senior officer, your union representatives, the Department of Local Government, the Ombudsman's Office and the Independent Commission Against Corruption.

Independent Commission Against Corruption	8281 5999
NSW Ombudsman	9286 1000
NSW Department of Local Government	4428 4100

## **PART 2: STANDARDS OF CONDUCT**

*This Part of the Model Code sets out the conduct obligations required of council officials. These are the enforceable standards of conduct.*

*Failure by a councillor to comply with Part 2, the standards of conduct, of council's code of conduct constitutes misbehaviour and may constitute a substantial breach for the purposes of section 9 of the ICAC Act 1988. The Local Government Act 1993 provides for suspension of councillors from civic office for up to six months for proven misbehaviour. For further information on misbehaviour refer to Sections 11 and 12 of this Code.*

*Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.*

### **6 GENERAL CONDUCT OBLIGATIONS**

#### General conduct

6.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:

- a) contravenes the Act, associated regulations, council's relevant administrative requirements and policies
- b) is detrimental to the pursuit of the charter of a council
- c) is improper or unethical
- d) is an abuse of power or otherwise amounts to misconduct
- e) causes, comprises or involves intimidation, harassment or verbal abuse
- f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
- g) causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)

6.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (*section 439*)

6.3 You must treat others with respect at all times.

6.4 Where you are a councillor and have been found in breach of the code of conduct, you must comply with any council resolution requiring you to take action as a result of that breach.

#### Fairness and equity

6.5 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.

*NSW Department of Local Government*

- 6.6 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

Harassment and discrimination

- 6.7 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination on the grounds of sex, pregnancy, age, race, responsibilities as a carer, marital status, disability, homosexuality, transgender grounds or if a person has an infectious disease.

Development decisions

- 6.8 You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.
- 6.9 In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.



## 7 CONFLICT OF INTERESTS

- 7.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 7.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.
- 7.3 Any conflict of interests must be managed to uphold the probity of council decision-making. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 7.4 Private interests can be of two types: pecuniary or non-pecuniary.

### What is a pecuniary interest?

- 7.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. (section 442)
- 7.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. (section 443)
- 7.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
- a) councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (section 449)
  - b) councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (section 451)
  - c) designated persons immediately declare, in writing, any pecuniary interest. (section 459)
- 7.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the general manager and other senior staff of the council.
- 7.9 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose in writing to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

What is a non-pecuniary conflict of interests?

- 7.10 Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.
- 7.11 The matter of a report to council from the conduct review committee/reviewer relates to the public duty of a councillor or the general manager. Therefore, there is no requirement for councillors or the general manager to disclose a conflict of interests in such a matter.
- 7.12 The political views of a councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

- 7.13 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.
- 7.14 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 7.13.
- 7.15 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.
- 7.16 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:
- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
  - b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
  - c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.
- 7.17 If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:
- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
  - b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply

- 7.18 If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.
- 7.19 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.
- 7.20 Despite clause 7.17(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 7.17(b) above.

Political donations exceeding \$1,000

- 7.21 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 7.22 Councillors should take all reasonable steps to ascertain the source of any political contributions that directly benefit their election campaigns. For example, councillors should have reasonable knowledge of contributions received by them or their "official agent" (within the meaning of the *Election Funding Act 1981*) that directly benefit their election campaign.
- 7.23 Where a councillor or the councillor's "official agent" has received "political contributions" or "political donations", as the case may be, within the meaning of the *Election Funding Act 1981* exceeding \$1,000 which directly benefit their campaign:
- a) from a political or campaign donor or related entity in the previous four years; and
  - b) where the political or campaign donor or related entity has a matter before council,
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 7.17(b).
- 7.24 Councillors should note that political contributions below \$1,000, or political contributions to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 7.25 If a councillor has received a donation of the kind referred to in clause 7.23, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff or appointing another person or body to make the decision in accordance with the law (see clause 7.20 above).

NSW Department of Local Government

Other business or employment

7.26 If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing. (section 353)

7.27 As a member of staff, you must ensure that any outside employment or business you engage in will not:

- a) conflict with your official duties
- b) involve using confidential information or council resources obtained through your work with the council
- c) require you to work while on council duty
- d) discredit or disadvantage the council.

Personal dealings with council

7.28 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

**8 PERSONAL BENEFIT**

For the purposes of this section, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

Token gifts and benefits

8.1 Generally speaking, token gifts and benefits include:

- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
  - i) the discussion of official business
  - ii) council work related events such as training, education sessions, workshops
  - iii) conferences
  - iv) council functions or events
  - v) social functions organised by groups, such as council committees and community organisations.
- b) invitations to and attendance at local social, cultural or sporting events
- c) gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)
- d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

Gifts and benefits of value

8.2 Notwithstanding clause 8.1, gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

Gifts and benefits

8.3 You must not:

- a) seek or accept a bribe or other improper inducement
- b) seek gifts or benefits of any kind
- c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- d) accept any gift or benefit of more than token value
- e) accept an offer of money, regardless of the amount.

8.4 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.

*NSW Department of Local Government*

- 8.5 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.
- 8.6 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

Improper and undue influence

- 8.7 You must not use your position to influence other council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else. A councillor will not be in breach of this clause where they seek to influence other council officials through the appropriate exercise of their representative functions.
- 8.8 You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for council in order to obtain a private benefit for yourself or for any other person or body.

**9 RELATIONSHIP BETWEEN COUNCIL OFFICIALS**

Obligations of councillors and administrators

9.1 Each council is a body corporate. The councillors or administrator/s are the governing body of the council. The governing body has the responsibility of directing and controlling the affairs of the council in accordance with the Act and is responsible for policy determinations, for example, those relating to industrial relations policy.

9.2 Councillors or administrators must not:

- a) direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352*)
- b) in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (*Schedule 6A of the Act*)
- c) contact a member of the staff of the council on council related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
- d) contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to council's external auditors who, in the course of their work, may be provided with information by individual councillors.

Obligations of staff

9.3 The general manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.

9.4 Members of staff of council must:

- a) give their attention to the business of council while on duty
- b) ensure that their work is carried out efficiently, economically and effectively
- c) carry out lawful directions given by any person having authority to give such directions
- d) give effect to the lawful decisions, policies, and procedures of the council, whether or not the staff member agrees with or approves of them.

Obligations during meetings

9.5 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings.

- 9.6 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

Inappropriate interactions

- 9.7 You must not engage in any of the following inappropriate interactions:
- a) Councillors and administrators approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues.
  - b) Council staff approaching councillors and administrators to discuss individual staff matters and not broader industrial policy issues.
  - c) Council staff refusing to give information that is available to other councillors to a particular councillor.
  - d) Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
  - e) Councillors and administrators being overbearing or threatening to council staff.
  - f) Councillors and administrators making personal attacks on council staff in a public forum.
  - g) Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
  - h) Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
  - i) Council staff meeting with developers alone AND outside office hours to discuss development applications or proposals.
  - j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.
- 9.8 It is appropriate that staff and staff organisations have discussions with councillors in relation to matters of industrial policy.



**10 ACCESS TO INFORMATION AND COUNCIL RESOURCES**

Councillor and administrator access to information

- 10.1 The general manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under section 12 of the *Local Government Act 1993*.
- 10.2 The general manager must provide councillors and administrators with information sufficient to enable them to carry out their civic office functions.
- 10.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with council procedures.
- 10.4 Members of staff of council who provide any information to a particular councillor in the performance of their civic duties must also make it available to any other councillor who requests it and in accordance with council procedures.
- 10.5 Councillors and administrators who have a private (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.

Councillors and administrators to properly examine and consider information

- 10.6 Councillors and administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

Refusal of access to documents

- 10.7 Where the general manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or administrator to perform their civic duty (see clause 10.2). The general manager or public officer must state the reasons for the decision if access is refused.

Use of certain council information

- 10.8 In regard to information obtained in your capacity as a council official, you must:
- a) only access council information needed for council business
  - b) not use that council information for private purposes
  - c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council
  - d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

10.9 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.

10.10 In addition to your general obligations relating to the use of council information, you must:

- a) protect confidential information
- b) only release confidential information if you have authority to do so
- c) only use confidential information for the purpose it is intended to be used
- d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- e) not use confidential information with the intention to cause harm or detriment to your council or any other person or body
- f) not disclose any information discussed during a confidential session of a council meeting.

Personal information

10.11 When dealing with personal information you must comply with:

- a) *the Privacy and Personal Information Protection Act 1998,*
- b) *the Health Records and Information Privacy Act 2002,*
- c) the Information Protection Principles and Health Privacy Principles,
- d) council's privacy management plan,
- e) the Privacy Code of Practice for Local Government

Use of council resources

10.12 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.

10.13 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:

- a) the representation of members with respect to disciplinary matters
- b) the representation of employees with respect to grievances and disputes
- c) functions associated with the role of the local consultative committee.

10.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.

10.15 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

*NSW Department of Local Government*

- 10.16 The interests of a councillor in their re-election is considered to be a private interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. You must not use council letterhead, council crests and other information that could give the appearance it is official council material for these purposes.
- 10.17 You must not convert any property of the council to your own use unless properly authorised.
- 10.18 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to council buildings

- 10.19 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.
- 10.20 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.
- 10.21 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

## 11 REPORTING BREACHES

11.1 Any person, whether or not a council official, may make a complaint alleging a breach of the code of conduct.

11.2 For the purposes of Chapter 14, Part 1, Division 3 of the Act, failure by a councillor to comply with an applicable requirement of this code of conduct constitutes misbehaviour. (section 440F)

### Protected disclosures

11.3 The *Protected Disclosures Act 1994* aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector.

11.4 The purpose of that Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that matters raised in the disclosures are properly investigated.<sup>1</sup>

11.5 If a complaint under this code is or could be a protected disclosure, you must ensure that in dealing with the complaint, you comply with the confidentiality provisions of the Protected Disclosures Act set out in section 22:

*'An investigating authority or public authority (or officer of an investigating authority or public authority) or public official to whom a protected disclosure is made or referred is not to disclose information that might identify or tend to identify a person who has made the protected disclosure unless:*

- (a) the person consents in writing to the disclosure of that information, or*
- (b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern, or*
- (c) the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.'*

### Reporting breaches of the code of conduct

11.6 You should report suspected breaches of the code of conduct by councillors, members of staff of council (excluding the general manager) or delegates to the general manager in writing.

11.7 Where you believe that the general manager has breached the code of conduct, you should report the matter to the Mayor in writing.

<sup>1</sup> Protected Disclosures Guidelines, 5<sup>th</sup> Edition, NSW Ombudsman, May 2004, Annexure 2.

*NSW Department of Local Government*

- 11.8 Where you believe that an administrator has breached the code of conduct, you should report the matter to the Minister for Local Government in writing.
- 11.9 Councillors should not make allegations of suspected breaches of the code at council meetings or in other public forums.

### **PART 3: PROCEDURES**

*This Part of the Model Code contains the complaint handling procedures, complaint assessment criteria and the operating guidelines for the conduct review committee/reviewer. This Part should be used to guide the management of complaints about breaches of the Code.*

#### **12 COMPLAINT HANDLING PROCEDURES & SANCTIONS**

12.1 Complaints about the conduct of councillors, members of staff of council, members of council committees and delegates of council should be addressed in writing to the general manager.

12.2 Complaints about the conduct of the general manager should be addressed in writing to the Mayor.

##### Complaint handling procedures – staff, delegate and council committee member conduct (excluding the general manager)

12.3 The general manager is responsible for making enquiries, or causing enquiries to be made, into complaints alleging breach of the code of conduct regarding members of staff of council, delegates of council and/or members of council committees (other than councillors), and will determine such matters.

12.4 Where the general manager has determined not to enquire into the matter, the general manager will give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith.

12.5 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument and make provision for procedural fairness including the right of an employee to be represented by their union.

12.6 Sanctions for staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

12.7 Sanctions for delegates and/or members of council committees depend on the severity, scale and importance of the breach and may include:

- a) censure
- b) requiring the person to apologise to any person adversely affected by the breach
- c) counselling
- d) prosecution for any breach of the law
- e) removing or restricting the person's delegation
- f) removing the person from membership of the relevant council committee
- g) revising any of council's policies, procedures and/or the code of conduct.

Complaint handling procedures – councillor conduct

12.8 The general manager is responsible for assessing complaints, made under Section 11.1, alleging breaches of the code of conduct by councillors, in accordance with the assessment criteria provided at Section 13 of this Code, in order to determine whether to refer the matter to the conduct review committee/reviewer.

12.9 The general manager must determine either to:

- a) take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
- b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
- c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
- d) refer the matter to the conduct review committee/reviewer.

Complaint handling procedures – general manager conduct

12.10 The Mayor is responsible for assessing complaints, made under clause 11.1, alleging breaches of the code of conduct by the general manager, in accordance with the assessment criteria provided at Section 13 of this Code, in order to determine whether to refer the matter to the conduct review committee/reviewer.

12.11 The Mayor must determine either to:

- a) take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
- b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
- c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
- d) refer the matter to the conduct review committee/reviewer.

Conduct review committee/reviewer

12.12 Council must resolve to appoint persons independent of council to comprise the members of a conduct review committee and/or to act as sole conduct reviewers.

- 12.13 The members of the conduct review committee and/or the persons acting as sole conduct reviewers should be appropriately qualified persons of high standing in the community. These persons do not need to be residents of the local government area of the council that has appointed them.
- 12.14 The conduct review committee, members of such committee and sole conduct reviewers may act in that role for more than one council.
- 12.15 The general manager, or in the case of complaints about the general manager, the Mayor, will undertake the following functions in relation to the conduct review committee/reviewer:
- provide procedural advice when requested
  - ensure adequate resources are provided, including providing secretariat support
  - attend meetings of the conduct review committee if so requested by the committee, and then in an advisory capacity only
  - provide advice about council processes if requested to do so but not so as to take part in the decision making process
  - if attending the conduct review committee meeting to provide advice, must not be present at, or in sight of, the meeting when a decision is taken.
- 12.16 Where a matter is to be considered by the conduct review committee/reviewer, then in each case, the general manager, or Mayor in the case of complaints about the general manager, acting in their capacity as advisor, will either convene a conduct review committee and select its members from those appointed by council or alternatively select a sole conduct reviewer from those appointed by council.
- 12.17 The conduct review committee/reviewer will operate in accordance with the operating guidelines at Section 14 of this code.
- 12.18 The conduct review committee/reviewer operating guidelines (Section 14) are the minimum requirements for the operation of conduct review committees/reviewers. Council may supplement the guidelines, but any additional provisions should not be inconsistent with the guidelines.
- 12.19 The conduct review committee/reviewer is responsible for making enquiries into complaints made under clause 11.1 alleging breaches of the code of conduct by councillors and/or the general manager and must determine either to:
- a) not make enquiries into the complaint and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
  - b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, making recommendations to the general manager, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
  - c) make enquiries into the complaint, or



- d) engage another appropriately qualified person to make enquiries into the complaint, or
  - e) not make enquiries or discontinue making enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this code, this will constitute finalisation of such matters and no further action is required.
- 12.20 Where the conduct review committee/reviewer conducts enquiries or causes enquiries to be conducted, the conduct review committee/reviewer must make findings on whether, in its view, the conduct referred to it comprises a breach of the code of conduct.
- 12.21 Where the conduct review committee/reviewer makes findings, the conduct review committee/reviewer may recommend that council take any actions provided for in this code of conduct that it considers reasonable in the circumstances.
- 12.22 Where the conduct review committee/reviewer makes findings, the conduct review committee/reviewer will report its findings, and the reasons for those findings, in writing to the council, the complainant and the person subject of the complaint.
- 12.23 The conduct review committee/reviewer will report its findings and any recommendations to council only when it has completed its deliberations.

Sanctions

- 12.24 Before a council can impose a sanction it must make a determination that a councillor or the general manager has breached the code of conduct.
- 12.25 Where the council finds that a councillor or general manager has breached the code, it may decide by resolution to:
- a) censure the councillor for misbehaviour in accordance with section 440G of the Act
  - b) require the councillor or general manager to apologise to any person adversely affected by the breach
  - c) counsel the councillor or general manager
  - d) make public findings of inappropriate conduct
  - e) prosecute for any breach of law.

Councillor misbehaviour

- 12.26 Under section 440G a council may by resolution at a meeting formally censure a councillor for misbehaviour.
- 12.27 Under section 440H, the process for the suspension of a councillor from civic office can be initiated by a request made by council to the Director General of the Department of Local Government.

12.28 The first ground on which a councillor may be suspended from civic office is where the councillor's behaviour has been disruptive over a period, involving more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension.

12.29 Council cannot request suspension on this ground unless during the period concerned the councillor has been:

- formally censured for incidents of misbehaviour on two or more occasions, or
- expelled from a meeting of the council or a committee of the council for an incident of misbehaviour on at least one occasion.

12.30 The second ground on which a councillor may be suspended from civic office is where the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.

12.31 Council cannot request suspension on this ground unless the councillor has been:

- formally censured for the incident of misbehaviour concerned, or
- expelled from a meeting of the council or a committee of the council for the incident of misbehaviour concerned.

12.32 Under section 440H, the process for the suspension of a councillor can also be initiated by the Department of Local Government, the Independent Commission Against Corruption or the NSW Ombudsman.

Reporting on complaints

12.33 The general manager must report annually to council on code of conduct complaints. This report should include, as a minimum, a summary of the:

- a) number of complaints received,
- b) nature of the issues raised by complainants, and
- c) outcomes of complaints.

**13 COMPLAINT ASSESSMENT CRITERIA**

- 13.1 The general manager or Mayor, in the case of a complaint about the general manager, will assess a complaint alleging a breach of the code of conduct to determine if the matter should be referred to the conduct review committee/reviewer. In assessing the complaint, the general manager and Mayor will have regard to the following grounds:
- a) whether there is any prima facie evidence of a breach of the code of conduct
  - b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as general manager
  - c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
  - d) whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct
  - e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
  - f) whether there is an alternative and satisfactory means of redress
  - g) how much time has elapsed since the events the subject of the complaint took place
  - h) how serious the complaint is and the significance it has for council
  - i) whether the complaint is one of a series indicating a pattern of conduct.
- 13.2 Complaints that are assessed as not having sufficient grounds to warrant referral to the conduct review committee/reviewer or that are to be referred to a more appropriate person or body can be finalised by the general manager or the Mayor, in the case of complaints about the general manager.
- 13.3 If a matter is referred to the conduct review committee/reviewer, then the conduct review committee/reviewer should use the above criteria in clause 13.1 for its initial assessment of the complaint and determination of the course to follow in dealing with the complaint.

#### **14 CONDUCT REVIEW COMMITTEE/REVIEWER OPERATING GUIDELINES<sup>2</sup>**

##### **14.1 Jurisdiction of the conduct review committee/reviewer**

The complaint handling function of the conduct review committee/reviewer is limited to consideration of, making enquiries into and reporting on complaints made under clause 11.1, about councillors and/or the general manager.

Complaints regarding pecuniary interest matters should be reported to the Director General of the Department of Local Government and will not be dealt with by the conduct review committee/reviewer.

Sole reviewers and members of the conduct review committee are subject to the provisions of this code of conduct.

##### **14.2 Role of the general manager and Mayor**

The general manager, or in the case of complaints about the general manager, the Mayor, will undertake the following functions in relation to the conduct review committee/reviewer:

- provide procedural advice when requested
- ensure adequate resources are provided, including providing secretariat support
- attend meetings of the conduct review committee if so requested by the committee, and then in an advisory capacity only
- provide advice about council processes if requested to do so but not so as to take part in the decision making process
- if attending the conduct review committee meeting to provide advice, must not be present at, or in sight of, the meeting when a decision is taken.

Where the general manager, or in the case of complaints about the general manager, the Mayor, is unable to act as advisor to the conduct review committee/reviewer due to a conflict of interests in relation to a complaint, they are to nominate a senior council officer or councillor (in the case of complaints about the general manager) to perform this role.

##### **14.3 Composition of the conduct review committee**

Where council has a conduct review committee it will comprise three or more appropriately qualified persons of high standing in the community who are independent of the council, convened and selected as provided in clause 12.16.

In the circumstances where a member of the conduct review committee cannot participate in a matter, the general manager, or Mayor in the case of complaints about the general manager, should select another person as provided in clause 12.16.

<sup>2</sup> The operating guidelines have been adapted from the Ku-ring-gai Council Conduct Committee Guidelines – 25 October 2006

The chairperson is to be elected by the members of the conduct review committee.

The general manager, or in the case of complaints about the general manager, the Mayor, will act in an advisory capacity to the committee when requested.

**14.4 Quorum of the conduct review committee**

A quorum for a meeting of the conduct review committee is the majority of the members of the conduct review committee.

If a quorum is not present at a meeting of the conduct review committee it must be adjourned to a time and date that is specified.

Business is not to be conducted at any meeting of the conduct review committee unless a quorum is present.

Business may be conducted by video-conference or teleconference.

**14.5 Voting of the conduct review committee**

Each member of the conduct review committee shall be entitled to one vote in respect of any matter. In the event of equality of votes being cast, the chairperson shall have the casting vote.

If the vote on a matter is not unanimous, then this should be noted in any report to council on its findings.

In relation to any procedural matters relating to the operation of the conduct review committee, the ruling of the chairperson shall be final.

**14.6 Procedures of the conduct review committee/reviewer**

The general manager or Mayor, in the case of a complaint about the general manager, will be responsible for convening the initial meeting of the conduct review committee when there is a complaint to be referred to it.

The conduct review committee/reviewer will conduct business in the absence of the public.

The conduct review committee/reviewer will keep proper records of deliberations.

The conduct review committee shall determine the procedures governing the conduct of its meetings provided such procedures are consistent with these operating guidelines.

**14.7 Procedural fairness**

In conducting enquiries, the conduct review committee/reviewer or the person engaged to do so should follow the rules of procedural fairness and must -

- a) provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation
- b) provide the person the subject of the complaint with an opportunity to place before the conduct review committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry
- c) provide the person the subject of the complaint with an opportunity to address the conduct review committee/reviewer in person
- d) hear all parties to a matter and consider submissions before deciding the substance of any complaint
- e) make reasonable enquiries before making any recommendations
- f) act fairly and without prejudice or bias
- g) ensure that no person decides a case in which they have a conflict of interests
- h) conduct the enquiries without undue delay.<sup>3</sup>

Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the conduct review committee/reviewer should proceed to finalise the matter.

**14.8 Complaint handling procedures**

In addition to complying with these operating guidelines, the conduct review committee/reviewer will ensure it deals with all complaints in accordance with the provisions of Section 12 of this Code.

All persons who are the subject of complaints that are referred to the conduct review committee/reviewer will receive written information about the process being undertaken to deal with the matter.

The conduct review committee/reviewer will only deal with matters that are referred to it by the general manager or the Mayor.

Where the conduct review committee/reviewer determines to make enquiries into the matter, such enquiries should be made without undue delay.

In circumstances where the person the subject of the complaint meets with the conduct review committee/reviewer, they are entitled to bring a support person or legal adviser. That person will act in an advisory and support role to the person affected. They will not speak on behalf of the subject person.

<sup>3</sup> NSW Ombudsman, Investigating complaints, A manual for investigators, June 2004.

**14.9 Findings and recommendations of the conduct review committee/reviewer**

Where the conduct review committee/reviewer determines, in its view that the conduct referred to it comprises a breach of this code of conduct it may, in its report to the council, make recommendations, that the council take any of the following actions:

- a) censure the councillor for misbehaviour
- b) require the councillor or general manager to apologise to any person adversely affected by the breach
- c) counsel the councillor or general manager
- d) make public findings of inappropriate conduct
- e) prosecute for any breach of the law
- f) revise any of council's policies, procedures and/or the code of conduct.

Before making any such recommendations, the conduct review committee/reviewer shall have regard to the following:

- a) the seriousness of the breach
- b) whether the breach can be easily remedied or rectified
- c) whether the subject has remedied or rectified their conduct
- d) whether the subject has expressed contrition
- e) whether the breach is technical or trivial only
- f) whether the breach represents repeated conduct
- g) the age, physical or mental health or special infirmity of the subject
- h) the degree of reckless intention or negligence of the subject
- i) the extent to which the breach has affected other parties or the council as a whole
- j) the harm or potential harm to the reputation of local government and of the council arising from the conduct
- k) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny
- l) whether an educative approach would be more appropriate than a punitive approach
- m) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action
- n) what action or remedy would be in the public interest
- o) where to comply with a councillor's obligations under this code of conduct would have had the effect of depriving the council of a quorum or otherwise compromise the capacity of council to exercise its functions

**14.10 Amendment of the operating guidelines**

The conduct review committee/reviewer guidelines may be added to and any additional requirements may be further amended or repealed by resolution of the council.

**ITEM NO. 8**

**FILE NO: PSC2007-3291**

**CROSS BOUNDARY S94 PLAN FOR VILLAGE IN GREAT LAKES  
COUNCIL LOCAL GOVERNMENT AREA ADJACENT TO KARUAH**

**REPORT OF: TREVOR ALLEN - INTEGRATED PLANNING MANAGER**

---

**THIS MATTER WAS DEALT WITH AT THE ORDINARY MEETING OF COUNCIL HELD  
ON 8<sup>TH</sup> JULY 2008.**



## ORDINARY MEETING MINUTES – 22 JULY 2008

ITEM NO. 9

### INFORMATION PAPERS

REPORT OF: JUNE SHINE – EXECUTIVE MANAGER, CORPORATE MANAGEMENT

#### RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 8<sup>th</sup> July, 2008.

No:	Report Title
a.	Minutes of Tourism Joint Venture Meeting – 20 <sup>th</sup> May 2008
b.	Access Committee Meeting
c.	Kids who read succeed
d.	Hardship Assistance – Interest free loans
e.	Cash & Investments as at 31 May 2008
f.	Access to Information
g.	Undetermined DA's

#### OPERATIONS COMMITTEE MEETING – 8 JULY 2008

##### RECOMMENDATION:

That the information papers be received and noted.

#### ORDINARY MEETING OF COUNCIL – 22 July 2008

##### RESOLUTION:

189	Councillor Hodges Councillor Jordan	It was resolved that the recommendation be adopted.
-----	----------------------------------------	-----------------------------------------------------

##### MATTER ARISING:

Moved Cr Hodges Seconded Cr Nell

##### RECOMMENDATION:

That Council investigate options to access funding for the Kids Who Read Succeed program to ensure its continued operation beyond 2007/2008.

#### ORDINARY MEETING OF COUNCIL – 22 July 2008

##### RESOLUTION:

190	Councillor Hodges Councillor Jordan	It was resolved that the matter arising be adopted
-----	----------------------------------------	----------------------------------------------------

Note: Cr Robinson left the meeting at 7.36 during Item 9.

# OPERATIONS COMMITTEE INFORMATION PAPERS



**INFORMATION ITEM NO. 1**

**MINUTES OF TOURISM JOINT VENTURE COMMITTEE MEETING 20  
MAY 2008**

---

**REPORT OF: JOHN FLANNERY  
FILE:A2004-1127**

**BACKGROUND**

**The purpose of this report is to advise Council of the minutes of the meeting of the  
Tourism Joint Venture Committee held 20 May 2008**

**ATTACHMENTS**

- 1) Minutes of Tourism Joint Venture Committee Meeting held 20 May 2008

## ATTACHMENT 1

**MINUTES OF THE JOINT VENTURE COMMITTEE**  
**held at Council Chambers Committee Rooms**  
**Tuesday 20<sup>th</sup> May 2008 at 5:35 PM**

<b>Present</b>	P.Dann (in the Chair), P.Gesling, Cr Tucker Cr Hodges, Cr Westbury, R Yeo, P.Sherriff, M.Stephens
<b>In Attendance</b>	Mayor R Swan, Cr Dover, Cr Brown, Cr Nell, Cr Dingle, Cr Robinson, J. Flannery, D.Broyd, P.Buchan N Deuis & T Bylhouwer,
<b>Apologies</b>	Cr Jordan, Cr Francis
<b>Chair</b>	P.Dann
<b>Minutes of the last meeting</b>	The minutes of the meeting held 19 <sup>th</sup> February 2008 were confirmed as an accurate record of the meeting.  Moved: Cr Westbury P Gesling
<b>Business Arising</b>	<p><b>Dolphin Watching:</b> No response received to date. P.Gesling will chase Ministers office</p> <p><b>Clean Up Days:</b> P.Gesling advised that he had met with S.Bernasconi re waste. The major collection is being negotiated with the contractors and may possibly occur in May or June.</p> <p><b>Garbage:</b> P.Gesling reported that at this stage there is no reasonable answer to the garbage collection issue with Pacific Blue. There are now 2 pickup days per week and Council staff are working with the Managers to find a better solution.</p> <p><b>Anti Social Behaviour:</b> P.Dann advised that PSTL had met with reps from Nelson Bay Town Management, the Liquor Accord (LA) and Chamber of Commerce. Some of the recommendations were:</p> <ul style="list-style-type: none"> <li>• LA look at restricting trade after 10pm</li> <li>• That with PSC we look at clarity of alcohol free zoning with respect to signage, handing out maps and publishing restrictions along with event advertising.</li> <li>• Look at flood lighting in Apex Park.</li> </ul> <p><b>DA's for Water Activities:</b> D.Broyd reported that his dept has a list of current operators and owners of vessels identified as not having consent to operate will receive letters to 'show cause' why they should continue to be allowed to operate. There is however a problem with the definitions in the LEP. To ensure certainty he is proposing a new definition covering commercial boats however this is a process and depending on the state govt response could likely take 12 months or longer.</p>

## ATTACHMENT 1

<b>Current Activities</b>	<p><b>PSTL Update:</b> Information</p> <p><b>LGSA Tourism Conference:</b> The JVC recommended that Council raise a notice of motion to formally ask the GM to write to the State Premier asking for the immediate release of the O'Neil report.</p> <p><b>Mid North Coast Tourism:</b> Information.</p> <p><b>Consumer Shows:</b> Information.</p> <p><b>DA's for Charter Boats.</b> Covered in Matters Arising.</p> <p><b>Advertising/Media:</b> Information.</p> <p><b>PSTL Strategic Plan:</b> Information</p> <p><b>Activities:</b> Information</p> <p><b>Saxbys Bakery:</b> Information: N.Deuis advised that N.Deuis advised that the information centre at Sydney Airport was to close and that he would forward the relevant emailed advice to Council.</p> <p><b>Tourism Industry Council NSW:</b> It was resolved that Councils planning staff provide advice on caravans &amp; motorhomes staying overnight in a designated rest area etc in response to TIC – NSW request that councils not permit "illegal camping"</p> <p>Moved P.Gesling R.Yeo</p> <p><b>Area Performance:</b> Information</p> <p><b>Port Stephens Web Site bookings:</b> Information</p>
<b>General Business</b>	<p><b>Clans on the Coast. Mayor Swan:</b> The Mayor advised that the event was a great success and that the promotion included 32 NBN adverts, distribution of visitors guides and a number of adverts in the print media. The event finished in the black. Next years event may be moved to September based on feedback from the public this year.</p> <p><b>Maitland Caravan and Camping Show. Cr Hodges</b> inquired re attending the Maitland C&amp;C Show. N Deuis advised that operators do attend many of these shows in their own right and they distribute Port Stephens Visitors guides on behalf of the area.</p> <p><b>Event Stats. Cr Tucker</b> enquired on availability of research / stats to quantify success or otherwise of the various events in the LGA. P.Gesling reported that a test survey had been developed for Sail Port Stephens and ways to expand this survey may be applicable to measuring events.</p> <p><b>Tourism Awards. P.Gesling</b> Inquired about the status of the Tourism Awards. N.Deuis confirmed the gala night for Monday 25<sup>th</sup> August at Nelson Bay Diggers. Countrylink has been confirmed as a major sponsor. Tony Griffiths has been confirmed as Chair of the Judges. We are still awaiting endorsement from TIC on the release of Judges comments at the time of finalist announcement.</p>
<b>Meeting Closed</b>	18:55

**INFORMATION ITEM NO. 2**

**ACCESS COMMITTEE MINUTES**

---

**REPORT OF: PAUL PROCTER, ACTING INTEGRATED PLANNING  
MANAGER**

**FILE: A2004-0226**

**BACKGROUND**

**The purpose of this report is to present to Council the minutes of the Access Committee meeting held on 4 June 2008.**

Key issues addressed at the meeting included: -

- 1) Access Committee Brochure
- 2) Community Transport Planning Day
- 3) Proposed Community Access Awards
- 4) Access Committee Meeting Procedures

**ATTACHMENTS**

- 1) Minutes of the Access Committee meeting held on 4 June 2008.

**ATTACHMENT 1**

**PORT STEPHENS ACCESS COMMITTEE  
MINUTES OF MEETING HELD 4 JUNE 2008  
AT THE RAYMOND TERRACE BOWLING CLUB**

**Present:**

Michelle Page, Paul Procter, Amanda Heidke, Joe Delia, Cathy Delia, Tony Kean, Liz Harper & Guest, Margaret O'Leary with students Alison, Tina and Courtney

**Apologies:**

Clr Helen Brown, Clr Sally Dover, Cathy Jennings, Donna Robinson

**1. ADOPTION OF PREVIOUS MINUTES**

Council's Community Planner - Ageing & Disability welcomed everyone. The minutes of the meeting held on the 6 May 2008 were adopted as an accurate record of that meeting.

**2. MATTERS ARISING FROM PREVIOUS MINUTES**

**2.1 Access Committee Brochure**

The Committee endorsed the new access brochure and no further changes are required.

**2.2 Access to Raymond Terrace Food Outlet**

This matter is being followed up and a report on the outcomes will be presented at the next meeting.

**2.3 Disabled Toilet Signage – Port Stephens Tourist Facility**

The premises were investigated by occupational therapists and Committee members. A report was subsequently submitted to the Access Committee. Council's Community Planner - Ageing & Disability will now liaise with the Manager of these premises to make suggestions on improvements to current signage provisions.

**2.4 Access Provisions - Bobs Farm Tourist Facility**

Concerns were raised in relation to access provisions within the onsite amenities. This has been assessed and no further action is required by the Access Committee in relation to this matter.

**2.5 Disabled Parking Facilities at Nelson Bay Club**

Council's Community Planner - Ageing & Disability has discussed the concerns raised by the Access Committee with the Club's Manager both verbally and in writing. Currently awaiting a response.

**3. GENERAL BUSINESS**

**3.1 Community Transport Planning Day**

Council's Community Planner - Ageing & Disability recently attended Port Stephens Community Transport planning day. During the planning day she raised the Access

## ORDINARY MEETING MINUTES – 22 JULY 2008

Committee's suggestion in relation to the provision of transportation (where required) to the monthly meetings of the Access Committee. This suggestion was prompted by some members having concerns about: -

- ✚ The adequacy of the timetabling and routes of existing bus operators not aligning with the needs of some members for transportation needs and the scheduling of the Committee's meetings
- ✚ Difficulties experienced by individuals in collecting and/or delivering Committee members to/from meetings (eg; inappropriateness of vehicles to accommodate people with disabilities and any associated equipment, OH&S issues associated with transferring people correctly and safely)

Discussion followed about the possibility of a more centralised location for the meetings which would be accessible from Tilligerry, Nelson Bay, Raymond Terrace and Karuah. It was noted that Karuah has the greatest proportion of older people. Council's Social Planning Co-ordinator cautioned the Committee about changing the location of meetings as Committee members have over many years become well accustomed to the current format of monthly meetings alternating between Raymond Terrace and the Tomaree Peninsula. Any changes may impact adversely upon attendance as a result of some instability. That said, consideration should be given to formulating a promotional strategy to attract a greater geographical representation of members from localities such as Karuah.

ACTION	1. Council's Community Planner - Ageing & Disability will investigate available rooms at Salt Ash Hall.
--------	---------------------------------------------------------------------------------------------------------

### 3.2 Proposed Community Access Awards

Council's Community Planner - Ageing & Disability raised the idea of creating a recognition program to acknowledge businesses that have gone over and above the minimum requirements for providing access for people with disabilities. The details need to be developed and may take the form of: -

- ✚ Nominations being sought widely
- ✚ Access Committees would select the overall winner
- ✚ An annual perpetual trophy (and certificate) would be awarded to the winner which could be displayed for twelve months, and certificates of recognition given to all other nominated businesses
- ✚ Open to all businesses and service providers, not just for new businesses, but also existing businesses that have implemented appropriate training or have needed to bring their premises in to line with current standards and have acted in a timely manner in implementing improvements

An Access Committee member offered disability stickers which they have which could be displayed by the nominated business which would identify the premises as a nominated business, both for the purpose of judging and for community awareness. The Access Committee agreed unanimously to support the development of this idea. Council's Social Planning Co-ordinator suggested that the eligibility criteria be broadened beyond businesses to include other groups (eg; sporting clubs).

### 3.3 Access Committee Meeting Procedures



## ORDINARY MEETING MINUTES – 22 JULY 2008

The Access Committee members agreed that the new meeting procedures (eg; commencement and finish times, agenda setting) were working well by helping the meetings to stay focused.

Council's Social Planning Co-ordinator mentioned that whilst the procedures are good in terms of participating members/service providers who have competing time commitments, the procedures are meant to be more of a guideline for meetings with their still being flexibility in meeting duration.

The Access Committee agreed unanimously to retain the new meeting procedures recognising that the intent is that they be used as practical guidelines rather than strict rules.

### 3.4 Community Planner - Ageing & Disability News

#### a. Community Consultation:

A community consultation has been organised with respect to the preparation of the Draft Corlette to Shoal Bay Waterfront Plan. Details of the meetings are: -

📅 Thursday 12<sup>th</sup> June 6.30 - 8.30pm at the Nelson Bay Diggers

📅 Thursday 10<sup>th</sup> July 6.30 - 8.30pm at the Nelson Bay Diggers

#### b. Council's Website:

Some Committee members have reported problems accessing the details on the website.

ACTION	1. Council's Community Planner - Ageing & Disability will bring a laptop to the next meeting to demonstrate how to access and use the website.
--------	------------------------------------------------------------------------------------------------------------------------------------------------

#### c. Caring for Carers Day:

A mini expo that will feature disability trusts, counselling services, Government budget information, and carers. Details: -

📅 Interrelate Kings Street Newcastle Tuesday 17<sup>th</sup> June 1.00 - 3.00pm

#### d. Raymond Terrace Bus Stops:

Council is applying for funding in relation to bus stop infrastructure. The Access Committee will provide a letter of support for Council's application.

#### e. Council's Customer Service:

If you have a non- access related issue which requires Council consideration, it is recommended that people refer the matter to Council's Customer Service Staff who in turn will ensure that the matter is referred to the appropriate Council Officer and dealt with in an appropriate manner rather than bringing it to the attention of the Access Committee.

### 4. DETAILS OF NEXT MEETING

The next meeting will be held on the 1 July 2008 at 10.30am at Nelson Bay RSL Club between 10.30 am to 12:00pm

Meeting closed at 11.50am

INFORMATION ITEM NO. 3

KIDS WHO READ SUCCEED

REPORT OF: PHILIP CROWE – COMMUNITY & LIBRARY SERVICES MANAGER  
FILE: PSC 2005-3932

BACKGROUND

The purpose of this report is to inform Council about the *Kids Who Read Succeed Program* Evaluation Report. Council's early literacy program was evaluated by the University of Newcastle's *Family Action Centre* and a report prepared documenting the full assessment of the project including its successful implementation, positive outcomes and recommendations for the future. The report concludes, *"based on the evidence available, it is clear that the Kids Who Read Succeed Project (KWRS) has had a significant impact on the participating families and to an unquantifiable degree, the broader community. It can be concluded that the project successfully met its aims, with the likelihood that participating families have been provided with the necessary skills to result in long term benefits."*

In 2004, Community & Library Services applied to the NSW Department of Community Services for Hunter Area Assistance Scheme (HAAS) grant funding. The application was successful, and grant funding of \$118,000 was provided to implement an early literacy pilot program over a three year period from 2005 - 2008.

The aim of the project was to work with children aged 0-5 and their families in the catchment area of Irrawang Public School in the development of pre-literacy and early literacy skills. The project was designed to work in partnership with a number of service providers and to develop a collaborative approach that would strengthen the links between the target group, their school and their community. The intended outcome was to maximise early literacy development opportunities for children and their families who no longer had access to the Activity Van's Mobile Preschool Service. The Activity Van had provided a mobile preschool service at Irrawang Public School between 1995 – 2003, however this service ceased when the Thou-Walla Family Centre and Irrawang Pre-School was established in 2004/2005.

As part of our proposal to the HAAS, we requested that a detailed evaluation of the project be commissioned in partnership with the University of Newcastle. This extensive report provides a detailed analysis of a number of the initiatives undertaken by the KWRS Project including Stories in the Street, Stories in the Park, Book Boxes, Community Education, Babes Tales and planned excursions, and evaluates the effectiveness of each of these initiatives. The analysis of the project assesses its capacity to effect change in parents and children, the impacts on the broader community, the level of community engagement, and the effectiveness of the partnerships developed throughout this project.

We draw Councillors attention to the Executive Summary on page 3 and the Conclusion (significant findings & recommendations) on pages 53-54 of the report. Community & Library Services staff have been very committed to this project over the past three years and are pleased with the outcomes. The outcomes include the formation of new partnerships and relationships between individuals and within the community, parents and children who are engaged in and

committed to early literacy development, changes in parent behaviour, increased bonding between parents and their children, establishment of trust, feelings of social inclusion, and increased self-confidence in both parents and children.

We have learnt a great deal about our own practices throughout this project and it has challenged the way we go about providing services. A very clear and positive impact of this project has been the increase in families identified as 'isolated' or 'hard to reach', who have joined as members of Port Stephens Library and now visit with their children on a regular basis. This outcome indicates that our approach to 'outreach services', where we take programs, such as the KWRS literacy program, beyond the four walls of a building and out into the community, have a direct influence on breaking down some of the fear and apprehension surrounding the perception of libraries as being accessible only by those who read books or are well educated.

The evaluation report concludes, *"Funding for this project is not guaranteed, yet its positive impact is demonstrable. Families that have participated in the project's activities may well continue to be more involved in their community as a result of their increased self-confidence and having learnt the enjoyment that can be derived from attending gatherings provided by the project activities. However, the projects cessation will mean that the opportunity will not be available for other families to derive the same benefits. In all likelihood, these families will remain isolated"*.

At present, Community & Library Services is continuing to investigate every opportunity to fund aspects of this highly successful project into the future.

#### **COUNCILLORS ROOM**

- 1) Two (2) copies of the Kids Who Read Succeed Pilot Project Evaluation Report have been made available in the Councillors Room.

**INFORMATION ITEM NO. 4**

**HARDSHIP ASSISTANCE – INTEREST FREE LOANS**

**REPORT OF: JEFF SMITH – FINANCIAL SERVICES MANAGER**  
**FILE: PSC2005-0829**

**BACKGROUND**

**The purpose of this report is to update Council on the extension of interest free loans to ratepayers across Port Stephens who due to substantial hardship are unable to afford to upgrade their defective on-site sewage management system.**

In 2005 Council introduced interest free loans to assist ratepayers in the Bobs Farm and Salt Ash localities in response to the closure of zone 5b of the Tilligerry Creek to oyster harvesting. The loans assisted two households to upgrade their defective systems and those ratepayers were grateful for the assistance and have met their ongoing loan repayment obligations.

When the interest free loan scheme was first set up the number of potential applicants was unknown and so the assistance was restricted to those ratepayers with properties in the Tilligerry Creek catchment and the eligibility hardship testing criteria was set up to mirror the NSW Department of Community Services State Disaster Recovery Centre criteria for assistance with disasters such as bushfires. As it turned out Council was not inundated with applications and scheme has proven beneficial.

With the re-opening of zone 5b staff have reviewed the success of the interest free loans and considered whether there is a need for the scheme to continue to assist ratepayers in similar circumstances across the LGA. Environmental Services staff have identified that there is a need for a scheme such as this across the whole of the LGA to safeguard our environment and economy and respond practically to cases of financial hardship.

Staff considered whether there was a need to expand the concept of interest free loans to assist ratepayers served with orders by Council to do other works on their properties. It is considered that it is appropriate to provide interest free loans in the following circumstances:

- To upgrade an on-site sewage management system where the existing system is defective or at risk of polluting
- To connect premises to the sewer where the existing on-site system is defective or at risk of polluting

However it is not considered appropriate to provide interest free loans to ratepayers who are served with orders to carry out other works, which are often caused by neglect or other reasons within the control of the ratepayer.

In all circumstances:

- the amount of assistance is capped at \$15,000; and
- the property in question must be the ratepayer's principal place of living; and
- the hardship criteria must be met; and
- the ratepayer must enter into a written agreement with Council; and
- the ratepayer must consent to a caveat being placed on the title to the land preventing transfer of the property until the loan is repaid.

Council will now continue to grant interest free loans in the circumstances outlined above and this assistance will be extended across the whole of the Local Government Area.

**ATTACHMENTS**

Nil

**INFORMATION ITEM NO. 5**

**CASH AND INVESTMENTS HELD AT 31 MAY 2008**

---

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

**BACKGROUND**

The purpose of this report is to present Council's schedule of Cash and Investments Held at 31 May 2008.

**ATTACHMENTS**

- 1) **Cash and Investments Held at 31 May 2008.**
- 2) **Monthly Cash and Investments Balance June 2007 – May 2008**

## ATTACHMENT 1

CASH & INVESTMENTS HELD - AS AT 31 MAY 2008								
INVESTED WITH	INV. TYPE	DATE INVESTED	COUPON DATE	MATURITY DATE	NO. OF DAYS	AMOUNT INVESTED	INTEREST RATE	% OF TOTAL FUNDS HELD
<b>GRANGE SECURITIES</b>								
WIDE BAY CAPRICORN BUILDING SOCIETY	Floating Rate Sub Debt	17-Mar-08	16-Jun-08	15-Dec-08	91	500,000.00	9.51%	1.65%
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	20-Mar-08	20-Jun-08	20-Mar-12	92	1,000,000.00	9.28%	3.30%
NEXUS BONDS LTD "TOPAZ AA-"	Floating Rate CDO	22-May-08	21-Nov-08	23-Jun-15	183	412,500.00	10.45%	1.36%
HERALD LTD "QUARTZ AA"	Floating Rate CDO	20-Mar-08	20-Jun-08	20-Dec-10	92	450,000.00	9.28%	1.49%
STARTS CAYMAN LTD "BLUE GUM AA-"	Floating Rate CDO	24-Mar-08	23-Jun-08	22-Jun-13	91	1,000,000.00	9.18%	3.30%
HELIUM CAPITAL LTD "ESPERANCE AA+"	Floating Rate CDO	20-Mar-08	20-Jun-08	20-Mar-13	92	1,000,000.00	9.48%	3.30%
HOME BUILDING SOCIETY	Floating Rate Sub Debt	25-Apr-08	25-Jul-08	25-Jul-11	91	500,000.00	8.81%	1.65%
DEUTSCHE BANK CAPITAL GUARANTEED YIELD CURVE NOTE *	Yield Curve Note	18-Apr-08	18-Jul-08	18-Oct-11	91	500,000.00	0.00%	1.65%
GRANGE SECURITIES "KAKADU AA"	Floating Rate CDO	20-Mar-08	20-Jun-08	20-Mar-14	92	1,000,000.00	8.78%	3.30%
GRANGE SECURITIES "COOLANGATTA AA"	Floating Rate CDO	25-Mar-08	20-Jun-08	20-Sep-14	87	1,000,000.00	9.08%	3.30%
ANZ YIELD CURVE NOTE	Yield Curve Note	17-Apr-08	17-Jul-08	17-Jul-17	91	500,000.00	8.25%	1.65%
<b>TOTAL GRANGE SECURITIES</b>						<b>\$7,862,500.00</b>		<b>25.95%</b>
<b>ABN AMRO MORGANS</b>								
REMBRANDT ISOSCELES SERIES 1	Floating Rate CDO	20-Mar-08	20-Jun-08	20-Sep-09	92	2,000,000.00	9.18%	6.60%
GLOBAL PROTECTED PROPERTY NOTES VII **	Property Linked Note	21-Mar-08	21-Mar-09	17-Sep-11	365	1,000,000.00	0.00%	3.30%
BANK OF QLD FLOATING RATE NOTE	Floating Rate Note	17-Mar-08	16-Jun-08	30-Jun-09	91	1,000,000.00	8.06%	3.30%
<b>TOTAL ABN AMRO MORGANS</b>						<b>\$4,000,000.00</b>		<b>13.20%</b>
<b>ANZ INVESTMENTS</b>								
ECHO FUNDING PTY LTD SERIES 16 "3 PILLARS AA-"	Floating Rate CDO	7-Apr-08	7-Jul-08	6-Apr-10	91	500,000.00	9.03%	1.65%
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	20-Mar-08	20-Jun-08	30-Dec-11	92	1,000,000.00	9.28%	3.30%
MOTIF FINANCE (IRELAND) PLC	Floating Rate CDO	20-Mar-08	20-Jun-08	1-Jun-17	92	1,017,876.98	4.56%	3.36%
<b>TOTAL ANZ INVESTMENTS</b>						<b>\$2,517,876.98</b>		<b>8.31%</b>
<b>RIM SECURITIES</b>								
HERITAGE BUILDING SOCIETY LTD (2008)	Floating Rate Sub Debt	29-Apr-08	29-Jul-08	29-Jul-13	91	500,000.00	9.50%	1.65%
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO	11-Apr-08	11-Jul-08	8-Oct-11	91	2,000,000.00	9.85%	6.60%
ELDER'S RURAL BANK (2011)	Floating Rate Sub Debt	7-Apr-08	7-Jul-08	15-Apr-11	91	1,000,000.00	8.52%	3.30%
<b>TOTAL RIM SECURITIES</b>						<b>\$3,500,000.00</b>		<b>11.55%</b>
<b>WESTPAC INVESTMENT BANK</b>								
HOME BUILDING SOCIETY (2010)	Floating Rate Sub Debt	29-Apr-08	29-Jul-08	27-Apr-10	91	500,000.00	8.95%	1.65%
MACKAY PERMANENT BUILDING SOCIETY	Floating Rate Sub Debt	21-May-08	21-Aug-08	20-Nov-11	92	500,000.00	8.77%	1.65%
<b>TOTAL WESTPAC INV. BANK</b>						<b>\$1,000,000.00</b>		<b>3.30%</b>

# ORDINARY MEETING MINUTES – 22 JULY 2008

## ATTACHMENT 1

<b>LONGREACH CAPITAL MARKETS</b>								
LONGREACH SERIES 16 PROPERTY LINKED NOTE	Property Linked Note	6-Mar-08	5-Sep-08	7-Mar-12	183	500,000.00	6.60%	1.65%
LONGREACH SERIES 19 GLOBAL PROPERTY LINKED NOTE	Property Linked Note	7-Mar-08	6-Sep-08	7-Sep-12	183	500,000.00	6.00%	1.65%
<b>TOTAL LONGREACH CAPITAL</b>						<b>\$1,000,000.00</b>		<b>3.30%</b>
<b>COMMONWEALTH BANK</b>								
PRINCIPAL PROTECTED YIELD ACCRUAL NOTE	Yield Curve Note	06-May-08	06-Aug-08	06-Nov-11	92	500,000.00	9.25%	1.65%
CALLABLE CPI LINKED NOTE	Yield Curve Note	04-Apr-08	04-Jul-08	04-Apr-12	91	500,000.00	1.00%	1.65%
EQUITY LINKED DEPOSIT	Equity Linked Note	03-Aug-07	05-Aug-08	20-Sep-11	368	500,000.00	8.25%	1.65%
EQUITY LINKED DEPOSIT GI100	Equity Linked Note	25-Mar-08	23-Jun-08	03-Aug-10	90	500,000.00	3.00%	1.65%
EQUITY LINKED DEPOSIT ELN SERIES 2	Equity Linked Note	04-May-08	04-Aug-08	05-Nov-12	92	500,000.00	3.00%	1.65%
BENDIGO BANK SUBORDINATED DEBT	Floating Rate Sub Debt	09-May-08	08-Aug-08	09-Nov-12	91	500,000.00	9.49%	1.65%
<b>TOTAL COMMONWEALTH BANK</b>						<b>\$3,000,000.00</b>		<b>9.90%</b>
<b>FIIG SECURITIES</b>								
CREDIT SUISSE PRINCIPAL PROTECTED NOTE	Principal Protected Note	21-Mar-08	20-Jun-08	21-Jun-10	91	1,000,000.00	7.00%	3.30%
AQUADUCT AA-	Principal Protected Note	31-May-08	29-Aug-08	30-Nov-14	90	500,000.00	8.79%	1.65%
TELSTRA LINKED DEPOSIT NOTE	Term Deposit	11-Mar-08	10-Jun-08	10-Jun-08	91	500,000.00	8.44%	1.65%
AUSTRALIAN CENTRAL CREDIT UNION	Term Deposit	25-Mar-08	23-Jun-08	23-Jun-08	90	3,000,000.00	8.18%	9.90%
<b>TOTAL FIIG SECURITIES</b>						<b>\$5,000,000.00</b>		<b>16.50%</b>
<b>MAITLAND MUTUAL</b>								
	Floating Rate Sub Debt	16-Apr-08	30-Jun-08	30-Jun-08	75	500,000.00	8.84%	1.65%
	Term Deposit	27-May-08	25-Aug-08	25-Aug-08	90	526,881.44	8.19%	1.74%
	Floating Rate Sub Debt	11-Mar-08	10-Jun-08	31-Dec-08	91	500,000.00	9.11%	1.65%
<b>TOTAL M'LAND MUTUAL</b>						<b>\$1,526,881.44</b>		<b>5.04%</b>
<b>TOTAL INVESTMENTS</b>						<b>\$29,407,258.42</b>		<b>97.07%</b>
AVERAGE RATE OF RETURN ON INVESTMENTS							7.85%	
<b>CASH AT BANK</b>						<b>\$888,528.04</b>	7.20%	2.93%
AVERAGE RATE OF RETURN ON INVESTMENTS + CASH							7.84%	
<b>TOTAL CASH &amp; INVESTMENTS</b>						<b>\$30,295,786.46</b>		<b>100.00%</b>
BBSW FOR PREVIOUS 3 MONTHS							7.83%	

### CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER

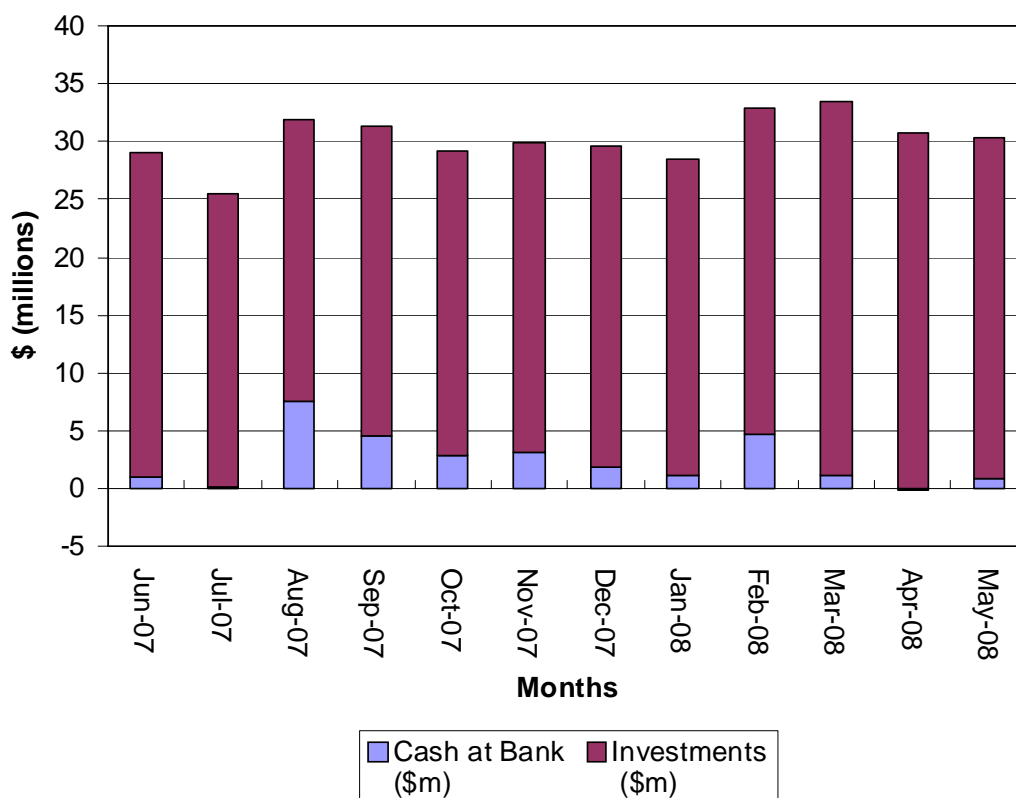
I, Peter Gesling, being the Responsible Accounting Officer of Council, hereby certify that the Investments have been made in accordance with the Local Government Act 1993, the Regulations and Council's investment policy.

**P GESLING**

## ATTACHMENT 2

## Cash and Investments Held

Date	Cash at Bank (\$m)	Investments (\$m)	Total Funds (\$m)
Jun-07	1.001	28.103	29.104
Jul-07	0.230	25.237	25.467
Aug-07	7.612	24.236	31.848
Sep-07	4.531	26.737	31.268
Oct-07	2.855	26.268	29.123
Nov-07	3.148	26.713	29.860
Dec-07	1.911	27.731	29.641
Jan-08	1.163	27.262	28.424
Feb-08	4.760	28.085	32.844
Mar-08	1.162	32.230	33.392
Apr-08	0.146	30.783	30.637
May-08	0.889	29.407	30.296

Cash and Invested Funds for the Period ended  
31/5/2008



INFORMATION ITEM NO.6

**ACCESS TO INFORMATION – SECTION 12 LOCAL GOVERNMENT  
ACT 1993**

---

**REPORT OF: JUNE SHINE – EXECUTIVE MANAGER, CORPORATE  
MANAGEMENT  
FILE: PSC2008-3083**

**BACKGROUND**

The purpose of this report is to advise Council and make public the reasons for not granting access to documents/information under Section 12A, *Local Government Act 1993*.

In accordance with Section 12A (1), *Local Government Act 1993*, the General Manager or any member of staff who decides that access should not be given to a document or other information to the public or a councillor, is required to provide Council with written reasons for the restriction. Sub-section 12A (2) requires that the reason must be publicly available.

The requests shown in **ATTACHMENT 1** to this report are those that are made in writing and determined by Corporate Management for the period 2007/08.

The information in **ATTACHMENT 1** is for the period of June 2008 only with a total of 15 applications received, 9 with full access granted and 6 with restrictions as shown below.

The total number of Section 12 applications for the 2007/08 period is 77, 45 with full access granted and 32 with restrictions on release.

**ATTACHMENT 1** provides Council with the details of the request and the reasons why access was not fully granted. The names of applicants have not been provided as this would be a breach of the *Privacy & Personal Information Protection Act 1998*. Further details may be available should Councillors require it.

In addition to these figures 19 applications were received under the Freedom of Information Act for 2007/08.

**ATTACHMENTS**

- 1) Listing of requests under Section 12 of the *Local Government Act 1993*.

**LISTING OF REQUESTS UNDER SECTION 12 OF THE LOCAL GOVERNMENT ACT  
1993**

<b>No.</b>	<b>File No.</b>	<b>Information requested</b>	<b>Determination</b>
1	PSC2008-2327	Seeking development application information	Part released due to Legal Professional Privilege & Contrary to Public Interest
2	PSC2008-2628	Seeking development application information	Part released due to Privacy & Personal Information Protection Act
3	PSC2008-3074	Seeking development application information	Information not held by Council
4	PSC2006-6567	Seeking development application information	Part released due to Copyright legislation
5	PSC2008-3039	Seeking development application information	Part released due to Privacy & Personal Information Protection Act
6	PSC2008-3501	Seeking development application information	Part released due to Copyright legislation

**INFORMATION ITEM NO. 7**

**DETERMINED AND UNDETERMINED DEVELOPMENT APPLICATIONS**

---

**REPORT OF: SCOTT ANSON – MANAGER, DEVELOPMENT & BUILDING  
FILE: PSC2007-3153**

**BACKGROUND**

**The purpose of this report is to provide Councillors with information on determined and undetermined development applications currently with Council, at the request of Cr Tucker.**

Undetermined development applications greater than 365 days are not included in this report, given that generally there has been no action by the applicant in response to Council requests for additional information and/or these applications may be held in abeyance subject to strategic landuse processes. All these applications are now subject to Council's adopted Application Determination Policy that provides a clear framework to enable such determination.

Days in Council also do not include "Stop the Clock" days. "Stop the Clock" indicates that Council is waiting on further information from the applicant. Further summary information is also provided to Council quarterly through the Performance Measurement Report on "Cockpit Charts".

Reference is made to the Supplementary Information provided on 24 June 2008 regarding the inclusion of additional information and a report of development applications determined in the preceding month.

The reports are accurate as of the date of generation, but not as of the date of publication of the Business Paper. If more up-to-date information is required, it is available on Council's DA Tracker.

The number of undetermined Development Applications greater than 365 days is 40.

**ATTACHMENTS**

- 1) Report on Undetermined Development Applications
- 2) Report on Determined Development Application

## ATTACHMENT 1

## AUTHORITY



**Undetermined Development Applications (less than 365 days)  
as at 25-Jun-2008**

Appln No	Proposal	Property Address	Date Lodged	Days in Council	Current Status
16-2006-368-3	Harper Somers O'Sullivan Pty Ltd	S.96 Amendment 1146 Nelson Bay RD FERN BAY	24/06/2008	1 25/06/2008	Referral - Building
16-2008-494-1	Nelson Bay Bowling & Recreation Club	ADVERTISING SIGN 67 Dowling ST NELSON BAY	24/06/2008	1 25/06/2008	Referred to Mgr for Allocation
16-2008-488-1	Mcgoldrick	Garage 20 Potoroo BVD MEDOWIE	23/06/2008	2 25/06/2008	Referral - Building
16-2008-489-1	Dawson	Garage 64 The Peninsula CORLETTE	23/06/2008	2 24/06/2008	Referral - Building
16-2008-490-1	Design Design	Shop Fitting - (EB Games) 22 William ST RAYMOND TERRACE	23/06/2008	2 25/06/2008	Referred to Mgr for Allocation
16-2008-491-1	Phillips	Garage and Stables 50 Butterwick RD WOODVILLE	23/06/2008	2 24/06/2008	Referral - Building
16-2008-492-1	Turner	Garage 11 Grey Gum ST MEDOWIE	23/06/2008	2 25/06/2008	Referral - Building
16-2008-493-1	D'Angelo	Retaining Wall 11 Fisher CL SEAHAM	23/06/2008	2 25/06/2008	Referral - Building
16-2002-215-3	Taxiropoulos	S.96 Amendment 10 Market ST FINGAL BAY	20/06/2008	5 23/06/2008	Application Information Check
16-2008-482-1	Paul Le Mottee Project Management	Boundary Re-alignment 68 Lisadell RD MEDOWIE	20/06/2008	5 25/06/2008	Admin Distribution
16-2008-483-1	Ross	Single Storey Dwelling 43 George ST KARUAH	20/06/2008	5 25/06/2008	Referral - Building
16-2008-484-1	Ross	Single Storey Dwelling 45 George ST KARUAH	20/06/2008	5 25/06/2008	Referral - Building
16-2008-485-1	Hodgekiss Hodgekiss	Carport 11 Sir Edward ST KARUAH	20/06/2008	5 23/06/2008	Referral - Building
16-2008-486-1	Freeth Freeth	Fence 27 Ocean AVE ANNA BAY	20/06/2008	5 23/06/2008	Referral - Building
16-2008-487-1	Cook	Garage 6 Sir Keith PL KARUAH	20/06/2008	5 23/06/2008	Referral - Building
16-2008-479-1	Beazley	Storage Shed & Gable Roof 7 Twelve Mile Creek RD TWELVE MILE CREEK	19/06/2008	6 20/06/2008	Referral - Building

# ORDINARY MEETING MINUTES – 22 JULY 2008

AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No		Proposal	Property Address	Date Lodged	Days in Council		Current Status
16-2008-480-1	Beaumont Consultant & Unique Home Design	Addition to Dwelling & Deck	49 Pacific AVE ANNA BAY	19/06/2008	6	25/06/2008	Checking & Signing
16-2008-481-1	Beaumont Consultant & Unique Home Design	Addition to Dwelling and Carport	22 Andrew CL BOAT HARBOUR	19/06/2008	6	20/06/2008	Referral - Building
16-2008-477-1	Baldwin	Single Storey Dwelling (Variation to Building Line)	38 Britannia DR TANILBA BAY	18/06/2008	7	24/06/2008	Further Information Required
16-2008-478-1	Connaughton	Two Storey Dwelling & Shed	54 Ullora CL NELSON BAY	18/06/2008	7	19/06/2008	Referral - Building
16-2008-475-1	Longworth	Garage (Variation to Building Line)	30 Rosemount DR RAYMOND TERRACE	17/06/2008	8	19/06/2008	Referral - Building
16-2008-476-1	M J Mcdougall & Associates	Two Lot Subdivision - TT	4 Tarwhine ST CORLETTE	17/06/2008	8	24/06/2008	Preparation of Correspondence
16-2008-468-1	J R Garner Pty Limited	Swimming Pool	105 Foreshore DR SALAMANDER BAY	16/06/2008	9	23/06/2008	Further Information Required
16-2008-469-1	Spanline Port Stephens	Patio Cover	4 Response DR TANILBA BAY	16/06/2008	9	24/06/2008	Preparation of Correspondence
16-2008-470-1	Stephenson	Deck and Patio Cover	28 Rigney ST SHOAL BAY	16/06/2008	9	18/06/2008	Referral - Building
16-2008-471-1	Johnson	Swimming Pool	24 Bourke ST RAYMOND TERRACE	16/06/2008	9	18/06/2008	Referral - Building
16-2008-472-1	Johnson	Single Storey Dwelling & Garage (Demolish existing)	24 Bourke ST RAYMOND TERRACE	16/06/2008	9	18/06/2008	Referral - Building
16-2008-473-1	Jones	Two Storey Dwelling - Demolish existing Dwelling	322 Wanda AVE SALAMANDER BAY	16/06/2008	9	18/06/2008	Referral - Building
16-2008-474-1	Beaven	Single Storey Dwelling	85A Clemenceau CR TANILBA BAY	16/06/2008	9	24/06/2008	Checking & Signing
16-2008-463-1	McLaughlin	Addition to Dwelling	373 Duns Creek RD DUNS CREEK	13/06/2008	12	17/06/2008	Referral - Building
16-2008-464-1	Cox	Fence	48 Lisadell RD MEDOWIE	13/06/2008	12	17/06/2008	Referral - Building

# ORDINARY MEETING MINUTES – 22 JULY 2008

AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No		Proposal	Property Address	Date Lodged	Days in Council		Current Status
16-2008-465-1	Bullock	Carport	105 Benjamin Lee DR RAYMOND TERRACE	13/06/2008	12	17/06/2008	Referral - Building
16-2008-466-1	Bailey	Single Storey Dwelling	64 Pershing PL TANILBA BAY	13/06/2008	12	24/06/2008	Checking & Signing
16-2008-467-1	Elite Enterprises Australia Pty Ltd	Machinery Shed	73 Seaham RD NELSONS PLAINS	13/06/2008	12	25/06/2008	Further Information Required
16-2008-461-1	Jackson	Garage	1352 Clarence Town RD SEAHAM	12/06/2008	13	20/06/2008	Further Information Required
16-2008-462-1	Torren Bell	Deck with Sail Structure	17 Canomii CL NELSON BAY	12/06/2008	13	17/06/2008	Referral - Building
16-2004-832-3	Armillei	Garage and Additions to Existing Dwelling Stage 1	19 Cook PDE LEMON TREE PASSAGE	11/06/2008	14	18/06/2008	Referral - Building
16-2007-554-3	Kelly	Dual Occupancy - (One Dwelling Existing)	136A Salamander WAY SALAMANDER BAY	11/06/2008	14	26/06/2008	Referral - Planning
16-2008-239-2	Laroche	Single Storey Dwelling	60 South ST MEDOWIE	11/06/2008	14	25/06/2008	Preparation of Correspondence
16-2008-449-1	Orman	Retaining Wall	37 Spinnaker WAY CORLETTE	11/06/2008	14	16/06/2008	Referred to Mgr for Allocation
16-2008-450-1	Bannister & Hunter Pty Ltd	Two Lot Subdivision - TT	1117 Nelson Bay RD FERN BAY	11/06/2008	14	23/06/2008	Further Information Required
16-2008-451-1	Defence Housing Australia	Single Storey Dwelling	39 Moxey CL RAYMOND TERRACE	11/06/2008	14	17/06/2008	Referral - Building
16-2008-452-1	Defence Housing Australia	Single Storey Dwelling	19 Moxey CL RAYMOND TERRACE	11/06/2008	14	17/06/2008	Referral - Building
16-2008-453-1	Defence Housing Australia	Single Storey Dwelling	41 Moxey CL RAYMOND TERRACE	11/06/2008	14	17/06/2008	Referral - Building
16-2008-454-1	Defence Housing Australia	Single Storey Dwelling	37 Moxey CL RAYMOND TERRACE	11/06/2008	14	17/06/2008	Referral - Building
16-2008-455-1	Defence Housing Australia	Single Storey Dwelling	16 Moxey CL RAYMOND TERRACE	11/06/2008	14	17/06/2008	Referral - Building

:

:

# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No		Proposal	Property Address	Date Lodged	Days in Council		Current Status
16-2008-456-1	Defence Housing Australia	Single Storey Dwelling	22 Moxey CL RAYMOND TERRACE	11/06/2008	14	17/06/2008	Referral - Building
16-2008-457-1	Defence Housing Australia	Single Storey Dwelling	18 Moxey CL RAYMOND TERRACE	11/06/2008	14	17/06/2008	Referral - Building
16-2008-458-1	Defence Housing Australia	Single Storey Dwelling	20 Moxey CL RAYMOND TERRACE	11/06/2008	14	17/06/2008	Referral - Building
16-2008-459-1	Defence Housing Australia	Single Storey Dwelling	17 Moxey CL RAYMOND TERRACE	11/06/2008	14	17/06/2008	Referral - Building
16-2008-460-1	Holloway	Swimming Pool	3 Gilchrist RD SALAMANDER BAY	11/06/2008	14	20/06/2008	Further Information Required
16-2008-37-2	Tri-Steel Industries Pty Ltd	Garden Shed - Replace existing	3 Sketchley ST RAYMOND TERRACE	10/06/2008	15	11/06/2008	Referral - Planning
16-2008-446-1	Keefe	Garage	2 Pershing PL TANILBA BAY	6/06/2008	19	11/06/2008	Further Information Required
16-2008-447-1	Stepfner	Advertising Signs for Place of Public Entertainment	1 Oakvale DR SALT ASH	6/06/2008	19	16/06/2008	Referral - Planning
16-2008-448-1	Bamber	Two Storey Dwelling	13 Stringybark DR FERN BAY	6/06/2008	19	11/06/2008	Referral - Building
16-2008-443-1	Watt	Patio Cover (Variation to Building Line)	15 Cambridge AVE RAYMOND TERRACE	5/06/2008	20	10/06/2008	Referral - Building
16-2008-445-1	Paul Le Mottee Project Management	Two (2) Lot TT Subdivision	7 Karwin RD MEDOWIE	5/06/2008	20	16/06/2008	Referral - Planning
16-2007-1153-2	Jones	Dual Occupancy Attached. Two (2) Lot Torrens Title Subdivision	86 Irrawang ST RAYMOND TERRACE	4/06/2008	21	11/06/2008	Referral - Planning
16-2008-439-1	Tame	Single Storey Dwelling and Storage Shed	12 Gerill CL WALLALONG	4/06/2008	21	18/06/2008	Further Information Required
16-2008-440-1	Bayside Patios	Carport and replace existing Pergola	228A Sandy Point RD SALAMANDER BAY	4/06/2008	21	11/06/2008	Further Information Required
16-2008-442-1	Paul Le Mottee Project Management	Four (4) Lot Subdivision - Industrial - ST	9 Industrial CR LEMON TREE PASSAGE	4/06/2008	21	25/06/2008	Checking & Signing

# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No		Proposal	Property Address	Date Lodged	Days in Council		Current Status
16-2008-433-1	Joseph	Addition to Dwelling	863 Swan Bay RD SWAN BAY	3/06/2008	22	4/06/2008	Referral - Building
16-2008-434-1	Greentree	Storage Shed	14A Gwen PDE RAYMOND TERRACE	3/06/2008	22	4/06/2008	Referral - Building
16-2008-435-1	Boura	Alteration to Dwelling - Lift for a wheel chair	7 President Wilson WALK TANILBA BAY	3/06/2008	22	6/06/2008	Further Information Required
16-2008-437-1	Beaumont Consultant & Unique Home Design	Addition to Dwelling, Garage, Shade over Pool	15 Campbell AVE ANNA BAY	3/06/2008	22	25/06/2008	Checking & Signing
16-2007-1098-2	Williams River Steel Pty Ltd	Industrial Development - S.96 Amendment	47 Camfield DR HEATHERBRAE	2/06/2008	23	19/06/2008	Referral - Planning
16-2008-430-1	Barrett	Verandah	11 Lillypilly CL MEDOWIE	2/06/2008	23	25/06/2008	Checking & Signing
16-2003-1650-3	Adw Johnson Pty Ltd	Five (5) Lot Subdivision - S.96 Amendment	33 Elizabeth ST WALLALONG	30/05/2008	26	6/06/2008	Referral - Planning
16-2003-2247-2	Orman	Dual Occupancy & 2 Lot Subdivision - S.96 Amendment	37 Spinnaker WAY CORLETTE	30/05/2008	26	6/06/2008	Referral - Planning
16-2008-428-1	Stringer	Garage	47 Federation DR MEDOWIE	30/05/2008	26	25/06/2008	Further Information Required
16-2008-427-1	King King	Single Storey Dwelling	25 Augusta Place PRIV MEDOWIE	29/05/2008	27	2/06/2008	Referral - Building
16-2008-421-1	Kajic	Extension to Existing Commercial Premises	55 Port Stephens ST RAYMOND TERRACE	28/05/2008	28	29/05/2008	Further Information Required
16-2008-422-1	Mason	Storage Shed, Garage & Workshop	1 Yangoora CL MEDOWIE	28/05/2008	28	29/05/2008	Referral - Building
16-2008-423-1	Bond	Addition to Dwelling, Garage & Deck (Demolish existing deck)	1 Messines ST SHOAL BAY	28/05/2008	28	29/05/2008	Referral - Building
16-2008-424-1	Duncan	Extension to Existing Machinery Shed	9 Eskdale Park DR SEAHAM	28/05/2008	28	4/06/2008	Checking & Signing
16-2008-425-1	Scott	Dual Occupancy - Detached (One Dwelling Existing)	133 Shoal Bay RD NELSON BAY	28/05/2008	28	2/06/2008	Referral - Planning



# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No		Proposal	Property Address	Date Lodged	Days in Council		Current Status
16-2008-417-1	Wellings	Home Industry (personal growth & healing)	8 Randall DR SALAMANDER BAY	27/05/2008	29	11/06/2008	Referral - Planning
16-2008-418-1	Fiddis	Shop Fitting & Change of Use (Medical Centre - Podiatry)	1/199 Adelaide ST RAYMOND TERRACE	27/05/2008	29	2/06/2008	Referral - Planning
16-2008-419-1	Mcintosh	Farm Shed, Stables, Swimming Pool and Demolish Existing Shed,	26 Gwandalan CL BRANDY HILL	27/05/2008	29	29/05/2008	Referral - Building
16-2008-420-1	Tri-Steel Industries Pty Ltd	Garage & Attached Carport	18 Alma ST RAYMOND TERRACE	27/05/2008	29	29/05/2008	Referral - Building
16-2007-14-3	Buildex Properties Pty Ltd	Six (6) Lot Boundary Adjustment	3 Zircon LN FULLERTON COVE	26/05/2008	30	6/06/2008	Referral - Planning
16-2007-288-3	Atb Morton Pty Limited	Industrial Development	21 Old Punt RD TOMAGO	26/05/2008	30	24/06/2008	Further Information Required
16-2008-409-1	Resitech	Fence - Demolish Existing	24 Clyde CCT RAYMOND TERRACE	26/05/2008	30	17/06/2008	Checking & Signing
16-2008-412-1	Hearn	Swimming Pool - Tourist Facility	15 Fenninghams Island RD BOBS FARM	26/05/2008	30	29/05/2008	Further Information Required
16-2008-413-1	Bright	Garage	111 Adelaide ST RAYMOND TERRACE	26/05/2008	30	28/05/2008	Referral - Building
16-2008-415-1	Lockley Land Title Solutions	Six (6) Lot Strata Subdivision - Residential	29 Wahgunyah RD NELSON BAY	26/05/2008	30	6/06/2008	Referred to Minor Assess Team
16-2008-416-1	Shoal Bay Resort & Aqua Spa	Jazz, Wine and Food Festival	130/43 Shoal Bay RD SHOAL BAY	26/05/2008	30	18/06/2008	Referral - Planning
16-2008-408-1	Monk	Farm Shed and Pergola	6 Morpeth VWS WALLALONG	23/05/2008	33	26/05/2008	Referral - Building
16-2008-397-1	Simpson	Land Fill	15 Echo PL ONE MILE	22/05/2008	34	2/06/2008	Further Information Required
16-2008-399-1	Lemon Tree Passage Bowling Club Co-Operative Ltd	Addition & Alteration to Existing Club	18 Gould DR LEMON TREE PASSAGE	22/05/2008	34	2/06/2008	Referral - Planning
16-2008-400-1	Physick	Two Storey Dwelling	10 Reflections DR ONE MILE	22/05/2008	34	29/05/2008	Further Information Required

# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No	Proposal	Property Address	Date Lodged	Days in Council	Current Status
16-2008-401-1	Spicer	Two Storey Dwelling	6 Ullora RD NELSON BAY	22/05/2008 34	26/05/2008 Referral - Building
16-2008-393-1	Chapman	Addition to Dwelling and Deck	4 Kerrie Close PRIV NELSON BAY	21/05/2008 35	23/06/2008 Further Information Required
16-2008-395-1	Tri-Steel Industries Pty Ltd	Garage (Demolish Existing)	23 Norburn AVE NELSON BAY	21/05/2008 35	22/05/2008 Referral - Building
16-2008-388-1	Paul Le Mottee Project Management	Four (4) Lot Subdivision - TT	364 Six Mile RD EAGLETON	20/05/2008 36	2/06/2008 Ext Ref - NSW RFS
16-2008-389-1	Hill Top Planners	Industrial Development	2228 Pacific HWY HEATHERBRAE	20/05/2008 36	30/05/2008 Further Information Required
16-2008-382-1	Purdon	Carport and Patio Cover (Variation to Building Line)	6 Grevillea DR MEDOWIE	19/05/2008 37	10/06/2008 Further Information Required
16-2008-385-1	Charlton	Storage Shed	10 Thomas ST RAYMOND TERRACE	19/05/2008 37	20/05/2008 Referral - Building
16-2008-377-1	Mcfadyen	Swimming Pool	21 Bilmark DR RAYMOND TERRACE	16/05/2008 40	19/05/2008 Referral - Building
16-2008-379-1	Thompson	Garage and Awning	55 Sylvan AVE MEDOWIE	16/05/2008 40	5/06/2008 Further Information Required
16-2008-380-1	Richmond	Two Storey Dwelling & Garage - Demolish Existing	221 Foreshore DR CORLETTE	16/05/2008 40	
16-2008-371-1	Martin Building Services	Addition to Dwelling and Stables	5 Ralstons RD NELSONS PLAINS	15/05/2008 41	22/05/2008 Further Information Required
16-2008-372-1	Fenemor	Patio Cover	82 Irrawang ST RAYMOND TERRACE	15/05/2008 41	16/05/2008 Referral - Building
16-2008-376-1	Diemar	Replacement of Private Slipway	21A Diemars RD SALAMANDER BAY	15/05/2008 41	22/05/2008 Referral - Planning
16-2008-368-1	Mclay	Single Storey Dwelling	22 Ability AVE TANILBA BAY	14/05/2008 42	
16-2008-369-1	Young	Temporary Sales Office and Carpark	51 Bagnall Beach RD CORLETTE	14/05/2008 42	2/06/2008 Further Information Required

# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No	Proposal	Property Address	Date Lodged	Days in Council	Current Status
16-2008-370-1	Port Stephens Veterans & Citizens Aged Care Ltd	Urban Housing (Three Dwellings)	44 Farm RD FINGAL BAY	14/05/2008 42	19/06/2008 Referral - Planning
16-2008-361-1	Catholic Schools Office	Addition & Alteration to School (new classrooms, upgrade of facilities)	52 Irrawang ST RAYMOND TERRACE	13/05/2008 43	2/06/2008 Referral - Planning
16-2008-362-1	Bryant	Addition to Dwelling, Garage, Carport, Deck OBP 355426P	13 Thomas ST RAYMOND TERRACE	13/05/2008 43	14/05/2008 Referral - Building
16-2008-359-1	Cagda Pty Limited	Shed - Commercial Premises	3443 Nelson Bay RD BOBS FARM	12/05/2008 44	19/05/2008 Application Information Check
16-2008-349-1	Annable	Machinery Shed (Horse Agistment)	18 Salt Ash AVE SALT ASH	9/05/2008 47	5/06/2008 Referral - Building
16-2008-351-1	Paul Le Mottee Project Management	Two (2) Lot Subdivision - Rural - TT	12 Kula RD MEDOWIE	9/05/2008 47	16/05/2008 Referral - Planning
16-2008-353-1	Spanline Port Stephens	Deck with Screened Enclosure	59 Sergeant Baker DR CORLETTE	9/05/2008 47	12/05/2008 Referral - Building
16-2008-356-1	Spanline Port Stephens	Patio Cover - (Existing Deck)	72 Navala AVE NELSON BAY	9/05/2008 47	
16-2008-348-1	Greg Paton Master Builder	Addition to Dwelling and Bed & Breakfast Establishment	85 James RD MEDOWIE	8/05/2008 48	2/06/2008 Referral - Planning
16-2008-337-1	Wheatley	Urban Housing (3 Dwellings) & 3 Lot Subdivision-ST (Demolish Existing)	16 Tathra ST RAYMOND TERRACE	7/05/2008 49	16/05/2008 Referral - Planning
16-2008-341-1	Cockbain	Single Storey Dwelling	4 Iona LN WOODVILLE	7/05/2008 49	16/05/2008 Further Information Required
16-2008-344-1	Lambert Building Pty Ltd	Dual Occupancy - Detached & 2 Lot Strata Subdivision	15 Brown ST RAYMOND TERRACE	7/05/2008 49	11/06/2008 Referral - Planning
16-2008-345-1	Rowe	Machinery Shed	14 Eskdale Park DR SEAHAM	7/05/2008 49	
16-2003-2105-6	Hill Top Planners	169 Unit Retirement Village & Facilities / Demolish Existing	1143 Nelson Bay RD FERN BAY	6/05/2008 50	9/05/2008 Referral - Planning

# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No	Proposal	Property Address	Date Lodged	Days in Council	Current Status
16-2008-333-1	Freedom Homes	Single Storey Dwelling, Swimming Pool, Machinery Shed	97 Richardson RD RAYMOND TERRACE	6/05/2008	50 7/05/2008 Referral - Building
16-2008-334-1	Flyash Equipment Pty Ltd	Three (3) Transportable Silos - (Existing Industrial Development)	13 Motto LN HEATHERBRAE	6/05/2008	50 15/05/2008 Further Information Required
16-2008-335-1	Raybal Building Services Pty Ltd	Two x Industry /Warehouse & Ancillary Commercial	20 Kennington DR TOMAGO	6/05/2008	50 4/06/2008 Referral - Waste Water Officer
16-2008-331-1	Mewett Plant Pty Ltd	Store Shed to Existing Industrial Development	19 School DR TOMAGO	5/05/2008	51 16/05/2008 Referral - Planning
16-2008-332-1	Jw Planning Pty Limited	Advertising Sign	40 Richardson RD RAYMOND TERRACE	5/05/2008	51 25/06/2008 Admin Distribution
16-2008-327-1	Holt	Two Storey Dwelling	20 Gynea Way PRIV NELSON BAY	2/05/2008	54 5/05/2008 Referral - Building
16-2008-303-1	Tattersall Surveyors Pty Ltd	Two Storey Dwelling and Shared Driveway	26 The Parkway MALLABULA	28/04/2008	58 22/05/2008 Further Information Required
16-2008-305-1	Strang Ncs Pty Limited	Industrial Building	15A School DR TOMAGO	28/04/2008	58 7/05/2008 Referral - Planning
16-2008-306-1	Resitech	Housing for Seniors/People with a Disability-9 Self Contained Dwelling	125 Watt ST RAYMOND TERRACE	28/04/2008	58 4/06/2008 Further Information Required
16-2008-310-1	Paul Le Mottee Project Management	Managers Residence Tourist Facility & Two Lot Subdivision - TT	91 Swan Bay RD KARUAH	28/04/2008	58 8/05/2008 Further Information Required
16-2008-298-1	Paul Le Mottee Project Management	Three (3) Lot Subdivision - TT	18 Fairlands RD MEDOWIE	23/04/2008	63 24/06/2008 Preparation of Correspondence
16-2008-291-1	Martin	Single Storey Dwelling	20 Nobles RD NELSONS PLAINS	21/04/2008	65 22/04/2008 Referral - Building
16-2008-292-1	Malone	Industrial Development	10 William Bailey ST RAYMOND TERRACE	21/04/2008	65 22/05/2008 Referral - Planning
16-2008-287-1	Kozary	Home Industry (Road Side Stall) and Sign	41 Lisadell RD MEDOWIE	18/04/2008	68 26/05/2008 Further Information Required

# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No		Proposal	Property Address	Date Lodged	Days in Council		Current Status
16-2008-284-1	Croker	Dual Occupancy - Detached & 2 Lot TT Subdivision (demolish existing)	28 Peace PDE TANILBA BAY	17/04/2008	69	5/06/2008	Referral - Planning
16-2008-281-1	Gwh Construction (Nsw) Pty Ltd	Fitout of Existing Warehouse (Lot 6)	6/15 Shearwater DR TAYLORS BEACH	16/04/2008	70	15/05/2008	Further Information Required
16-2008-272-1	Hill Top Planners	Two Lot Subdivision - TT	56 William ST RAYMOND TERRACE	15/04/2008	71	28/05/2008	Referral - Planning
16-2008-273-1	Jedniuk	Dual Occupancy (one existing) & Garage	69 Abundance RD MEDOWIE	15/04/2008	71	11/06/2008	Referral - Planning
16-2008-274-1	Taylor	Change of Use (Motor Vehicle Sales)	340 Soldiers Point RD SALAMANDER BAY	15/04/2008	71	2/06/2008	Referral - Planning
16-2008-276-1	Retirement Care Australia (Port Stephens Gardens)	Alteration & Addition to Nursing Home	40 Bagnall Beach RD CORLETTE	15/04/2008	71	15/05/2008	Further Information Required
16-2008-263-1	Atb Morton Pty Limited	Industrial Development - Warehouse Extension	13A Old Punt RD TOMAGO	10/04/2008	76	29/05/2008	Further Information Required
16-2008-252-1	Sweeney	Change of Use - Bulky Goods Sales Room (Tender & Services Centre)	7 Abundance RD MEDOWIE	9/04/2008	77	11/04/2008	Referral - Planning
16-2008-256-1	Tattersall Surveyors Pty Ltd	Oyster Shed	25 Oyster Farm RD LEMON TREE PASSAGE	9/04/2008	77	11/04/2008	Referral - Planning
16-2008-244-1	Transition Resort Holdings Pty Limited	Section 68B	1117 Nelson Bay RD FERN BAY	8/04/2008	78	11/04/2008	Referral - Planning
16-2008-245-1	Transition Resort Holdings Pty Limited	256 Lot Community Title Subdivision (Manufactured Home Estate)	1117 Nelson Bay RD FERN BAY	8/04/2008	78	15/04/2008	Referral - Planning
16-2008-246-1	Nelson Focus Pty Ltd	Urban Housing (Three Dwellings) & 3 Lot Strata Subdivision	16 Johnson PDE LEMON TREE PASSAGE	8/04/2008	78	23/04/2008	Further Information Required
16-2008-249-1	Kingstone Homes	Two Storey Dwelling	20 Talavera CL RAYMOND TERRACE	8/04/2008	78	19/05/2008	Further Information Required

# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No		Proposal	Property Address	Date Lodged	Days in Council		Current Status
16-2008-250-1	Contour Building & Construction Pty Ltd	Two Lot Subdivision - TT	10 Ironbark DR FERN BAY	8/04/2008	78	24/06/2008	Preparation of Correspondence
16-2008-251-1	Contour Building & Construction Pty Ltd	Two Lot Subdivision - TT	8 Ironbark DR FERN BAY	8/04/2008	78	24/06/2008	Preparation of Correspondence
16-2008-238-1	Lawson	Carport (Variation to Building Line)	30 Grafton ST NELSON BAY	7/04/2008	79	9/04/2008	Referral - Building
16-2008-234-1	Mcdonald'S Properties (Aust) Pty Limited	Extend trading hours - drive-thru only.	94 Adelaide ST RAYMOND TERRACE	4/04/2008	82	20/05/2008	Referral - Planning
16-2008-232-1	Lismore Management Services Pty Ltd	Renovations to Existing Kiosk and Managers Residence (Holiday Park)	13 Hannah PDE ONE MILE	3/04/2008	83	10/04/2008	Further Information Required
16-2008-224-1	Jw Planning Pty Limited	Third Floor Addition to Existing Commercial Premises	12B Teramby RD NELSON BAY	2/04/2008	84	11/04/2008	Referral - Planning
16-2008-218-1	Casey	Addition to Dwelling	113 Francis AVE LEMON TREE PASSAGE	1/04/2008	85	24/06/2008	Further Information Required
16-2008-219-1	Rennie Golledge & Partners	Four (4) Lot Subdivision - ST	6/12 Blanch ST LEMON TREE PASSAGE	1/04/2008	85	8/04/2008	Further Information Required
16-2008-223-1	Aimaway Holdings Pty Limited	Dual Occupancy - Detached (demolish existing) & 2 Lot Subdivision TT	5 Randall DR SALAMANDER BAY	1/04/2008	85	14/05/2008	Further Information Required
16-2008-214-1	Australian Marina Operations Pty Ltd	Shop	26B Corlette Point RD CORLETTE	28/03/2008	89		
16-2008-216-1	Hydromet Corporation Limited	Industrial Development - Warehouse, Lead Battery Recycling Facility	25 School DR TOMAGO	28/03/2008	89	26/05/2008	Further Information Required
16-2008-210-1	Unimin Australia Limited	Four (4) Additional Silos to Existing Sand Mining Facility	8 Oakvale DR SALT ASH	27/03/2008	90	2/04/2008	External Referrals
16-2008-204-1	Corocher	Single Storey Dwelling, Garage and Dam	15 Forest RD DUNS CREEK	26/03/2008	91	20/06/2008	Checking & Signing
16-2008-201-1	Botany Pty Ltd	Industrial Development	5 Kennington DR TOMAGO	25/03/2008	92		



# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No		Proposal	Property Address	Date Lodged	Days in Council		Current Status
16-2008-202-1	Rps Harper Somers O'Sullivan	Extension to Existing Commercial Premises & Two Storey Carpark	5 Peppertree RD MEDOWIE	25/03/2008	92	5/05/2008	Further Information Required
16-2008-194-1	Graham	Two (2) Lot Subdivision - Industrial - TT	8A Archibald PL HEATHERBRAE	19/03/2008	98	5/06/2008	Further Information Required
16-2008-182-1	Rawson Homes Pty Limited	Dual Occupancy - Detached	57 Sergeant Baker DR CORLETTE	14/03/2008	103	4/04/2008	Further Information Required
16-2008-183-1	Sorensen Design	Dual Occupancy - Detached (one existing)	39 Compass CL SALAMANDER BAY	14/03/2008	103	18/03/2008	Referral - Planning
16-2008-165-1	Commercial Fishermans Co-Op Ltd	Fence to existing Wharves	12 Teramby RD NELSON BAY	7/03/2008	110	14/05/2008	Referral - Planning
16-2008-151-1	Rennie Gollidge & Partners	Four (4) Lot Subdivision - ST	5/12 Blanch ST LEMON TREE PASSAGE	4/03/2008	113	14/03/2008	Further Information Required
16-2006-284-2	Keighley	S.96 Amendment - Extend rear house 1.2 metres	6 Victory VIEW TANILBA BAY	29/02/2008	117	7/03/2008	Referral - Planning
16-2008-143-1	Iuliano	Home Industry (Concreting Contractor)	5 Bowalla CL WALLALONG	28/02/2008	118		
16-2008-138-1	Newcastle Quality Constructions	Single Storey Dwelling	30 Abundance RD MEDOWIE	27/02/2008	119	17/06/2008	Referral - Building
16-2008-116-1	Burr	Additions to Existing Dwelling (Urban Housing)	2/111 Port Stephens DR SALAMANDER BAY	19/02/2008	127	24/06/2008	Preparation of Correspondence
16-2008-110-1	Williams River Steel Pty Ltd	Warehouse & Demolish Existing	1 Archibald PL HEATHERBRAE	15/02/2008	131	2/04/2008	Further Information Required
16-2008-111-1	Lonie	Staged Development - Dual Occupancy (Detached) & Demolish Existing	19 Sunset BVD SOLDIERS POINT	15/02/2008	131	20/02/2008	Referral - Planning
16-2008-100-1	Greentree	Single Storey Dwelling & Retaining Wall	13 Edstein PL RAYMOND TERRACE	13/02/2008	133	11/04/2008	Further Information Required
16-2008-94-1	Hill Top Planners	Five (5) Lot Subdivision - TT	4 Brown ST RAYMOND TERRACE	12/02/2008	134	20/02/2008	Further Information Required

# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No	Proposal	Property Address	Date Lodged	Days in Council	Current Status
16-2008-97-1	Paul Le Mottee Project Management	Boundary Re-alignment (Six Lots)	15 Warrigal CL SEAHAM	12/02/2008 134	14/02/2008 Referral - Planning
16-2002-345-2	Stanton (Snr)	S.96 Amendment to Jetty	15 Fenninghams Island RD BOBS FARM	8/02/2008 138	7/05/2008 Further Information Required
16-2008-83-1	Simpson	Bridge	1 Mustons RD KARUAH	8/02/2008 138	6/05/2008 Ext Ref - Planning NSW Part 3A
16-2008-79-1	Medowie Pastoral Pty Ltd	Dual Occupancy - Detached & Two (2) Lot Strata Subdivision	1A Heritage AVE MEDOWIE	6/02/2008 140	24/06/2008 Further Information Required
16-2008-57-1	Clark	Place of Public Entertainment	37 Ferodale RD MEDOWIE	30/01/2008 147	26/03/2008 Referral - Planning
16-2008-47-1	Malone	Urban Housing - Four Dwellings and Four (4) Lot Subdivision	15 Edstein PL RAYMOND TERRACE	24/01/2008 153	12/03/2008 Further Information Required
16-2008-31-1	Atb Morton Pty Limited	Office Building	21 Old Punt RD TOMAGO	18/01/2008 159	23/06/2008 Further Information Required
16-2008-26-1	Watson	Tourist Facility (Restaurant, Function Room & Car Parking)	3 Koala PL BOAT HARBOUR	16/01/2008 161	28/05/2008 Further Information Required
16-2003-2105-5	Hill Top Planners	169 Unit Retirement Village & Facilities / Demolish Existing	1143 Nelson Bay RD FERN BAY	9/01/2008 168	16/01/2008 Referral - Planning
16-2005-864-3	Hill Top Planners	S.96 Amendment - Conditions 15, 19 and 43	1143 Nelson Bay RD FERN BAY	9/01/2008 168	16/01/2008 Referral - Planning
16-2008-11-1	Outtrim	Dwelling and Machinery Shed and Boundary Re-alignment	3A Ferodale RD MEDOWIE	9/01/2008 168	24/06/2008 To DAP for Review
16-2008-12-1	Don Blainey Superannuation Fund Pty Limited	Additions & Alterations to Dwelling	62 Randall DR SALAMANDER BAY	9/01/2008 168	2/04/2008 Further Information Required
7-1996-41299-8	Environmental Resources Management Australia Pty L	S.96 Amendment - Create Thirty (30) Additional Residential Lots	20 Seaside BVD FERN BAY	3/01/2008 174	16/01/2008 Referral - Planning
16-2004-687-3	Beaumont Consultant & Unique Home Design	S.96 Amendment - Altered Driveway & Internal & External Changes	38 Lawson ST NELSON BAY	20/12/2007 188	22/01/2008 Further Information Required

:

4



# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No	Proposal	Property Address	Date Lodged	Days in Council	Current Status
16-2007-1141-1	Farley	Four (4) Lot Subdivision (TT) & Boundary Re-alignment	28 Road 607 Off Butterwick UR BUTTERWICK	20/12/2007	188 14/01/2008 Referral - Planning
16-2007-1149-1	Johnson	Patio Cover and Storage Shed	75 South ST MEDOWIE	20/12/2007	188 10/04/2008 Further Information Required
16-2007-1135-1	Avocari Pty Limited	Urban Housing - Alterations & Additions to Existing Five (5) Dwellings	1/68 Government RD NELSON BAY	19/12/2007	189 7/03/2008 Further Information Required
16-2007-1120-1	Lidgard	Addition to Dwelling & Carport	79 James Scott CR LEMON TREE PASSAGE	17/12/2007	191 13/05/2008 Further Information Required
16-2003-2105-4	Hill Top Planners	169 Unit Retirement Village & Facilities / Demolish Existing	1143 Nelson Bay RD FERN BAY	14/12/2007	194 16/01/2008 Referral - Planning
16-2007-1119-1	Giggins	Urban Housing - 6 Dwellings (one dwelling existing)	204 Meredith CR RAYMOND TERRACE	14/12/2007	194 25/03/2008 Further Information Required
16-2007-1114-1	Atb Morton Pty Limited	Industrial Development	18 Old Punt RD TOMAGO	12/12/2007	196 4/01/2008 Referral - Planning
16-2001-1700-3	Rps Harper Somers O'Sullivan	S.96 Amendment - Road Re-Alignment & Lot Layout Adjustment	78 Port Stephens DR TAYLORS BEACH	11/12/2007	197 6/06/2008 Further Information Required
16-2007-1106-1	Refuse & Recycling Centre	Industrial Shed	360 Soldiers Point RD SALAMANDER BAY	10/12/2007	198 21/01/2008 Further Information Required
16-2007-1085-1	Laverick	Dual Occ (One Dwelling Existing) & Three (3) Lot TT Subdivision (VBL)	10 Freeth ST RAYMOND TERRACE	5/12/2007	203 24/06/2008 Referral - Council Officer
16-2007-1078-1	Hotel Victoria	Alterations & Additions to Existing Hotel	2 Paterson ST HINTON	3/12/2007	205 20/05/2008 Referral - Building
16-2007-1065-1	Buldev Development Nsw (Ra) Pty Ltd	39 Lot Subdivision - Industrial	60 Port Stephens DR TAYLORS BEACH	30/11/2007	208 8/04/2008 Referral - Council Officer
16-2007-1057-1	Everingham Everingham	Three Storey Dwelling	37 Watersleigh AVE MALLABULA	28/11/2007	210 22/05/2008 Further Information Required

# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No		Proposal	Property Address	Date Lodged	Days in Council		Current Status
16-2007-1059-1	M J Mcdougall & Associates	Two (2) Lot Subdivision - TT	121 Navala AVE NELSON BAY	28/11/2007	210	24/06/2008	Further Information Required
16-2007-1037-1	Paul Le Mottee Project Management	15 Lot Subdivision - TT	30 Joseph Sheen DR RAYMOND TERRACE	20/11/2007	218	13/05/2008	Further Information Required
16-2007-989-1	Tattersall Surveyors Pty Ltd	Home Industry, Storage Shed & upgrade to Access Track	727 Seaham RD NELSONS PLAINS	6/11/2007	232		
16-2006-214-2	Parson	S.96 Amendment - Tile to Colourbond Roof	30 The Breakwater CORLETTE	30/10/2007	239	2/04/2008	Checking & Signing
16-2007-930-1	Torren Bell	Dual Occupancy - Detached	5 Vista AVE SOLDIERS POINT	19/10/2007	250	30/10/2007	Referral - Planning
16-2007-902-1	Hingston	Two Storey Dual Occupancy (demolish existing) & Two Lot Subdivision	16 Pacific RD FINGAL BAY	12/10/2007	257		
16-2007-846-1	Labrakis Hagios	Urban Housing (3 Dwellings), 3 Lot TT Subdivision & Demolish existing	10 Shoreline DR FINGAL BAY	26/09/2007	273	17/06/2008	Preparation of Correspondence
16-2007-821-1	Smith	Two Lot Subdivision - TT	43 Fairlands RD MALLABULA	18/09/2007	281	30/05/2008	Checking & Signing
16-2007-817-1	Dagg	Land Fill (Cattle Mound)	18 Market ST HINTON	14/09/2007	285	19/02/2008	Referral - Engineer
16-2007-813-1	Environmental Resources Management Australia Pty L	Subdivision of Four (4) Existing Lots into Six (6) Lots - C Title	1 Gynea Way PRIV NELSON BAY	13/09/2007	286	31/03/2008	Checking & Signing
16-2007-810-1	Baker	Single Storey Dwelling (Demolish existing dwelling)	1027 East Seaham RD EAST SEAHAM	12/09/2007	287	16/06/2008	Checking & Signing
16-2007-785-1	Musumeci	Dual Occupancy (One existing dwelling) & Two (2) Lot Subdivision - TT	3 Armidale AVE NELSON BAY	6/09/2007	293	15/10/2007	Further Information Required
16-2007-650-1	Munro	Land Fill	363 Gan Gan RD BOAT HARBOUR	24/07/2007	337		
16-2007-562-1	Tattersall Surveyors Pty Ltd M J Mcdougall & Associates	Two (2) Lot Subdivision - Rural - TT	13 Kula RD MEDOWIE	28/06/2007	363		

# ORDINARY MEETING MINUTES – 22 JULY 2008

AUTHORITY



## Undetermined Development Applications (less than 365 days) as at 25-Jun-2008

Appln No		Proposal	Property Address	Date Lodged	Days in Council	Current Status
16-2007-565-1	Poulakas Poulakas	Urban Housing x Three (3) Dwellings - (4) Storey - Demolish existing	25 Weatherly CL NELSON BAY	28/06/2007	363 4/06/2008	Checking & Signing
16-2007-566-1	Zavone	Dual Occupancy & Two (2) Lot Subdivision - TT(Demolish Existing Bldg)	25 Grafton ST NELSON BAY	28/06/2007	363 6/12/2007	Referral - Building
16-2007-567-1	Bakker	Child Care Centre and Demolish Existing Dwelling	83 Tomaree RD SHOAL BAY	28/06/2007	363 22/05/2008	Referral - Engineer
Total Applications		219				

## ATTACHMENT 2

AUTHORITY



## Determined Development Applications for the Month of June 2008

Appln No	Applicant	Proposal	Property Address	Date Lodged	Days in Council
16-2008-444-1	Brown	Farm Building	12 Iona LN WOODVILLE	5/06/2008	20
16-2007-144-2	G R Ball & Associates Pty Ltd	Two Storey Dwelling & Demolish Existing Dwelling	63 Kingsley DR BOAT HARBOUR	5/06/2008	20
16-2008-441-1	Bayside Patios	Patio Cover	5 Garden WAY TANILBA BAY	4/06/2008	21
16-2008-438-1	Mathews	Patio Cover	40 Rosebank DR WALLALONG	4/06/2008	21
16-2008-436-1	Suejenal Pty Limited	Change of Use - Air Conditioning & Refrigeration	6/23 Shearwater DR TAYLORS BEACH	3/06/2008	22
16-2008-432-1	Bailey	Storage Shed	95 Butterwick RD WOODVILLE	3/06/2008	22
16-2008-429-1	Ehrenberg	Awning	2A Rosebank DR WALLALONG	2/06/2008	23
16-2008-205-2	Spanline Home Additions Newcastle	Glassed Enclosure - S.96 Amendment	13 Loch Goyle DR WOODVILLE	2/06/2008	23
16-2008-431-1	Smith	Garage	31 Vera AVE LEMON TREE PASSAGE	2/06/2008	23
16-2008-426-1	Spanline Port Stephens	Patio Cover	5 Auberge CL RAYMOND TERRACE	28/05/2008	28
16-2008-414-1	M J Mcdougall & Associates	Two (2) Lot Subdivision - Residential - TT	62 Wallawa RD CORLETTE	26/05/2008	30
16-2008-411-1	Schuman	Farm Building	458 Swan Bay RD SWAN BAY	26/05/2008	30
16-2008-410-1	David Reid Homes Hunter Valley	Single Storey Dwelling & Swimming Pool	7 Wingen ST FERN BAY	26/05/2008	30
16-2008-405-1	Tri-Steel Industries Pty Ltd	Storage Shed	9 Timbertop RD GLEN OAK	23/05/2008	33
16-2008-406-1	Klippel	Single Storey Dwelling	46 Ralstons RD NELSONS PLAINS	23/05/2008	33

# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Determined Development Applications for the Month of June 2008

Appln No	Applicant	Proposal	Property Address	Date Lodged	Days in Council
16-2008-404-1	O'Lone	Single Storey Dwelling	30 Britannia DR TANILBA BAY	23/05/2008	33
16-2008-407-1	Likisha Pty Ltd	Single Storey Dwelling & Change of use(existing dwelling to be store)	44 Ralstons RD NELSONS PLAINS	23/05/2008	33
16-2008-402-1	Milner	Patio Cover	14 Adastra CL RAYMOND TERRACE	22/05/2008	34
16-2008-398-1	Stopoff Nominees Pty Limited	Two Storey Dwelling (Demolish Existing)	114 Sandy Point RD CORLETTE	22/05/2008	34
16-2008-403-1	Casey	Garage	97 Salamander WAY SALAMANDER BAY	22/05/2008	34
16-2008-394-1	Halliwell	Machinery Shed	14 Gerill CL WALLALONG	21/05/2008	35
16-2008-392-1	Richardson	Garage	22 Pershing PL TANILBA BAY	21/05/2008	35
16-2008-396-1	Tri-Steel Industries Pty Ltd	Garage	5 Stanley ST LEMON TREE PASSAGE	21/05/2008	35
16-2008-387-1	Horan & Smith Builders	Additions to Dwelling	4 Cole CL MEDOWIE	20/05/2008	36
16-2008-386-1	Ryner	Swimming Pool	5 Fisher RD MEDOWIE	19/05/2008	37
16-2008-384-1	Clarke	Bed & Breakfast Establishment	2 Jarvie CL SEAHAM	19/05/2008	37
16-2008-383-1	Mambare Pty Limited	Single Storey Dwelling (Variation to Building Line)	1 Ability AVE TANILBA BAY	19/05/2008	37
16-2008-381-1	Port Stephens Council	Community Event (Blue Water Country Music Festival)	William ST RAYMOND TERRACE	16/05/2008	40
16-2007-346-3	Contour Building & Construction Pty Ltd	Single Storey Dwelling	9 Paperbark CRT FERN BAY	16/05/2008	40
16-2008-374-1	Wright	Addition to Dwelling & Carport	56 Pacific AVE ANNA BAY	15/05/2008	41
16-2008-373-1	Munro	Shop Fitout & Change of Use (Podiatry Clinic)	8/3 Town Centre CCT SALAMANDER BAY	15/05/2008	41

# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Determined Development Applications for the Month of June 2008

AppIn No	Applicant	Proposal	Property Address	Date Lodged	Days in Council
16-2008-367-1	White	Farm Building	96 Butterwick RD WOODVILLE	14/05/2008	42
16-2008-366-1	Marshall	Addition to Dwelling & Garage	111 Salamander WAY SALAMANDER BAY	14/05/2008	42
16-2008-365-1	Kershaw	Storage Shed	41 Sassin CR MEDOWIE	14/05/2008	42
16-2008-360-1	Code	Garage	4 Myanga ST RAYMOND TERRACE	13/05/2008	43
16-2008-364-1	Cox	Garage	780 Medowie RD MEDOWIE	13/05/2008	43
16-2008-358-1	Wincrest Homes Pty Ltd	Two Storey Dwelling	1 Ability AVE TANILBA BAY	12/05/2008	44
16-2008-355-1	Spanline Port Stephens	Screened Enclosure to Existing Dwelling - Urban Housing x 3 Dwellings	1/12 Fathom PL CORLETTE	9/05/2008	47
16-2008-354-1	Cox	Garage & Stables	48 Lisadell RD MEDOWIE	9/05/2008	47
16-2008-347-1	Sps Consultants Pty Limited	Advertising Signs	1A Sky CL TAYLORS BEACH	8/05/2008	48
16-2008-342-1	Gwh Construction (Nsw) Pty Ltd	Shop Fitting and Signage (Hair and Beauty Salon)	32 Beatty BVD TANILBA BAY	7/05/2008	49
16-2008-340-1	Elliott	Single Storey Dwelling	16 Paperbark CRT FERN BAY	7/05/2008	49
16-2008-339-1	Flynn	Single Storey Dwelling	8 Regal PL SEAHAM	7/05/2008	49
16-2008-343-1	Gwh Construction (Nsw) Pty Ltd	Advertising Sign	1043 Lemon Tree Passage RD TANILBA BAY	7/05/2008	49
16-2008-330-1	Murray	Two Storey Dwelling	23 Paperbark CRT FERN BAY	5/05/2008	51
16-2008-329-1	Delaney	Addition to Dwelling (Family Room & Pool Room)	21 Hideaway DR SALT ASH	5/05/2008	51

# ORDINARY MEETING MINUTES – 22 JULY 2008

AUTHORITY



## Determined Development Applications for the Month of June 2008

Appln No	Applicant	Proposal	Property Address	Date Lodged	Days in Council
16-2008-324-1	Bailey	Patio Cover	139 Oyster Cove RD OYSTER COVE	2/05/2008	54
16-2008-322-1	Tang	Screened Enclosure	6 James Scott CR LEMON TREE PASSAGE	1/05/2008	55
16-2008-320-1	Holloway	Single Storey Dwelling	14 Matilda AVE TANILBA BAY	30/04/2008	56
16-2008-318-1	Mackay	Single Storey Dwelling	41 Paperbark CRT FERN BAY	30/04/2008	56
16-2008-317-1	Friend	Garage	44 Waratah AVE SALAMANDER BAY	30/04/2008	56
16-2008-321-1	Steve Saunders Creative Building	Single Storey Dwelling and Swimming Pool	6 Shelby CL ANNA BAY	30/04/2008	56
16-2008-311-1	Sinclair	Swimming Pool	159 Sunningdale CCT MEDOWIE	29/04/2008	57
16-2008-315-1	Davies	Garage & Awning	5 Northumberland AVE LEMON TREE PASSAGE	29/04/2008	57
16-2008-314-1	Lietz	Garage with Awning	46 Boyd BVD MEDOWIE	29/04/2008	57
16-2008-308-1	Bennett	Addition to Dwelling	18A Cromarty RD SOLDIERS POINT	28/04/2008	58
16-2008-304-1	Eagle Boys Pizza	Change of use to Restaurant, Internal Fitout & Sign	32 Beatty BVD TANILBA BAY	28/04/2008	58
16-2008-299-1	Kelly	Patio Cover	1/4 Helm CL SALAMANDER BAY	24/04/2008	62
16-2008-301-1	Serret	Swimming Pool	11 Boots CL RAYMOND TERRACE	24/04/2008	62
16-2008-295-1	Freedom Homes	Single Storey Dwelling and Shed	64 Sassin CR MEDOWIE	23/04/2008	63
16-2008-294-1	Newton	Bed & Breakfast Establishment	112 Port Stephens ST RAYMOND TERRACE	23/04/2008	63

# ORDINARY MEETING MINUTES – 22 JULY 2008

AUTHORITY



## Determined Development Applications for the Month of June 2008

Appln No	Applicant	Proposal	Property Address	Date Lodged	Days in Council
16-2008-288-1	Davies	Second Storey Addition to Dwelling	6 Hartford ST MALLABULA	21/04/2008	65
16-2008-283-1	Shein	Verandah	0/97 Galoola DR NELSON BAY	17/04/2008	69
16-2008-280-1	Moylan	Fence (Variation to Building Line)	2 Riverview PL RAYMOND TERRACE	16/04/2008	70
16-2008-277-1	Bayside Patios	Screened Enclosure	4 Kingsley DR BOAT HARBOUR	15/04/2008	71
16-2008-271-1	Lindsay	Single Storey Dwelling	35 Broughton CCT TANILBA BAY	14/04/2008	72
16-2008-265-1	Mcgee	Carport	12 Still ST SEAHAM	11/04/2008	75
16-2008-262-1	Walker Douglas Nominees Pty Limited	Place of Public Entertainment	14A William ST RAYMOND TERRACE	10/04/2008	76
16-2008-264-1	School Salt Ash Public School	Educational Establishment (Covered Walkway & Security Fencing)	2 Hideaway DR SALT ASH	10/04/2008	76
16-2008-255-1	Jennings	Two Storey Dwelling & Swimming Pool (Demolish Existing)	173A Soldiers Point RD SALAMANDER BAY	9/04/2008	77
16-2008-237-1	Murphy	Addition to Dwelling and Swimming Pool	6 Ocean AVE ANNA BAY	7/04/2008	79
16-2008-231-1	Grugeon	Two Storey Dwelling (demolish existing)	70B Sandy Point RD CORLETTE	3/04/2008	83
16-2008-228-1	Cooper	Awning to Existing Deck & Cabana	17 Morna Point RD ANNA BAY	2/04/2008	84
16-2008-222-1	Cameron	Fitout of Existing Warehouse (Lot 1)	1/15 Shearwater DR TAYLORS BEACH	1/04/2008	85
16-2008-211-1	Greg Paton Master Builder	Roof over existing Deck	40 Rocky Point RD FINGAL BAY	27/03/2008	90
16-2008-203-1	Ray	Deck	10 Ocean PDE BOAT HARBOUR	26/03/2008	91

:



# ORDINARY MEETING MINUTES – 22 JULY 2008

## AUTHORITY



## Determined Development Applications for the Month of June 2008

AppIn No	Applicant	Proposal	Property Address	Date Lodged	Days in Council
16-2008-144-1	Giudes	Addition to Dwelling & Garage (Variation to Building Line)	55B Kent GDNS SOLDIERS POINT	28/02/2008	118
16-2008-132-1	Terrace Tenants & Associates	Storage Shed	12 King ST RAYMOND TERRACE	25/02/2008	121
16-2008-131-1	Beaumont Consultant & Unique Home Design	Addition to dwelling (Roof over deck, Pavillion, Landscaping)	47 John PDE LEMON TREE PASSAGE	22/02/2008	124
16-2008-96-1	M J McDougall & Associates	Dual Occupancy - Detached & 2 Lot Subdivision- TT	49 Tallean RD NELSON BAY	12/02/2008	134
16-2006-439-2	Jomal Developments Pty Limited	S.96 Amendment - Internal Changes	1A Ocean PDE BOAT HARBOUR	16/01/2008	161
16-2008-23-1	Smith	Awning	2 Kangaroo ST RAYMOND TERRACE	15/01/2008	162
16-2007-1118-1	Lindsay	Two Lot Subdivision (TT) & Two Dual Occupancies	8 Walker CR RAYMOND TERRACE	14/12/2007	194
16-2007-1088-1	Atb Morton Pty Limited	Industrial Development & Ancillary Office	13 Motto LN HEATHERBRAE	6/12/2007	202
16-2007-1073-1	Thomas	Storage Shed	3 Highland CL MEDOWIE	3/12/2007	205
16-2007-1066-1	Genner	Alterations to Dwelling	0/7 Vista AVE SOLDIERS POINT	30/11/2007	208
16-2007-1012-1	Fagan Mather Duggan Pty Ltd	Boundary Re-alignment	67 Gan Gan RD ANNA BAY	13/11/2007	225
16-2007-950-1	Padmos Padmos	Industrial Development	6 Hank ST HEATHERBRAE	24/10/2007	245
16-2007-530-1	Alchin	Garage	625 Marsh RD BOBS FARM	20/06/2007	371
16-2006-1259-1	Paul Le Mottee Project Management	Commercial Premises - Additions to Existing Shopping Centre	5 Peppertree RD MEDOWIE	14/11/2006	589
16-2005-1396-1	Detail Design & Development Pty Ltd	Service Station & Convenience Store (demolish existing)	2885 Nelson Bay RD SALT ASH	21/11/2005	947

# STRATEGIC COMMITTEE RECOMMENDATIONS

**NOTE: THIS ITEM WAS BROUGHT FORWARD AND DEALT WITH PRIOR TO ITEM 3 OF THE OPERATIONS COMMITTEE RECOMMENDATIONS**

**ITEM NO. 1**

**FILE NO: PSC2008-3522**

**REVIEW OF PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000**

**REPORT OF: DAVID BROYD - GROUP MANAGER SUSTAINABLE PLANNING**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Prepare a draft Local Environmental Plan pursuant to Section 54 of the Environmental Planning and Assessment Act 1979 which includes the following changes:
  - Minor editing and clarification of clauses
  - Prohibition of dual occupancy development in the Rural 1(a) zone only
  - Deletion of the 5(g) Special Urban (Flood Affected) zone and replacement with existing Port Stephens Local Environmental Plan 2000 zones for residential, industrial and commercial
  - Modification to level of heritage significance for existing cemeteries
  - Inclusion of existing potential archaeological items in the local significance schedule
  - Identification of the Heritage Conservation Areas on the zone maps
  - Modification to the definitions of clearing, earthworks and utility undertakings.
  - Rezoning of 7 Bourke Street to unzoned road

and refer to the Minister requesting delegation for a Section 65 Certificate.

- 2) On receipt of the Authorisation to Exercise Delegation from the Minister, place the draft LEP and supporting documentation on exhibition for a period of 28 days in accordance with Section 66 of the Environmental Planning and Assessment Act 1979.

**STRATEGIC COMMITTEE MEETING – 01 JULY 2008**

**RECOMMENDATION:**

**That this matter be deferred for a briefing.**

**ORDINARY MEETING OF COUNCIL – 22 July 2008**

**RESOLUTION:**

<b>184</b>	<b>Councillor Swan Councillor Dingle</b>	<b>It was resolved that;</b> <b>1) Prepare a draft Local Environmental Plan pursuant to Section 54 of the Environmental Planning and Assessment Act 1979 which includes the following changes:</b> <ul style="list-style-type: none"><li>• Minor editing and clarification of clauses</li><li>• Deletion of the 5(g) Special Urban (Flood Affected) zone and replacement with existing</li></ul>
------------	----------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>Port Stephens Local Environmental Plan 2000 zones for residential, industrial and commercial in accordance with the revised plan of Raymond Terrace rezoning tabled at this meeting.</p> <ul style="list-style-type: none"> <li>• Modification to level of heritage significance for existing cemeteries</li> <li>• Inclusion of existing potential archaeological items in the local significance schedule</li> <li>• Identification of the Heritage Conservation Areas on the zone maps</li> <li>• Modification to the definitions of clearing, earthworks and utility undertakings.</li> <li>• Rezoning of 7 Bourke Street to unzoned road and refer to the Minister requesting delegation for a Section 65 Certificate.</li> </ul> <p>2) On receipt of the Authorisation to Exercise Delegation from the Minister, place the draft LEP and supporting documentation on exhibition for a period of two months in accordance with Section 66 of the Environmental Planning and Assessment Act 1979.</p> <p>3) Defer the matter of Dual Occupancy Development in the Rural 1(a) Zone;</p> <p>4) Adopt the Policy that Dual Occupancy Development remain as permissible with the consent of Council in the Rural 1(a) Zone;</p> <p>5) Request that a Press Release be issued through the Mayor's office tomorrow to advise that the current provisions on Dual Occupancy Development in Rural 1(a) will remain;</p>
--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

The purpose of this report is to recommend Council resolve to prepare and place on exhibition an amendment to the Port Stephens Local Environmental Plan (LEP) 2000. The Amendment is the result of a general review where recommended changes are mainly to clarify clauses or definitions and clarify the desired land uses in the 5(g) Special Urban (Flood Affected) Zone. This Amendment is in accordance with the requirements of Planning Circular PS 06-015 which directs Council to group amendments in one amending LEP annually rather than several individual amendments which has been the practice. It should be noted that the Department of Planning (DoP) have advised Council in writing of their concern with the 'large number of individual LEP amendments currently being received'. The DoP have made it clear that they will no longer be tolerating this approach. To address this matter, officers are grouping rezoning requests where practicable, and will be continuing discussions with the DoP to determine the management of all current requests and the preparation of the new Principal LEP. The State Government has directed that Port Stephens Council will need to prepare the Principal LEP by 2011.

## **BACKGROUND**

Previously Council has requested that LEP 2000 be reviewed to ensure the document is current and reflects the changing demands on land use provisions. As part of the initial discussion on LEP 2000, workshops with staff and Councillors identified matters which needed to be addressed either as part of a Stage One of the LEP 2000 or the Principal LEP. All of the matters raised as issues to be addressed will be managed as follows:

Commercial zone – LEP 2000 has only one commercial zone which does not demonstrate clear roles for each commercial centre. Also the Lower Hunter Regional Strategy (LHRS) establishes a regional hierarchy of centres which is required to be reflected in the Principal LEP. To be consistent with the LHRS and establish a local government area (LGA) hierarchy to compliment the LHRS, additional research and analysis will need to be undertaken. This work has commenced and is currently scheduled for completion in early 2009 in readiness for the drafting of the Principal LEP.

Rural zones – LEP 2000 has six rural zones – 1(a) Rural Agriculture and 1(c1) to 1(c5) Rural Small Holdings zones. Several matters were raised regarding the management of these zones. These ranged from reviewing the permissible uses in the zone tables such as depots, to the inclusion of provisions to more clearly support the interpretation and intent of the zones. In addition to this the DoP have released a State Environmental Planning Policy (Rural Lands) 2008 which identifies a set of principles for the management of rural land. These principles generally identify the need for appropriate protection of rural lands. This has implications for specific land uses in the current LEP 2000 and the Principal LEP. The LHRS also identifies the importance of the rural land and directs councils to ensure the land is not fragmented or compromised by inappropriate land uses. This was a matter previously raised in the Councillor Workshop which will be partly addressed by this amending LEP in regard to residential uses and in the Rural Lands Study which is to be completed by early 2009. This Study will provide direction for the preparation of the Principal LEP.

5(g) Special Urban (Flood Affected) zone – this matter has been reviewed as part of this amending LEP and addressed under *Key Proposed Amendments* in this Report.

Residential zones – the matter raised previously related to the interface between the low density residential zone which generally has a maximum height of 8 metres and the 2(c) zone which has a maximum height of 15 metres. It was considered that a transitional zone should be investigated. It is agreed that improvements to the interface of the zones are required, however, this would require a significant change to the current structure of LEP 2000, and would be more appropriately introduced in the Principal LEP.

Review of definitions – there was some concern that LEP 2000 had definitions which required either clarification or minor editing to facilitate interpretation. There is a dictionary in the new Standard Template LEP prepared by the DoP and these definitions will be required to be included in the Principal LEP. As a result the DoP generally does not support the introduction of new definitions into existing LEP's unless they are from the Template. Some changes are proposed to definitions and have been addressed in *Key Proposed Amendments* in this Report. A matter of concern raised by Councillors previously was the definition of tourist boats and their management. This matter is complex and requires detailed investigation and involves discussions with other government bodies. This work has already commenced and will be reported to Council at a later date.

### **Key Proposed Amendments**

For ease of reference, Attachment 1 lists details of each clause or property affected by this amendment, the proposed amendment and the reasoning for the amendment. The following is a more detailed analysis of the key proposed changes:

#### **Dual Occupancy Development in the 1(a) Rural Agriculture Zone**

In recent years, the Department of Planning have emphasised the need to provide suitable provisions for housing choice, however, the concern has also been raised regarding the fragmentation or compromise of the intent of the Rural Agriculture zone. As mentioned previously SEPP Rural Land 2008 also provides councils with direction on the need to manage rural land appropriately. Council has also previously resolved to resource the preparation of a Rural Lands Study which should be completed early next year. With regard to housing choice, the current LEP 2000 provides appropriate controls to encourage housing choice/variety across the LGA, however, this is heavily influenced by market demand. The LHRS provides direction to Council for the need to protect the rural lands and control density of residential development particularly in the manner of low density housing such as rural residential development. This Council has already provided sufficient zoned or identified land to deliver this choice, however, the current LEP document does not adequately protect rural agricultural land. This amendment proposes to provide greater protection for rural agricultural land by the prohibition of dual occupancy housing.

#### **Definition of the 5(g) Special Urban (Flood Affected) Zone**

This zone currently provides for a mix of commercial, light industrial and residential uses. The area is located generally adjacent to the Hunter River in Raymond Terrace. Under the new Principal LEP, Councils are required to consider zones with more clarity and reflect the predominate uses of an area. Development Control Plan 2007 has already defined the three land use types of residential, commercial and industrial preferred for the area having regard to existing activity. This Amendment proposes to reflect the main land uses and place them into a relevant LEP 2000 zone. The proposed zones are identified in Attachment 2. Although the zone is changing, it does not reduce the significance of the flood impacts which will still impact on the development potential of individual sites. Significant limitations will still apply to the area to manage potential flooding impacts and development proposals mainly based on Clause 37 of LEP2000.

#### **Heritage**

Council's Heritage Committee has been reviewing the current schedule of heritage items and their associated level of significance. The Committee have recommended that all cemeteries should be more suitably identified with a local level of significance rather than state as they do not meet the Heritage Office's requirements for State significance. These items are Birubi Point Cemetery, Hinton Anglican, Hinton Pioneer Cemetery, Karuah Cemetery, Nelson Bay Cemetery, Raymond Terrace Cemetery, Pioneer Hill Cemetery, and Seaham Cemetery.

Also recommended to be included as a local item is the ornamental planting of *Phoenix canariensis* (Canary Island Date Palms) which is currently listed as State significant. The Committee has also recommended a more suitable level of protection for potential archaeological sites of the Eagleton Shipyard, Burrowel Homestead, off Dixon Street, Porphyry Point site, and Pomfrett's Cottage (slab cottage), which are proposed to be listed as items of local significance. There are no new proposed items as part of this Amendment.

#### Heritage Conservation Areas

There are three existing heritage conservation areas identified on the map of Port Stephens Heritage Conservation Area. These are Hinton, Tipperary Hill and Raymond Terrace. The areas are identified on a separate map from the zone maps and to improve interpretation the Heritage Conservation Areas will now appear on the zone maps. There is no change to the existing boundaries of the three existing Areas

#### Definitions

Minor changes are proposed to the definitions. The primary reason to change any definition is to clarify the intent. Where possible, the definitions utilise those listed in Standard Template LEP. The proposed changes are:

**Clearing** – the existing definition is overly complicated and difficult to interpret. Also it is defined differently in other legislation. To eliminate confusion and improve consistency between the legislation, it is recommended to be replaced by the Standard Template LEP definition.

*Clearing native vegetation has the same meaning as in the Native Vegetation Act 2003.*

**Earthworks** – this definition lacks supporting detail to allow a clear understanding of what does and does not require consent. To improve clarity, the definition has been expanded and incorporates wording from the Standard Template LEP.

*Earthworks means the addition to or removal of any solid material on any land or any other work which will alter the existing ground level or character of the surface of that land, including land filling, drainage works and excavation of open drains, but does not include*

- (a) the depositing of topsoil or feature rock imported to the site that is intended for use in garden landscaping, turf or garden bed establishment or top dressing of lawns and that does not significantly alter the shape, natural form or drainage of the land, or*
- (b) the use of land as a waste disposal facility, or*
- (c) maintenance of an approved property access.*

**Utility undertakings** - Activities such as wind farms are prohibited in the current LEP due to the wording of this definition. This definition is proposed to be replaced by the definition in the Standard Template LEP.

*public utility undertaking means any of the following undertakings carried on or permitted to be carried on by or by authority of any Government Department or under the authority of or in pursuance of any Commonwealth or State Act:*

- (a)..... railway, road transport, water transport, air transport, wharf or river undertakings,*
- (b) undertakings for the supply of water, hydraulic power, electricity or gas or the provision of sewerage or drainage services,*

*and a reference to a person carrying on a public utility undertaking includes a reference to a council, electricity supply authority, Government Department, corporation, firm or authority carrying on the undertaking.*

### Rezoning

In order to comply with the requirements of the DoP, the following rezoning proposals, already resolved upon by Council for initiation, will be included.

- 7 Bourke Street Raymond Terrace - Amend the zone from 6(a) General Recreation 'A' to unzoned road. This is a minor parcel of land which should be identified as road. This is not community land and would not require reclassification under the Local Government Act. (identified on Attachment 2)
- Existing Council resolution - 27 May 2008 – Council resolution to support rezoning to facilitate additional commercial land in the Medowie Town Centre - Lot 7 DP 19101, Lot 8 DP 19101, Lot 9 DP 19101 and Lot 10 DP 19101 and Lot 11 DP 19101 to 3(a) Business General. No additional resolution required, it is simply here as part of the grouping of amendments as required by the DoP.
- Existing Council resolution - 24 July 2007 Amend split zone where practicable at Taylors Beach Industrial Estate. No additional resolution required, it is simply here as part of the grouping of amendments as required by the DoP.
- Amend zone from 1(c1) to part commercial and part residential - Lot 1 DP 788451, Lot 2 DP 788451 and Lot 3 DP 788451 Corner of Ferodale Road and Abundance Road Medowie. This rezoning proposal is consistent with the exhibited Medowie Strategy. The site is identified on the map at Attachment 3.

### **LINKS TO CORPORATE PLANS**

The links to the 2007-2011 Council Plan are:-

**SOCIAL SUSTAINABILITY –** *Council will preserve and strengthen the fabric of the community, building on community strengths.*

**CULTURAL SUSTAINABILITY –** *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*

**ECONOMIC SUSTAINABILITY –** *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*

**ENVIRONMENTAL SUSTAINABILITY –** *Council will protect and enhance the environment while considering the social and economic ramifications of decisions.*

### **FINANCIAL/RESOURCE IMPLICATIONS**

The financial impacts associated with this review and the resultant amendments have been funded from the existing operational budget and using current staff resources. No additional funds are being sort to complete this work.

### **LEGAL AND POLICY IMPLICATIONS**

Adoption of the recommendations of this report will formally commence the process of amending LEP 2000, in order to improve its operation. The EP&A Act requires Council to resolve to prepare the draft amending LEP and to place it on public exhibition for a minimum of 28 days for public comment.

#### **Business Excellence Framework**

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.



These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what makes markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a cultural of continual improvement, innovation and learning.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

## **SUSTAINABILITY IMPLICATIONS**

To support a sustainable Port Stephens, in accordance with Council's Sustainability Policy, LEP 2000 needs to maintain its accuracy and currency to respond to changes in trends, demands and government policy for land use. The review and proposed amendments to LEP 2000 provides Council with the opportunity to make amendments or clarifications of clauses/definitions which assist in the interpretation and operation of the document for both the community and Council officers. By amending the LEP, Council continues to emphasise its commitment to streamline the development assessment process.

## **CONSULTATION**

Internal consultation was undertaken within the Sustainable Planning Group, who are the primary users of the document and are the officers who also have the most contact with the community for interpretation and operation of the document. Previous council reports and details of issues raised in Councillor Workshops have also been used to provide direction for this review. External consultation will occur in accordance with the provisions of the EP&A Act.

## **OPTIONS**

- 1) Council resolve to support the recommendations of this Report to refer the draft Amendment to the Minister seeking Authorisation to Exercise Delegation and proceed to exhibition. This is the recommended option.
- 2) Modify the draft Amendment deleting and/or adding changes.
- 3) Not support the recommendation. This is not the preferred option and will not assist the improvement in the operation of the document or support the improvements to the development assessment process.

## **ATTACHMENTS**

- 1) Summary of Proposed LEP Amendments
- 2) Map – former 5(g) Special Urban (Flood Affected) Zone changes
- 3) Map - Lot 1 DP 788451, Lot 2 DP 788451 and Lot 3 DP 788451 Corner of Ferodale Road and Abundance Road Medowie.

## **COUNCILLORS ROOM**

Nil

## **TABLED DOCUMENTS**

Nil

**ATTACHMENT 1**  
**Summary of Proposed LEP Amendments**

	Clause/Provision	Proposed Amendment	Reason
<b>PART 2</b>			
1	Clause (11) (5)	Omit "Hunter Valley Flood Mitigation Act 1956" Insert "Water Management Act 2000"	The Water Management Act 2000 is now the relevant Act to reference.
2	Clause (11) (5)	Insert "dual occupancy housing"	This will prohibit dual occupancy development in the 1(a) Rural Agriculture zone. This is in response to the direction set in the Lower Hunter Regional Strategy (LHRS) which states the importance of protecting the rural lands and requires Councils to have in place appropriate planning controls. The LHRS requires Council to balance the need for housing choice while ensuring that rural lands are not compromised by unplanned rural residential development. This Council has already provided sufficient zoned or identified land to deliver this choice, however the current LEP does not adequately protect the rural agriculture land due to current provisions allowing dual occupancy development.
3	Clause (12)(1)(a)(ii) Subdivision within Rural zones generally	Omit "in any way" Insert after change "any common"	This minor editing is to clarify that the reference to boundary does in fact mean the common boundary.
4	Clause (12)(1)(b) Subdivision within Rural zones generally	Omit "or without"	This change will help clarify interpretation of the clause which relates to land uses within the LEP and not allow confusion with the different requirements of the Exempt and Complying provisions in Schedule 3 and 4.
5	Clause 14 Dwelling houses and dual occupancy housing in rural zones	Omit clause 14 and replace with new clause 14	This clause is being replaced to remove the reference to the 1(a) Rural Agriculture zone.
6	Clause 14A Hotels and restaurants in	Omit clause 14A and Insert new clause 14A Titled Dwelling-houses, hotels and	This clause needed to be amended to provide details of provisions for a single dwelling in the 1(a) Rural

**ORDINARY MEETING MINUTES – 22 JULY 2008**

	Zone No 1 (a)	restaurants in Zone No 1(a).	Agriculture Zone.
7	Clause 26 Special Use zonings	Omit "Clause 26 Zone No 5(g) – Special Urban (Flood Affected) Zone"	This zone does not provide a clear direction for the land owners and does not reflect the various clusters of uses in each block.
8	Clause 28 Subdivision in the Special Urban (Flood Affected) zone	Omit Clause 28	As the 5(g) zone is recommended to be deleted this clause is no longer relevant.
9	Clause 51A Acid sulphate soils	Replace all reference to "Department" "Department of Infrastructure, Planning and Natural Resources" "NSW Fisheries" with "relevant government department"	As currently written the clause references government departments which no longer exist or have been renamed. This change ensures the LEP remains current regardless of state government restructuring.
	<b>Schedule 2 Heritage Part 1 State Items</b>		
10	State Items	Omit "Birubi Point Cemetery, Hinton Anglican, Hinton Pioneer Cemetery, Karuah Cemetery, Nelson Bay Cemetery, Raymond Terrace Cemetery and Pioneer Hill Cemetery and Seaham Cemetery".	As per the recommendations of the Port Stephens Heritage Advisory Committee which has requested the items have the appropriate level of significance which is local.
	State Item	Omit "Ornamental planting of Phoenix canariensis (Canary Island Date Palms )Port Stephens Street Raymond Terrace	As per the recommendations of the Port Stephens Heritage Advisory Committee which has requested the item have the appropriate level of significance which is local.
	<b>Schedule 2 Heritage Part 2 Local Items</b>		
11	Local items	Insert in appropriate alphabetical order "Birubi Point Cemetery, Hinton Anglican, Hinton Pioneer Cemetery, Karuah Cemetery, Nelson Bay Cemetery, Raymond Terrace Cemetery and Pioneer Hill Cemetery, and Seaham Cemetery and Ornamental planting of Phoenix canariensis (Canary Island Date Palms)"	As per the recommendations of the Port Stephens Heritage Advisory Committee which has requested the items have the appropriate level of significance which is local.
12	Local Items	Insert "Eagleton Shipyard site, Burrowel Homestead,	As per the recommendations of the Port Stephens Heritage Advisory

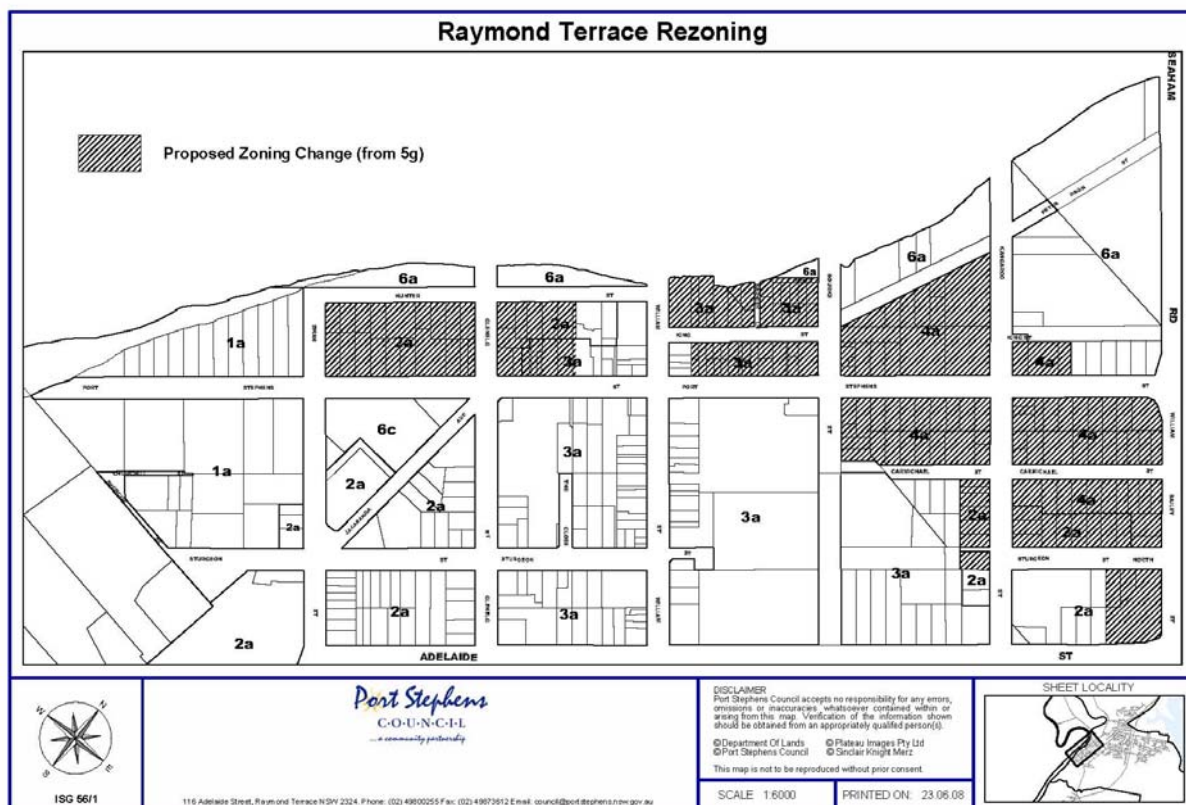
**ORDINARY MEETING MINUTES – 22 JULY 2008**

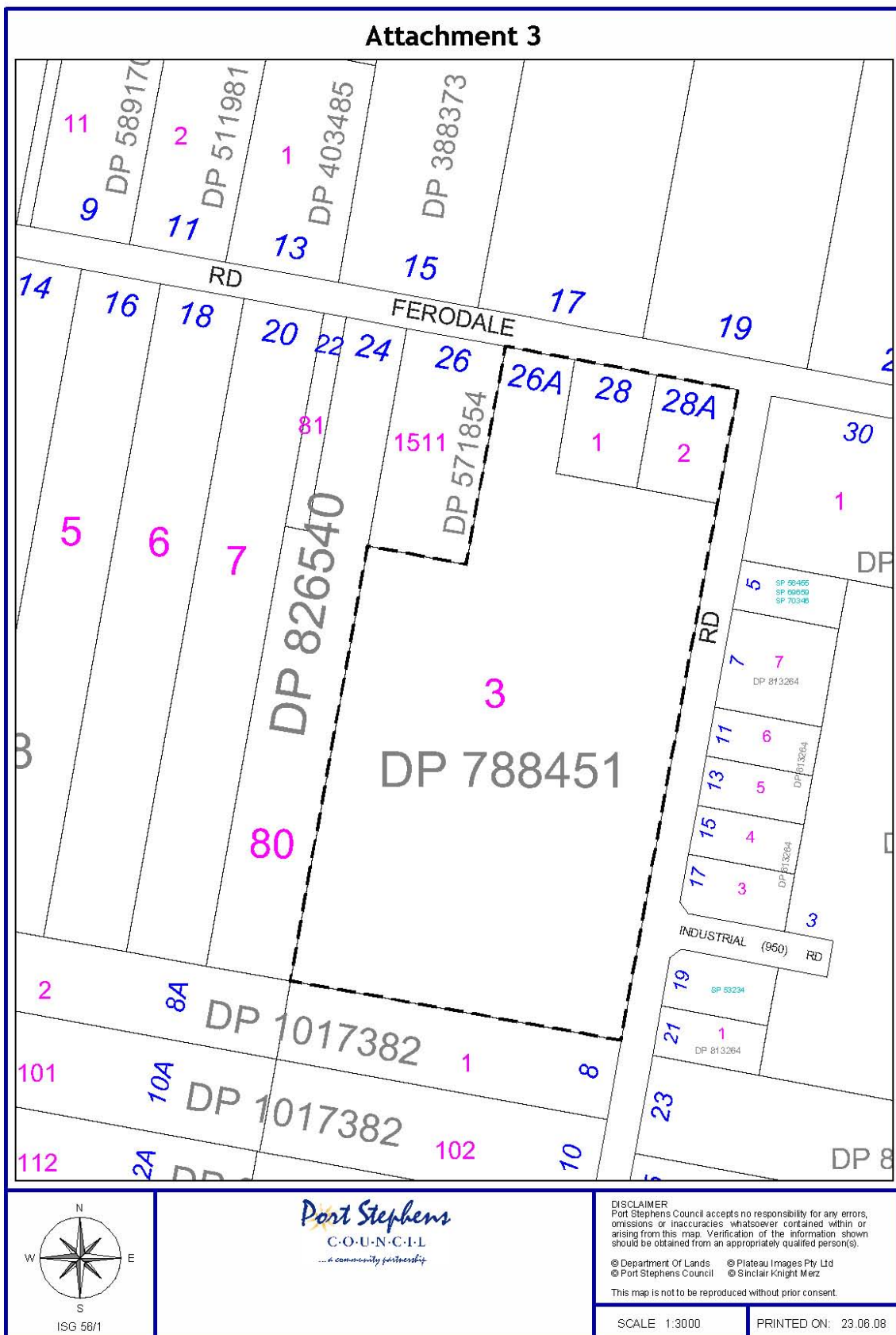
		off Dixon Street, Porphyry Point site Pomfrett's Cottage – slab cottage.	Committee which has requested the items be removed as potential archaeological sites and included as local items.
13	Part 4 Potential archaeological sites	Omit "Part 4 Potential archaeological sites"	The Heritage Committee have reviewed the matter and have recommended the clause be removed and the items to be located under local significance
14	Part 4 Heritage conservation areas	Insert "Part 4 Heritage Conservation Areas Hinton Heritage Conservation Area Raymond Terrace Heritage Conservation Area Tipperary Hill Heritage Conservation Area".	No changes are proposed to the 3 existing conservation areas, this Part is being included to provide the list of areas in the LEP Instrument rather than just on the LEP maps.
<b>Dictionary</b>			
15	Clearing	Amend definition of "clearing" and amend zone tables to reflect change.	The existing definition is overly complicated and difficult to interpret. Also it is defined differently in other legislation. To eliminate confusion and improve consistency between the legislation, it is recommended to be replaced by the Standard Template LEP definition.
16	Earthworks	Amend definition of "earthworks"	The existing definition is unclear with its intent. Additional wording from the Standard Template LEP has been used.
17	Utility undertaking	Amend definition of "utility undertaking"	Activities such as wind farms are prohibited in the current LEP due to the wording of the definition. This definition is proposed to be replaced by the Standard Template definition of <i>public utility undertaking</i> .
<b>Map Amendments</b>			
	<b>Land description</b>	<b>Proposed Amendment</b>	<b>Reason</b>
18	Rezoning	5(g) Special Urban (Flood Affected) zone	This Amendment proposes to reflect the main land uses of the area and place them into a relevant LEP 2000 zone. (refer to attachment 2 for detail)
19	Rezoning	Amend the zone from 6(a) General Recreation 'A' to 3(a) Business General 'A'. 7 Bourke Street Raymond Terrace	This is a minor parcel of land which should be identified as road. This is not community land and would not require reclassification under the Local Government Act.
20	Rezoning	Amend the zone from 2(a)	Existing Council resolution - 27

**ORDINARY MEETING MINUTES – 22 JULY 2008**

		to 3(a) Business General	May 2008 – Council resolution to support rezoning to facilitate additional commercial land in the Medowie Town Centre - Lot 7 DP 19101, Lot 8 DP 19101, Lot 9 DP 19101 and Lot 10 DP 19101 and Lot 11 DP 19101 to 3(a) Business General.
21	Rezoning	Amend split zone where practicable at Taylors Beach Industrial Estate	Existing Council resolution - 24 July 2007 requiring council officers to investigate and prepare an LEP to remove the split zone where practicable.
22	Rezoning	Amend zone from 1(c1) to part commercial and part residential	Lot 1 DP 788451, Lot 2 DP 788451 and Lot 3 DP 788451 corner of Ferodale Road and Abundance Road. Medowie which is consistent with the Strategy.
23	Heritage Conservation Areas	Move details of the Heritage Conservation Areas to the zone maps.	Heritage Conservation Areas are on a separate map to the zoning maps which makes interpretation more complicated. To simplify this heritage conservation areas will appear on the zoning maps. There are no changes proposed to the current boundaries as identified on the Ports Stephens Heritage Conservation Map.

## ATTACHMENT 2





**ITEM NO. 2**

**INFORMATION PAPERS**

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

---

**RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 1 July, 2008.

---

No:	Report Title
-----	--------------

1	Food Partnership
---	------------------

---

**STRATEGIC COMMITTEE MEETING – 01 JULY 2008**

**RECOMMENDATION:**

That the information paper be received and noted.

---

**ORDINARY MEETING OF COUNCIL – 22 July 2008**

<b>RESOLUTION:</b>		
--------------------	--	--

<b>191</b>	<b>Councillor Dover Councillor Nell</b>	<b>It was resolved recommendation be adopted.</b>
------------	---------------------------------------------	---------------------------------------------------



# STRATEGIC COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

**NEW FOOD SURVEILLANCE PROCEDURES AND FEES UNDER THE  
“FOOD REGULATION PARTNERSHIP” WITH NSW FOOD  
AUTHORITY**

---

**REPORT OF: BRUCE PETERSEN – MANAGER, ENVIRONMENTAL SERVICES  
FILE: PSC2005-5504**

**BACKGROUND**

The purpose of this report is to advise Council of administrative changes to the Food Surveillance program which have been brought about by the introduction of the NSW Food Authority's "Food Regulation Partnership" Policy. The implications include changes to Council's fee structure in relation to Food premises and changes in classification of premises to allow for the newly required reporting regime to the NSW Food authority.

The State Government's model for Food Regulation Partnership with Local Government was recently adopted by Parliament after extensive consultation with Councils and the Food industry. Its objectives are –

- To clearly define the respective roles of Councils and the NSW Food Authority.
- To provide a dedicated program to support and assist Councils in food regulation
- To establish arrangements for co-ordination of the NSW food regulatory system (eg protocols, guidelines and reporting arrangements)
- To provide a secure funding base for Council's food regulatory work.

The operational implications for Council under the new protocols are minimal in regard to its food inspection program however the manner of funding Council food inspection programs and the level of reporting now demanded by the NSW Food Authority has changed.

Reporting

Council is now required to provide comprehensive reports to the NSW Food Authority on a six monthly basis. These reports must include such information as the number of inspections carried out on each classification of food premises, the number of complaints and critical responses and details of any enforcement action. The new procedures have also required Council to re-classify food premises to align with the Food Authority's classification system. The changes come into effect on 1<sup>st</sup> July 2008 and Council's internal systems are currently being redesigned to comply with the new reporting procedures. The costs of this are being absorbed by the Food Surveillance program.

Fees

The State Government has acknowledged the costs to Council in conducting a food surveillance program and the additional administrative cost burden created by the new reporting requirements.

Traditionally, Councils Food surveillance program has not operated on a full cost recovery basis. This is because there is an acceptance that high public health standards have far reaching benefits in regard to tourism and community health and food inspection is a core and essential function of Council. The real costs of providing Council's current food surveillance program are in the vicinity of \$221,000 (staff and admin plus overheads). Current income from inspection fees is approx \$113,000.

Council's current inspection fee is \$180 per inspection. To operate at full cost recovery, the inspection fee would need to be in the vicinity of \$431 per inspection (based on the current inspection rate of 512 inspections per year). The current fee is on par with that charged by other Councils in the region but it has long been recognised that a system of levying fees which moves to reduce the level of subsidisation of the program is required.

The Government has provided a new scale of fees as part of the Food regulation Partnership to assist Councils in their ability to move towards full cost recovery of their food programs. The fees adopted in the partnership are provided to Councils as a maximum scale and may be summarised as follows –

- Inspection fees - \$140/hour
- Annual administration charge:-
  - \$250 (small premises)
  - \$500 (medium premises)
  - \$2000 (large premises).

The Government has suggested that Council utilise a combination of Annual administration fees and inspection charges to recover costs of Food programs.

#### Approach for 2008/09

At the time of preparing the 2008/09 budget, the Food Regulation Partnership had not been adopted by the Government, however the proposed reporting regime and fee structure was known in draft form.

The budget was drafted utilising the following principles

- There would be no substantial increase in income from food inspections (based on the belief that current fee levels were at market value).
- The current income level could be achieved through a combination of the new administration charge plus inspection fees.
- The inspection fee would be reduced to accommodate the administration fee.
- Some food premises would pay a small increase in fees and some would pay less due to the new classification system.

After reclassification of all food premises, it was determined that the recommended annual administration fee of \$250 should apply to all class P1 and P2 premises (higher risk premises) and a reduced inspection fee \$80 would apply to all inspections. These fees will realise an income of around \$116,000 which is a small increase from last year.

The major benefit of the new fee structure is that administrative fees will be collected up front at the commencement of the year and assist to fund the additional administrative costs imposed by the Food Regulation Partnership and the program in general with less reliance on inspection fee income. Experience has shown that inspection fees are potentially problematic to collect with many bad debts arising. Whilst inspection fees will still be levied,

## **ORDINARY MEETING MINUTES – 22 JULY 2008**

they will now represent approximately 35% of total fee income (as opposed to 100% currently) and will be collected throughout the year whilst the new Administration fee (65%) will be collected at the beginning of the year through Councils debtors system.

A comparison of fees that food proprietors will pay in 2008/09 compared to the current year is provided in Attachment 1. Councillors will note that some proprietors will experience an increase in fees.

An information letter will be forwarded to all food shop proprietors in June advising of the new Food Regulation Partnership, its implications and the new fee structure.

Councillors are encouraged to contact Environment Services staff should they require further information regarding the Food Regulation Partnership.

### **ATTACHMENTS**

- 1) Fee comparisons for Food premises

## ATTACHMENT 1

## COMPARISON OF FEE STRUCTURES – CURRENT V 2008/09 (FOOD PARTNERSHIP PROGRAM)

Old Classification	Example type	Current fee	New classification	Admin fee 2008/09	Inspection fee 2008/09	Total fee 2008/09	Fee change 2008/09
Class 1a (Low risk)	<ul style="list-style-type: none"> <li>• Service station.</li> <li>• Healthfood shop.</li> <li>• Newsagency.</li> </ul>	\$80	P4 or P3	\$0	\$80	\$80	\$0
Class 1 (medium risk)	<ul style="list-style-type: none"> <li>• Canteen</li> <li>• Caravan park kiosk.</li> <li>• Coffee shop.</li> <li>• Food van.</li> </ul>	\$180	P2	\$250	\$80	\$330	+\$150- \$230
Class 2 (high risk)	<ul style="list-style-type: none"> <li>• Takeaway food shop.</li> <li>• Restaurant.</li> <li>• Bakery.</li> <li>• Large Supermarket.</li> <li>• Juice Bar</li> <li>• Sushi bars</li> </ul>	\$360	P1	\$250	\$160	\$410	+\$50

**Notes:**

1. Inspections carried out under old classification as follows:

- Class 1a - one inspection/year;
- Class 1 - one inspection per year;
- Class 2 - two inspections per year.

2. Inspections required under new classification as follows:

- P4 and P3 –one inspection per year;
- P2 – one or two inspections per year depending on Council classification of risk;
- P1 – two inspections per year.

# GENERAL MANAGER'S REPORT

**PETER GESLING  
GENERAL MANAGER**

**ITEM NO. 1****FILE NO: PSC2008-4027****ORGANISATIONAL STRUCTURE****REPORT OF: PETER GESLING, GENERAL MANAGER****RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt an organisational structure based upon four groups as shown in Attachment 2 in accordance with provisions of Section 333 of the Local Government Act 1993;
- 2) Endorse the proposed group philosophies as outlined in Attachment 3 with their final form to be reported to Council by the future Group Managers.
- 3) Authorise the appointment of two Group Managers to fill the positions of Group Manager Commercial Services and Group Manager Corporate Services as designated 'senior officers' under the provisions of Section 332 of the Local Government Act.

**ORDINARY MEETING OF COUNCIL – 22 July 2008****RESOLUTION:**

<b>192</b>	<b>Councillor Nell Councillor Dingle</b>	<b>It was resolved recommendation be adopted.</b>
------------	----------------------------------------------	---------------------------------------------------

Note: Cr Robinson returned to the meeting at 7.39pm during Item 1

**BACKGROUND**

**The purpose of this report is to recommend an organisational structure to Council.**

Council has been part of the current actions to review the organisational structure.

While this was initiated following the recent Group Manager vacancy there were other issues that Council agreed should be considered.

Attachment 1 is the presentation provided to staff on the week ending 20<sup>th</sup> June, 2008 seeking their input. A consultant, Lynda Burke, provided independent facilitation of consultation with staff including scheduled and one-on-one sessions during the week ending 27 June, 2008. Lynda Burke produced a report to the General Manager on the 4<sup>th</sup> July, 2008. The report concludes that:

- "There is a high level of in-principle agreement around the proposed changes".
- The majority of staff expressed the view that a mainstream Commercial Services Group would be a positive move.
- While "concerns were expressed by several people impacted by impending changes that they had not been consulted and informed" many people expressed appreciation for the process to date.
- "Implementation too quickly could disenfranchise staff who should have more input."
- There is an urgent necessity to appoint an appropriate Manager to deliver the Property Development program.
- There is considerable comment about the detail below the Group Manager level. This detail is an issue for the General Manager and the Staff and will involve testing each activity and function against an agreed philosophy or principle activity.

The Executive Team and Organisational Development Manager conducted an extensive workshop about the report and future Principal Activities on Monday 7<sup>th</sup> July, 2008.

Attachment 2 details the proposed Principal Activities for a four-group structure that provides a clear philosophy for delivering the current Council Plan.

Attachment 3 provides a suggested section structure to meet the proposed philosophy.

## **LINKS TO CORPORATE PLANS**

The links to the 2008-2012 Council Plan are:-

## **FINANCIAL/RESOURCE IMPLICATIONS**

One extra Senior Officer position is proposed in the amended structure to achieve a fourth group. This cost would be offset by attributing this to the relevant business activities of the Commercial Services Group. The number of sections remains at fourteen, as shown in Attachment 3. Other positions may evolve during discussions around the detailed discussions within each group. Where possible, these costs will be absorbed within the existing budget.

## **LEGAL AND POLICY IMPLICATIONS**

Section 332 of the Local Government Act requires that Council determined the principal activities to inform the organisational structure of the Senior Officer appointments that will provide the resources necessary to deliver the Council Plan. A senior officer is one where:

- The total remuneration package for senior staff is to be at least equal to or greater than that of NSW Senior Executive Service (SES) Level 1.
- Senior staff are to be employed under performance based fixed-term contracts not less than 12 months and not exceeding 5 years.
- Minimum conditions of employment are governed by the Annual Holidays Act and the Long Service Leave Act.
- Council is required to publish the total package value of each senior staff's employment contract in the Annual Report.

In the appointment of senior staff positions, the Local Government Act requires that the General Manager consult with Council before finalising details of appointments.

The detailed structure below this is the responsibility of the General Manager. Council's advice and input is important to ensuring that these resources are directed to achieving agreed outcomes.

## **CONSULTATION**

A focused and direct process has targeted all staff seeking their input. Councillors were consulted prior to staff information issues and further consulted as part of that data collection. Further communication is being planned for all staff.

## **OPTIONS**

- 1) Recommendation.
- 2) Council determine to retain the existing structure and recruit accordingly.
- 3) Determine to continue investigation of an alternative group structure to be defined and report to the new Council.

## **ATTACHMENTS**

1. General Manager's Presentation to staff during week 20-24 June, 2008.
2. Proposed Principal Activities
3. Recommended Organisational Structure.



Attachment 1

# Port Stephen Council

## Proposed changes to organisational structure

# Introduction

- Background
- Issues
- Underpinning principles
- Councillors View
- The General Manager's Vision
- The way forward - How you can be involved

## The Issues

- Business & Support Group
- Property Development Section
- Economic Development Unit
- Risk and Knowledge Management
- Business Excellence
- Reporting structure to GM
- Corporate Management

## Underpinning Principles

- Matrix Structure
- Retaining key staff
- Structure follows strategy
- Commercial operations
- Building relationships
- Communication (staff and Councillors)
- Cost benefit
- Strong rationale for each group

## Councillors View

- Input from employees
- Clarify 'corporate services'
- Focus on commercial operations
- A move to 4 Groups
- Current Council is best equipped
- Independent facilitator

## Doing Nothing is not an Option

- Does not address the issues
- Fails to take window of opportunity
- Ignores Council objectives and Plan

## The General Manager's Vision

- The challenge
- Not change for change's sake
- The proposed model
- Meant to stimulate conversations

## The way forward. How can I be involved?

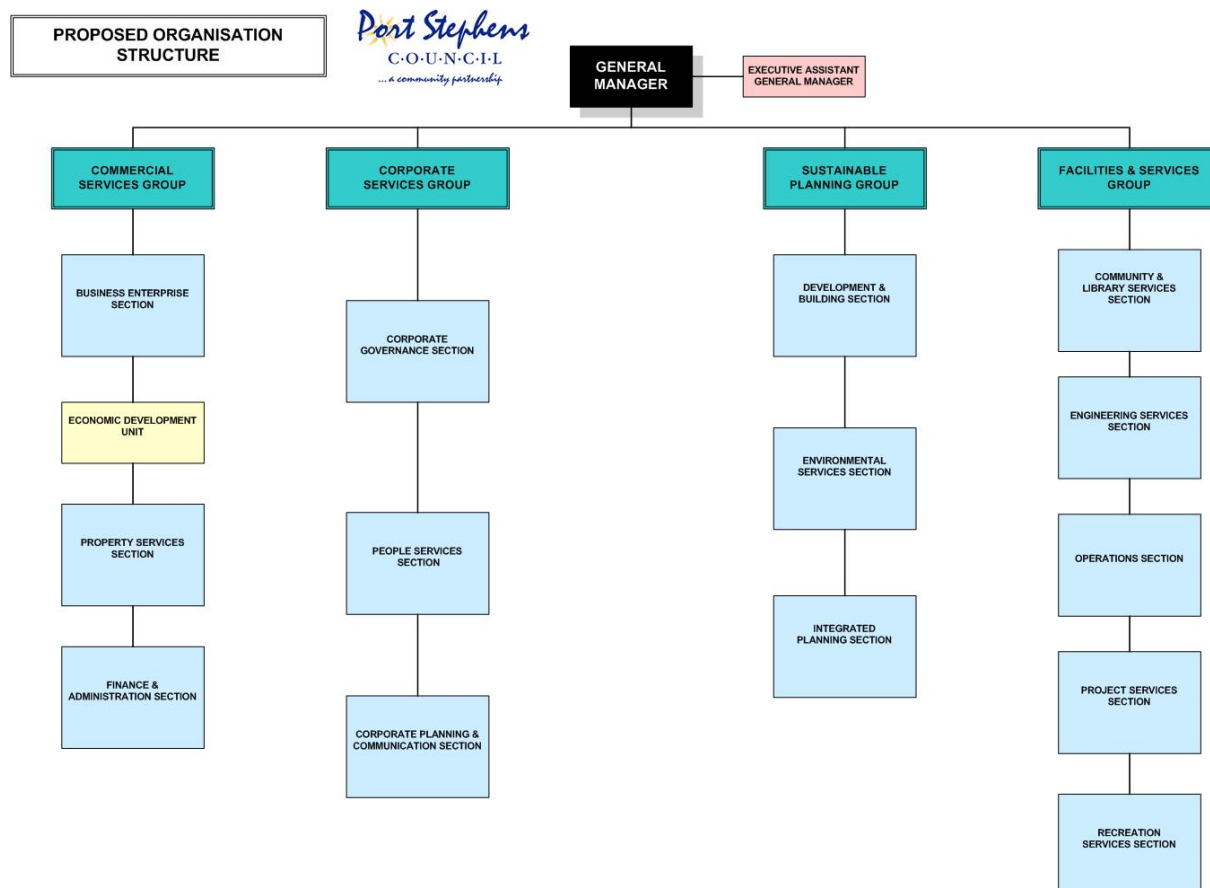
- Structured conversations with consultant
- All staff can attend
- Report to GM by 4 July
- Develop model
- Inform staff
- Report to Council 22 July



Questions?

Attachment 2

Recommended Organisation Structure



## **Attachment 3**

### **Proposed Principal Activities of Council.**

#### **Sustainable Planning**

Planning for the present and future well-being of the community and natural and built environments of Port Stephens and implementing regulatory controls to ensure this is achieved on behalf of Council and the community.

#### **Commercial Services**

Achieving and maintaining a healthy financial position and facilitating a new approach to economic sustainability

#### **Facilities & Services**

The provision, operation and maintenance of infrastructure, facilities and services for the community.

#### **Corporate Services**

To develop our people, encourage innovation, and build key relationships with our councillors, staff and community. We achieve this through effective communication, clear strategy and by ensuring a high level of probity, appropriate governance standards and an appreciation of risk.

**ITEM NO. 2**

## **INFORMATION PAPERS**

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

---

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

Receives and notes the Information Papers listed below being presented to Council on 22 July, 2008.

---

<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	General Manager's Performance Review	24

---

### **ORDINARY MEETING OF COUNCIL – 22 July 2008**

<b>RESOLUTION:</b>		
193	Councillor Westbury Councillor Nell	It was resolved recommendation be adopted.

Note: Cr Francis left the meeting at 7.56pm during Item 2

# GENERAL MANAGERS INFORMATION PAPERS



**INFORMATION ITEM NO. 1**

**GENERAL MANAGER'S PERFORMANCE REVIEW – JULY TO  
DECEMBER 2007**

---

**REPORT OF: PETER GESLING – GENERAL MANAGER**  
**FILE: PERS: P GESLING**

**BACKGROUND**

The purpose of this report is to provide Council with the results of the General Manager's Performance Review for the period of July to December 2007.

**TABLE DOCUMENT**

- 1) General Manager's Performance Review

# NOTICES OF MOTION

# NOTICE OF MOTION

**ITEM NO. 1****FILE NO: A3250-029 PSC 2005-2583****FINGAL BAY LINK ROAD****COUNCILLOR: JOHN NELL**  
-----**THAT COUNCIL:**

- 1) Prepare a report on the upgrade of Dowling Street, Fingal Bay Link Road and the extension of Austral Street to Government Road Shoal Bay.
- 
- 

**ORDINARY MEETING OF COUNCIL – 22 July 2008****RESOLUTION:**

<b>194</b>	<b>Councillor Nell Councillor Robinson</b>	<b>It was resolved the Notice of Motion be adopted.</b>
------------	------------------------------------------------	-------------------------------------------------------------

**BACKGROUND REPORT OF: MIKE TRIGAR – GROUP MANAGER FACILITIES & SERVICES****BACKGROUND**

In the early 1990's a variant of this suggested upgrade was considered as one of ten options from five major routes proposed for the Fingal Bay Link Road (as known as Nelson Bay Bypass Road). However, the preferred route eventually selected and agreed actually travels east from Nelson Bay Road just north of the intersection with Gan Gan Road to the northern end of Government Road at Shoal Bay. This route was subsequently declared a road reserve and Council purchased the land adjoining the national parks from the Department of Lands several years ago. The purchases of relative small parcels of private land at either end of the route are subject to current negotiations.

A concept design has been completed and the cost of construction is currently estimated at \$10 Million. Some contribution from either the state or federal government has been indicated separately from time to time but usually contingent on matching funds. Overall funding for this construction is not identified at this time however our engineering staff continues to pursue appropriate grant funding. In more recent times, this route has also been identified as a potential underground utilities corridor in concert with the road.

As identified in the original studies, the upgrade of Dowling Street and potential extension of Austral Street although cheaper would only partly alleviate the current and future congestion of Nelson Bay and Shoal Bay in peak seasons. The Fingal Link Road as currently proposed still represents the best long term outcome for Nelson Bay, Shoal Bay and Fingal Bay residents, visitors and tourists.

Note: Cr Francis returned to the meeting at 7.59pm during Item 1



## **NOTICE OF MOTION**

**ITEM NO. 2**

**FILE NO: 3150-029**

### **ESTABLISHMENT OF AN OFFICE ON TOMAREE PENINSULA**

**COUNCILLOR: JOHN NELL**

---

**THAT COUNCIL:**

- 1) Prepare a report on the establishment of an office on the Tomaree Peninsula.
- 

#### **ORDINARY MEETING OF COUNCIL – 22 July 2008**

<b>RESOLUTION:</b>		
<b>195</b>	<b>Councillor Nell Councillor Dover</b>	<b>It was resolved that the Notice of Motion be adopted.</b>

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

##### **BACKGROUND**

Goal 16 of the Council Plan 2008-2012 provides for a feasibility study to be conducted with respect to the establishment of an office on the Tomaree Peninsula. The deadline for the feasibility study is February 2009. The establishment of an office on the Tomaree also forms part of the General Managers "Big Piece of Paper" Performance Management program.

# **NOTICE OF MOTION**

**ITEM NO. 3**

**FILE NO: 3150-029 & PSC2007-2094**

## **BANNING OF SMOKING IN SPORTING FIELDS AND PLAYGROUNDS**

**COUNCILLORS: NELL, HODGES, TUCKER, DOVER, FRANCIS, SWAN, JORDAN, BROWN AND DINGLE**

### **THAT COUNCIL:**

- 1) Prepare a report on the banning of smoking in outdoor areas, primarily sporting fields and playgrounds.

### **ORDINARY MEETING OF COUNCIL – 22 July 2008**

#### **RESOLUTION:**

<b>196</b>	<b>Councillor Francis Councillor Nell</b>	<b>It was resolved that Council adopt in principle a smoke free outdoor area policy in a staged process as follows;</b>  <b>1) Within 10 meters of all children's playground equipment (endorsed immediately)</b>  <b>2) Sports fields and facilities (only following consultation with Sports Council in October 2008)</b>  <b>3) Other nominated areas such as alfresco dining areas, bushland, parks, reserves and beaches.</b>
------------	-----------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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

#### **BACKGROUND**

Smoking in enclosed public places in NSW is regulated by the NSW Smoke-Free Environment Act 2000. However, these laws make no provision for controlling outdoor smoking in places where people congregate, such as alfresco dining areas, sporting fields and playgrounds.

In 2004 the Act was amended, and from July 2007 smoking will be banned in all enclosed public places, for example in State and Federal offices, shopping centres, hospitals, schools, childcare settings and entertainment venues, as well as the transport sector.

Under the NSW Local Government Act 1993, Councils have the power to legislate in their own jurisdictions to protect their local communities from the effects of second-hand smoke. Council has an obligation to promote public health outcomes where Council provides assets and services intended to be of benefit to children and other members of the community. They have a commitment to improve the natural environment and the amenity of the local area. In the interests of the health of our local community and environment, Council must consider the adoption of a comprehensive smoke-free outdoor areas policy. This policy would be underpinned by the following:

- Improve the health of community members
- Improve the public amenity and maintenance of Council property
- Raise community awareness of the issues associated with public smoking
- Provide community leadership in taking measures to protect the health and social well-being of the community
- Minimise cigarette butt pollution on Council owned beaches, waterways, parks and other open space areas

### **HEALTH IMPACTS**

There is substantial evidence linking exposure to second-hand smoke with a range of serious and life threatening health impacts including heart disease, cancer, asthma and other respiratory problems. Children exposed to second-hand smoke are at an increased risk of asthma, sudden infant death syndrome (SIDS), acute respiratory infections and ear problems.

While most of the evidence relates to indoor exposure there is emerging evidence on how smoking affects air quality in outdoor locations such as alfresco cafes and playgrounds. A recent study which measured cigarette smoke levels in a variety of outdoor locations showed that a person sitting near a smoker in an outdoor area could be exposed to levels of cigarette smoke similar to the exposure of someone sitting in an indoor tavern where smoking is allowed. Therefore, the second-hand smoke in outdoor areas where people tend to congregate, such as alfresco dining areas, sports stadiums and concert venues etc can present a real health risk to patrons and staff.

### **ENVIRONMENTAL IMPACTS**

Cigarettes are the most littered item in the world. Consistently one of the most common items found during Clean Up Australia Day, cigarette butts make up 31% of the top 10 items found and almost 50% of litter in urban areas. Cigarette butts are not biodegradable and take up to five years to break down. Outdoor smoking bans can help to reduce the amount of cigarette butt litter and provide a substantial cost saving through reduced clean-up costs.

### **COMMUNITY SUPPORT**

Increasing community awareness of the harmful effects of second-hand smoke has led the community to accept, and expect the availability of smoke-free areas. Given that over 82% of the NSW population are non-smokers a Council's decision to introduce smoke-free areas is often in response to community expectations. In December 2006, a survey<sup>2</sup> of 2,400 NSW residents found overwhelming support for smoking restrictions in the following areas:

- 92% support bans in children's playgrounds
- 85% support bans outside workplace doors/ entrances
- 80% support bans in sports stadiums

- 69% support bans in outdoor dining areas
- In addition, 65% say they avoid places where they may be exposed to other people's smoke.

### **COUNCIL APPROACH**

More than thirty NSW Councils have already introduced smoke-free outdoor areas within their localities. For example: Mosman Council first banned smoking in playgrounds, sporting fields, bushland, foreshore reserves and beaches in June 2004. These bans were so popular with residents that the Council extended them to cover all parks, public squares, bus shelters, and alfresco dining areas. Through a process aimed at engaging community support, Mosman Council joined neighbouring Councils, Manly and Warringah in the Smoke Free Zones Campaign. This ensured that compliance was self regulated, rather than requiring an enforcement style approach.

Councils may choose to include some or all of the following areas under a Smoke Free Outdoor Areas Policy. The Cancer Council strongly recommends including the first four points as a minimum, due to the high impact of passive smoking on children and other community members amongst these forums:

- Within ten metres of all children's playground equipment
- On all playing fields, sporting grounds and sporting facilities (ie: swimming pools, outdoor sports centres)
- At all events run or sponsored by Council
- In alfresco dining areas on public land
- In Council's pedestrian malls / plazas
- Beaches
- Bushland, parks and reserves
- Covered bus stops and taxi ranks
- Within ten metres of Council owned or managed buildings including balconies or covered areas, as well as Council car parks

Experiences of other Councils suggest that the most successful implementation of a Smoke Free Outdoor Areas Policy is to implement gradually – utilising relevant community engagement processes that are educative and supportive of the communities most affected by the policy.

It is the opinion of Port Stephens Council staff, as well as the Cancer Council that Port Stephens Council adopt a Smoke Free Outdoor Area Policy as a staged process as follows:

1. Within 10 meters of all children's playground equipment (endorsed immediately)
2. Sports fields and facilities (only following consultation with Sports Council in October 2008)
3. Other nominated areas such as alfresco dining areas, bushland, parks, reserves and beaches.

# NOTICE OF MOTION

ITEM NO. 4

FILE NO: 3150-029 A2004-0217/104

## PREPARATION OF A DRAFT LOCAL ENVIRONMENTAL PLAN FOR TAYLORS BEACH

COUNCILLOR: JOHN NELL

### THAT COUNCIL:

Implement the recommendation of the Draft Foreshore Management Plan, to prepare a draft Local Environmental Plan to rezone the land at Taylors Beach; Lot 2: DP 1115507, 41 Taylors Beach Rd, Taylors Beach from Rural 1(a) to Environmental Protection (7a) given the ecological significance of the land.

**PLEASE NOTE:** *This Notice of Motion was deferred at Council's meeting of the 22<sup>nd</sup> April 2008 to allow for a site inspection. The site inspection was held on 15<sup>th</sup> July 2008.*

### ORDINARY MEETING OF COUNCIL – 22 July 2008

#### RESOLUTION:

197	Councillor Nell Councillor Brown	It was resolved that Council resolve to initiate a draft LEP amendment for the Taylors Beach site on the basis that the predominant proposed zonings will be Environmental Protection, but acknowledging that the detailed studies prepared on behalf of the landholders may warrant some consideration of limited residential development on the site. The Group Manager Sustainable Planning to report to Council at its Ordinary meeting in February 2009 on progress on this matter.
-----	-------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

#### BACKGROUND REPORT OF: SALLY WHITELOW – NATURAL RESOURCES COORDINATOR

##### BACKGROUND

This land has great ecological significance as an intertidal wetland composed of mangroves and marsh land. It is also a significant bird sanctuary and an important buffer zone for the oyster industry at Cromarty Bay.

## **MINUTES FOR ORDINARY MEETING – 22 JULY 2008**

The site contains two Endangered Ecological Communities (EECs), Swamp Sclerophyll Forest on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions and Coastal Saltmarsh in the NSW North Coast, Sydney Basin and South East Corner Bioregions.

In addition the site also contains areas of Preferred Koala Habitat and almost the entire site is classified as a SEPP 14 wetland.

The site surrounds Cromarty Bay which is a Marine Park Sanctuary Zone and has large areas of intertidal zones which are integral to the life cycle of many marine flora and fauna, and the aquaculture industries of the area.

The site is also visited by a number of migratory birds many which are listed under the Federal Environmental Protection Biodiversity Conservation Act 1999 (EPBC Act). The EPBC Act also protects birds listed under bilateral agreements with Japan, China and the Republic of Korea.

The land also acts as an important wildlife corridor around the waters of Cromarty Bay. These environmental attributes when combined, highlight the significance of the site and is the reason why the Draft Foreshore Management Plan recommends its rezoning to Environmental Protection.

There being no further business the meeting closed at 8.36pm.