

Minutes 28 July 2009



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 28th July 2009, commencing at 6.00pm.

PRESENT: Councillors B. MacKenzie (Mayor); R. Westbury (Deputy Mayor); G. Dingle; S. Dover, G. Francis; P. Kafer; K. Jordan; D. Maher, J. Nell; S. O'Brien; F. Ward; General Manager; Corporate Excellence Group Manager, Facilities and Services Group Manager; Sustainable Planning Group Manager; Commercial Services Group Manager and Executive Officer.

219	Councillor Ken Jordan Councillor Peter Kafer	It was resolved that the apology from be Councillor Steve Tucker received and noted.
220	Councillor Peter Kafer Councillor Ken Jordan	Resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 30 June & 14 July 2009 be confirmed.
		No Declarations of Interest were received.

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MAYORAL MINUTES

MAYORAL MINUTE

ITEM NO. 1

FILE NO:16-2009-165-1

AMENDMENT TO CLAUSE 14 OF THE PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000

THAT COUNCIL:

Resolve to initiate a draft amendment to Clause 14 of the Port Stephens Local Environmental Plan 2000 to enable permissibility of dwellings on allotments created for approved uses prior to the appointed date.

ORDINARY COUNCIL – 28TH July 2009

221	Councillor Bruce MacKenzie Councillor Ken Jordan	It was resolved that the Mayoral Minute be adopted together with an interim report to be provided to Council.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Cr Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

BACKGROUND

Clause 14 – Dwelling houses and dual occupancy housing in Rural zones.

Clause 14 of the Port Stephens Local Environmental Plan, 2000 outlines the matters to be considered in the development of dwelling houses and dual occupancies within the Rural zones.

Clause 14 states inter alia;

(2) The consent authority shall not consent to the erection of a dwelling house or dual occupancy housing on an allotment of land to which this clause applies if;

(i) if the allotment was created before the appointed day – the consent authority is of the opinion that the allotment was intended to

be used for any one or more of the purposes (other than the purpose of dwelling house or dual occupancy housing) for which it could have been used (with or without the consent of the consent authority) under the environmental planning instrument under which it was created,

Clauses 14(2)(i) and 14(2)(ii) serve specifically to prohibit the development of dwellings and/or dual occupancies on allotments that were created for another intended use (other than dwellings and/or dual occupancies).

Development Proposal

Council is in receipt of a Development Application (16-2009-165-1) proposing the change of use from Tourist Facility (Ski School) and Managers Residence to Dual Occupancy.

The Ski School was approved on 5th November 1998 by Development Consent L1055/98 which encompassed approvals for the use of the subject site for Managers Residence, Tourist Lodge, Subdivision and Water Ski School.

Consent condition Number 6 restricted the use of the site in the following way

The use of the proposed allotments is restricted pursuant to clause 12(b) of Local environmental Plan 1987 and accordingly no dwelling or duplex can be built on the proposed residue Lot1. The title of the relevant property shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition. In this regard Council shall be nominated as the sole authority permitted to alter/remove the endorsement.

This condition was reflected in the allotments 88B instrument, specifically in Terms of Easement or Restrictions secondly referred to in the plan.

The provisions of Condition 6 of Development Consent L1105/98, the Section 88B instrument for DP 881743 and Clause 12(b) of the LEP 1987 all serve to prohibit this development.

In June 2006, Council received correspondence requesting that the 88B be released by Council to allow a Dual Occupancy on the site. Council's Senior Development Planner responded on 28th August 2006 stating that this restriction on the title of the land could not be varied given that the original approval was granted pursuant to the provisions of Clause 12(b) of the Local Environmental Plan 1987.

Under the provisions of Council's current Planning Instrument, the Port Stephens Local Environmental Plan 2000, Clause 14 deals with dwelling houses and dual occupancies in the rural zone.

Given that the proposal for subdivision and Tourist Facility was approved under Clause 12(b) of the Port Stephens Local Environmental Plan 1987 development for the purposes of Dwelling House or Dual Occupancy Housing is prohibited by clause 14 of LEP 2000.

Hence to enable this request by the land owner to be considered for approval, a relevant amendment is required to the Port Stephens Local Environmental Plan 2000.

MAYORAL MINUTE

ITEM NO. 2

FILE NO: A2004-0259

CITY OF TATEYAMA – FRIENDSHIP AGREEMENT

THAT COUNCIL:

That Council support the move to replace the Friendship Agreement with a Sister Cities relationship with the City of Tateyama, Japan.

BACKGROUND

On the 11 February 2000, Port Stephens Council and the City of Tateyama, Japan signed a Friendship Agreement. The signing of the Friendship Agreement provided the opportunity to develop cross-cultural understanding between the areas.

The City of Tateyama will celebrate the 70th year of its founding this year on November 3, and have requested Council to consider changing the current Friendship Agreement to a Sister Cities Relationship as part of the celebration. This would also mark the 10 year anniversary of signing the Friendship Agreement with Tateyama.

The Mayor will be invited by the City of Tateyama to attend the celebrations and also formalise the Sister Cities Relationship arrangements should Council wish to be involved with Tateyama as part of the Sister Cities program.

Port Stephens Council and City of Tateyama both have a relationship with Bellingham, USA which is based on international and cultural exchanges.

ORDINARY COUNCIL – 28TH July 2009

222	Councillor Bruce MacKenzie Councillor Bob Westbury	It was resolved that the Mayoral Minute be adopted.
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MAYORAL MINUTE

ITEM NO. 3

FILE NO: PSC2005-2892

LOCAL GOVERNMENT ASSOCIATION OF NSW CONFERENCE

THAT COUNCIL:

- 1) Nominates four (4) delegates for the Local Government Association Conference.
 - 2) Submit the proposed Motion for consideration by conference delegates.
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ORDINARY COUNCIL – 28TH July 2009

223	Councillor Bruce MacKenzie	<p>It was resolved that</p> <ol style="list-style-type: none">1. Councillors John Nell, Bruce MacKenzie, Peter Kafer and Glenys Francis be Council's delegates at the Local Government Association Conference.2. Council submit the Motion to the Conference contained in the Mayoral Minute.
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BACKGROUND

The purpose of this Mayoral Minute is to advise Council that Local Government Association Annual Conference is scheduled to be held in Tamworth from 25 October to 28 October 2009.

This year the theme of the conference is *"Tough Times, Smart Solutions"*.

As a member of the Association, Council is eligible to have four voting delegates attend. Council has four (4) registrations available for Councillors to attend this years conference and is asked to consider the nomination of four Councillors to attend.

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

It is also proposed that the following Motion be submitted by Council for consideration by Conference delegates.

Proposed Motion

1. *That the State Government be requested to review the definition of “waste” as the current definition is too broad given the diversity of local government functions and it places a financial burden on local government.*

**OPERATIONS
COMMITTEE
RECOMMENDATIONS**

ITEM NO. 1

FILE NO: 16-2009-178-1

DEVELOPMENT APPLICATION FOR COMMERCIAL PREMISES (DAN MURPHY'S LIQUOR) AT NO. 30 PORT STEPHENS STREET, RAYMOND TERRACE.

REPORT OF: ANTHONY RANDALL - ACTING MANAGER, DEVELOPMENT AND BUILDING

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2009-178-1 for the demolition of the existing building, construction of a new building and its use as a shop – liquor store subject to the Conditions contained in Attachment 4.

OPERATIONS COMMITTEE – 14TH July 2009

RECOMMENDATION:

	Councillor Steve Tucker Councillor Shirley O'Brien	That the recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Bruce MacKenzie, Ken Jordan, Daniel Maher, Steve Tucker, Shirley O'Brien, and Bob Westbury.

Those against the Motion: Councillors Geoff Dingle. John Nell. Frank Ward and Sally Dover.

MATTER ARISING

	Councillor John Nell Councillor Geoff Dingle	That Council make a submission to the Office of Liquor, Gaming and Racing (OLGR) objecting to the issuing of an additional licence in Raymond Terrace and seek the reallocation of an existing licence within Raymond Terrace.
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The Matter Arising on being put was lost.

ORDINARY COUNCIL – 28TH July 2009

	<p>Councillor Glenys Francis Councillor Geoff Dingle</p>	<p>That Council refuse Development Application 16-2008-827-1 for the following reasons:-</p> <ol style="list-style-type: none"> 1. Detrimental effects on the local amenity. 2. Adverse social impact given that Port Stephens Street is the main entry and thoroughfare to Raymond Terrace which is the Main Centre of Port Stephens. 3. Adverse social impacts in terms of further inducement to alcohol generated problems in Raymond Terrace (domestic, violence, crime, anti-social behaviour etc).
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Peter Kafer, Glenys Francis, Geoff Dingle, John Nell and Frank Ward.

Those against the Motion: Councillors Bruce MacKenzie, Ken Jordan, Daniel Maher, Shirley O'Brien, Bob Westbury and Sally Dover.

The motion on being put was lost.

<p>224</p>	<p>Councillor Ken Jordan Councillor Daniel Maher</p>	<p>It was resolved that the recommendation be adopted.</p>
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Bruce MacKenzie, Ken Jordan, Daniel Maher, Shirley O'Brien, Bob Westbury and Sally Dover.

Those against the Motion: Councillors Peter Kafer, Glenys Francis, Geoff Dingle, John Nell and Frank Ward.

BACKGROUND

The purpose of this report is to present the Development Application for a Dan Murphy's Liquor Store in Raymond Terrace to Council for determination.

The development application seeks consent for the erection of a 1450m² building to be occupied by Dan Murphy's Liquor. The proposal also includes the demolition of the existing H&D Hardware Store, the erection of the building and associated signage and the provision of sixty two (62) at grade carparking spaces.

The site is zoned 5(g) Special Urban (Flood Affected) Zone which permits retail shops subject to consent. The proposal is considered to be consistent with the zone objectives.

The proposal will employ fifteen (15) full time staff and twenty (20) part time staff with a minimum of six (6) staff on-site during trading hours. It is proposed that the store will operate in line with the following hours;

- Monday – Wednesday 9:00am – 8:00pm,
- Thursdays to Fridays 9:00am – 9:00pm,
- Saturdays 9:00am – 8:00pm,
- Sunday 10:00am – 6:00pm

The subject land is situated within an established commercial area and has a frontage to Port Stephens Street. Adjoining the property to the north is the new Aldi Development.

The key issues associated with this proposal are as follows:-

- Social Impact
- Flooding
- The economic/retail competition issues that have been asserted by authors of submissions and presenters at public access.

An assessment of these issues is provided in Attachment 3.

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.*

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

The development application is consistent with Council's Policy.

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:-

- 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

The application was supported by a Social Impact Assessment (prepared by TPG Dated March 2009, Project: 209.048 SIA).

The Social Impact Assessment states that:

The Raymond Terrace Area (determined by census collector district) is serviced by nine (9) licensed premises/bottle shops including seven (7) bottle shops within 800m of the site.

In 2006 the ratio of licensed premises to persons over 18 years of age was 1 licensed premises per 1,029 people within the census collector district. The report considers that the addition of another licensed premises will have a minor impact on this ratio when population growth is taken into account. In this sense the addition of the Dan Murphy's proposal will not significantly increase the availability of alcohol on a per person basis.

The Social Impact Assessment states that the employment qualifications required to work within a bottle shop, the Responsible Service of Alcohol Certificate, will assist to minimise the number of persons that are submitted to hospital from an alcohol related cause as those persons will be refused service.

It is also considered that the nature of the commercial premises and the amenity created by a clean and tidy site maintained by the occupants will provide surveillance in the area which will serve to curb potential anti social behaviour.

The Social Impact Assessment concludes:

No significant impacts have been envisaged to occur to the amenity of surrounding properties as a result of this SIA. As such, the proposed bottle shop is appropriate to service the existing and future population of Raymond Terrace.

Council's Community Planner – Crime Prevention provided the following comments to the proposal. These comments were also submitted to the Crime Impact Statement for the licensing process.

Council's Community Planner Comment:

The cumulative impacts of another licensed premise in Raymond Terrace are considered to be not conducive with maintaining, enhancing and protecting the social well-being of the community.

The following information has been considered when arriving at this conclusion:

- *The high level of social disadvantage and high unemployment which exists in Raymond Terrace. Port Stephens is characterised by pockets of social disadvantage with Raymond Terrace being the most socially disadvantaged area (Raymond Terrace Integrated Service Centre final*

report 2007 available on PSC Website). Social indicators that reflect high incidents of stress include low school completion rates, high unemployment/generational unemployment, low literacy and numeracy levels, and high numbers of social housing tenants;

- The high level of drug and alcohol abuse and domestic violence in this area that has been reported to NSW Police (domestic violence has risen 3.5% per annum in Port Stephens over the last 10 years with Raymond Terrace experiencing the highest rate in the LGA - Port Stephens Crime Prevention Plan 2006-2009);
- National Drug Research Institute research released in 2008 (Predicting alcohol-related harms from licensed outlet density) confirmed that an increase in the number of liquor outlets (hotels and/or bottle shops) is associated with an increase in alcohol-related violence and assault in the surrounding area. Regardless of the type of new liquor outlet, most of this increased violence occurs in private homes rather than at licensed premises. There are already two large liquor outlets and three hotel/ bottle shops in the town centre. This outlet would mean there are six outlets in close proximity to each other.
- A report by the Alcohol Education and Rehabilitation Foundation (AERF) indicates that increased (liquor)outlet density and outlet accessibility are directly related to an increase in neighbourhood problems due to 'drunkedness', domestic assault and property damage
- An increase in the number of outlets will cause pricing competition between the liquor outlets which will result in cheaper alcohol. This in turn will result in higher consumption and stockpiling of liquor. Lower priced alcohol is directly related to higher consumption of alcohol and risky behaviour by young people. (Young People and Alcohol-the Role of Cultural Influences – DrinkWise Australia Ltd 2008)
- In total, throughout 2008 and up until march 2009, the total number of minors charged with alcohol related offences in Port Stephens was 29 (Port Stephens LAC statistics). The total number of alcohol related offences that attracted legal action across the whole community during this period was 324 with 90% of these related to street offences including offensive behaviour and intimidation

Council's Social Planning Coordinator comment:

Acknowledging the references made in the responses provided by Council's Community Planner – Crime Prevention about:

- *the reported correlation between an increase in the number of liquor outlets and alcohol related violence; and*
- *greater affordability of alcohol through competition,*

it is also acknowledged that the evidence/data to support this argument in the context of the existing density of liquor premises in the Raymond Terrace CBD appears to be relatively intangible with respect to definitively demonstrating

that any adverse social impacts are directly attributable to the subject proposal.

It is therefore considered that there appears to be insufficient data to justify refusing this development application on social grounds.

The application is also accompanied by a Crime Prevention through Environmental Design report (prepared by TPG Dated March 2009, Project: 209.048 CPTED).

The report outlines a number of safety and security measures to be implemented in the development of the proposal. These measures are included as a condition of consent to ensure that they are implemented in the event of consent being granted. The security measures include the installation of Closed Circuit Television (CCTV), vandal resistant lighting, reinforced glazing, clear signage, and maintained landscaping.

Liquor is already readily available from a number of existing liquor outlets and licensed premises within the vicinity of this development and the addition of additional premises will not greatly increase the ratio of licensed premises per person in the Raymond Terrace locality. In this sense, the proposal is not going to make alcohol more readily available in the locality currently serviced by nine (9) licensed premises. Economic forces will likely determine the viability of the licensed premises density in the Central Business District.

The Crimes Act 1900 and Liquor Act 1982 prohibits sale of alcohol to minors or the provision of alcohol to minors and staff of the Dan Murphy's will be required to attain the Responsible Service of Alcohol qualifications. It is likely through the liquor licensing process that the establishment will be required to participate in the Liquor Accord.

Consideration has also been given to the recently approved Local Area Command and Raymond Terrace Police Station. It is considered that the increased Police presence provided by the redevelopment and expansion of the Police Station will serve to mitigate against potential crime in the Raymond Terrace Central Business District.

Consideration of comments from Council's Community Planner – Crime Prevention and the submitted Social Impact Assessment and Crime Prevention Report has led to the conclusion that an additional retail liquor store is not considered likely to have a significant social impact on the community based on population density per premises not significantly increasing. In 2006 the ratio of licensed premises per person over 18 in the Raymond Terrace census district was 1 premises per 1029 people. Using the projected growth rate for Raymond Terrace of 1.87%, the projected population of persons over 18 in the Raymond Terrace census district in 2009 is 9819 people giving a ratio of 1 licensed premises per 982 people. While Council's Crime Prevention officer has raised areas of concern in relation to the Social Impact of an additional liquor outlet in the Raymond Terrace Locality, assessment of the data surrounding the social impacts of the development indicates that sufficient grounds for the application to be rejected solely in terms of the Social Impact on the

community are relatively intangible in the context of the density of liquor outlets in the Central Business District.

Approving a retail liquor outlet is not considered to be contrary to the public interest on planning merit grounds.

It is concluded that there is no evidence that can form part of the assessment to the effect that refusing this DA will in any way lead to improving any antisocial behaviour and alcohol related crime in the Raymond Terrace area. To refuse the application could also have an effect on reinforcing the economic positioning of existing outlets and this would not be a defensible position for Council in the Land and Environment Court.

ECONOMIC IMPLICATIONS

In terms of Economic Impact on existing liquor establishments in the Raymond Terrace locality, the economic impacts of the development on other liquor outlets is considered to be an issue of consumer competition, it is considered that assessment of this impact is outside of the scope of assessment under the heads of consideration, Section 79C of the Environmental Planning and Assessment Act, 1979.

Accordingly, Council is not considered to have a regulatory role in the determining of the economic viability of individual proposals or their impacts on existing premises.

The proposed development should create a positive multiplier effect, albeit limited, on the local economy. Initially, through income to local contractors during the construction phase and in the longer term, through the increased demand for goods and services by staff and visitors. The proposal has the potential to attract customers to the area with a flow on to other retail establishments.

ENVIRONMENTAL IMPLICATIONS

Flooding

The development is sited on land classified as being flood prone. The Flood Planning Level for the site is 5.3m AHD.

The proposal seeks approval for a floor level of 3.24m AHD, some 2.06m below the flood planning level. The existing footpath level is 2.35m AHD and the applicant considers that varying the flood planning level requirements will result in a superior streetscape.

To mitigate against the impacts of flooding the applicant has proposed that the design will incorporate flood barriers at each building opening.

The application has been assessed by Council's Flood Engineer and specific conditions of consent have been included to mitigate against the potential external impacts of flooding. However, the protection of stock within the proposed building is entirely dependant upon the performance of the flood barriers proposed to protect

the openings of the building, and the non-perishable nature of the stock due to its packaging.

The development conditions include the provision of a Flood Emergency Operation Plan to Council prior to the issue of a Construction Certificate, Certification of the structural design and specification of the building by an NPER Structural Registered Professional Engineer.

It is considered in this case that the alternate flood mitigation measures adopted by the proposal will allow for an enhanced streetscape with street level shop front windows providing street surveillance. It is considered that this streetscape outcome would not have been able to be achieved with the shop floor level elevated to 5.3m AHD, some 2.95m above the existing footpath level.

The flood constraints of the site have been included in the design response and are considered to reasonably resolve the issues of safety, streetscape, evacuation, access and loading.

Heritage

The development site is adjacent to a Local Heritage Item, being 34 Port Stephens Street – Timber Cottage. The development site currently contains a hardware store with an associated building sited in close proximity to the heritage item. The proposed commercial development will significantly improve the amenity of the Heritage item through increased setback of 28m from the commercial development to the Heritage Item and through the implementation of landscaping on site.

It is considered that the increased setback of the buildings on the subject site will result in a considerable reduction of the visual dominance on the heritage item of the current buildings. This will also serve to provide a larger vantage area around the heritage item from which it can be viewed.

It is considered that the development as proposed will result in a lessening of impacts on the heritage item to those currently experienced.

Flora and Fauna

The site is not known to contain any threatened flora or fauna and as such the development should not pose an adverse effect on any known threatened species, populations or ecological communities.

CONSULTATION

The application was publically exhibited in accordance with Council policy and three (3) submissions were received. These are discussed in the Attachment 3.

OPTIONS

Council can:

- 1) Adopt the recommendation.
- 2) Determine refusal of the application, which will require Councillors providing the reasons for refusal.

ATTACHMENTS

- 1) Locality Plan
- 2) Site Plan
- 3) Assessment
- 4) Conditions to apply with the Development Consent in the event that this is Council's determination.

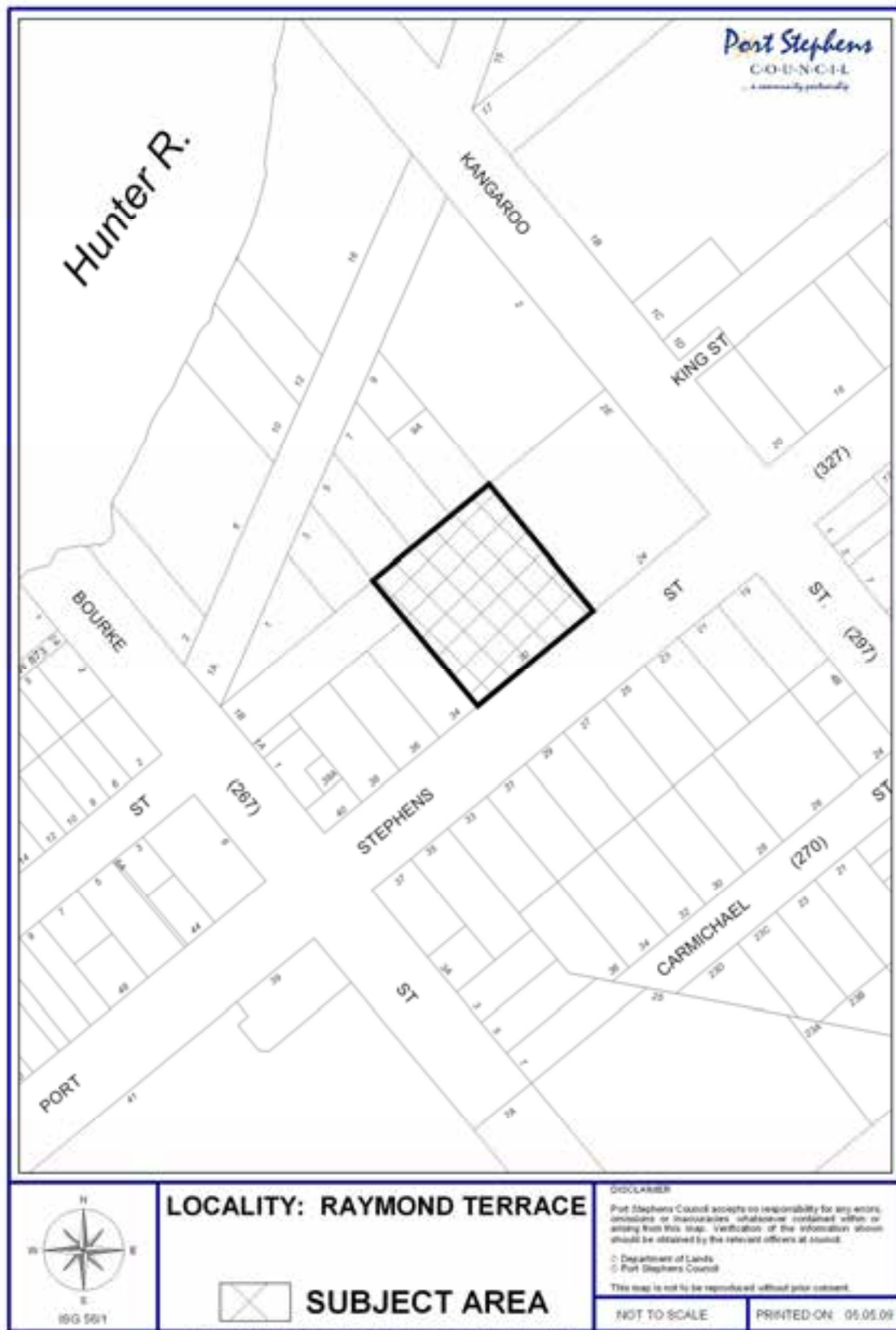
COUNCILLORS ROOM

- 1) Development Plans
- 2) Statement of Environmental Effects

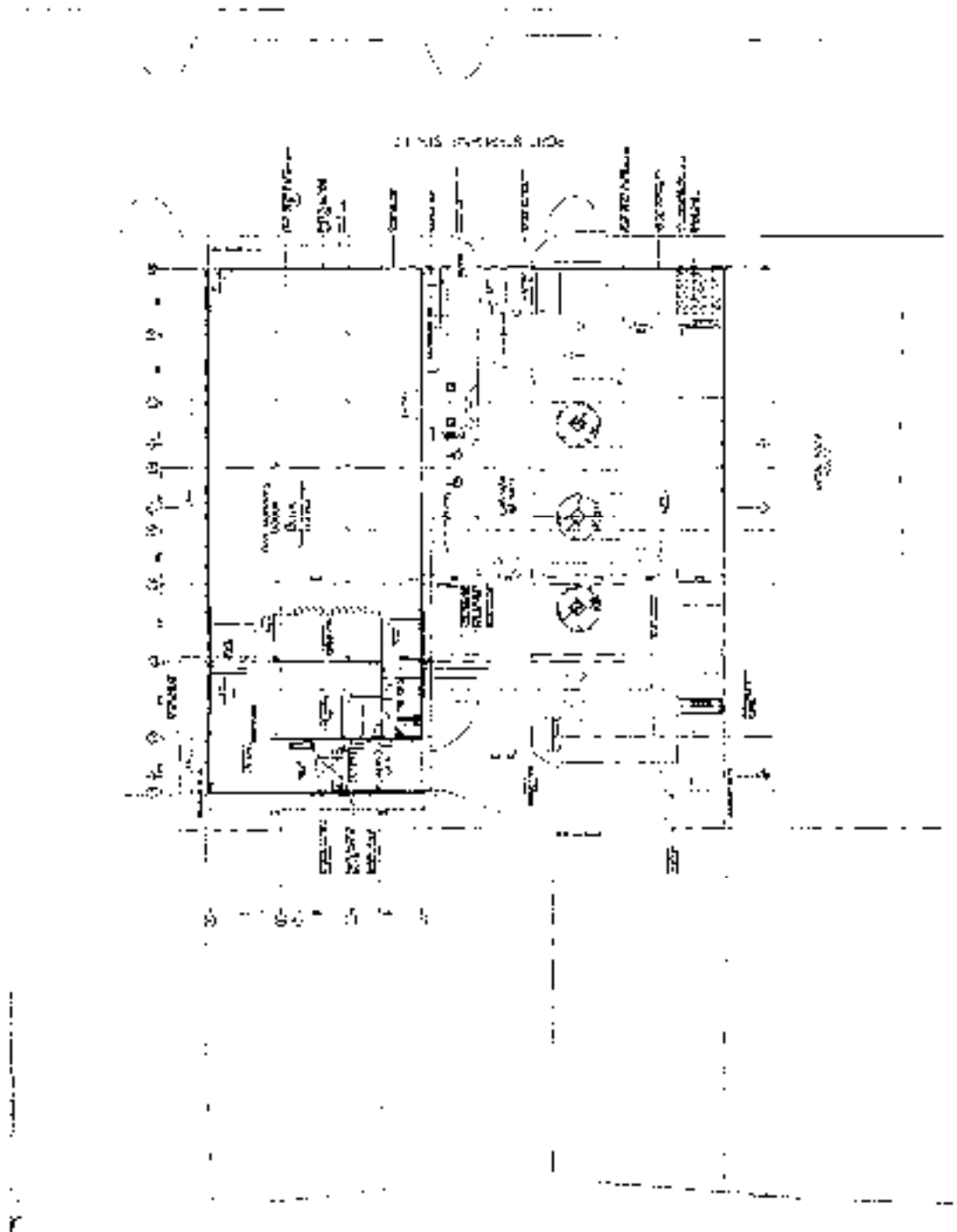
TABLED DOCUMENTS

Nil

ATTACHMENT 1
LOCALITY PLAN



ATTACHMENT 2
SITE PLAN



ATTACHMENT 3

ASSESSMENT

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

THE PROPOSAL

The development application seeks consent for the erection of a 1450m² building to be occupied by Dan Murphy's Liquor. The proposal also includes the demolition of the existing H&D Hardware Store, the erection of the building and associated signage and the provision of sixty two (62) at grade carparking spaces.

THE APPLICATION

Owner	Silsoe Developments Pty Ltd & Comtop Pty Ltd
Applicant	Fabcot Pty Ltd
Detail Submitted	Development Plans Statement of Environmental Effects Waste Management Plan Crime Prevention through Environmental Design Report Social Impact Assessment Statement from Flood Engineer

THE LAND

Property Description	Lot 12 DP 1111906
Address	30 Port Stephens Street Raymond Terrace
Area	3,985m ²
Dimensions	Street Frontage 60.65m, Depth 65.705m
Characteristics	Generally level, rectangular block with frontage to Port Stephens Street. Site is currently occupied by a H&D Home Timber and Hardware Store.

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	5(g) – Special Urban (Flood Affected) Zone
Relevant Clauses	26, 37, 38, 51A, 60.
Development Control Plan	Development Control Plan 2007
State Environmental Planning Policies	SEPP (Infrastructure) 2007

Environmental Planning and Assessment Act, 1979

The development has been assessed under Section 79C of the Environmental Planning and Assessment Act, 1979.

State Environmental Planning Policy (Infrastructure) 2007

The development involves the creation of 1,450m² of shop space. The proposal does not have direct access to a classified road and as such Column 2 of Schedule 3 is applicable in determining if the development is considered to be traffic generating.

To be considered as Traffic Generating under column 2 a development for the purposes of a shop must have a floor space of greater than 2000m². The development as proposed has a floor space of 1450m² and as such the development is not considered to be Traffic Generating.

Under the provisions of clause 104, there is no requirement for a development of this size to be referred to the Roads and Traffic Authority (RTA).

Port Stephens Local Environmental Plan 2000

Clause 26 - Zoning Provisions

The development site is zoned 5(g) – Special Urban Flood Prone. Under the provisions of this zone, development for the purposes of "Bulky Goods" is permissible with development consent. It is noted that the applicant has applied for the development under the definition of "shop" which is also permissible with development consent in the 5(g) zoning.

The development is considered to be consistent with the zone objectives and description.

Clause 38 – Development on Flood Prone Land

The development is sited on land classified as being flood prone. The Flood Planning Level for the site is 5.3m AHD.

The proposal seeks approval for a floor level of 3.24m AHD, some 2.06m below the flood planning level. The existing footpath level is 2.35m AHD and the applicant considers that varying the flood planning level requirements will result in a superior streetscape.

To mitigate against the impacts of flooding the applicant has proposed that the design will incorporate flood barriers at each building opening.

The application has been assessed by Council's Flood Engineer and specific conditions of consent have been included to mitigate against the potential external impacts of flooding. However, the protection of stock within the proposed building is entirely dependant upon the performance of the flood barriers proposed to protect

the openings of the building, and the non-perishable nature of the stock due to its packaging.

The development conditions include the provision of a Flood Emergency Operation Plan to Council prior to the issue of a Construction Certificate, Certification of the structural design and specification of the building by an NPER Structural Registered Professional Engineer.

It is considered in this case that the alternate flood mitigation measures adopted by the proposal will allow for an enhanced streetscape with street level shop front windows providing street surveillance. It is considered that this streetscape outcome would not have been able to be achieved with the shop floor level elevated to 5.3m AHD, some 2.95m above the existing footpath level.

The flood constraints of the site have been included in the design response and are considered to reasonably resolve the issues of safety, streetscape, evacuation, access and loading.

Clause 51A – Acid Sulphate Soils

The subject site is identified as being class 5 Acid Sulfate Soils. The provisions of Clause 51A state;

Works within 500m of class 1, 2, 3 or 4 land which are likely to lower the water table below 1m AHD on the adjacent Class 1, 2, 3 or 4 land

The proposed development does not involve any excavation for the erection of the building. However, the proposal does involve relocation of a stormwater easement. During the relocation of the easement the following measures have been proposed and included as a condition of consent.

Excavation and dewatering works on the site shall be undertaken in accordance with the NSW Government's document titled Managing Acid Sulphate Soils. All testing and monitoring shall be undertaken by an appropriately qualified geotechnical consultant.

Clause 60 – Development in the vicinity of a Heritage Item

The development site is adjacent to a Local Heritage Item, being 34 Port Stephens Street – Timber Cottage. Clause 60 states,

60 Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites

The consent authority must take into consideration the likely effect of the proposed development on the heritage significance of a heritage item, heritage conservation area, archaeological site or potential archaeological site, and on its setting, when determining an application for consent to carry out development on land in its vicinity.

The development site currently contains a hardware store with an associated building sited in close proximity to the heritage item. The proposed commercial development will significantly improve the amenity of the Heritage item through increased setback of 28m from the commercial development to the Heritage Item and through the implementation of landscaping on site.

It is considered that the increased setback of the buildings on the subject site will result in a considerable reduction of the visual dominance on the heritage item of the current buildings. This will also serve to provide a larger vantage area around the heritage item from which it can be viewed.

It is considered that the development as proposed will result in a lessening of impacts on the heritage item to those currently experienced.

Port Stephens Development Control Plan, 2007

The development is subject to the controls of Development Control Plan 2007, specifically the controls of Section B2 – Environmental and Construction Management, B3 – Traffic Parking and Transport, B4 – Commercial and Mixed Use Development, B12 – Advertising Signs and C1 – Raymond Terrace Town Centre.

The development is considered to be generally compliant with the provisions of the Development Control Plan, however any departures are discussed below.

Section B3 – Traffic, Parking and Transport

Section B3 sets the controls for traffic, parking and transport considerations for development. It is considered that the development is consistent with these controls and principles other than the controls noted below.

B3.8 Schedule of Car Parking Requirements

Section B3.8 requires that parking be required at a rate of 1 space per 20m² for a shop.

This ratio requires that the development provide 73 spaces based on a floor space of 1450m². The development provides 62 spaces resulting in a shortfall of 11 spaces.

A traffic report (Colsten Budd Hunt & Kafes Pty Ltd, March 2009) was submitted to accompany the application. The report studies other Dan Murphy developments and the traffic demands of the stores concluding that peak demands require 1 space per 28m² to 36m². Utilising this ratio and the demands from other Dan Murphy stores, a total of 40 to 52 spaces would be required by the development.

It is considered in this instance that the departure from the requirements of Section B3.8 is justified on the basis of the demonstrated investigation of the parking demand of other Dan Murphy's development that are operating elsewhere.

The investigation indicates that the parking requirements of the development are being reasonably met at the site as demonstrated in a development specific Traffic Impact Assessment that has been submitted in support of the subject application.

In these circumstances it is considered unreasonable to levy via Section 94 a car parking shortfall arising from applying a generic car parking ratio for shops. If no Traffic Impact Assessment were supplied to justify the departure in this case, Section 94 levies would be applied to any shortfall of car parking at the site.

Section B4 – Commercial and Mixed use Development

Section B4 applies to all commercial development. The proposal is considered to be consistent with this section of the Development Control Plan.

C1 – Raymond Terrace Town Centre

Section C1 contains controls specific to the Raymond Terrace town centre. The subject allotment is identified as being within the Industrial Precinct. The controls of Section B4 apply to Commercial Development in this area, however where there are inconsistencies between section B4 and C1, the provisions of C1 are to take precedent.

The proposal is consistent with the provisions of this section.

2. Likely Impact of the Development

The proposed development is consistent with the requirements of the *Port Stephens Local Environmental Plan 2000* and generally consistent with the requirements of DCP 2007.

The development is situated adjacent to a heritage item, however the proposal is likely to reduce the existing visual impact on the heritage item through increased setbacks and landscaping.

3. Suitability of the Site

The development site is a fully serviced commercial site that currently contains retail Hardware Store. The site is bordered by the recent Aldi development.

It is considered that the proposed development is consistent with Council's codes and policies governing development of the site while being compatible and sympathetic with existing and envisaged commercial streetscape.

4. Submissions

The development was initially advertised and notified until the 15th April 2009. In response to this process three (3) submissions were received objecting to the proposal.

The key issues raised in the submissions are;

- Service of alcohol by persons without specific training.

The applicant and supporting documentation state that all employees involved in the sale of alcohol will be required to complete the Responsible Service of Alcohol qualifications.

- Over servicing of the Raymond Terrace Areas by liquor outlets.

The submitted Social Impact Assessment has outlined that the provision of an additional retail liquor outlet will bring the ratio of outlets per person in the Raymond Terrace locality to a number similar to that at the 2006 census. In 2006 the ratio of licensed premises per person over 18 in the Raymond Terrace census district was 1 premises per 1029 people. Using the projected growth rate for Raymond Terrace of 1.87%, the projected population of persons over 18 in the Raymond Terrace census district in 2009 is 9819 people giving a ratio of 1 licensed premises per 982 people. In this sense, the creation of an additional outlet when factoring in population growth will not dramatically change the ration of liquor outlets per person.

- Social Impacts of Alcohol on crime, violence and families.

The proposed liquor outlet is supported by a Social Impact Assessment, discussed elsewhere in this report, and will be the subject of the same licensing laws at the other existing liquor premises in the Raymond Terrace locality.

- Economic Impact on existing retail liquor outlets.

The submitted Social Impact Assessment outlined that in 2006 the ratio of licensed premises to persons over 18 years of age was 1 licensed premises per 1,029 people. Given the growth in population since the collection of the 2006 data, it is considered that the new premises will allow for servicing of the population increase and will not significantly alter the ratio of licensed premises per person in the Raymond Terrace locality.

5. Public Interest

It is considered to be in the public interest to approve the proposal. The development has demonstrated that it satisfies relevant planning considerations, represents an improvement over the current development on site in terms of architectural design, site responsiveness and merit and will result in an improved streetscape.

**ATTACHMENT 4
CONDITIONS**

CONDITIONS OF APPROVAL

1. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
2. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
3. Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.
4. The development application has not been assessed against the provisions of the Building Code of Australia. A Section 96 application under the Environmental Planning & Assessment Act 1979 will be required if design amendments are necessary to comply with the provisions of the Building Code of Australia.
5. The development shall be limited to the following hours of operation;
 - Monday to Wednesday 9:00am to 8:00pm;
 - Thursday to Friday 9:00am to 9:00pm;
 - Saturday 9:00am to 8:00pm;
 - Sunday 10:00am to 6:00pm.
6. Landscaping shall be carried out in accordance **with the details submitted**. The landscaping must be completed prior to issue of Occupation Certificate.
7. A colour scheme providing full details of the colours and character of all external building materials and finishes to be used shall be approved by Council **prior to the issue of the Construction Certificate**.
8. The development shall provide 62 on-site car parking spaces, including 2 disabled parking spaces. These spaces shall be separately accessible, clearly line-marked (disabled spaces clearly signposted) and adequately paved and drained in accordance with Section B3 of Port Stephens Development Control Plan 2007. Car parking must be provided prior to the issue of the occupation certificate or use of the development.
9. A Construction Management Plan shall be submitted and approved by Council, **prior to the issue of the Construction Certificate**. The construction management plan shall specify operational details to minimise any potential impact to adjoining properties. The construction management plan should

include but not limited to the following information:- Construction techniques, noise and vibration management, storage of equipment and building materials, hours of work:, primary route for truck movements, etc.

10. All work or the storage of goods or materials shall be confined within the building or approved areas. Separate development approval is required for external storage.
11. Any lighting on the site is to be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.
12. Flashing illuminated signage is not permitted. Illuminated signs must be fitted with an automatic timing device to extinguish the illumination between the hours of 10.00pm and 7.00am.
13. An NPER Structural Registered Professional Engineer shall develop and/or review structural design, specifications, and plans and provide certification to Council, for the construction of watertight shields over doors, windows, and other openings. The certificate shall certify that below the flood planning level the structures are watertight with walls substantially impermeable to the passage of water which "shall not permit the accumulation of more than 100mm of water depth during a 24-hour period if there were no devices provided for its removal". The certificate shall also certify that structural components have the capability of withstanding the hydrostatic and hydrodynamic flood forces, including debris impact and buoyancy uplift for the 1% AEP Flood. The certificate shall be issued to Council prior to the issue of the Construction Certificate.
14. A Flood Emergency Operation Plan shall be prepared and approved by Council prior to the issue of the Construction Certificate. The Plan shall include measures to ensure that the floodproofing components will operate properly under all conditions, including power failures. A continuous source of electricity to operate any necessary floodproofing components, such as pumps, will be needed for any floodproofing design that includes such components. The plan must include the following:
 - An established chain of command and responsibility with leadership responsibilities clearly defined for all aspects of the plan.
 - A list of specific duties assigned to ensure that all responsibilities are addressed expeditiously. The locations of materials necessary to properly install all floodproofing components must be included in the list.
 - A periodic training and exercise program to keep personnel aware of their duties and responsibilities. Training drills should be held at least once a year and should be coordinated with community officials. Flood safety precautions should be repeated during each training drill.
 - An Inspection and Maintenance Plan to ensure that all components will operate properly under flood conditions. The necessary inspection and maintenance activities, including inspection intervals and repair requirements, must be described in the Inspection and Maintenance Plan. Components that should be inspected as part of an annual (as a minimum) maintenance and inspection program include the following:

- Mechanical equipment such as sump pumps and generators.
- Flood shields and closures, to ensure that they fit properly and that the gaskets and seals are in good working order, properly labeled, and stored as indicated in the Flood Emergency Operation Plan.
- Walls and wall penetrations, for cracks and potential leaks

15. The development shall be constructed in accordance with the NSW Government Floodplain Management Manual (2005).
The Flood Planning Level for this development is 5.3 metres AHD.
Flood Compatible Building Materials are listed in the attached Schedule #.

The following design precautions must be adhered to:-

- b. In sewerred areas some plumbing fixtures may be located below the Flood Planning Level. Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge.
- c. No potentially hazardous or offensive material is to be stored on site that could cause water contamination during floods.
- d. All building materials, equipment, ducting, etc., below the Flood Planning Level shall be flood compatible.
- e. All main power supply, heating and air conditioning service installations, including meters shall be located above the Flood Planning Level.
- f. All electrical wiring below the Flood Planning Level shall be suitable for continuous submergence in water. All conduits below the Flood Planning Level shall be self-draining. Earth core leakage systems or safety switches are to be installed.
- g. All electrical equipment installed below the Flood Planning Level shall be capable of disconnection by a single plug from the power supply.
- h. Where heating equipment and fuel storage tanks are not feasible to be located above the Flood Planning Level then they shall be suitable for continuous submergence in water and securely anchored to overcome buoyancy and movement which may damage supply lines. All storage tanks shall be vented to an elevation above the Flood Planning Level.
- i. All ducting below the Flood Planning Level shall be provided with openings for drainage and cleaning.

Attach schedule for flood compatible materials.

16. The Designated flood is the 1 % AEP Flood. A structural engineer shall design provide certification to Council that all building structures and earth mounds are able to withstand the hydrostatic and hydrodynamic flood forces, including

debris impact and buoyancy uplift for the 1% AEP Flood **prior to the issue of the Construction Certificate.**

17. A flood management plan which covers evacuation and the provision of emergency food, medical supplies, power/communication, water and effluent disposal, etc incorporating the State Emergency Services Business Floodsafe Toolkit,. shall be submitted and approved by Council **prior to the issue of the Construction Certificate.**
18. A flood storage area of at least 10% of the floor space shall be provided above the Flood Planning level for use by the occupier in times of flood. Such storage shall be accessible and be signposted for flood storage only and not be used for any other purpose. **Prior to the issue of Construction Certificate,** details shall be provided to Council identifying nominated areas.
19. Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Port Stephens Section 94A Development Contributions Plan, a contribution of 1% of the cost of the development, as determined in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000, shall be paid to Council

The amount to be paid is to be determined in accordance with the provisions of the Port Stephens Section 94A Development Contributions Plan. The contribution is to be paid **prior to issue of the Construction Certificate.**

A Quantity Surveyor's Detailed Cost Report **(form attached)** setting out an estimate of the proposed cost of carrying out development in accordance with Schedule 2 of the Port Stephens Section 94A Development Contributions Plan must be approved by Council prior to issue of a Construction Certificate.

20. The development shall incorporate the following safety and security measures Details are to be approved by Council **prior to issue of an Occupation Certificate.**
 - Details shall be provided to Council prior to issue of Construction Certificate demonstrating that the proposed development will utilise either a shatter resistant film or laminated glass to aid in the prevention of breakage of windows.
 - CCTV shall be installed in the building and carpark areas (including loading dock)to maximise surveillance opportunities and to reduce potential hiding locations. Details of camera locations shall be provided to Council prior to issue of Construction Certificate.
 - Security lighting is to be provided on the property to minimise the potential for criminals to be concealed on site. A detailed lighting strategy achieving these aims is to be provided to Council prior to issue of Construction certificate.

- The site shall be covered in low glare/high uniform lighting compliant with Australian Standard AS:1158. Details shall be provided to Council prior to issue of Construction Certificate.
 - The light covers shall be designed to reduce opportunities for vandalism to the lighting system. Details of the light covers shall be provided to Council prior to issue of Construction Certificate.
 - The applicant shall prepare a lighting maintenance policy. All broken or damaged lighting shall be replaced within 48hours. Details of the lighting maintenance policy are to be provided to Council prior to issue of Construction Certificate.
 - The applicant shall prepare a landscape maintenance policy. All landscaping is to be maintained so as to not result in overgrown vegetation providing hiding areas. Trees on the perimeter of the site shall be under pruned to allow for clear site lines and natural surveillance to and from the site. Details of the landscape maintenance policy are to be provided to Council prior to issue of Construction Certificate.
21. Digital or Video technology shall be implemented to record images from the CCTV camera's. Staff shall be trained in the correct operation of the system.
22. All lighting implemented is to be appropriate for its intended use. Car park lighting shall allow customers to view the interior of their vehicles.
23. Directional signage shall be implemented advising of entry and exit points to both the site and the building.
24. Signage shall be implemented in the carpark area and on the building advising of security measures in place on the site.
25. "Park Smarter" signage shall be placed in the carpark to encourage carpark users to remove or secure all valuables in vehicles.
26. The loading dock roller shutter doors are to remain closed at all times other than when deliveries are being made.
27. The vehicle driveway from the roadway to the property boundary incorporating the gutter crossing shall have a width of 6m and shall be constructed in concrete in accordance with the options shown on **Council's Standard Drawing No. S122A & S105A.**
- The construction of the footpath crossing and associated lipless layback must be constructed **prior to the issue of any Interim and Final Occupation Certificate.**
28. Internal carparking and manoeuvring areas shall have a 100mm concrete kerb along the boundary edge to stop stormwater discharging onto neighbouring properties.

29. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
30. Submission of Works-As-Executed plans and report prepared and certified by a suitability qualified drainage engineer confirming all drainage works (volume, discharge, levels, location, etc) are built in accordance with conditions of consent and the approved plan. Minor variations in height can be certified providing they are clearly identified in the report and the engineer certifies that the overland flow paths are not altered, discharge rates are not increased, and no additional negative effects are imparted on any dwellings or property. Minor variations can only be certified where it can be demonstrated that the ease of maintenance and monitoring of the system has not been negatively affected.

The documents shall be submitted to, and accepted by the Certifying Authority, **prior to issue of the occupation certificate.**

31. Works associated with the approved plans and specifications located within the existing Road Reserve shall not commence until:
i) a Roads Act Approval has been issued, and
ii) all conditions of the Roads Act Approval have been complied with to Council's satisfaction.
32. Works associated with the Roads Act Approval are subject to:
a. inspection by Council,
b. testing by a registered NATA Laboratory and
c. approval by Council at each construction stage as determined by Council.
33. All driveways and parking/manoeuvring areas shall have an offset of 300mm or greater from obstructions higher than 150mm.
34. All redundant lay-backs shall be reinstated to match the adjoining kerb and gutter profile.
35. Collected stormwater runoff shall be piped to the inter-allotment drainage line junction point located within the drainage easement.
36. Where Council is nominated as the Principal Certifying Authority, a separate approval under the Roads Act will not be required from Council for all works within Council land and Road Reserves.
37. All civil engineering works associated with the Roads Act Approval shall be carried out to the satisfaction of Council (with a letter of practical completion issued) **prior to issue of the Subdivision Certificate or Occupation Certificate.**

All works associated with the Roads Act Approval shall be at no cost to Council.

38. Filling shall not obstruct any natural stormwater flowpath or water drainage system. Neither shall the fill encroach any adjoining property.
39. In areas that are disturbed for site filling, all available topsoil shall be stockpiled and re-used at the completion of the earthworks. The topsoil shall be spread evenly and lightly rolled. All disturbed areas shall be stabilised within 14 days of completion of the filling operations with grass cover by either turfing or seeding.
40. Erosion control measures shall be put in place to prevent the movement of soil by wind, water or vehicles onto any adjoining property, drainage line, easement, natural watercourse, reserve or road surface, in accordance with "Managing Urban Stormwater", Volume 1:2004 (Landcom).
41. The driveway (within the road reserve) shall have a minimum of 0.5 metres clearance from the edge of existing drainage structures, pits, power poles etc. Details shall be approved by the certifying authority **prior to issue of the construction certificate.**
42. Driveways, parking and turning areas shall be paved or sealed with either reinforced concrete, pavers or asphalt over a suitably prepared, compacted sub-base. These areas shall be maintained in perpetuity by the existing or future owners and occupiers of the property(s)
43. Provide a drainage system on site to collect pavement runoff from vehicle parking areas into proprietary oil arrestor before discharge from the site (or to any stormwater detention or infiltration systems on-site). Pollutants shall be disposed of in an approved manner. Roof stormwater must be discharged separately. Full details, shall be approved by the certifying authority **prior to issue of the Construction Certificate.**
44. The stormwater detention system shall be designed and built in accordance with the approved concept plan. Details shall be approved by the certifying authority **prior to issue of the construction certificate.**
45. The stormwater detention system is to be designed in accordance with Section 8.11 of AS 3500.3:2003. Details are to be approved by the Certifying Authority **prior to issue of Construction Certificate.**
46. Structural Certification is required for the below ground stormwater system/ tank(s). Details are to be approved by the Principal Certifying Authority **prior to issue of the Construction Certificate.**
47. All works as listed as conditions of development consent, which are located in public roads are subject to approval under section 138 of the Roads Act 1993. Engineering details in accordance with Council's Subdivision and Development Code, of such works shall be submitted with a Roads Act application form and then approved by Council prior to approval to commence these works and **prior to issue of the Construction Certificates.**

The following items are also required to be approved by Council prior to approval being granted to commence works:

- a) Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual;
- b) Payment of fees and bonds (same Principle Certifying Authority fees, inspection fees and maintenance bonds as relevant to subdivisions);
- c) Contractors public liability insurances to a minimum value of \$10 million dollars.

48. The following fees and/or bonds are to be paid as part of this consent:

- a) Subdivision construction certificate/plan approval fee, prior to approval of construction certificate or plans.
- b) PCA/inspection fee, prior to approval of construction certificate or plans.
- c) Long Service Levy, prior to issue of construction certificate (verification of payment is required if paid directly to Long Service Board)
- d) Maintenance Bond, prior to release of subdivision certificate.
- e) Street Tree Bond/Contribution, prior to release of subdivision.

The rates are as listed in Council's fees and charges. Contact Council's Subdivision Engineer prior to payment.

- 49. Collected stormwater runoff shall be piped to # within a drainage easement.
- 50. The building is located adjacent to a drainage system and as such all footings are to be founded below the zone of influence. Details shall be approved by an accredited Certifier or Council **prior to issue of the Construction Certificate.**
- 51. The existing interallotment drainage system shall be relocated in accordance with the approved plans and covered by an appropriate easement **prior to issue of the Occupation Certificate.**
- 52. The footway verge over the full Port Stephens Street frontage shall be reconstructed with segmental paving (identical to that existing in Port Stephens Street in front of the Aldi development). Detailed drawings and specifications for the proposed paving shall be submitted to and approved by Council **prior to the issue of Roads Act Approval.**
- 53. The proposed driveway onto Port Stephens Street shall include suitable delineation to distinguish pedestrian right of way along the footpath. Full details are to be submitted to and approved by Council **prior to the issue of Roads Act Approval.**
- 54. Appropriate directional controls and signage shall be provided where secondary circulation aisles meet the main entry / exist aisle onto Port Stephens Street. Full details are to be submitted to and approved by Council **prior to issue of the Roads Act Approval.**

55. The cross fall on the accessible car parks shall not exceed 1:40. Full details are to be approved by the Principal Certifying Authority or Council **prior to issue of a Construction Certificate.**
56. All doors, windows, and other openings shall be protected by watertight shields to prevent the ingress of floodwaters. Full details are to be approved by the Principal Certifying Authority or Council **prior to issue of a Construction Certificate.**
57. The proposed development shall be provided with access and facilities for the disabled in accordance with Australian Standard 1428.1 and the relevant provisions of the Building Code of Australia.
58. A continuous and accessible path of travel, designed in accordance with Australian Standard 1428.1 shall be provided to and within any building on the site. This accessway shall provide access to all required facilities.
59. External access to the building required to be accessible must be in accordance with the Building Code of Australia Part D and Australian Standard 1428.1, and must be provided:
 - (i) from the allotment boundary at the main points of entry; and
 - (ii) from any accessible carparking space on the allotment; and
 - (iii) from any adjacent and associated accessible building on the allotment; and
 - (iv) through the principal public entrance.
60. The minimum number of accessible car parking spaces shall be provided in accordance with the Building Code of Australia Section D Subsection 3.5 and designed in accordance with Australian Standard 2890.1.
61. Access and facilities for the disabled provided in accordance with Australian Standard 1428.1 and the relevant provisions of the Building Code of Australia. These shall be maintained for the life of the development by existing or future owners.
62. The fit out of food preparation, storage and service areas are to be designed and constructed to comply with standard 3.2.3 of the Australia New Zealand Food Standards Code and Australian Standard AS 4674-2004 for the construction and fitout of food premises in particular with reference to the following:-

If Council is nominated as the Principal Certifying Authority, details of compliance are to be included in the plans and specifications for the construction certificate. The Food Surveillance Officer shall be given 48 hours notice to inspect the premises prior to commencement of the business.

Where Council is not nominated as the Principal Certifying Authority a certificate from an appropriately qualified person confirming compliance with the above legislation and guidelines is to be provided before the issue of the occupation certificate.

Prior to occupation the business is to be registered with Council.

a Solid Walls

The walls including internal walls of the food premises to the food preparation areas, kitchens, sculleries, food displays, food serveries and food storage areas shall be of solid construction eg. Brick, concrete, concrete block, lightweight concrete block or other similar approved homogenous material.

b Wall Finishes

Any kitchens, sculleries, food preparation areas, food serveries and the like shall be finished to a height of at least two (2) metres above the floor level with:-

- i. Glazed tiles fixed in accordance with the requirements of AS3958.1;
- ii. Stainless steel or other approved impervious material adhered directly to the wall.

c Rendering Walls Above Two (2) Metres

Where wall tiling does not extend to the ceiling level the wall surface above the tiles shall be rendered to a smooth steel trowel finish flush with the face of the tiles and painted with a durable gloss paint of a light colour.

d No Ledge On Wall Tiles

The face of the tiles fixed to the vertical wall surfaces shall be flush with the adjoining wall surfaces to reduce the likelihood of the collection of dust and other accumulations on the ledge formed.

e Ceilings

Ceilings over food preparation, display and storage areas are to be constructed of rigid smooth faced material such as plasterboard or villaboard finished with set joints and a plaster cornice at the walls and is required to be painted in a washable gloss paint of a light colour.

h Floor Finishes

Floors are to be covered with approved floor coverings:-

- i With the use of ceramic floor tiles coved with a 25mm ceramic cove tile at the intersection with the walls, or
- ii. With the use of a continuous sheet vinyl returned 150mm up the wall to form a cove and sealed to the wall and fillet with an approved fillet or backing piece to provide support, or
- iii. With the use of impervious trowelled epoxy over concrete, coved at the intersection of the walls and floor.

i Floorwastes

Floors are to be adequately graded and drained to the required floor waste(s).

j Light Fittings

Light fittings being recessed flush to the ceiling surface or be of a 'squareline' type attached to the underside and provided with approved diffuser covers.

L Vermin Proofing

Windows, external doors and other external openings shall be provided with vermin and insect proofing.

M Coolroom Construction

Any cool rooms and freezing rooms shall be constructed and drained in accordance with Standard 3.2.3 – Food Premises and Equipment, of the Australia New Zealand Food Standards Code, Australian Standard As 4674 and Council's local policies.

N Coolroom Coving

Coving of the coolroom and/or freezer room shall be finished up to a 25mm aluminium "arrowhead" moulding installed 50mm above the finished floor surface to prevent damage to the coving and to allow ease of cleaning.

o Coolroom Floor

The floor of the coolrooms / freezer rooms must be finished with a trowelled epoxy finish or tile with an epoxy grout or similar to ensure that the floor is impervious and easily cleaned. The concrete floor must be covered a minimum of 25mm and capped with an aluminium arrowhead.

p Coolroom Shelving

Shelves to the coolroom / freezer rooms shall be constructed of galvanised pipe, angle iron, T iron, flat metal or other approved materials, all of which should be treated to prevent corrosion. The base of the shelves in the coolroom / freezer room must be at least 300mm above the floor surface.

q Coolroom Top Infill

The coolroom being sealed and vermin proofed against the existing ceiling and wall surface.

rPlumbing & Electrical

Services pipes, conduits, condensate drains and the like being concealed behind the finished floor and ceiling surfaces. Where such services are installed pre-fabricated panels provide 25mm clearance off panel surfaces

S Fixed Thermometers

All hot and cold holding units used for storage of perishable foods eg; coolrooms / freezer rooms, fridges, pie warmers, bain maries, roller grills etc. must be fitted with permanent thermometers accurate to one (1) degree that are able to be read from outside the unit (ie. Without opening the unit) and must be fitted in a location that gives an accurate reading of the temperature of the food.

TRefrigeration Drainage

The refrigeration condensation drainage shall be conveyed to the reticulated sewerage system where available and in other cases disposed of without causing a nuisance.

uEquipment 150mm Off Floor

All cookers, ovens, vats, fridges, freezers, benches, cupboards, shelves or similar appliances or equipment are required to be fitted with legs so as the base of the unit is at least 150mm off the floor surface. Further consideration must be given to deep units so as to not hinder cleaning requirements.

W False Bases

False bottoms beneath counters, cupboards, fittings, fixtures and equipment are not permitted. The above shall be installed on approved metal legs not less than 150mm in height.

YRoller Shutters

The roller shutter drum casings being concealed above the ceiling level or enclosed in a plasterboard bulkhead.

BBInspection Requirements

It is the Applicants responsibility to ensure that the appropriate progress and final inspections of the food premises fitout have been carried out by the Principal Certifying Authority.

EECleaners Sink

A cleaners sink shall be provided with hot and cold water connected thereto, through a common mixing spout.

FFHands Free Basin

All hand washbasins shall be provided in sufficient number within a food premises and must be fitted with a "hands free" operation with a single spout to mix hot and cold water. A supply of liquid soap and single-use paper towel made available from an enclosed dispenser is also to be provided to the handwash basin.

63. The fit out of food preparation, storage and service areas are to be designed and constructed to comply with standard 3.2.3 of the Australia New Zealand Food Standards Code and Australian Standard AS 4674-2004 for the construction and fitout of food premises.
64. All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.
65. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.

66. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-

- * Monday to Friday, 7am to 6pm;
- * Saturday, 8am to 1pm;
- * No construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L_{10} level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.

67. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.

68. The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring and the finished ground around the perimeter of the building is to be graded to prevent ponding of water and ensure the free flow of water away from the building.

69. Where the proposed development incorporates pile-driving activities associated with the construction process the applicant/beneficiary of the consent shall, **prior to commencement of work** for the works associated with the piling system undertake the following actions.

a) For development incorporating pile-driving activities for a period of 5 days or more, be that consecutive or combined total:

i) An appropriately qualified Acoustic Engineer shall prepare a report on the impact on adjoining properties in relation to anticipated noise and vibration

with reference to compliance with British Standard 6472 - 1996 Guide to evaluation of human exposure to vibration in buildings (1Hz to 80 Hz).

ii) Where the anticipated impacts exceed the prescribed performance standards of the

noted Standard the consultant shall make recommendations on the method of

minimising the noted impacts to meet the performance standards.

iii) For pile driving activities with a duration in excess of 5 days as noted above the

applicant/beneficiary of the consent shall engage an Acoustic Engineer to undertake

monitoring of the pile driving to verify the identified performance standards noted are

not exceeded. Details to be forwarded to Principle Certifying Authority.

70. Pile driving shall only be carried out between the hours of 8.00am - 3.30pm Monday to Friday excluding public holidays.
71. Development incorporating pile-driving activities for a period of less than five (5) days be that consecutive and a total combined throughout the construction process, shall comply with the provision of British Standard 6472-1996.
72. The applicant or the person who is the beneficiary of the development consent incorporating pile-driving activities shall, **prior to commencement of work** prepare and submit for approval of a Construction Management Plan incorporating notification provisions for the pile-driving activities with practical measures taken to notify all adjoining property occupants of the commencement date and period of pile-driving works.

The notification shall be forwarded a minimum of 2 days prior to the commencement of works.

73. Separate approval is required to occupy, close or partially close the road reserve adjacent to the property under the Roads Act. The storage of materials, placement of toilets and rubbish skips within the road reserve is not permitted.
74. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. **Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.**
75. The construction site is to be adequately protected and drainage controlled to ensure that erosion and sediment movement is kept on your site. Construction sites without appropriate erosion and sediment control measures have the potential to pollute the waterways and degrade aquatic habitats. Offenders will be issued with an 'on the spot' fine under the Protection of the Environment Operations Act 1997.

Note: Erosion and sediment control measures prepared in accordance with the Erosion and Sediment Control Regional Policy and Code of Practice or Managing Urban Stormwater – Soils and Construction produced by Landcom 2004, need to be maintained at all times. A copy of Landcom 2004 bluebook may be purchased by calling (02) 98418600.

76. A "KEEP PORT STEPHENS WATERWAYS POLLUTION FREE" sign shall be displayed and be clearly visible from the road frontage for public viewing on the site at the commencement of works and remain in place until completion of the development. Signs are available from Port Stephens Council.
77. The Principal Certifying Authority shall only issue an occupation certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the Principal Certifying Authority issues an occupation

certificate. NOTE: If an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.

78. A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades. A copy of fire safety certificate needs to be forwarded to Council, If Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
79. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
 - a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.
80. Prior to demolition, all existing services are to be disconnected, sealed and made safe. The sewer, water and gas service is to be disconnected by a licensed plumber.
81. An asbestos audit shall be undertaken in respect of the proposed demolition work by a qualified occupational hygienist to determine the presence or otherwise of materials containing asbestos. Where asbestos is found to be present, a written procedure approved by Workcover Authority is to be used by contractors for the demolition handling and disposal of materials containing asbestos. A copy of such procedure and Workcover approval is to be submitted to Council before undertaking any works.
82. The demolition and disposal of materials containing asbestos should be carried out in accordance with Workcover Authority Guidelines. Material should be disposed of at a licenced landfill facility.
83. Any proposal with respect to flood proofing of the development to be supported by a report identifying how full compliance with the Building Code of Australia is to be achieved.

ADVICES

The following general information is provided to assist you with the preparation and prompt processing of your **Construction Certificate** where such application is made to Council.

- a) Plans in respect of an application for a Construction Certificate must be submitted to the Hunter Water Corporation for checking & stamping prior to application for the Construction Certificate being made.
- b) In the case of residential building work, prior to commencement of work submit to Council or a private certifying authority a copy of the contract of insurance under Part 6 of the Home Building Act 1989 (specific for the building work the subject of this approval) and builders licence details. (Or alternatively present to Council a copy of an Owner Builders Permit issued by the Department of Fair Trading.)
- c) If the value of the work is \$25,000 or more, you will need to pay a levy to the Long Service Corporation **prior to issue of the construction certificate**. You can either pay the Long Service Levy Corporation direct and show us your receipt OR you can pay us and we'll send your money to them.

Note: Owner builders can ask for a reduction in the levy. For more details contact the Long Service Corporation, Locked Bag 3000, CCDS, Lisarow 2252, phone 131441.

- d) Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- e) The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. This applies particularly to new buildings or significant building alterations. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act. Further information can be obtained from Council or the Human Rights and Equal Opportunity Commission on 008 021 199.
- f) Consideration should be given to the following enhanced access and facilities provisions for the proposed development.
 - (III) Australian Standard 1428.3 Design for access and mobility – Requirements for children and adolescents with physical disabilities.
- g) Further information about disabled access obligations can be found at the Human Rights and Equal Opportunities Commission website www.hreoc.gov.au
- h) It will be necessary to include within the Management Documents for this development, a programme for maintenance of stormwater detention devices.

ITEM NO. 2

FILE NO: 16-2008-827-1

DEVELOPMENT APPLICATION TO CHANGE USE FROM SHED TO DWELLING AT NO. 470 MARSH ROAD BOBS FARM

REPORT OF: ANTHONY RANDALL – ACTING MANAGER, DEVELOPMENT AND BUILDING

RECOMMENDATION IS THAT COUNCIL:

- 1) Defer determination of Development Application 16-2008-827-1 to request applicant to submit additional plans for a separate replacement dwelling to facilitate and reinforce the Council resolution dated 24 February 2009.
- 2) Require submission of additional plans for a separate replacement dwelling within six (6) months.
- 3) Delegate the determination of Development Application 16-2008-827-1 to the General Manager, subject to the receipt of plans for a separate replacement dwelling within six (6) months.
- 4) Should additional plans for a separate replacement dwelling not be received by Council within six (6) months, delegate the refusal of Development Application 16-2008-827-1 to the General Manager

OPERATIONS COMMITTEE – 14TH July 2009

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Ken Jordan	That matter be deferred to the Ordinary Council meeting on the 28 th July to allow for a site inspection.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Bruce MacKenzie, Ken Jordan, Daniel Maher, Steve Tucker, Shirley O'Brien, Bob Westbury, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Peter Kafer.

Those against the Motion: Nil.

ORDINARY COUNCIL – 28TH July 2009

	<p>Councillor John Nell Councillor</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Defer determination of Development Application 16-2008-827-1 to request applicant to submit additional plans for a separate replacement dwelling to facilitate and reinforce the Council resolution dated 24 February 2009. 2. Require submission of additional plans for a separate replacement dwelling within six (6) months. 3. Delegate the determination of Development Application 16-2008-827-1 to the General Manager, subject to the receipt of plans for a separate replacement dwelling within six (6) months. 4. Should additional plans for a separate replacement dwelling not be received by Council within six (6) months, delegate the refusal of Development Application 16-2008-827-1 to the General Manager.
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The motion lapsed given the need for a seconder.

<p>225</p>	<p>Councillor Bruce MacKenzie Councillor Ken Jordan</p>	<p>It was resolved that the matter be deferred to allow for a meeting between the applicant and Council's Sustainable Planning Group.</p>
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present a development application to Council for consideration in regard to a proposed permanent conversion of an existing shed to a dwelling.

Council is in receipt of a development application for a change of use, to permanently convert an existing machinery shed to a dwelling. The shed has been the subject of a recent compliance investigation that was reported to Council. In this regard, on the 24 February 2009, Council resolved to:

'issue orders allowing occupation of the machinery shed for five years until a separate dwelling has been constructed. Milestones would be required to show continued progress and that the wastewater management system be upgraded within six (6) months.'

It is reinforced that the application currently before Council for consideration is seeking to permanently convert the shed to a dwelling, rather than to construct a separate replacement dwelling.

The proposal to permanently convert the shed to a dwelling is considered to be contrary to the public interest. The development is not considered to be in keeping with the design characteristics of dwellings within the existing area, and would be inconsistent with public expectations of orderly development. Most significantly, the proposal has the potential to create a precedent for other land owners to seek approval to live in sheds, and future applications may be in more visually prominent locations. Conversion of sheds to dwellings is sub-standard in terms of built form and should be discouraged to protect the future character of the rural areas in Port Stephens.

It is noted that the surrounding area contains similar sheds. However the key point of difference is that these other sheds are being used in a rural capacity, usually in conjunction with a 'standard' dwelling. It is likely that the subject site is justifiably suitable have a single dwelling development, provided that issues including bushfire and flooding are addressed in the design. It is considered that the subject site has a dwelling entitlement, as the size of the property is greater than 4000m² as required by the Local Environmental Plan 2000, and the allotment was not created for a purpose other than a dwelling. However it is the built form of the shed to be converted to a dwelling that is considered to be inappropriate because of the bulky appearance. In terms of considering the appropriate form of development in the rural area, a site context analysis of the surrounding area has been undertaken. The surrounding properties are predominantly characterised as single storey dwellings of 'standard' appearance, with some double storey dwellings.

A 'standard' dwelling is numerically characterised as having a wall to ceiling height of 2.7 metres, and for double storey dwellings, the levels are usually broken by articulation and eaves. Roof pitches are generally 22 degrees, with maximum roof ridgelines of less than 10 metres. Generally the materials used for a 'standard'

appearance dwelling are weatherboard or brick, with tile or corrugated iron pitched roofing. There are also some new 'project' homes style residences being constructed in the area. Many of the dwellings are well set back from the street and shielded by vegetation.

In contrast, this proposal involves unbroken roof ridgelines of 18.4 metres and blank walls far in excess of Council's Development Control Plan design requirements, and accordingly gives an excessively bulky appearance with no articulation or visual relief. The double storey structure does not have eaves, nor any articulation between the two levels to relief the mass of the walls. The single colour of the metal sheeted structure further exacerbates this bulky appearance, as does the shallow roof pitch of around 10 degrees. The proposed dwelling is not considered to incorporate a design with high quality materials and detailing, nor does it reflect the predominant design of the surrounding area.

It is considered that cosmetic design features would not extend so far as to give this structure the appearance of a 'standard' dwelling, however additions including awnings and pergolas may alleviate the impacts to some extent. These kinds of structures attached to the shed would create an unusual appearance that is inconsistent with the surrounding dwellings in terms of the erected built form outcome in rural localities. Whilst the appearance to the street is an issue, it is noted that the proposal has a large street setback. However, the structure will be highly visible to adjoining properties, particularly those using the shared right-of-way to the east of the subject site.

In addition to the visual appearance issues, the development fails to satisfy relevant planning considerations and establishes an unacceptable level of impact on the amenity for future occupants due to the habitable floor space not being directly accessible to the private open space area. This issue is a result of the building being required to amend the existing structure so that all habitable rooms are above the flood planning level, i.e. they would need to be relocated to the second storey which does not have a balcony or the like proposed, to provide access to private open space from living areas.

The application as proposed has a habitable room, being a 'bar and games room' currently proposed on the lower level. This room is considered to be unacceptable as the floor level proposed, 1.8m AHD, is below the minimum flood planning level which is 2.5m AHD. The 1% flood level at this location is 1.88m AHD, and therefore the proposal would be 80mm below this level without the further provision of a freeboard, nor the provision of the 0.91 metre increase adopted by Council to cater for sea level rise. Accordingly, this room would need to be relocated, and this creates the open space issue referred to above.

It is noted that some of the issues discussed in this report could be addressed by requesting the applicant to make amendments to the proposal or by providing additional information. However, it was considered that requesting additional information would incur additional costs without the reasonable likelihood that the application would be supported in the current form, based on the Council's resolution of 24 February 2009 to restrict occupancy of the shed to five years, with

construction of a separate replacement dwelling. In this regard, it is considered more reasonable to request additional plans for a replacement dwelling, rather than to require the applicant to incur further costs in relation to designing the shed conversion.

Further, in terms of the wastewater issues on the site, should additional plans for a replacement dwelling be submitted, Council would not be likely to require an upgrade to the existing wastewater system on the site in the five year period extension period provided by the Council resolution dated 24 February 2009. However, should permanent approval be given to occupy the shed, then the applicant would be required to upgrade this system in the immediate future.

In general, should owners wish to establish temporary occupation of machinery sheds and like during periods of construction for their permanent dwellings, then these owners should be encouraged to establish this as part of their development application for the permanent dwelling. Should this approach be taken, issues including residential amenity, the Building Code of Australia, flooding, bushfire and wastewater disposal can be considered in the shed design to ensure that the temporary structures are safe and habitable for the temporary period of occupation.

However, approval of a permanent shed/dwelling conversion has the potential to create a precedent in the Port Stephens Local Government Area, wherein applicants are not encouraged to lodge a staged, well conceived staging plan for the construction of a dwelling. It is recommended that the permanent approval of the shed/dwelling conversion not be supported by Council, as providing consent in the configuration proposed would create a precedent which has the potential to be used in future development applications as reason for consent noting fairness, consistency and equity in the application of Council's planning provisions. Accordingly, Council may in the future be in a position of dealing with additional compliance matters and the associated liabilities.

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 *Council will protect and enhance the environment while*

SUSTAINABILITY – *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

Given the time that has elapsed since this DA was lodged and the lack of adequate information and plans to fully satisfy this application, refusal would normally have been issued under delegation by this time. Given Council's Resolution of February 2009 however the recommendation to seek additional plans within the next six (6) months is put forward.

Refer to Confidential Information Paper 'Development Application to Change Use from Shed to Dwelling at No.470 Marsh Road Bobs Farm.

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:-

- 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

If Council approve the permanent conversion of the shed to a dwelling rather than to encourage the construction of a replacement dwelling, then the development

would be contrary to the public interest and expectations of an orderly and predictable built environment.

Council should actively discourage the unauthorised occupation of sheds as dwellings, or additional owners may inhabit structures that are not built to a safe and appropriate standard.

Council has the responsibility to lead, educate, and regulate the community to achieve a fair, transparent and consistent approach to land use planning in the Local Government Area, as well as a duty of care to ensure the safety risks and environmental risks are responsibly and reasonably investigated and actioned in order to fulfil the requirements of the law to protect the community.

ECONOMIC IMPLICATIONS

It is not considered that the development application is likely to incur any economic implications to Council should any dwelling approved on this property be approved and constructed to the relevant standards. It is noted that constructing a replacement dwelling would incur costs to the applicant.

ENVIRONMENTAL IMPLICATIONS

The development, if approved by Council, will set a precedent in the Port Stephens Local Government Area (LGA). This precedent may result in a decay of the accepted rural character and environment of the locality, i.e. the existing character is predominantly single storey weatherboard or brick dwellings with pitched roofs. As dwellings are replaced over time, Council should encourage sympathetic buildings that do not detract from the desired or established environment.

CONSULTATION

The application was exhibited in accordance with Council policy and no submissions were received.

OPTIONS

Council can:

- 1) Adopt the recommendation to defer the determination until additional plans for a permanent replacement dwelling are submitted by the applicant.
- 2) Approve the development application to permanently convert the shed to a dwelling, subject to conditions
- 3) Indicate in principle direction to refuse the development application to permanently convert the shed to a dwelling, based on the current plans and information submitted and request the Group manager, Sustainable Planning to bring forward draft reasons for refusal.
- 4) Reject or amend the Recommendations in other ways.

ATTACHMENTS

- 1) Locality Plan
- 2) Site Plan
- 3) Assessment

COUNCILLORS ROOM

Nil

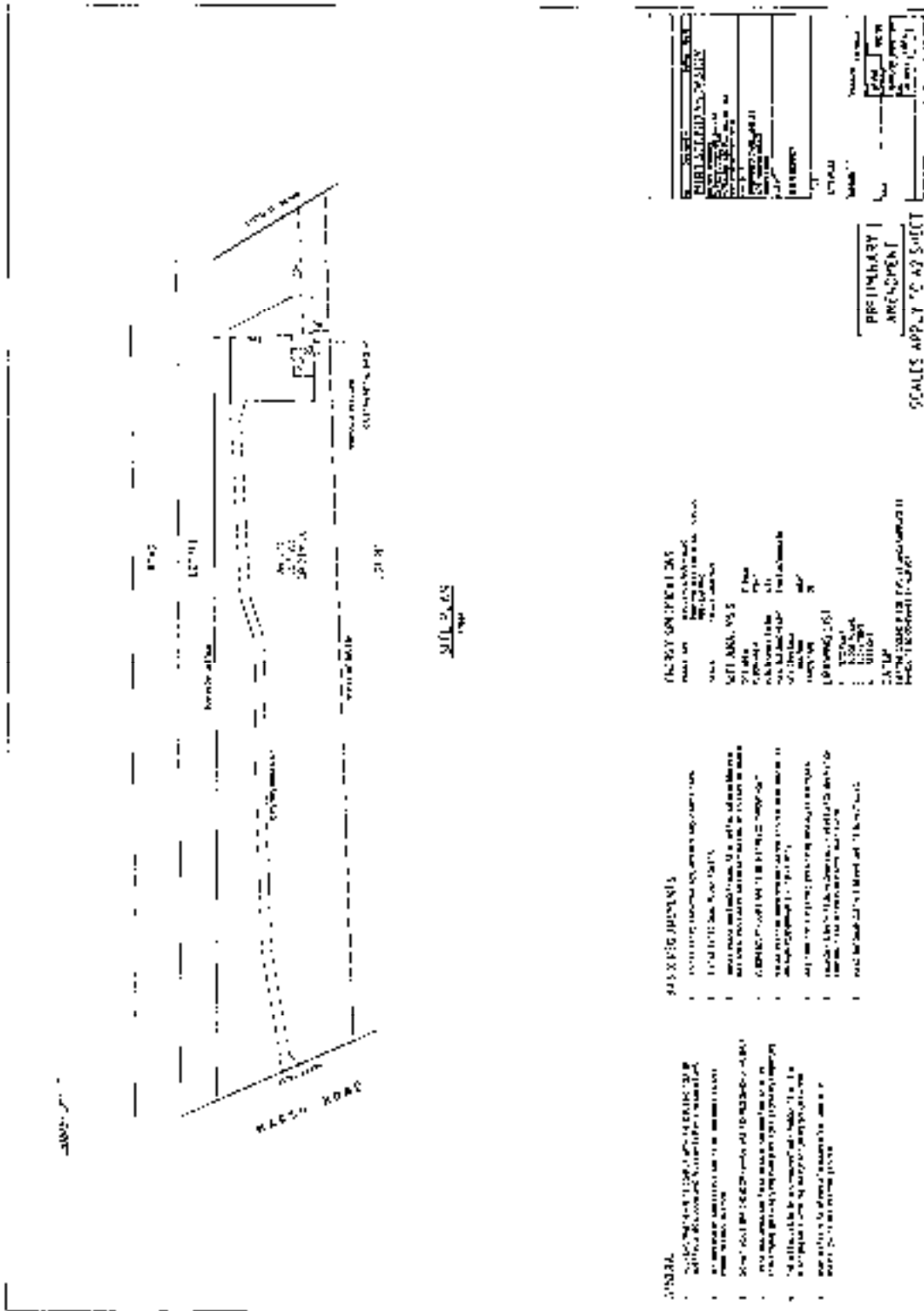
TABLED DOCUMENTS

Nil

ATTACHMENT 1
LOCALITY PLAN



ATTACHMENT 2
SITE PLAN



ATTACHMENT 3

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 proposal is for a change of use, from a shed to a dwelling. The shed was approved in 2004 for general rural purposes and was not considered at this time as to appropriateness for habitable purposes.

The proposal would involve three additional windows and awnings, internal modifications including extension of mezzanine level to include kitchen and living area.

The shed has been the subject of a compliance investigation and Council have resolved to allow the continued occupation of the shed as a dwelling for a period of five years subject to the satisfaction of certain criteria, namely the construction of a separate replacement dwelling.

THE APPLICATION

Owner	MR S K & MRS R J BONNEY
Applicant	MR S K BONNEY
Detail Submitted	Site Plan, Floor Plans, Elevations, Sections, Survey Plan, Statement of Environmental Effects, BASIX Certificate and Bushfire Report

THE LAND

Property Description	Lot 162 DP 239144
Address	470 Marsh Road Bobs Farm
Area	1.97 hectares
Dimensions	Approximately 60 metres by 365 metres
Characteristics	The site is generally flat with some patches of vegetation.

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	1 (a) (Rural Agriculture “A” Zone)
Relevant Clauses	11 Rural zonings 14 Dwelling-houses and dual occupancy housing in rural zones 37 Objectives for development on flood prone land

38 Development on flood prone land
47 Services

Development Control Plan 2007

B2 - Environmental and Construction
Management
B6 - Single and Dual Occupancy Dwellings

State Environmental Planning
Policies (SEPP)

SEPP No 14—Coastal Wetlands
SEPP No 71—Coastal Protection
SEPP (Building Sustainability Index: BASIX)
2004
SEPP (Rural Lands) 2008

Hunter Regional Environmental Plan 1989

Discussion

Local Environmental Plan 2000

11 Rural zonings

The subject site is zoned 1 (a)—Rural Agriculture “A” Zone and dwellings are permissible in this zone.

However, the current proposal, being the conversion of an existing shed into a dwelling in this locality, is not considered to be consistent with the objectives of this zone, namely:

(a) regulating the development of rural land for purposes other than agriculture by ensuring that development is compatible with rural land uses and does not adversely affect the environment or the amenity of the locality, and

(e) reducing the incidence of loss of life and damage to property and the environment in localities subject to flooding and to enable uses and developments consistent with floodplain management practices.

It is considered that the proposed appearance of this dwelling has the potential to have a detrimental impact to the amenity of the locality, and that the habitable floor levels proposed are below the flood planning level of 2.5m AHD poses an unacceptable risk of damage to property.

It is noted that it is likely that the subject site is justifiably suitable to have a separate single dwelling development. However it is the form of dwelling proposed that is considered to be inappropriate. In terms of considering the appropriate form of development in the rural area, a site context analysis of the surrounding area has been undertaken. The surrounding properties are predominantly characterised as single storey dwellings of ‘standard’ appearance, with some double storey structures.

Generally the materials used for the dwellings is weatherboard or brick, with tile or corrugated iron pitched roofing. There are also some new 'project' homes style residences coming into the area. Many of the dwellings are well set back from the street and shielded by vegetation.

However, in contrast, it is considered that the current proposal will have a negative overall visual impact to the streetscape and adjoining properties. The proposed building is not considered to be in keeping with the design characteristics of dwellings with the existing area, and would constitute development that is inconsistent with public expectations of orderly development in the rural area.

This proposal involves unbroken roof ridgelines of 18.4 metres and blank walls far in excess of Council's Development Control Plan design requirements, and accordingly gives an excessively bulky appearance with no articulation or visual relief. The double storey structure does not have eaves, nor any articulation between the two levels to relief the mass of the walls. The single colour of the metal sheeted structure further exacerbates this bulky appearance, as does the shallow roof pitch of around 10 degrees. The proposed dwelling is not considered to incorporate a design with high quality materials and detailing, nor does it reflect the predominant design of the surrounding area.

14 Dwelling-houses and dual occupancy housing in rural zones

The proposal is considered to satisfy the requirements of this clause, as the subject allotment has an area of at least 4,000 square metres.

37 Objectives for development on flood prone land

One of the objectives for development on flood prone land is to minimise risk to human life and damage to property caused by flooding and inundation through controlling development.

Given that the proposed dwelling has habitable floor levels below the flood planning level of 2.5m AHD, it is considered that the design poses an unacceptable risk of damage to property. However, it is noted that the proponent could amend the proposal to satisfy the flood planning level, by internally reconfiguring all habitable floor space to the upper level. However, direct access to private open space at ground level is not achievable in this design.

The current application as proposed has a habitable room, being a 'bar and games room' currently proposed on the lower level. This room is considered to be unacceptable as its floor level proposed, 1.8m AHD, is below the minimum flood planning level which is 2.5m AHD. The 1% flood level at this location is 1.88m AHD, and therefore the proposal would be 80mm below this level without the provision of a freeboard, nor the provision of the 0.91 metre increase adopted by Council to cater for future sea level rise. Accordingly, this room would need to be relocated, and this creates an open space issue which is discussed later in the assessment.

38 Development on flood prone land

Before granting consent to development on flood prone land, Council must consider, amongst other matters, the following:

- (c) whether the risk of flooding or inundation affecting the proposed development could reasonably be 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.

The proposal as lodged does not satisfy Council's policy in this area, i.e. that all habitable floor levels are required to be at a minimum level of 2.5m AHD.

As discussed above, it is noted that this floor level could be achieved should a redesign of the proposal occur, however based on the application as lodged, the application should be refused on flooding grounds.

47 Services

The subject site is not connected to reticulated sewer. In this regard the applicant has lodged an application to operate an on-site waste water treatment system. It is acknowledged that the proposed design would comply with Council's requirements. However, it is noted that the existing currently being used, i.e. the system previously approved for the shed, would not satisfy the standard requirements. Conditions of consent can address this issue.

Development Control Plan 2007

The dwelling proposed is considered to be contrary to the provisions of Port Stephens Development Control Plan 2007 (DCP 2007), specifically in relation to building design elements and visual appearance. This DCP requirement underpins the intent and objectives of Port Stephens Council Local Environmental Plan 2000 for dwellings in the 1 (a)—Rural Agriculture "A" zone which states:

(a) regulating the development of rural land for purposes other than agriculture by ensuring that development is compatible with rural land uses and does not adversely affect the environment or the amenity of the locality, and

The adoption of the Port Stephens DCP 2007 provides clear direction for future development in the local government area. This change was motivated by the growing concern that previous DCP's provided no clear guidance for Council or development assessment staff in relation to desired design requirements for single dwellings. This issue is significant public interest, that being the orderly and predictable form of development occurring within rural areas.

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

It is noted that one of the outcomes of the recent Futures Project was that 'The scenic qualities of Port Stephens, particularly in the rural areas, are important and need to be preserved'.

To assist in providing a strategic approach to land use management and property development, the inclusion of additional controls in relation to external appearance is reflected in the principles which were adopted within the DCP 2007 to provide guidance for developers and land owners. These principles, as well as the relevant controls as discussed below.

Summary of numerical compliance with DCP standards

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
Front setback	More than 200 metres	12 metres	YES
Height	5.9 metres	9 metres	YES
Side setbacks	More than 7 metres	2 metres for second storey	YES
Unbroken roof ridgelines	18.4 metres	Maximum 10m in length	NO
Blank walls	7.5 metres	Maximum 5m in length	NO
Carparking	At least 1 space	1 space	YES
Private Open Space	Living areas would be required to be relocated to upper levels.	Directly accessible from living area	NO

B2 - Environmental and Construction Management

B2.12 Waste Water

The subject site is not connected to reticulated sewer. In this regard the applicant has lodged an application to operate an on-site waste water treatment system. It is acknowledged that the proposed design would comply with Council's requirements. However, it is noted that the existing currently being used, i.e. the system previously approved for the shed, would not satisfy the standard requirements. For the dwelling to be occupied permanently, the existing non-compliant system would be required to be decommissioned and replaced.

The proposed replacement system meets the requirements of the On-site Sewage Management Strategy. Treated effluent from the treatment system will be discharged to a raised and vegetated irrigation area. The location within the Tilligerry Creek catchment prescribes that appropriate disposal, environmental protection and minimisation of public health impacts overrides re-use options.

B6 - Single and Dual Occupancy Dwellings

Numerical standards have been addressed in the table above. The principles and merit based criteria are discussed below.

B6.3 Streetscape & Front Setback

It is noted that on a rural property, streetscape issues are considered differently to that of residential properties, given the lower density of development and provision of larger front setbacks. This application proposes a particularly large front setback, however, the building will be some what visible to the street and accordingly the streetscape principles are required to be considered.

In this regard the proposal is considered to be inconsistent with the DCP principles in relation to streetscape. Specifically:

B6.P1 – Development should be of scale and appearance that reinforces the existing or the desired future character of the area.

B6.P2 – Development should be sympathetic to the existing context...

Whilst it is noted that rural sheds are not inconsistent with the surrounding, it is considered that the conversions required to upgrade this structure to a dwelling standard would result in a structure that would be unsympathetic to the streetscape. This is due to bulk and scale issues and the building design elements, which are discussed in detail below.

B6.5 Bulk and Scale

It is considered that the proposal is inconsistent with the following principles of the DCP:

P6.C20 – the bulk and scale of a dwelling should be sympathetic to the local street context.

B6.P21 – the bulk, scale and location of a new dwelling should minimise the impact on the amenity of adjacent dwellings and land

As discussed above, it is considered that the conversions required to upgrade this structure to a dwelling standard would result in a structure that would be unsympathetic to the surrounding area. The proposal provides minimal, if any architectural relief or articulation to reduce the bulk and scale of the structure. Additional discussion in this regard is detailed below in B6.9 Building Design Elements.

B6.9 Building Design Elements

It is not considered that the conversion of the shed into a dwelling will be able to achieve the following principles of the DCP:

B6.P31 Development should reflect street character through use of local design elements, materials and forms.

B6.P33 Building design should balance horizontal and vertical proportions, windows positions and openings on all building facades.

B6.P34 Façade design should use high quality materials and detailing.

Further the proposal does not comply with the following controls:

B6.C55 Unbroken roof ridgelines must not exceed 10m in length and blank walls without a window must not exceed 5m in length.

B6.C57 The selection of colours and materials must be used to highlight the shape of building masses and detail elements. Single colour buildings are not acceptable.

In general, it is considered that the proposal will have a detrimental impact to the visual landscape, both to the streetscape and to adjoining houses. The dwelling is not considered to incorporate a design with high quality materials and detailing, or reflect the design of the surrounding areas.

The proposal involves unbroken roof ridgelines and blank walls far in excess of Council's design requirements, and accordingly will give an excessively bulky appearance. The single colour of the metal sheeted structure further exacerbates the bulky appearance.

B6.10 Energy Efficiency

It is noted that an engineering certification has been provided in relation to BASIX requirements.

B6.11 Private Open Space

Whilst it is noted that the subject site provides sufficient land for private open space, the design of the shed conversion to dwelling is not conducive to the future amenity of the occupants.

Specifically, as all habitable rooms will be required to be located on the mezzanine level, as subsequently the proposal will not comply with the following control:

B6.C64 The principle private open space area must be directly accessible from the living area of the dwelling.

It is considered that the current design does not provide the minimum amenity requirements as specified by the DCP.

B6.12 Privacy and Amenity

Given the setback distances proposed, it is considered unlikely that the proposal would create any significant privacy impacts.

B6.14 Vehicular Access & Parking

The proposal complies with the carparking requirements.

B6.15 Stormwater & Greywater

Stormwater management is achievable for the proposal through conditions of consent.

B6.17 Site Facilities & Services

The subject site has suitable areas for the provision of facilities, e.g. clothes drying area and garbage storage.

State Environmental Planning Policies

SEPP No 14—Coastal Wetlands

Land adjacent to the site is identified as containing SEPP 14 wetlands. However given that these areas are separated from the site by a road, it is considered that the proposal is unlikely to have any significant impacts to this area.

SEPP No 71—Coastal Protection

An assessment of the proposal pursuant to the 'matters for consideration' contained in this policy, the proposal is considered to be inappropriate. Specifically, the proposal is not considered to be suitable given its type, location and design and its relationship with the surrounding area.

SEPP (Building Sustainability Index: BASIX) 2004

It is noted that an engineering certification has been provided in relation to BASIX requirements. The existing shed will require modifications including insulation and window awnings. It is noted that the erection of awnings would have benefits to the appearance of the structure.

SEPP (Rural Lands) 2008

This policy aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes, and to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

It is not considered that the current proposal is consistent with the following rural planning principles contained in this policy:

(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities

This policy prescribes that the following matters are required to be considered in determining development applications for rural dwellings:

Matters for consideration	Comment
(a) the existing uses and approved uses of land in the vicinity of the development,	It is noted that the surrounding area contains similar sheds. However the key point of difference is that these other sheds are being used in a rural capacity. The proposal will involve the conversion of a shed structure into a dwelling style construction. It is considered that this will create an unusual appearance that is inconsistent with the surrounding lands and uses.
(b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,	The conversion of sheds to dwellings is considered to be generally inconsistent with the preferred and the predominant land uses in the vicinity of the development, as detailed in the context analysis contained in this report.
(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),	It is noted that the dwelling use is not inconsistent with the surrounding area, however that the built form of the dwelling proposed is inconsistent with the built form established in the locality.
(d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,	It is not considered that the area is a rural residential area.
(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).	It is not considered that design features could be incorporated into the shed/dwelling design to achieve consistency with the surrounding area in terms of character and design. It is noted that window awnings, pergola and cladding materials will provide cosmetic relief to the bulk and scale of the shed, but will not contribute to the otherwise inconsistent appearance of the shed structure with rural dwellings, in relation to wall heights, ridge lengths, articulation or roof pitch.

Building and Construction Matters

As the proposal involves the conversion of a shed to dwelling, Building Code of Australia issues are relevant to the assessment, i.e. whether the Class 10 structure can be reasonably converted to be Class 1A structure.

The matters to be considered include:

- Critical structural details, being the size and spacing of floor joists
- Certification from an engineer that structure has or can be modified to be suitable for the new intended use as a class 1a structure in accordance with AS1170 – i.e. required to shown that the class 10(a) structure meets class 1(a)
 - Issues relating to the class of the building include:
 - Wall/roof sarking
 - Wet areas waterproofed
 - Wall to ceiling height of 2.4 metres
 - Light and ventilation
- Certification from an engineer that the structure has been modified to be suitable for Class 1(a) and is structurally capable of standing all loads imposed thereon, eg mezzanine level
- Certification from an engineer that the footings are capable of additional point loads for existing and proposed works
- Certification from an engineer that structure is designed and built in accordance with NSW Government Floodplain Management Manual (2001)
- Certification from a qualified person that the electrical components comply with NSW Government Floodplain Management Manual and that all electrical connections are above the flood planning level
- Certification from a plumber that the plumbing work complies with AS3500 and is installed above flood level
- Termite treatment certificate

Council has received written certification from an engineering consultancy stating that their review of the existing building confirmed that the design and construction of the structural elements satisfy the requirements of AS 1170 (Loading Code) and the existing structure is suitable for use as a Class 1A building. They have also confirmed that the structure and footings are also suitable for the change of use from a shed to a dwelling and the building is capable of withstanding the forces and impacts of a 1% design flood.

Bushfire

The subject site is identified as bushfire prone, and accordingly an assessment pursuant to Section 79BA of the Environmental Planning and Assessment Act 1979 has been undertaken. It is considered that the proposal could comply with the requirements of Planning for Bushfire Protection 2006 provided that it was built to level 1 construction, a static water source was provided, as well as asset protection zones from 10-16 metres.

2. Likely Impact of the Development

This development application has the potential to create a cumulative impact in the Port Stephens Local Government Area, in that it could potentially create a precedent.

3. Suitability of the Site

It is noted that it is likely that the subject site is justifiably suitable have a single dwelling development. However it is the built form of the dwelling proposed that is considered to be inappropriate.

4. Submissions

The proposal was notified in accordance with Council policy and no submissions were received by Council.

5. Public Interest

The proposal is contrary to the public interest as the development fails to satisfy relevant planning considerations and establishes an unacceptable level of impact on amenity due to lack of appropriate private open space area and by not providing a floor level above the minimum flood planning level. Further it is considered that the proposal will have a negative overall visual impact to the streetscape and adjoining properties.

The proposed building is not considered to be in keeping with the design characteristics of dwellings with the existing area, and would constitute development that is inconsistent with public expectations of orderly development.

Councillor Glenys Francis left the meeting at 6.37pm during Item 3.

ITEM NO. 3

FILE NO: A2004-0511

LOCAL TRAFFIC COMMITTEE MEETING – 2nd JUNE 2009

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

Adopt the recommendations contained in the minutes of the local Traffic Committee meeting held on 2nd June 2009.

OPERATIONS COMMITTEE – 14TH July 2009

RECOMMENDATION:

	Councillor Geoff Dingle Councillor John Nell	That the recommendation be adopted.
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ORDINARY COUNCIL – 28TH July 2009

226	Councillor Frank Ward Councillor John Nell	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to bring to Council's attention traffic issues raised and detailed in the Traffic Committee minutes and to meet the legislative requirements for the installation of any regulatory traffic control devices associated with Traffic Committee recommendations.

LINKS TO CORPORATE PLANS

The items referred to the local Traffic Committee, and the subsequent recommendations are linked to the current Council Plan 2008 - 2012. In Parts 5 and 7 of the Plan, the Local Traffic Committee contributes to the following directions and goals:

- 1) Provide programs and planning instruments that enhance the safety of individuals and the community whilst preserving social amenity and discouraging social isolation.
- 2) Providing good community planning and the development of quality infrastructure.

FINANCIAL/RESOURCE IMPLICATIONS

Council has an annual budget of \$41 000 (\$25 000 grant from the RTA and General Revenue) to complete the installation of regulatory traffic controls (signs and markings) recommended by the Local Traffic Committee. The construction of traffic control devices and intersection improvements resulting from the Committee's recommendations are not included in this funding and are listed within Council's "Forward Works Program" for consideration in the annual budget process. The construction of traffic control devices and intersection improvements for items with a **SAFETY PRIORITY** (listed below) have a budget of \$ 25 000 (Safety Around Schools Program).

The local Traffic Committee procedure provides a mechanism to respond to and remedy problems in accordance with Council's "Best Value Services" Policy. The recommendations contained within the local Traffic Committee Minutes can be completed within the current Traffic Committee budget allocations and without additional impact on staff or the way Council's services are delivered.

SAFETY PRIORITIES

The installation of regulatory traffic controls or traffic control devices that are noted as having a Safety Priority shall be attended to before other works undertaken by Council. These works are generally of an urgent nature requiring immediate action.

The items with a Safety Priority are listed as follows:

NIL

LEGAL AND POLICY IMPLICATIONS

The local Traffic Committee is not a Committee of Council; it is a technical advisory body authorised to recommend regulatory traffic controls to the responsible Road Authority. The Committee's functions are prescribed by the Transport Administration Act with membership extended to the following stakeholder representatives; the Local Member of Parliament, the Department of Transport, NSW Police, Roads & Traffic Authority and Council.

The procedure followed by the local Traffic Committee satisfies the legal requirements required under the Transport Administration (General) Act furthermore there are no policy implications resulting from any of the Committee's recommendations.

AUSTRALIAN BUSINESS EXCELLENCE FRAMEWORK

This aligns with the following ABEF Principles;

- 2) Mutually agreed plans translate organisational direction into actions
- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 6) Continual improvement and innovation depend on continual learning
- 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

The recommendations from the local Traffic Committee aim to improve traffic management and road safety.

SOCIAL IMPLICATIONS

A safer road environment reduces costs to the Council and community by reducing the number and severity of accidents on our roads.

ECONOMIC IMPLICATIONS

Improved transport efficiency assists in the reduction in green house gases and vehicle operating costs.

ENVIRONMENTAL IMPLICATIONS

Transport efficiency and road user safety; contribute positively to the quality of life for residents and visitors to Port Stephens. Improved road user safety distributes benefits to all road users including commercial and private motorists, cyclists and pedestrians. These benefits include improved accessibility, mobility and safer road environment.

CONSULTATION

The Committee's technical representatives are the Police, RTA, and Council Officers; they investigate issues brought to the attention of the Committee and suggest draft recommendations for further discussion during the scheduled meeting. One week prior to the local Traffic Committee meeting copies of the agenda are forwarded to

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

the Committee members, Councillors, Facilities and Services Group Manager, Integrated Planning Manager and Road Safety Officer. During this period comments are received and taken into consideration during discussions at the Traffic Committee meeting.

No additional consultation was required for the meeting of 2nd June 2009.

OPTIONS

- 1) Adopt all or part of the recommendations.
- 2) Reject all or part of the recommendations.
- 3) Council may choose to adopt a course of action for a particular item other than that recommended by the Traffic Committee. In which case Council must first notify both the RTA and NSW Police representatives in writing. The RTA or Police may then lodge an appeal to the Regional Traffic Committee.

ATTACHMENTS

- 1) The minutes of the local Traffic Committee meeting held on 2nd June 2009 are contained in ATTACHMENT 1.

TABLED DOCUMENTS

Nil

Attachment 1
**PORT STEPHENS
LOCAL TRAFFIC COMMITTEE AGENDA**

**INDEX OF LISTED MATTERS
TUESDAY 2nd June, 2009**

- A. ADOPTION OF THE MINUTES OF 5TH MAY 2009**
- B. BUSINESS ARISING FROM PREVIOUS MEETING**
- B1 COUNCIL RESOLUTION MINUTE 148 - 2**
- B2 COUNCIL RESOLUTION MINUTE 149**
- C. LISTED MATTERS**
- C1 FERODALE ROAD MEDOWIE - REQUEST TO LENGTHEN THE BUS ZONE AT MEDOWIE PUBLIC SCHOOL TO ALLOW ALL BUSES TO FIT INTO THE ZONE**
- C2 FORESHORE DRIVE CORLETTE – REQUEST TO REMOVE A SMALL SECTION OF BARRIER LINE AT THE ENTRY TO THE NEW SEALED CARPARK AT ROY WOOD RESERVE**
- C3 SHOAL BAY ROAD SHOAL BAY - REPLACE 'NO STANDING' SIGNS WITH 'NO PARKING' AND 'NO STOPPING' WHERE APPLICABLE**
- C4 SHOAL BAY ROAD SHOAL BAY - REQUEST FOR SHORT-TERM PARKING NEAR THE CHEMIST**
- D. INFORMAL MATTERS**
- E. GENERAL BUSINESS**
- E1 KINDLEBARK DRIVE MEDOWIE – CONCERNS REGARDING VEHICLES SPEEDING IN THE VICINITY OF THE MEDOWIE PRE-SCHOOL**
- E2 COOK PARADE LEMON TREE PASSAGE – COMPLAINTS RECEIVED REGARDING VEHICLES SPEEDING**

**LOCAL TRAFFIC COMMITTEE MEETING
HELD ON TUESDAY 2nd June, 2009
AT 9:30AM**

Present:

Mayor Cr Bruce MacKenzie, Cr Peter Kafer, Sen. Const. John Simmons – NSW Police, Mr Mark Morrison – RTA, Ms Michelle Mexon Representing Craig Baumann MP, Mr Brian Moseley – Hunter Valley Buses, Mr Joe Gleeson (Chairperson), Mr Graham Orr and Ms Lisa Hudson – Port Stephens Council

Apologies:

Mr Frank Terenzini MP – Member for Maitland, Mr Mark Newling – Port Stephens Coaches

A. ADOPTION OF MINUTES OF MEETING HELD 5TH MAY, 2009

B. BUSINESS ARISING FROM PREVIOUS MEETING

Council Resolutions:

Item B1 Minute 148 - 2. Approach the RTA regarding the speed limit and street lighting at Richardson Road/Grahamstown Rd, Campvale. Item 503_04/09.

The RTA advises that an assessment of the speed limit along Main Road 104 – Salt Ash to Raymond Terrace, has been completed and that works orders have been signed for a reduction of existing speed limits. The details of the changes are:

- Between Campvale and Raymond Terrace – the speed limit will be reduced to 80km/h for the full length including around Grahamstown Dam, from the existing 100km/h.
- Between Nelson Bay Road and Medowie Road, the speed limit will be reduced to 90km/h from the existing 100km/h. The existing 80km/h sections on either end will be increased in length.

Traffic Committee Comment:

Cr MacKenzie expressed his concern that 80km/h speed limit is not warranted and that there is likely to be poor compliance and that there will be increased numbers of drivers overtaking.

The RTA representative advised that while the road environment appeared to be relatively innocuous that accidents continued to occur over this whole length of road and that a reduction of speed will reduce the number and severity of accidents that occur. Nelson Bay Road speed limits were reduced a number of years ago however the amount of data available is not yet sufficient to draw any

conclusions regarding improved accident rates that have resulted from the speed limit reduction.

The RTA advised that there will be a notification procedure undertaken to ensure that drivers are aware of the speed limit reductions. The full details of the notification procedure will be advised to Council. The change of speed limit is expected to occur within the next 2 weeks.

Item B2 Minute 149 – Benjamin Lee Drive Raymond Terrace – Intersection upgrade at Richardson Road intersection - RTA has been requested to provide any available information at next Local Traffic Committee meeting

The RTA advises that a plan was prepared and a submission for blackspot funding was made regarding this intersection.

Traffic Committee Comment:

Cr MacKenzie stated that Council wants to know what is happening and why it has taken so long for action on this matter. The RTA representative advised that for political reasons no further information is available at this time and that Cr MacKenzie needs to contact the Manager for Road Safety and Traffic for the Hunter Region to obtain further information.

C. Listed Matters

Item: C1 **22_06/09**

FERODALE ROAD MEDOWIE – REQUEST TO LENGTHEN THE BUS ZONE AT MEDOWIE PUBLIC SCHOOL TO ALLOW ALL BUSES TO FIT WITHIN THE ZONE

State MP: Member for Port Stephens

Requested by: Port Stephens Council Rangers

File:

Background:

Buses currently wait in the bus zone after school to pick-up students. When all buses are on-site, there is insufficient room for them all to fit within the existing bus zone, causing the last bus to arrive to protrude into the children's crossing.

Comment:

The existing bus zone at Medowie Public School is large enough to accommodate 3 buses comfortably. Recent problems have arisen due to the need for a small bus from Blinky Bill's after-school care to pick-up at the school at the same time as other buses are there.

Legislation, Standards, Guidelines and Delegation:

ARR Part 12 Div.2 – Rule 167 – No Stopping signs

ARR Part 12 Div.2 – Rule 195 – Stopping at or near a bus stop

AS 2890.5 – On street parking

RTA Regulatory Signs Manual – R5-400, R5-20

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Recommendation to the Committee:

Relocate the existing 'Bus Zone' post and sign to the eastern alignment of the school boundary, as shown on the attached sketch.

Discussion:

Cr MacKenzie questioned whether there would still be sufficient room for parents to park legally if the bus zone was extended. Cr Kafer stated that there had been recent enforcement of parking restrictions from Council Rangers at the school that had angered many parents. The Committee heard that while the school area is busy at school pick-up times that there is ample parking available further along Ferodale Road. The presence of vehicles parking and manoeuvring also helps to reduce vehicle speeds along Ferodale Road during the school zone operation times. Port Stephens Council is committed to encouraging the use of public transport and bus travel to and from school is a major part of this.

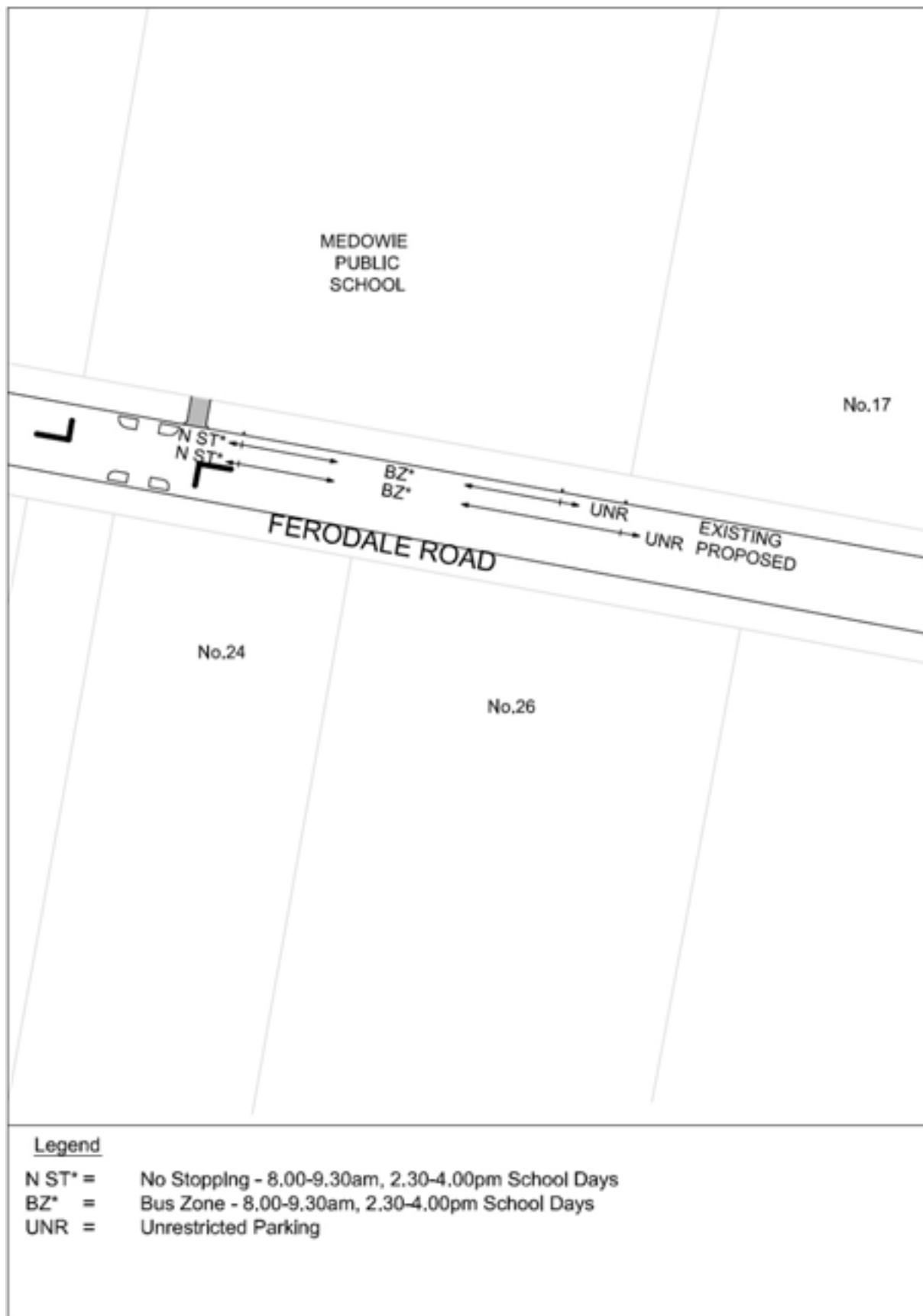
The representative from Hunter Valley Buses questioned whether the after-school care bus was able to park legally in the bus zone. The RTA representative advised

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

that under NSW legislation, provided that the bus met certain criteria, that they are able to legally stop in the bus zone while picking-up or dropping-off passengers.

Support for the recommendation:

1	Unanimous	
2	Majority	✓
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



Item: C2 23_06/09

FORESHORE DRIVE CORLETTE – REQUEST TO REMOVE A SMALL SECTION OF BARRIER LINE AT THE ENTRY TO THE NEW SEALED CARPARK AT ROY WOOD RESERVE

State MP: Member for Port Stephens
Requested by: Hon. Secretary - Corlette Halls Parks & Reserves Committee
File: PSC2005-4019/229
Background:

Council has recently completed improvement works at the Roy Wood Reserve car park. These works include sealing, linemarking and installation of internal speed humps.

Comment:

Australian Road Rules now allow vehicles to turn across barrier lines when entering or exiting driveways, car parks or service roads. The Inspection Committee noted that the entrance to the car park now appears as if it could be a continuation of the Foreshore Drive road alignment and that in adverse weather conditions or at night drivers could mistakenly enter the car park.

The Traffic Inspection Committee recommend removing a small section of the barrier line on Foreshore Drive, as well as installing a continuity line around the outside of the curve and across the driveway entrance and removing the barrier line within the car park, to make it more obvious to drivers where the road goes to.

Legislation, Standards, Guidelines and Delegation:

RTA Delineation Manual – Section 4 – Longitudinal Markings
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

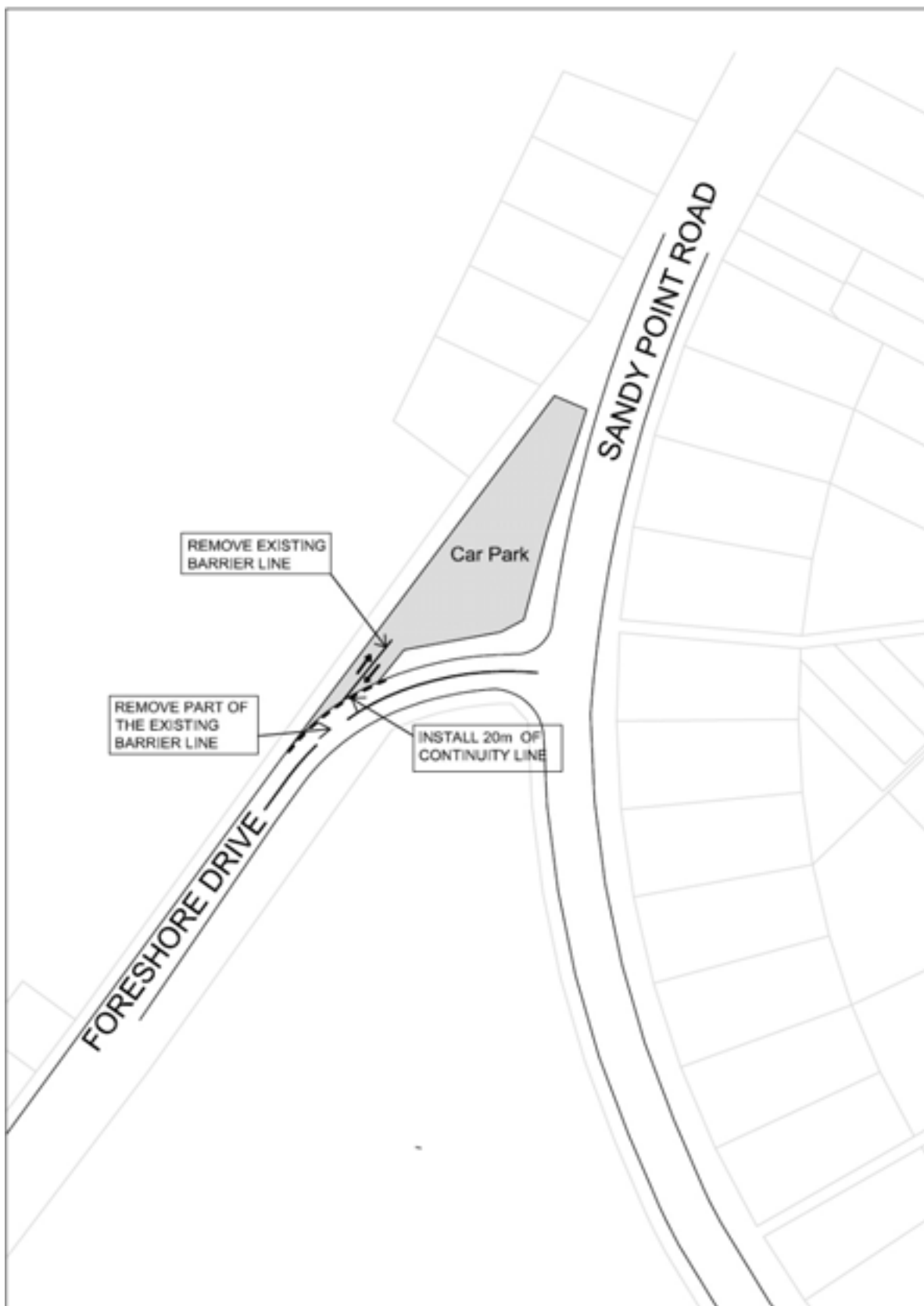
Recommendation to the Committee:

1. Remove 5m of barrier line at the car park entrance on Foreshore Drive as well as a part of the barrier line within the car park.
2. Install C1 continuity line across the entrance to the car park to delineate the through road, as shown on the attached sketch.

Discussion:

Support for the recommendation:

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



Item: C3 24_06/09

SHOAL BAY ROAD SHOAL BAY - REPLACE 'NO STANDING' SIGNS WITH 'NO PARKING' AND 'NO STOPPING' WHERE APPLICABLE

State MP: Member for Port Stephens

Requested by: Port Stephens Council

File:

Background:

On 1 December 1999, NSW adopted new road rules which included the Australian Road Rules (ARR) and required changes in the way parking zones are signed. These changes mean that NSW now has a two tier parking strategy (NO STOPPING and NO PARKING) and is designed to bring NSW parking arrangements substantially in line with the rest of Australia.

'No Standing' zones should now be phased out and changed to become either 'No Parking' or 'No Stopping'.

Comment:

There are still a number of 'No Standing' signs in existence in the Local Government area that require to be changed. The Traffic Inspection Committee recommend changing the signs along Shoal Bay Road from 'No Standing' to 'No Parking' where possible, to allow drop-off and pick-up areas and for 'No Stopping' to be installed where necessary.

Legislation, Standards, Guidelines and Delegation:

ARR Part 12 Div.2 – Rule 167 – No Stopping signs

ARR Part 12 Div.2 – Rule 168 – No Parking signs

RTA Technical Direction TDT99/21

RTA Regulatory Signs Manual – R5-400, R5-40

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Recommendation to the Committee:

Replace existing 'No Standing' signs with 'No Parking' and 'No Stopping' signs along Shoal Bay Road between Lillian and Tomaree Streets, as shown on the attached sketch.

Discussion:

Support for the recommendation:

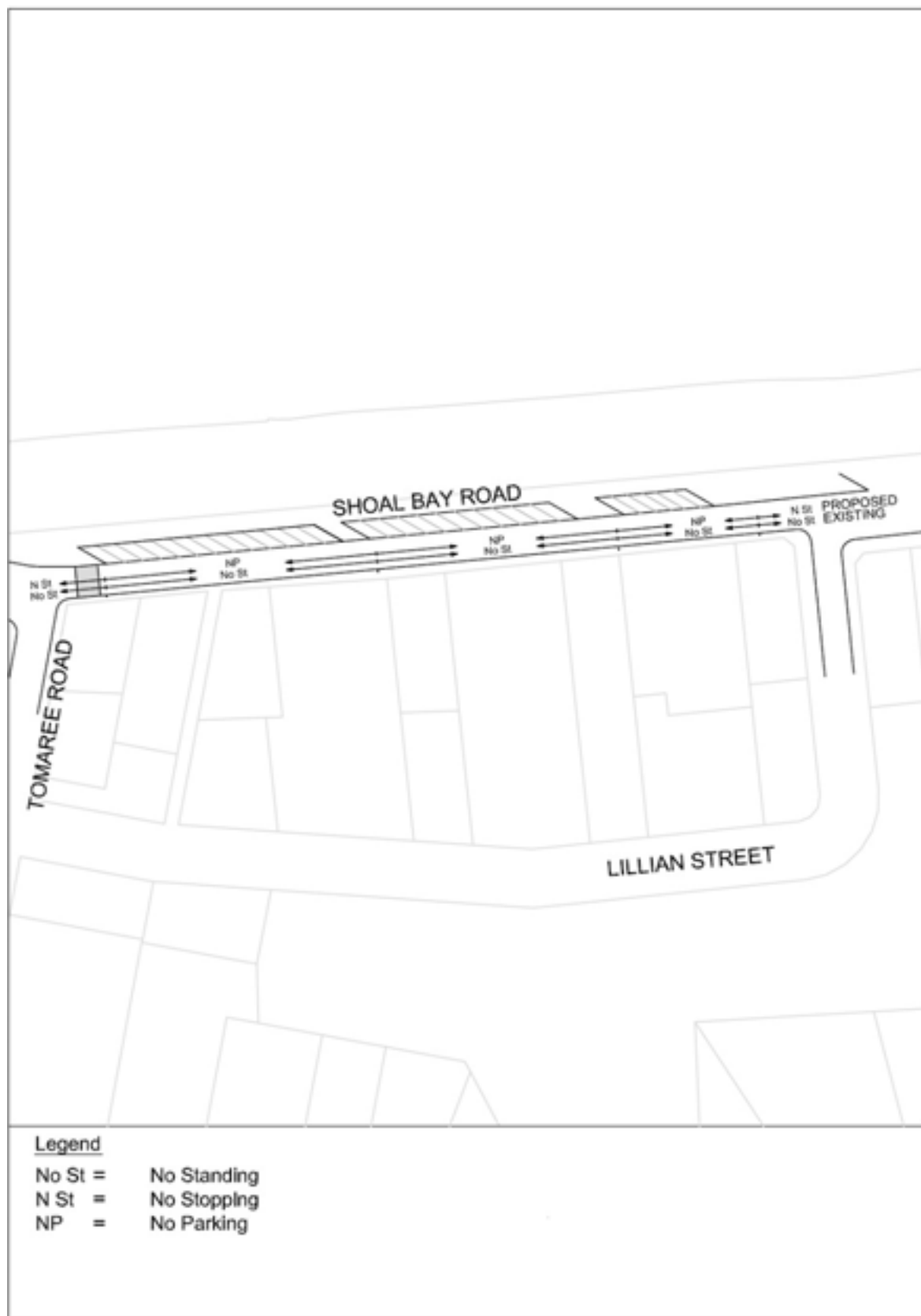
1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

PORT STEPHENS TRAFFIC COMMITTEE
Tuesday 3 June 2009

ITEM NO.24_06/09
Street: Shoal Bay Road

ANNEXURE A
Page 1 of 1



Item: C4 25_06/09

SHOAL BAY ROAD SHOAL BAY - REQUEST FOR SHORT-TERM PARKING NEAR THE CHEMIST

State MP: Member for Port Stephens

Requested by: Cr Ward

File: PSC2006-0615/070

Background:

Port Stephens Traffic Committee in February 2009 considered a request from the Shoal Bay Pharmacy for installation of accessible parking in Shoal Bay Road to allow less mobile customers to be able to park close to the Pharmacy. The Traffic Committee at that time did not support this request because of the unsuitability of the location and the likelihood that a disabled parking zone could be taken up for long periods by mobility parking permit holders and would not necessarily improve parking turnover.

Comment:

The Traffic Inspection Committee supported installation of short-term parking along the Pharmacy frontage and noted that holders of mobility parking permits are still able to legally park for up to 30 minutes in a 1/4P zone. This area is currently 1 hour parking although there appears to be limited turnover of parking.

Legislation, Standards, Guidelines and Delegation:

ARR Part 12 Div.2 – Rule 205 – Parking for longer than indicated

AS 2890.5 – On street parking

RTA Regulatory Signs Manual – R5-15

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

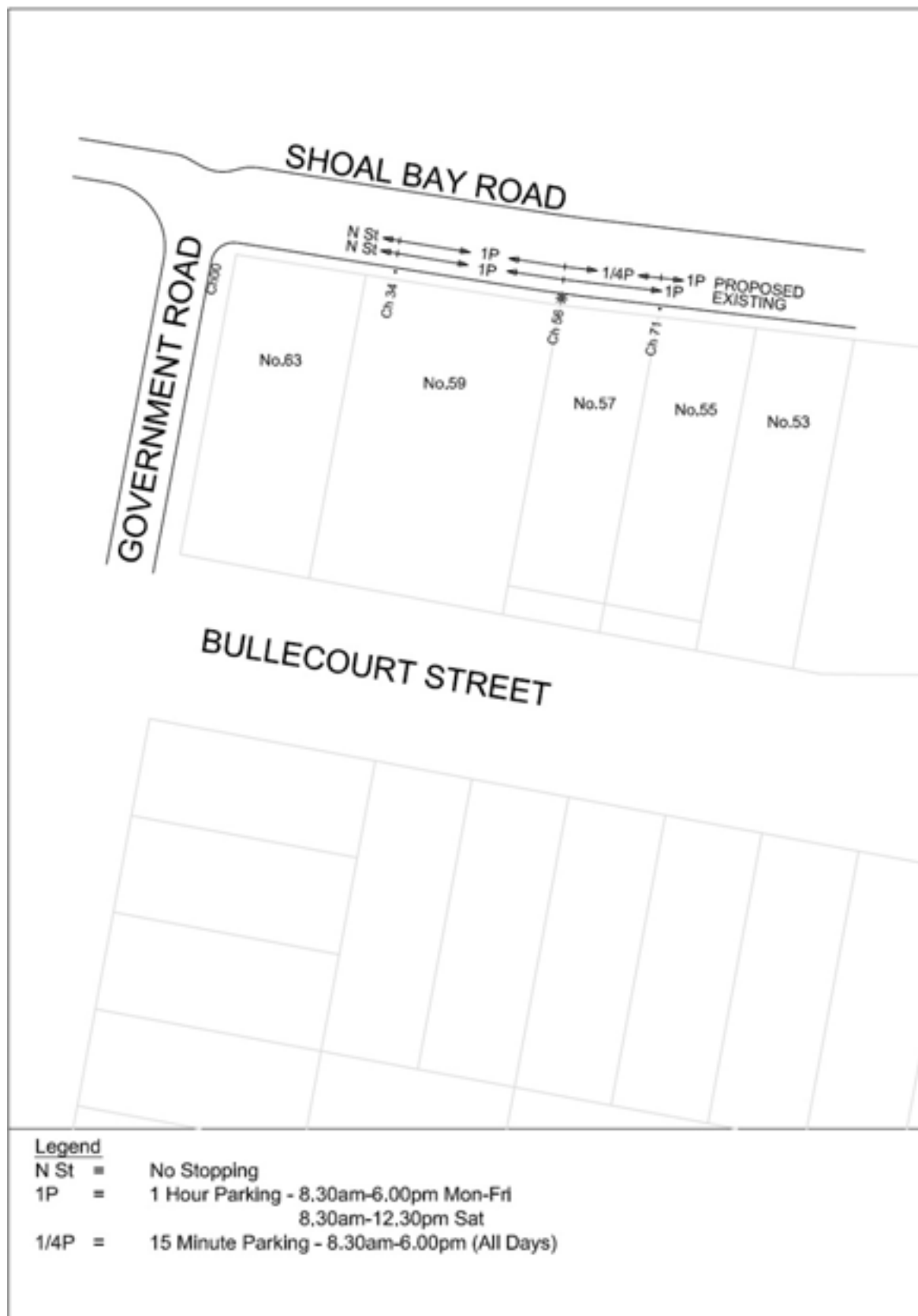
Recommendation to the Committee:

Install 15 minute parking restrictions along the frontage of No.57 Shoal Bay Road as shown on the attached sketch. The restrictions to read: 1/4P 8.30am-6.00pm

Discussion:

Support for the recommendation:

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



E. General Business

Item: E1 603_06/09

KINDLEBARK DRIVE MEDOWIE – CONCERNS REGARDING VEHICLES SPEEDING IN THE VICINITY OF THE MEDOWIE PRE-SCHOOL

Requested by: Cr Kafer

File:

Background:

Cr Kafer has received representations from parents regarding dangerous vehicle speeds on Kindlebark Drive in the vicinity of the pre-school. Parents are concerned for the safety of children and carers especially when crossing the road.

Discussion:

Cr Kafer stated that he had gone out during the day to the site to observe conditions for himself and that he had observed a number of vehicles that appeared to be travelling well above the speed limit.

Comment:

Council has recently received representations regarding this issue as well. Council is to install traffic classifiers in the vicinity of the pre-school to determine the speed and volume of traffic in the area and the item will be referred to Traffic Committee once the traffic data has been collected and assessed.

Item: E2 604_06/09

COOK PARADE LEMON TREE PASSAGE – COMPLAINTS RECEIVED REGARDING VEHICLES SPEEDING

Requested by: NSW Police

File:

Background:

NSW Police representative raised this item following representations from a resident of Cook Parade. The resident had taken details of the vehicles involved and had contacted Police but was disappointed with the lack of follow-up action.

Comment:

Council has recently received representations regarding this issue as well. Council is to install traffic classifiers in Cook Parade to determine the speed and volume of traffic in the area and the item will be referred to Traffic Committee once the traffic data has been collected and assessed.

ITEM NO. 4

FILE NO: PSC2005-3964

CULTURAL PROJECT FUND

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Re-allocate \$3,000 from the Cultural Project Fund to Port Stephens Celtic Association Incorporated for the *'2009 Scottish & Celtic Festival'*.
-

OPERATIONS COMMITTEE – 14TH July 2009

RECOMMENDATION:

	Councillor Bob Westbury Councillor Sally Dover	That the recommendation be adopted.
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ORDINARY COUNCIL – 28TH July 2009

227	Councillor Bob Westbury Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to seek Council endorsement for the re-allocation of \$3,000 from the Cultural Project Fund to the Port Stephens Celtic Association Incorporated for this year's *'Port Stephens Scottish & Celtic Festival'*.

In February 2009 Council allocated \$30,000 in grants from the Cultural Project Fund towards 16 community based cultural projects as shown in Attachment 1. The allocation included a grant of \$3,000 to Williamtown Rotary for the *'Scottish & Celtic Festival Project'*.

In May 2009 the Rotary Club of Williamtown Inc returned their grant to Council indicating they did not wish to be responsible for managing the finances of the Port Stephens Scottish & Celtic Festival. They recommended Council re-allocate the

grant to Port Stephens Celtic Association Incorporated. The re-allocation of these funds to another group is subject to a resolution of Council. Subsequent discussions with Port Stephens Celtic Association Incorporate indicate their support to manage this grant.

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

The grant returned from Rotary Club of Williamtown Inc has been deposited into Council's 2008/2009 Cultural Project Fund budget leaving a balance of \$3,000.

LEGAL AND POLICY IMPLICATIONS

Recipients of funding under the Cultural Project Fund shall accept full responsibility for the liability of any programs or projects funded.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Cultural projects aim to enhance and celebrate community identity and sense of belonging.

ECONOMIC IMPLICATIONS

Cultural projects may have a positive impact on local businesses and suppliers (eg; catering, accommodation, venue hire, printing, and advertising) through the attendance of residents and visitors to events.

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

Discussions with Port Stephens Celtic Association Incorporate indicate their support to manage this grant in lieu of Rotary Club of Williamtown Inc.

OPTIONS

- 1) To accept the recommendation
- 2) To reject the recommendation

ATTACHMENTS

- 1) Overview of allocations made under 2008/2009 Cultural Project Fund

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1

2008/2009 Cultural Project Fund Allocations

- a) A grant of \$3,000 to Karuah Festival for the '*Karuah Festival Project*'.
- b) A grant of \$3,300 to Port Stephens Family Support Service for the '*Ba-ra Boolarnng Dance Group Project*'.
- c) A grant of \$1,900 to Port Stephens Community Band for the '*Camp Project*'.
- d) A grant of \$1,200 to Terrace Tenants & Associates Inc for the '*Postcards from the Terrace Project*'.
- e) A grant of \$3,250 to Hands on Youth Events for the '*Tilligerry Youth Alive Project*'.
- f) A grant of \$1,060 to Lions Club of Tilligerry Peninsula for the '*Tilligerry Art & Craft Show Project*'.
- g) A grant of \$1,190 to Port Stephens Family History Society Inc for the '*Family History Project*'.
- h) A grant of \$500 to Tilligerry Adult & Community Education for the '*Port Stephens Examiner Literature Awards Project*'.
- i) A grant of \$2,000 to Tilligerry Committee for the '*Tilligerry Festival Project*'.
- j) A grant of \$2,000 to Musical Matinees Inc for the '*Classical Variety Concert Project*'.
- k) A grant of \$1,560 to Nelson Bay Town Management for the '*Carols by the Bay Project*'.
- l) A grant of \$2,440 to Tomaree Musical Theatre Co Inc for the '*Music Theatre Project*'.
- m) A grant of \$1,000 to Port Stephens Community Arts Centre Inc for the '*Art Prize Project*'.
- n) A grant of \$3,000 to Williamstown Rotary for the '*Scottish & Celtic Festival Project*'.
- o) A grant of \$2,000 to Lions Club of Tilligerry Peninsula for the '*Australia Day Breakfast Project*'.
- p) A grant of \$600 to Karuah Progress Association for the '*Karuah Carols by Torchlight Project*'.

ITEM NO. 5

FILE NO: PSC 2009-00671

MANAGEMENT OF NEW YEARS EVE 2009 ON TOMAREE PENINSULA

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Agrees in principle to the establishment of a 'controlled precinct' in Nelson Bay in collaboration with the NSW Police to manage New Year's Eve activities on the Tomaree Peninsula.
- 2) Supports the inclusion of the establishment of a controlled precinct into the New Year's Eve Working Group's operational plan for 2009.

OPERATIONS COMMITTEE – 14TH July 2009

RECOMMENDATION:

	<p>Councillor John Nell Councillor Steve Tucker</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Not agree to a controlled precinct or gated event at Nelson Bay. 2. That Council seek the Office of Liquor, Gaming and Racing (OLGR) to have all off licence liquor sales to cease by 9pm in Nelson Bay on New Year's Eve. 3. That Nelson Bay Blues consult with the Sports Council on the use of Tomaree Oval for New Year's Eve Event.
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ORDINARY COUNCIL – 28TH July 2009

<p>228</p>	<p>Councillor John Nell Councillor Daniel Maher</p>	<p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1. Not agree to a controlled precinct or gated event at Nelson Bay. 2. That Council seek the Office of Liquor, Gaming and Racing (OLGR) to have all off licence liquor sales to cease by 9pm in Nelson Bay on New Year's Eve. 3. That Nelson Bay Blues consult with the Sports Council on the use of Tomaree Oval for New Year's Eve
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		Event. 4. Council review the activities on the Tomaree Peninsula early in 2010.
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BACKGROUND

The purpose of this report is to recommend to Council a plan of action for New Year's Eve celebrations around Nelson Bay which will provide the best outcomes for Council, the community and stakeholders.

The proposed co-ordinated management of New Year's Eve for Nelson Bay and the surrounding area arose in response to widespread community concern about anti-social and criminal behaviour that had been occurring during previous New Year's Eve celebrations at Shoal Bay (**see Attachment 1**). This resulted in the formation of a New Year's Eve Working Group in 2007 involving NSW Police, Council staff, event organisers, Office of Liquor, Gaming & Racing and d'Albora Marina representatives.

Typically 3000 to 7000 people would arrive at Shoal Bay on New Year's Eve and the absence of any professionally managed events and activities contributed to excessive drinking, underage drinking, assaults, vandalism, theft, rubbish, and broken glass.

The events company that gained development consent and managed the event at Fly Point last year (Cattleyard Promotions) has the option to lodge a Development Application to run the Ewebay event for the next three (3) years. If Council supports the approach of a "controlled precinct", this will form a qualified policy basis for such a DA to be assessed.

FINANCIAL/RESOURCE IMPLICATIONS

As with each year, there are recurring costs to Council involved with the management of New Year's Eve events. However, during the past three years these have been offset by the Ewebay event. The recommended option represents a positive financial approach compared to the arrangements which were sponsored by Council prior to 2006.

LEGAL AND POLICY IMPLICATIONS

The main legal implications are insurance and liquor licensing. The organisers of the planned event are responsible for these. The controlled precinct involves the legal implications of road closure. This will be addressed by the Local Traffic Committee at the appropriate time.

SUSTAINABILITY IMPLICATIONS OF THE RECOMMENDATIONS OF THIS REPORT**SOCIAL IMPLICATIONS**

New Year's Eve activities at Tomaree have been characterised by excessive drinking, violence and anti-social behaviour. Regardless of a gated event, each year

has seen more and more young people travelling to Nelson Bay to celebrate New Year's Eve, arriving New Years Eve morning with plans to party all night and then camp in their vehicles before travelling home late on New Years Day.

A controlled precinct (yet to be finalised - encompassing the Nelson Bay Foreshore and town centre with a series of activities along the foreshore) is considered the most effective way to provide a safe venue for people to celebrate New Year's Eve. It should also minimise the potential risk of injury to patrons and result in reduced property damage for traders and residents.

ECONOMIC IMPLICATIONS

A well managed New Year's Eve event, including strong security, will allow the town to benefit economically. The perception by tourists of Nelson Bay as a safe venue for celebrating New Year's Eve would act as an economic stimulus.

ENVIRONMENTAL IMPLICATIONS

The large number of people gathering at Tomaree on New Year's Eve generates a considerable amount of rubbish and 'wear and tear' on the Foreshore. Strategies to mitigate these problems will be developed as part of the New Year's Eve Working Group's operational plan, including the controlled precinct and the co-ordinated approach along the Nelson Bay Foreshore. Over the past three years, the gated event at Fly Point has had little impact on the Nelson Bay Foreshore and Council's assets. This is because the event organisers have been bound by conditions of consent.

CONSULTATION

Community members were invited along by the New Year's Eve Working Group to the 2008 debrief to contribute their ideas and opinions. Since then there have been several working group meetings facilitated by NSW Police at which all stakeholders have been present. The Sports Council has also been given the opportunity to comment and at its February 2009 meeting the use of the Tomaree sports oval for a New Year's Eve event was opposed. Following the proposal by the Nelson Bay Blues Football Club this opposition was reinforced at its June 17th meeting.

OPTIONS

Council can adopt, amend or reject the recommendation above based upon three options that are explained in more detail in Attachment 2 and are summarised below:

Option 1: No controlled precinct or gated event (do nothing)

Option 2: Controlled precinct, with coordinated activities along Nelson Bay Foreshore, with or without the *Evebay* event at Fly Point. This is the recommended option. Information presented at the New Year's Eve debrief on 17th February 2009 indicated that the *Evebay* event organisers fully complied with the development consent conditions. (File No: 16-2008-610-1) The Police have recommended that any

future Ewebay events also include designated 'wet' and 'dry' areas and the serving of medium strength beer only

The concept 'controlled precinct' refers to an area which would be defined by water-filled barricades. The area inside the barricades would be alcohol-free and entry by pedestrians and vehicles into the area would be through entry points controlled by security personnel. Police would control the area inside the precinct.

In preparation of this report, NSW Police have formally advised that *'Council and Police organise an area controlled by blockades from the vicinity of d'Albora Marina through to Bill Strong Oval and only allow access via check points manned by private security personnel, supported by local police. Everything inside the 'controlled area' will be declared alcohol-free and will be enforced by the police. Realistically, some alcohol will still get in, but nothing like the levels seen last year. This will allow Council and Police to exert some semblance of control over what happens inside the locked down area.....Obviously, a lockout will not work without a well thought out traffic plan. Once again this falls to the Council but NSW Police is happy to assist with advice. Finally, it is my opinion that the word is out amongst the teens and 20 something age group that Nelson Bay is the place to go for NYE with or without Ewebay'*.

Option 3: Conduct an event at Tomaree Sporting Complex (**see Attachment 3**)

ATTACHMENTS

- 1) History of New Years Eve Celebrations
- 2) Options for New Year's Eve
- 3) New Years Eve Party 2009 - Expression of Interest

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

ATTACHMENT 1 - HISTORY OF TOMAREE NEW YEARS EVE CELEBRATIONS – PRE 1999 TO 2008

YEAR	EVENT(S)	COST TO COUNCIL
> 1999	Street party at Shoal Bay patrolled by police and ambulance officers. Several arrests for assault, offensive behaviour, drink driving and attempted sexual assault	Unknown – probably clean up costs and damage repairs
2000	Free concert at Fly Point held by Chamber of Commerce drew a moderate crowd – 15,000 attended Nelson Bay fireworks. Street party at Shoal Bay quietest in years, but Country Club packed to capacity. Brawl involving 15 men at 5.00am outside bakery in Government Road.	Unknown – probably clean up costs and damage repairs
2001	First organised street party held at Shoal Bay – Partnership between Nelson Bay Blues, Police and PSC	Loan of \$20,000 to Nelson Bay Blues. Event cost \$55,000 Estimated 2,500 people
2002	Family street party at Shoal Bay organised by Onstage Productions under Council management	Event cost \$121,000 including \$21,500 management fee; Income \$61,000 Cost to Council \$60,000
2003	Shoal Bay street party managed by Nelson Bay Blues. Agreement for 2003 plus a three year option. \$10,000 management fee; all expenses paid by PSC, including clean up; %0% income split from food, drink and ticket sales	Event cost \$56,000 Income \$44,000 Cost to Council \$45,896
2004	Shoal Bay street party managed by Nelson Bay Blues.	Expenditure \$143,526 including \$37,543 income split with Nelson Bay Blues Income \$97,630 Cost to Council \$45,896
2005	Shoal Bay street party managed by Nelson Bay Blues.	Expenditure \$199,974 including \$50,623 income split with Nelson Bay Blues Income \$124,399 Cost to Council \$75,575 (With prediction of \$100,000 cost to Council for 2006)
2006	First year <i>Evebay</i> event held at Fly Point	No cost to Council – broke even
2007	<i>Evebay</i> at Fly Point	Profit to Council \$5000
2008	<i>Evebay</i> at Fly Point	Profit to Council \$10,000

ATTACHMENT 2 - OPTIONS FOR NEW YEARS EVE 2009

	Option	Advantages	Disadvantages
1	No controlled precinct or gated event (ie 'do nothing')	<ul style="list-style-type: none"> Local residents and visitors satisfied that there will be no loud music Perception that families able to enjoy fireworks without presence of anti-social young people Fly Point available for anyone to use free of charge 	<ul style="list-style-type: none"> Larger number of uncontrolled youth congregating in Tomaree on New Years Eve – greater possibility of youth activity being wider spread ie Nelson Bay to Shoal Bay Police control more difficult due to lack of controlled area and co-ordination of activities along foreshore by NYE Working Group No extra security guards and toilet facilities along foreshore No extra buses organised - more traffic problems occurring Loss of income Reactive instead of proactive Greater risk of injury/harm to persons or property
2	Controlled precinct, with coordinated activities along Nelson Bay Foreshore, with or without the Evebay event at Fly Point	<ul style="list-style-type: none"> Formation of controlled precinct around Nelson Bay Foreshore area, incorporating controlled access Co-ordination of all events in precinct area, minimising affects of crowd activity on Tomaree Peninsula Sharing of resources along foreshore eg. security Centralised Police command post set up in close proximity to all planned events in Nelson Bay Planned NYE transport plan Crowds/ alcohol consumption inside gated event are easily managed 	<ul style="list-style-type: none"> Complaints from residents and visitors Perceived loss of open spaces Extra cost involved in setting up barricades, security guards etc

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

		<ul style="list-style-type: none"> • Probable income for PSC • Provision of activities outside gated event to engage youth and minimise number of intoxicated youths who arrive for fireworks • Cattleyard's experience with holding <i>Evebay</i> over last three years 	
3	Conduct an event at Tomaree Sporting Complex (see Attachment 3)	<ul style="list-style-type: none"> • Removal of event away from family activities such as fireworks • Fewer complaints about event from residents and visitors to Foreshore area • Previous successful event held by the NBRL at Tomaree Oval No 1 • No noise impact on residential properties 	<ul style="list-style-type: none"> • Inability of NYE Working Party to plan controlled precinct around Nelson Bay Foreshore and co-ordinate all events – Police reactive rather than proactive • Division of Police and Council resources due to probable uncontrolled gatherings of youth around foreshore of Nelson Bay and possibly Shoal Bay • Greater risks of opportunistic crime, such as sexual assault, occurring in bushland surrounding sporting complex and pedestrian thoroughfares • Inability for event organisers to pool resources along foreshore • Council requirements for traffic management and control plans to be prepared by authorised person • RTA approval required • Impact on oval and surrounding assets • Inconsistent with Sports Council view • Financial subsidy requested from Council • Remote location will stretch the NYE Working Group Transport Plan and make it less effective • NBRL proposal only in point form–detailed plan will take time to complete–decision must be made asap to allow preparation for event

**ATTACHMENT 3:
NEW YEARS EVE PARTY 2009 “EXPRESSION OF INTEREST”**

From: The Nelson Bay Blues Football Club.

To: The Port Stephens Council.

Attention: Sally Dover.

I'm writing this letter on behalf of NBFC to request the opportunity to submit a full and comprehensive submission to obtain the rights to hold the function known as the annual New Years Eve function normally held at Fly Point , to be relocated and held at the NBFC home ground with the intentions of implementing all necessary requirements to satisfy the safety and entertainment levels needed to ensure the community enjoys this prestige's event.

CONCEPT:

To use the Elizabeth Waring Hall as Central Point of Operation for:

- Police and Security headquarters
- Alcohol distribution center
- Medical and first aid.
- Food distribution center.
- Artist and performers Station.

The NBFC are seeking the following:

1. *Granted permission with a 2 year operational agreement and 1 year option.*
2. *All copies of necessary Council reports to be lodged*
3. *All necessary Council restrictions.*
4. *Trading hours.*
5. *Discuss with Council a small subsidy in relation to tourism.*

The NBFC Intentions are:

1. *To supply all necessary entertainment.*
2. *To supply all necessary Security.*
3. *To supply all food and beverage.*
4. *Implement all Security measures.*
5. *To work with Police in regards to a procedure of operation.*
6. *To comply with all Council requirements and lodging of reports.*
7. *To implement all marketing and promotions.*
8. *To pay for all operating costs.*

Sally, the NBFC is a self funded sporting Club. This opportunity will be of immense importance to the future of the Club and the support the NBFC supplies to our youth.

Awaiting your Response Tony Short

Councillor Glenys Francis returned to the meeting at 6.40pm during Item 6.

ITEM NO. 6

FILE NO: 3150-029 A2004-1130

NELSON BAY TOWN MANAGEMENT

REPORT OF: LESLEY MORRIS – MANAGER, ECONOMIC DEVELOPMENT

RECOMMENDATION IS THAT COUNCIL:

1. Continue to provide funding within the Economic Development Unit budget for Community Economic Development and Events Development, from which Nelson Bay Town Management can access funds, and
2. Continue to provide non-financial support to business community groups, including Nelson Bay Town Management, to assist with the identification of opportunities and preparation of applications for grant funding.

OPERATIONS COMMITTEE – 14TH July 2009

RECOMMENDATION:

	Councillor John Nell Councillor Bob Westbury	That the recommendation be adopted.
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ORDINARY COUNCIL – 28TH July 2009

229	Councillor John Nell Councillor Bob Westbury	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to respond to a Notice of Motion requesting a report on the option for funding of Nelson Bay Town Management by a promotional levy, grants and/or local enterprise fee.

Nelson Bay Town Management Incorporated is an incorporated association with the stated aim to promote, market and raise the profile of Nelson Bay as an attractive and viable retail and commercial centre. The Constitution of Nelson Bay Town Management places the responsibility for financial management of Nelson Bay Town Management with the Board.

The existing Nelson Bay Town Management was formed in 1997/98 with the application of Nelson Bay improvement and marketing levies. The improvement levy

was spent on providing the current streetscape. The marketing levy had a three year term and was reviewed once before being abandoned due to inequities of its application and the administrative cost of collection and management with property owners seeking to opt in or out of rate categories chasing the lower cost. The most recent survey undertaken by Council indicated that Nelson Bay ratepayers were not in favour of the continuation of the special levy.

Council continued to provide financial and non-financial support to Nelson Bay Town Management following the cessation of the special levy and pending the development of the Port Stephens Economic Development Strategy.

The Port Stephens Economic Development Strategy, adopted by Council in late 2007 is the guiding document for Council in its efforts to shape the economic future of the area. Council's Economic Development Unit is committed to working with and providing funding support to Nelson Bay Town Management. However, the Unit's focus is on producing outcomes for all of Port Stephens and delivering on all of the recommendations included in the Port Stephens Economic Development Strategy.

Nelson Bay Town Management currently raises income from a variety of sources, including:

- Business sponsorship
- Government grants
- Council funding support
- Nelson Bay & District Chamber of Commerce
- Event ticket sales and participation fees
- Advertising sales
- Merchandising sales.

Additional sources of income from the local business community are currently being investigated by the Town Coordinator and Board.

In the current financial year, Nelson Bay Town Management has been successful in accessing Council funding through the Community Economic Development and Events Development programs managed by the Council's Economic Development Unit. Additionally, a substantial amount of in-kind (or non-financial) assistance is provided to Nelson Bay Town Management by Council. Council's Economic Development Unit has been actively providing assistance to a number of local business community organisations, including Nelson Bay Town Management, in identifying and accessing grant funding opportunities.

The Board of Nelson Bay Town Management is currently working with the NSW Department of State and Regional Development to undertake a community strategic planning process. A community planning workshop was held on 21 May 2009. This process will result in a Community Economic Development Strategic Plan that is prepared and endorsed by the local business community. A prioritised action plan will assist Nelson Bay Town Management to allocate their resources towards the activities that the community identifies as the most important. Additionally, the community endorsed plan will be an important tool in accessing subsequent grant funding.

It is therefore recommended that Council:

1. Continue to provide funding within the Economic Development Unit budget for Community Economic Development and Events Development, from which Nelson Bay Town Management can access funds, and
2. Continue to provide non-financial support to business community groups, including Nelson Bay Town Management, to assist with the identification of opportunities and application for grant funding.

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

Funding for Community Economic Development and Events Development is provided within the Economic Development budget on an annual basis.

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:-

- 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

SOCIAL IMPLICATIONS

Council support enables Nelson Bay Town Management to provide networking and business support strategies that contribute to the development of a strong business community.

ECONOMIC IMPLICATIONS

Council support enables Nelson Bay Town Management to leverage funding in order to maintain their activities which aim to create economic activity in the Nelson Bay area and grow local business.

ENVIRONMENTAL IMPLICATIONS

Nil.

CONSULTATION

Consultation has been undertaken with the Nelson Bay Town Management Board and the Nelson Bay Town Coordinator.

OPTIONS

- 1) Accept the recommendation
- 2) Amend the recommendation.

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 7

FILE NO: PSC2005-2671

RATIONALISING WASTE TRANSFER STATIONS TO PROVIDE NEW VALUE-ADDED DOMESTIC WASTE SERVICES

REPORT OF: MICK LOOMES – MANAGER, ENGINEERING SERVICES

RECOMMENDATION IS THAT COUNCIL:

1. Approve the decommissioning of the Lemon Tree Passage Waste Transfer Station during the 2009-2010 year and redirect funding of this business to additional "value-added" domestic waste services (as outlined in recommendations 2 to 5).
2. Provide a garden waste drop off at no direct charge to users at the Tilligerry Peninsula, Tomaree Peninsula, Karuah and Medowie/Raymond Terrace areas to be funded by the Domestic Waste Service Charge.
3. Provide one annual household chemical collection service funded by the Domestic Waste Service Charge.
4. Provide periodic electronic waste drop off services to the local government area subject to the success of the planned electronic waste drop off trial service in August 2009 and future customer and market demand for such a service to be funded by the Domestic Waste Service Charge.
5. Authorise the General Manager to investigate new business models for Salamander Bay Waste Transfer Station.

OPERATIONS COMMITTEE – 14TH July 2009

RECOMMENDATION:

	<p>Councillor Peter Kafer Councillor Sally Dover</p>	<p>That the recommendation be adopted.</p>
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ORDINARY COUNCIL – 28TH July 2009

<p>230</p>	<p>Councillor Ken Jordan Councillor Daniel Maher</p>	<p>It was resolved that the recommendation be adopted.</p>
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BACKGROUND

The purpose of this report is to seek endorsement for:

the decommissioning of the Lemon Tree Passage Waste Transfer Station and the redirection of funds used to subsidise this business towards additional value added domestic waste services.

On 18 January 2005 (Minute 21) Council agreed to a review of the management options for Lemon Tree Passage Waste Transfer Station. From 1999 to 2005 the primary role of Lemon Tree Passage Waste Transfer Station was as a place for the domestic garbage and recycling trucks to drop off their loads before bulk hauling this waste to the Bedminster Composting Facility at Raymond Terrace and the Recycling Facility at Gateshead. The secondary role was to provide a user pays waste depot for the Tilligerry Peninsula.

In 2005 the introduction of the new two garbage bin system resulted in the garbage/recycling trucks by-passing the waste transfer stations and driving directly to the Bedminster Composting Facility and to the new Recycling Facility at Thornton.

The result of this change in 2005 was that actual use of the Lemon Tree Passage Waste Transfer Station dropped to a level that requires significant and continual community subsidy to maintain. For instance in 2008-09 Lemon Tree Passage Waste Transfer Station will require a 75% subsidy from the Waste Management Charge to cover the short fall in actual revenue from users.

By comparison, Salamander Bay Waste Transfer Station has maintained a level of use and business separate from the domestic garbage trucks that results in a 30% subsidy.

After three years of data collection it is clear that the Lemon Tree Passage Waste Transfer Station:

is a heavily subsidised Council service requiring up to 75% subsidy
manages on average only of 850 tonnes per year

is an asset that is depreciating faster than planned due to higher rates of vandalism from its "out of sight" location and lack of daily presence by Council staff.

This being the case it is now time to consider closing the Lemon Tree Passage Waste Transfer Station business and using the cost savings to either:

Deliver alternative value added domestic waste services or

Marginally reduce the waste management and waste service charges

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 by providing a waste management service that is affordable and sustainable.

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.

Specifically:

Council will be open, transparent and accountable in its operations, policy making and decision making and

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

FINANCIAL/RESOURCE IMPLICATIONS

The financial implications of adopting the recommendation are reflected directly in the Domestic Waste Management Charge and Domestic Waste Service Charge.

Table 1 shows the potential changes to the Domestic Waste Management and Service Charges in 2009/2010 should the recommendation be adopted.

	2008/09	2009/10 Adopted Budget	OPTIONS	
			2009/10 Return all savings to Ratepayers	2009/10 Redirect some savings to new domestic waste services
Waste Management Charge	\$56.00	\$57.00	\$50.00	\$52.00
Waste Service Charge	\$267.00	\$286.00	\$284.00	\$291.00
Total charges	\$323.00	\$343.00	\$334.00	\$343.00

Table 1: Effect on waste management and waste service charges in 2009/10

Given that the 2009/10 fees and charges are already in place, it is proposed to maintain the current charge structure for 2009/10 and make the necessary changes in the 2010/11 fiscal year.

Additionally, closing the Lemon Tree Passage Waste Transfer Station business will result in the reduction in two positions at 13 hours per week each. It is proposed that these positions will be redeployed within the Operations Section. Given this scenario it is timely to review the Waste Transfer Station operations and the business models of the Salamander Bay Waste Transfer Station. It is recommended that collaborative partnership business models be investigated to result in reduced costs and greater resource recovery between the Salamander Bay Waste Transfer Station and the community-based Salamander Bay Refused and Reused Recycling Centre.

As part of the decommissioning of the Lemon Tree Passage Waste Transfer Station there may be a one off wind fall from the sale or reuse of the assets that exist on site. Specifically:

Transfer station shed (metal) (one only)

Weighbridge (one only)

Relocatable building and fittings (two only)
Awning (metal) (one only)
Waste Oil shed (one only)

It is proposed that these assets be reused within current council operations or sold by tender to return funds to the waste budget to cover one off costs of decommissioning the site.

LEGAL AND POLICY IMPLICATIONS

Adopting the recommendation will result in amendments being made to the Waste Management and Resource Recovery Policy 2008 to reflect the changes in the service levels. These amendments will be submitted at a later date once endorsement for changes is received.

The future use of the Lemon Tree Passage Waste Transfer Site is limited to Crown Land Reserve restrictions specifically those gazetted in December 1975 for Crown Reserve 89686 "Rubbish Depot". Additionally the location of the former landfill site and the waste transfer station exist over four parcels of Crown Land, two of which are zoned 6a General Recreation and two are zoned 1a General Agriculture in the Port Stephens Council Local Environment Plan 2000. Therefore the future use of the site may be restricted to some form of general recreation or continued use as a "rubbish depot". It is proposed that the future use of the site be as a depot for the stockpiling of recovered materials for local road works.

The proposed garden waste drop off service will require development approval. A development application will be lodged for each separate site once agreement to use each site has been obtained.

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

SOCIAL IMPLICATIONS

Adopting the recommendation has no significant negative implications on the social fabric of the area. Any negative impacts from the loss of the user pays waste transfer station business at Lemon Tree Passage would be offset by the introduction of other “no charge” domestic waste drop off services.

ECONOMIC IMPLICATIONS

Closure of the Lemon Tree Passage Waste Transfer Station business will impact on the waste disposal operations of up to ten (10) account holders. These account holders account for 25% of the revenue raised by the business. The remaining 75% of revenue comes from small load cash transactions.

The implications for the account holders and the cash transaction customers will be that alternative waste disposal sites at either Raymond Terrace or Salamander Bay will have to be sought. Account holders will be given notice of the final trading date to enable them to arrange other waste disposal methods.

The closure of the business may result in some growth in local skip bin businesses.

ENVIRONMENTAL IMPLICATIONS

Adopting the recommendation will result in more convenient methods of disposal of garden waste, household chemicals and electronic wastes which means fewer chances for these items to be disposed of illegally.

Given that the Lemon Tree Passage Waste Transfer Station currently only operates one and one half days per week, it is not likely that incidents of illegal dumping will increase dramatically as a direct result of the closure of the business. However, monitoring of illegal dumping in the area will be increased for a period after the closure of the business to ensure that any incident of illegal dumping around the site is responded to quickly. The Financial Assistance for Disposal of Waste program will be used to respond to illegal dumping incidences around the site.

It is proposed that the site will retain its full perimeter security fence as a measure to prevent illegal access and illegal dumping of waste.

Since 2005 the New South Wales Department of Environment and Climate Change have funded and run an annual chemical drop off service at Raymond Terrace. This service has proven popular and effective with customer numbers rising from 233 (2005) to 430 (2009) and quantities delivered rising from nine tonnes (2005) to 16 tonnes (2009). The geography of Port Stephens however, means that this service is not well used by residents in the eastern parts of the local government area. A second, Council funded chemical drop off service located on the Tomaree Peninsula will resolve the problems of distance and customer convenience. Discussions with a Department of Environment and Climate Change senior manager indicate that funding for the Raymond Terrace service would not be compromised on the basis of Council funding its own second chemical drop off service in the area.

CONSULTATION

Manager Engineering Services, Executive Team, Facilities and Services Operations Manager, Waste Transfer Station staff, United Services Union, Principal Property Advisor, Development Coordinator, Waste Management Coordinator, Manager Sustainability Programs Unit Department of Environment and Climate Change.

OPTIONS

- 1) Adopt the recommendation
- 2) Amend the recommendation to include other domestic waste services from Attachment 1 to a total value of \$265,000 in 2009/10
- 3) Reject the recommendation

ATTACHMENTS

- 1) List of possible additional domestic waste services
- 2) Proposed decommissioning plan for Lemon Tree Passage Waste Transfer Station

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

**ATTACHMENT 1
LIST OF POSSIBLE ADDITIONAL DOMESTIC WASTE SERVICES**

Option	Domestic Waste Service Options	Estimate cost
1	<p>One waste disposal voucher per domestic ratepayer</p> <p>Assumptions: 40% take up. 300kgs per load delivered.</p> <p>Advantages: Used when waste disposal required. Not have to wait for annual clean up. Perception of high level of convenience.</p> <p>Disadvantages: Once only use. Those without trailers may not get full benefit. Limited to residents thus not permitted to be traded to commercial operators in exchange for cash. High administrative cost. Assumed take up rate may be higher than 40% thus cost could rise quickly.</p>	\$331,000
2	<p>Bulky Waste Clean Up Service (extra service)</p> <p>Assumptions: Based on contract rates and same waste disposal costs as current service.</p> <p>Advantages: High convenience. Popular. Well used. Low administrative costs.</p> <p>Disadvantages: Messy streets. Scavengers leaving a mess. Safety risks. Waste out too early or late.</p>	\$255,000
3	<p>“On call” bulky and green waste collection service</p> <p>Assumptions: Would require tendering as very likely to exceed \$350,000 per year. One truck, two Full Time Equivalent workers, Half Full Time Equivalent dedicated customer service officer, 52 weeks per year</p> <p>Advantages: High level of convenience. No need to go to waste depot. Used when needed not when scheduled.</p> <p>Disadvantages: Waste always out on footpaths at all times of year at any part of LGA. Messy streets. Scavengers all year around. Safety risks.</p>	\$350,000 plus

Option	Domestic Waste Service Options	Estimate cost
4	<p>Monthly garden waste drop off service</p> <p>Assumptions: One Full Time Equivalent worker, one truck, 9am to 2pm Sundays, four Sundays per month, one service each week at different locations (Tilligerry, Tomaree, Karuah, Medowie/Raymond Terrace). Limited to PSC residents. Not available to commercial operators. Garden waste only limit to one box trailer per visit.</p> <p>Advantages: Whole of LGA serviced. Regular schedule easy to remember times. Proven popular service in Newcastle Council area. No vouchers required. Can be used every month in each location. Low administration cost. May create sense of community as regular users meet monthly to use service and swap stories.</p> <p>Disadvantages: Transport required. Potential for locations to attract illegal dumping after service finishes. Needs to be in high profile location to keep “eyes” on illegal dumping after hours or in a locked gate location.</p>	\$140,000
5	<p>Annual “E” (electronic) waste recycling drop off service</p> <p>Assumptions: Annual service over 7 hours. Two person operation. Two large skips. 5 tonne collected. Electronic waste assumed to be on the increase as old technology televisions replaced by digital system. Metals and plastics recyclable.</p> <p>Advantages: Removes bulky items out of landfilled waste. Recovers metals and plastics. Addresses ‘priority waste’ issue in state waste minimisation plan.</p> <p>Disadvantages: Residents required to hold onto large items until service provided. Only one drop off site for LGA. High cost per tonne compared to landfilling.</p>	\$20,000

Option	Domestic Waste Service Options	Estimate cost
6	<p>Household chemical clean up for Tomaree peninsula area</p> <p>Assumptions: Based on current service funded by NSW DECC. Growth in current service indicates ongoing need for service particularly for paints, batteries, motor oil and gas cylinders.</p> <p>Advantages: Convenient method of disposal for traditionally costly waste items. Provides legitimate disposal option for material that is often dumped illegally due to no other option. Second site for LGA increases accessibility to service.</p> <p>Disadvantages: Annual service only. Residents required to hold onto items until annual service provided. High cost per tonne rate.</p>	\$50,000
7	<p>Waste disposal “gift” vouchers</p> <p>Assumptions: Pre paid “gift voucher” costing \$25 per voucher. Each pre paid voucher returns greater value than purchase price – say \$50 or equivalent to box trailer of mixed waste. Domestic residents only. Conditions would apply. 60% take up. 300kg per load delivered.</p> <p>Advantages: Interesting and new idea. Revenue received up front. High level of convenience to user. Potentially popular.</p> <p>Disadvantages: Untried idea. Unknown take up and users means unknown total cost. A bit of a gamble.</p>	\$210,000
8	<p>Waste disposal voucher to ratepayers who pay total rates up front by due date.</p> <p>Assumptions: 4000 domestic ratepayers paying up front by 1 September. \$25 per voucher. 80% usage of that voucher.</p> <p>Advantages: May encourage greater payment of rates up front. Used when waste disposal required. Not have to wait for annual clean up. Perception of high level of convenience.</p> <p>Disadvantages: May disadvantage those who cannot pay rates in full up front. Once only use. Those without trailers may not get full benefit. Limited to residents thus not permitted to be traded to commercial operators in exchange for cash. High administrative cost.</p>	\$150,000

**ATTACHMENT 2
PROPOSED DECOMMISSION PLAN FOR LEMON TREE PASSAGE WASTE
TRANSFER STATION**

Date	Action
3 Aug 2009	Notification of intention to close business to account holders
31 Aug 2009	Public notification of closure date
30 Sep 2009	Final business day
Sep 2009	Secure all perimeter fence lines
Sep 2009	Barricade all vehicle access to prevent illegal dumping of waste
Oct 2009	Fence off sealed hardstand area to prevent access to retaining walls
Dec 2009	Remove building internals for reuse
When suitable	Tender for sale buildings on site
When suitable	Tender for sale weighbridge
Oct 2009 onwards	Include site on roadside mowing schedule
Oct 2009 onwards	Include site on weed control schedule
Oct 2009 onwards	Maintain use of the site as a stockpile depot for council road works

ITEM NO. 8

INFORMATION PAPERS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on Tuesday 14th July, 2009.

No:	Report Title	Page:
1	Determined and Undetermined Development Applications	
2	Aboriginal Strategic Committee	
3	Access Committee	
4	Port Stephens Economic Development Advisory Panel	
5	Cash and Investments Held at 31 st May 2009	
6	Access to Information – Section 12 Local Government Act 1993	

OPERATIONS COMMITTEE – 14TH July 2009

RECOMMENDATION:

	Councillor John Nell Councillor Bob Westbury	That the recommendation be adopted.
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ORDINARY COUNCIL – 28TH July 2009

231	Councillor John Nell Councillor Geoff Dingle	It was resolved that the recommendation be adopted.
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OPERATIONS COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

DETERMINED AND UNDETERMINED DEVELOPMENT APPLICATIONS

**REPORT OF: ANTHONY RANDALL –ACTING DEVELOPMENT & BUILDING
MANAGER
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.

As it is considered more convenient for Councillors if the reports are run on the last day of the month, and it is not possible to meet the necessary deadline for the Business Paper, the information will be provided under separate cover.

ATTACHMENTS

Nil

INFORMATION ITEM NO. 2

ABORIGINAL STRATEGIC COMMITTEE

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

FILE: PSC2005-0629

BACKGROUND

The purpose of this report is to present to Council the minutes of the Aboriginal Strategic Committee meetings with Worimi and Karuah Local Aboriginal Land Councils held on 11 May 2009 and 1 June respectively.

Key issues considered at the meeting included:

- 1) Birbui Headland
- 2) Development Assessment Framework - Aboriginal Impact Assessment
- 3) NAIDOC WEEK 2009

ATTACHMENTS

- 1) Minutes of Aboriginal Strategic Committee meeting with Worimi LALC on 11 May 2009.
- 2) Minutes of Aboriginal Strategic Committee meeting with Karuah LALC on 1 June 2009.

ATTACHMENT 1

**ABORIGINAL STRATEGIC COMMITTEE MEETING
WITH WORIMI LOCAL ABORIGINAL LAND COUNCIL
HELD ON THE 11 MAY 2009
AT THE MURROOK CULTURAL & LEISURE CENTRE**

Present:

Andrew Smith	Worimi LALC
Val Merrick	Worimi LALC
Grace Kinsella	Worimi LALC
Elaine Larkins	Worimi LALC
Cr Bruce MacKenzie	PSC
Cr Shirley O'Brien	PSC
Cr Sally Dover	PSC
Mike Triggar	PSC
Paul Procter	PSC
Cliff Johnson	PSC
Jason Linnane	PSC (Requested Attendee)

Apologies:

Cr Peter Kafer	PSC
Peter Gesling	PSC
Jamie Tarrant	Worimi LALC

Meeting opened at 1:10pm

Council's Social Planning Co-ordinator chaired the meeting in Cr Kafer's absence.

1. WELCOME TO COUNTRY / ACKNOWLEDGEMENT TO LAND

Worimi CEO brought the acknowledgement to the land paying respect to the Worimi Country, Elders past and present. They extended thanks to former Committee members Delece Manton and Janice MacAskill.

2. DECLARATION OF CONFLICTS OF INTEREST

None declared.

3. BUSINESS ARISING FROM PREVIOUS MINUTES

The following items of business arising from the meeting held on 9 March 2009 were discussed:

Item 1: Fitzroy Street Midden and Birubi Aboriginal Place Matters

Council's Recreation Services Manager tabled a letter from a ratepayer that proposes an alternate option for the conservation of this site. The letter was discussed and Councillors indicated that they would like further feedback from the WLALC Board on the matter. It was agreed that Council would not progress with the plans in

conjunction with NPWS until feedback is supplied by A Smith subsequent to the board meeting on 25 May 2009.

Other projects discussed were the surf club first floor, vehicle management around the Headland and general landscape improvements. Recreation Services Manager indicated that he has asked NPWS to arrange a meeting with the WCL Board to discuss the surf club draft plans as concepts are now available and have just been signed of by East and Central Ward Councillors for further engagement.

It was agreed that a meeting of PSC, NPWS, DoL, WCL Board and WLALC be arranged to initiate a plan of management for the whole area affected by the Aboriginal Place dedication. Recreation Services Manager is to arrange this meeting.

Item 2: Soldiers Point Boatramp Improvements

Council's Recreation Services Manager reported that Stage 1 has been completed, with stage 2 due for completion at end of May 2009. A proposed boardwalk has been included in Council's forward works program. A suitable option needs to be identified and agreed to by all parties which will protect the site. Once an option has been agreed, commencement of any work onsite will be subject to availability of funds and the review of plans by the Aboriginal community

Item 3: Cultural Mapping – Development Assessment

Council's Principal Property Adviser has commenced preliminary work with Worimi LALC on formulating the preamble to the draft memorandum of understanding between Council and WLALC pertaining to Aboriginal Impact Assessment of relevant Development Applications.

Cr MacKenzie stated the importance for WLALC to provide advice on Development Applications in a timely manner so as to avoid any hold ups.

WLALC CEO expressed a desire to see cultural significance given due importance.

Item 4: WLALC Representation on Aboriginal Strategic Committee:

WLALC CEO has advised that their Board have nominated the following people as their representatives on Council's Aboriginal Strategic Committee: -

- Andrew Smith
- Val Merrick
- Grace Kinsella
- Elaine Larkins
- Jamie Tarrant

Action:	<ol style="list-style-type: none">1. Council's Social Planning Co-ordinator to organise for Committee mailing list to be updated accordingly.2. Council's Social Planning Co-ordinator to send a letter of appreciation to WLALC former delegates on the ASC. Delece Manton and Janice MacAskill.
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4. PORT STEPHENS FUTURES FORUM UPDATE

Futures Forum will be held over two days at Murrook on 15 and 21 May 2009.

5. ABORIGINAL PROJECT FUND UPDATE

Funding round has now opened with Stage 1 applications closing 29 May 2009.

6. 2009 JOINT MEETING

Joint meeting of the Aboriginal Strategic Committee will be held on 21 July 2009. As no suggestions have been made for potential guest speakers, Council's Social Planning Co-ordinator suggested former Social Justice Commissioner, William Jonas. This suggestion was agreed.

Action:	1. Council's Social Planning Co-ordinator to extend an invitation to William Jonas to attend 2009 Joint Meeting as guest speaker.
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7. NAIDOC WEEK 2009 UPDATE

A working party has been established comprising LALCs, Council's Community Planner – Cultural Development and members of interested community and government agencies. The working party has been meeting on a weekly basis with plans to hold an event similar to the last two years, but on a week day to maximise impact and community participation. The theme for NAIDOC Week 2009 which will be held 5 – 12 July is *'Honoring our Elders, Nurturing our Youth'*.

Social Planning Co-ordinator indicated that in April 2009 Council resolved that an allocation of \$8,000 be allocated from Council's Aboriginal Project Fund, to this year's planned NAIDOC Week Celebration.

8. GENERAL BUSINESS

Telstra Network:

Council's Principal Property Advisor indicated that Telstra has met with Council Officers and advised that they are about to commence community consultation on their future plans for Port Stephens. This includes WLALC as part of the consultation process.

9. DETAILS OF NEXT MEETING

The next meeting will be the joint meeting on Tuesday 21 July 2009 at 6pm at Council's Administration Building, Raymond Terrace.

ATTACHMENT 2

**ABORIGINAL STRATEGIC COMMITTEE MEETING
WITH KARUAH LOCAL ABORIGINAL LAND COUNCIL
HELD ON MONDAY 1 JUNE 2009
AT KARUAH RESERVE**

Present:

David Feeney	Karuah LALC
Sharon Feeney	Karuah LALC
Kevin Manton	Karuah LALC
Carl Simms	Karuah LALC
Cr Dover	PSC
Cliff Johnson	PSC
Paul Procter	PSC

Apologies:

Cr MacKenzie	PSC
Cr Kafer	PSC
Cr O'Brien	PSC
Peter Gesling	PSC
Mike Triggar	PSC

1. WELCOME

KLALC CEO welcomed everyone.

2. BUSINESS ARISING FROM PREVIOUS MINUTES

ITEM 1: Old Karuah School House

KLALC considering options for the future use of the former school house.

Action	1. Karuah LALC Board to determine their preferred option for this facility and timing.
	2. Subject to (1), KLALC to seek Council advice on preparation of Development Application.

ITEM 2: Tennis Court

Council's Social Planning Co-ordinator shared ideas on options for updating existing court into a multipurpose sports court.

ITEM 3: New Bus Shelter

KLALC is seeking assistance from the RTA for infrastructure.

ITEM 4: Mustons Rd

Council Officers are investigating potential interim measures for improving vehicle and pedestrian movements.

ITEM 5: KLALC Representatives on Aboriginal Strategic Committee

KLALC Board have endorsed following representatives: -

- David Feeney
- Sharon Feeney
- Kevin Manton
- Carl Simms

ITEM 6: Aboriginal Project Fund

Applications close 29 May 2009. A special Committee meeting will be convened shortly to assess and shortlist applications.

ITEM 7: Naidoc Week 2009

Working party meeting weekly to organise this year's event.

ITEM 8: 2009 Joint Meeting

Former Social Justice Commission William Jonas confirmed as guest speaker.

3. GENERAL BUSINESS

Nil

4. NEXT MEETING

Joint meeting on 21 July 2009 at 6pm at Murrook.

Meeting closed at 2:15pm

INFORMATION ITEM NO. 3

ACCESS COMMITTEE

REPORT OF: TREVOR ALLEN - MANAGER, INTEGRATED PLANNING

FILE: A2004-0226

BACKGROUND

The purpose of this report is to present to Council the minutes of the Access Committee meeting held on 5 May 2009.

Key issues addressed at the meeting included: -

- 1) Local Access Issues
- 2) Lifestyle Access Awareness Day

ATTACHMENTS

- 1) Minutes of the Access Committee meeting held on 5 May 2009.

ATTACHMENT 1



PORT STEPHENS ACCESS COMMITTEE
MINUTES OF MEETING HELD 5 May 2009
AT NELSON BAY RSL CLUB

PRESENT:

Michelle Page, Kathy Delia, Joe Delia, Margaret O'Leary, Ken Whiting, Gavin Jones, Amanda Heidke

APOLOGIES:

Cr. Sally Dover, Karen Whiting

MEETING OPENED: 10.40am

1. WELCOME & INTRODUCTIONS

2. ADOPTION OF PREVIOUS MINUTES

The minutes of the previous meeting on 3 March 2009 were adopted. There were no minutes in April 2009 as inclement weather and transport issues resulted in a quorum not being reached.

3. BUSINESS ARISING FROM PREVIOUS MINUTES

3.1 Nelson Bay Community Health Centre Parking

The car park of the Centre is owned by Hunter Water. Issues relating to parking should be relayed to them. A Committee member indicated that they had experienced problems parking in the street outside of the Centre. Council's Community Planner – Ageing & Disability will relay these concerns onto relevant Council Officers to follow up.

3.2 Roundabout at Boat Harbour

The roundabout on Gan Gan Rd was discussed with regard to current access issues. Council's Community Planner – Ageing & Disability is currently awaiting a response from Council's traffic section and engineering re the issues raised by the Committee. The issue on Gan Gan Rd was awaiting drainage works to then create a traffic refuge to an adjacent bus stop on Gan Gan Rd and install kerb ramps to the same.

4. GENERAL BUSINESS

4.1 Private Residence – Driveway Access Barrier

The Committee has been notified of problems a Nelson Bay resident in a wheelchair is having in accessing their driveway due to the driveway's deteriorating condition. Council's Community Planner – Ageing & Disability indicated that they would enquire with relevant Council Officers to determine if any advice, assistance can be provided.

4.2 Lifestyle Access Awareness Day

Proposed Lifestyle Day ~ 2 June 2009 to be held at Port Stephens Council Administration Building. Activity to create awareness of barriers in an employment environment. Awareness day will also provide information to assist in assessing the accessibility of Council's Administration Building and make recommendations on relevant upgrades. The Committee are invited to the briefing at 9am to assist with the activity to commence in the Karuah Room at Port Stephens Council on the day.

5. COUNCIL'S COMMUNITY PLANNER – AGEING & DISABILITY UPDATE

5.1 Combined Pensioners & Superannuants Association of NSW

Received notification from the Association stating that the \$50 grocery vouchers scheme now has a 3yr waiting list due to voucher availability being funded from community donations. Therefore they will not be taking any more new applications at this time.

5.2 Terrace Tenants Association

Association is a community based organisation which provides inexpensive food and living options for individuals and families in Raymond Terrace in return for volunteer work with approved community based organisations.

5.3 Legal Aid Raymond Terrace Visit

Legal Aid will be conducting an information session on 14 May 2009 ~ 10.30am to 12.30pm ~ Raymond Terrace Bowling Club. The information session will cover: -

Decision making	Moving in with family
Wills	Helping your family financially
Power of attorney	Violence & abuse
Contracts	Changing your accommodation arrangements
Investments Property	Legal questions answered

5.4 Pensioner Telephone and Internet Allowance

Internet and telephone allowance is available to pensioners. Contact Centrelink to enquire if you are eligible.

5.5 Community Health Rehabilitation Team

Team now in Port Stephens. Contact Nelson Bay Community Centre for more details on 49840730

6. ACCESS APPRAISALS ACCREDITATION

Congratulations to Council's Community Planner – Ageing & Disability for achieving accreditation in Access Appraisals – Buildings, and becoming a member of the Australian Consultants in Access. The accreditation is highly regarded and was developed to meet the needs of a range of professionals with the responsibility for reviewing, designing, planning, managing and maintaining buildings, as well as those who are required to provide advice on access issues in the built environment.

These issues can incorporate those experienced by people with disabilities and other access challenges including users of wheelchairs, scooters and prams, as well as people with vision and hearing impairments and cognitive issues. They are also designed to provide an understanding of the relevant legislation and standards that relate to access to the built environment.

7. DETAILS OF NEXT MEETING

The next meeting of the Access Committee will be held on 7 July 2009 at the Nelson Bay RSL Club commencing at 10.30am.

INFORMATION ITEM NO. 4

PORT STEPHENS ECONOMIC DEVELOPMENT ADVISORY PANEL

**REPORT OF: LESLEY MORRIS – MANAGER, ECONOMIC DEVELOPMENT
FILE: A2004-0645**

BACKGROUND

The purpose of this report is to present to Council the minutes of the Port Stephens Economic Development Advisory Panel on Tuesday 5 May 2009.

ATTACHMENTS

- 1) Minutes of the Port Stephens Economic Development Advisory Panel meeting on 5 May 2009.

ATTACHMENT 1

**MINUTES OF THE PORT STEPHENS ECONOMIC DEVELOPMENT ADVISORY PANEL MEETING
HELD 9.30AM TUESDAY 5 MAY 2009
AT BUSINESS PORT STEPHENS**

PRESENT: Cr Paul Westbury (in the Chair), Roger Broadbury, Peter Dunn, Scott Gopin, Peter Gosling, Boris Novak, Susan Rowe, Cr Steve Tucker, LeVey Murray, Angela Nairnd, Jody O'Brien (Guest).

APPOLOGIES: Gillian Summers, Cr Dennis, Cr Daniel Maher, Brett Fatches, Paul Hughes

WELCOME AND INTRODUCTIONS

The Chairman welcomed the EADP members and in particular, Jody O'Brien, Events Coordinator for Business Port Stephens.

MINUTES OF THE LAST MEETING

Accepted as true and correct.
Moved by B. Novak, seconded by S. Tucker

BUSINESS ARISING

- Nil

QUARTERLY REPORT, STATISTICS AND PROJECT UPDATES

LeVey Murray presented the Business Port Stephens quarterly report with recent progress on KPI's shown in blue.

Business Arising:

- Recent completion of the ECU office expansion will provide business space for the BPS Events Coordinator, David Gray (Small Business Advisory Service), and Raymond Terrace Towns Coordinator
- Raymond Terrace Business Association will be assisting Nelson Bay Towns Management with the upcoming Country Music Festival.
- The Port Stephens Business Prospectus has been completed
- AusIndustry has approved a grant application for \$70K towards the Innovate Port Stephens project
- Susan Rowe unofficially announced that BSHD have approved grant funding for a Raymond Terrace Towns Coordinator.
- Peter Starr requested that Mid North Coast Tourism (RTO) be mentioned under Strategic Partnerships.

ATTACHMENT 1

BUSINESS PORT STEPHENS MARKETING PLAN UPDATE

Lesley Morris presented the Business Port Stephens Marketing Plan with recent progress on KPIs shown in blue.

Business Arising:

- Bob Westbury requesting that detailed web statistics be provided next quarter
- Peter Gosling requested that a collaborative photography be developed including professional images of Port Stephens as a business, events and tourism destination
- Peter Gosling suggested the possibility of marketing Kings Hill at the Country Week Expo next August.
- Peter Gosling requested that more integration with Tourism be shown in the 2 year marketing plan

OVERVIEW OF EVENTS PORT STEPHENS - JOEY O'BRIEN, EVENTS COORDINATOR

Joey O'Brien gave a presentation on Events Port Stephens

Business Arising:

- Peter Gosling and Scott Ogin requested that the term 'event' be defined
- Robyn Bradbury suggested that a community events calendar be developed

BUSINESS PORT STEPHENS BUDGET – EXPENDITURE OVERVIEW

Lesley Morris presented an expenditure spreadsheet detailing in-kind and financial support to date

Business Arising:

- Scott Ogin requested that the term 'in-kind' be defined

FREIGHT HUNTER HUB – EXECUTIVE SUMMARY REPORT

Lesley Morris provided an Executive Summary Report prepared by Emma Currie

Business Arising:

- Nil.

GENERAL BUSINESS

- S. Ogin suggested that BPS promote leadership in Business through an awards scheme in conjunction with the Business Leaders Lunch. The awards could be advertised through The Examiner or the Infonet. To be put on the agenda for next quarters meeting
- B. Westbury advised that Nick Manning would be compiling an economic report on the 2009 Club Championships
- R. Nowak advised that a new company established at Taylors Beach Business Park was available to assist with VOIP services.
- J. O'Brien advised that a copy of the Port Stephens Prospectus was included in every Skipper Park distributed at the recent Sail Port Stephens event

There being no further business, the meeting closed at 10:20am.

NEXT MEETING – 9:30AM TUESDAY 4 AUGUST 2009

INFORMATION ITEM NO. 5

CASH AND INVESTMENTS HELD AT 31 MAY 2009

REPORT OF: DAMIEN JENKINS – MANAGER, FINANCIAL SERVICES
FILE: PSC2006-6531

BACKGROUND

The purpose of this report is to present Council's schedule of Cash and Investments held at 31 May 2009.

ATTACHMENTS

- 1) Cash and Investments held at 31 May 2009
- 2) Monthly Cash and Investments Balance June 2008 – May 2009
- 3) Monthly Australian Term Deposit Index July 2008 – May 2009

ATTACHMENT 1

CASH & INVESTMENTS HELD AS AT 31 MAY 2009										
INVESTED WITH	INV. TYPE	CURRENT RATING	MATURITY DATE	AMOUNT INVESTED	% of Total Portfolio	Current Int Rate	Market Value March	Market Value April	Market Value May	Current Mark to Market Exposure
GRANGE SECURITIES										
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	AA	20-Mar-12	1,000,000.00	3.19%	4.51%	\$246,700.00	\$246,700.00	\$485,600.00	-\$514,400.00
NEXUS BONDS LTD "TOPAZ AA"	Floating Rate CDO	AA-	23-Jun-15	412,500.00	1.32%	5.74%	\$173,250.00	\$195,937.50	\$206,250.00	-\$206,250.00
HERALD LTD "QUARTZ AA"	Floating Rate CDO	BB+	20-Dec-10	450,000.00	1.44%	4.51%	\$95,895.00	\$137,025.00	\$191,340.00	-\$258,660.00
STARTS CAYMAN LTD "BLUE GUM AA"	Floating Rate CDO		22-Jun-13	1,000,000.00	3.19%	4.43%	\$20,500.00	\$100.00	\$100.00	-\$999,900.00
HELIUM CAPITAL LTD "ESPERANCE AA+" *	Floating Rate CDO	A-	20-Mar-13	1,000,000.00	3.19%	0.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
HOME BUILDING SOCIETY DEUTSCHE BANK CAPITAL GUARANTEED YIELD CURVE NOTE	Floating Rate Sub Debt		25-Jul-11	500,000.00	1.59%	4.01%	\$410,745.00	\$412,560.00	\$426,376.41	-\$73,623.59
GRANGE SECURITIES "KAKADU AA"	Yield Curve Note		18-Oct-11	500,000.00	1.59%	5.33%	\$485,000.00	\$492,500.00	\$492,500.00	-\$7,500.00
GRANGE SECURITIES "COOLANGATTA AA" *	Floating Rate CDO	AA-	20-Mar-14	1,000,000.00	3.19%	4.01%	\$83,300.00	\$149,100.00	\$209,200.00	-\$790,800.00
TOTAL GRANGE SECURITIES				\$6,862,500.00	21.89%		\$1,515,390.00	\$1,633,922.50	\$2,011,366.41	(\$4,851,133.59)
ABN AMRO MORGANS										
REMBRANDT ISOSCELES SERIES 1	Floating Rate CDO	AA	20-Sep-09	\$2,000,000.00	6.38%	0.00%	\$1,680,000.00	\$1,680,000.00	\$1,940,000.00	-\$60,000.00
GLOBAL PROTECTED PROPERTY NOTES VII	Property Linked Note		17-Sep-11	\$1,000,000.00	3.19%	0.00%	\$849,100.00	\$866,000.00	\$865,100.00	-\$134,900.00
BANK OF QLD TERM DEPOSIT	Term Deposit		5-Sep-09	\$750,000.00	2.39%	4.65%	\$750,000.00	\$750,000.00	\$750,000.00	\$0.00
TOTAL ABN AMRO MORGANS				\$3,750,000.00	11.96%		\$3,279,100.00	\$3,296,000.00	\$3,555,100.00	(\$194,900.00)
ANZ INVESTMENTS										
ECHO FUNDING PTY LTD SERIES 16 "3 PILLARS AA"	Floating Rate CDO	B	6-Apr-10	\$500,000.00	1.59%	4.31%	\$151,000.00	\$178,500.00	\$257,500.00	-\$242,500.00
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	BB	30-Dec-11	\$1,000,000.00	3.19%	0.00%	\$266,100.00	\$266,100.00	\$360,000.00	-\$640,000.00
ANZ ZERO COUPON BOND	Zero Coupon Bond	AA	1-Jun-17	\$1,017,876.98	3.25%	0.00%	\$671,798.80	\$610,726.18	\$600,252.23	-\$417,624.75
ADELAIDE BANK SENIOR DEBT	Floating Rate Deposit				0.00%		\$997,430.00	\$997,430.00		\$0.00
TOTAL ANZ INVESTMENTS				\$2,517,876.98	8.03%		\$2,086,328.80	\$2,052,756.18	\$1,217,752.23	(\$1,300,124.75)
RIM SECURITIES										
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO		29-Jul-13	\$2,000,000.00	6.38%	0.00%	\$520,020.00	\$500,008.00	\$701,844.00	-\$1,298,156.00
ELDERS RURAL BANK (2011)	Floating Rate Sub Debt		8-Oct-11	\$1,000,000.00	3.19%	3.80%	\$853,395.00	\$852,732.00	\$849,439.00	-\$150,561.00
QLD POLICE CREDIT UNION	Term Deposit				0.00%		\$500,000.00			
HERITAGE BUILDING SOCIETY	Term Deposit				0.00%		\$1,000,000.00	\$1,000,000.00		\$0.00
SAVINGS AND LOANS CREDIT UNION	Term Deposit				0.00%		\$1,000,000.00			
TOTAL RIM SECURITIES				\$3,000,000.00	9.57%		\$3,873,415.00	\$2,352,740.00	\$1,551,283.00	(\$1,448,717.00)
WESTPAC INVESTMENT BANK										
HOME BUILDING SOCIETY (2010)	Floating Rate Sub Debt		27-Apr-10	\$500,000.00	1.59%	4.16%	\$434,075.00	\$439,075.00	\$443,545.00	-\$56,455.00
MACKAY PERMANENT BUILDING SOCIETY	Floating Rate Sub Debt		20-Nov-11	\$500,000.00	1.59%	4.21%	\$443,105.00	\$445,300.00	\$426,995.00	-\$73,005.00
TOTAL WESTPAC INV. BANK				\$1,000,000.00	3.19%		\$877,180.00	\$884,375.00	\$870,540.00	(\$129,460.00)
CURVE SECURITIES										
POLICE AND NURSES CREDIT UNION	Term Deposit		24-Jun-09	\$1,000,000.00		4.25%			\$1,000,000.00	\$0.00
SAVINGS AND LOANS CREDIT UNION	Term Deposit		24-Jul-09	\$1,000,000.00		4.30%			\$1,000,000.00	\$0.00
TOTAL CURVE SECURITIES				\$2,000,000.00	6.38%		\$0.00	\$0.00	\$2,000,000.00	\$0.00

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

ATTACHMENT 1

DEFENCE CREDIT UNION									
DEFENCE CREDIT UNION TERM DEPOSIT	Term Deposit		19-Jul-09	\$1,000,000.00		4.00%		\$1,000,000.00	\$0.00
TOTAL DEFENCE CREDIT UNION				\$1,000,000.00	3.19%		\$0.00	\$0.00	\$1,000,000.00
LONGREACH CAPITAL MARKETS									
LONGREACH SERIES 16 PROPERTY LINKED NOTE	Property Linked Note	AA	7-Mar-12	\$500,000.00	1.59%	0.00%	\$402,300.00	\$403,450.00	\$406,800.00
NOTE	Property Linked Note		7-Sep-12	\$500,000.00	1.59%	0.00%	\$403,800.00	\$403,600.00	\$393,850.00
TOTAL LONGREACH CAPITAL				\$1,000,000.00	3.19%		\$806,100.00	\$807,050.00	\$800,650.00
COMMONWEALTH BANK									
EQUITY LINKED DEPOSIT	Equity Linked Note		20-Sep-11	\$500,000.00	1.59%	3.00%	\$491,400.00	\$491,550.00	\$488,850.00
EQUITY LINKED DEPOSIT G1100	Equity Linked Note		03-Aug-10	\$500,000.00	1.59%	3.00%	\$507,150.00	\$507,400.00	\$510,100.00
EQUITY LINKED DEPOSIT ELN SERIES 2	Equity Linked Note		05-Nov-12	\$500,000.00	1.59%	3.00%	\$480,050.00	\$475,450.00	\$474,400.00
BENDIGO BANK SUBORDINATED DEBT	loating Rate Sub Debt		09-Nov-12	\$500,000.00	1.59%	4.36%	\$434,880.00	\$436,245.00	\$441,215.00
BANK OF QUEENSLAND	Term Deposit		12-Aug-10	\$1,000,000.00	3.19%	4.80%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00
BANK OF QUEENSLAND BOND	Bond		16-Mar-12	\$1,000,000.00	3.19%	5.35%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00
TOTAL COMMONWEALTH BANK				\$4,000,000.00	12.76%		\$2,913,480.00	\$3,910,645.00	\$3,914,565.00
FIGI SECURITIES									
AQUADUCT AA-	incipal Protected Note		21-Jun-10	\$1,000,000.00	3.19%	0.00%	\$953,300.00	\$956,100.00	\$953,300.00
TELSTRA LINKED DEPOSIT NOTE	incipal Protected Note		30-Nov-14	\$500,000.00	1.59%	4.19%	\$185,910.00	\$356,290.00	\$385,000.00
AUSTRALIAN DEFENCE CREDIT UNION	Term Deposit				0.00%		\$1,000,000.00		
SAVINGS AND LOANS CREDIT UNION	Term Deposit				0.00%		\$1,000,000.00		
TOTAL FIGI SECURITIES				\$1,500,000.00	4.78%		\$2,139,210.00	\$1,312,390.00	\$1,338,300.00
MAITLAND MUTUAL									
MAITLAND MUTUAL SUB DEBT	loating Rate Sub Debt		30-Jun-13	500,000.00	1.59%	4.64%	\$500,000.00	\$500,000.00	\$500,000.00
MAITLAND MUTUAL TERM DEPOSIT	Term Deposit		25-Aug-09	562,420.35	1.79%	3.99%	556,584.50	556,584.50	562,420.35
MAITLAND MUTUAL SUB DEBT	loating Rate Sub Debt		31-Dec-14	500,000.00	1.59%	4.63%	\$500,000.00	\$500,000.00	\$500,000.00
TOTAL M'LAND MUTUAL				\$1,562,420.35	4.98%		\$1,556,584.50	\$1,556,584.50	\$1,562,420.35
TOTAL INVESTMENTS				\$28,192,797.33	89.92%		\$19,046,788.30	\$17,806,463.18	\$16,821,976.99
AVERAGE RATE OF RETURN ON INVESTMENTS						2.62%			
CASH AT BANK				\$3,160,255.19	10.08%	2.95%	(\$530,586.50)	\$2,233,981.11	\$3,160,255.19
AVERAGE RATE OF RETURN ON INVESTMENTS + CASH						2.73%			
TOTAL CASH & INVESTMENTS				\$31,353,052.52	100.00%		\$18,516,201.80	\$20,040,444.29	\$19,982,232.18
BBSW FOR PREVIOUS 3 MONTHS						3.16%			

* Lehman Brothers is the swap counterparty to these transactions and as such the deals are in the process of being unwound. No valuation information is available.

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.

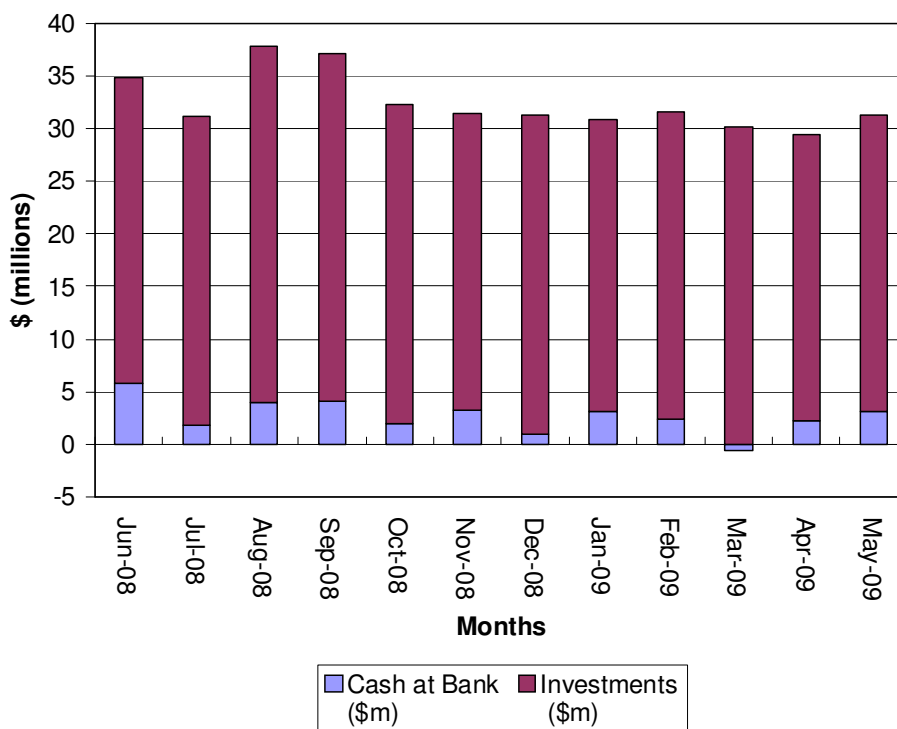
P GESLING

ATTACHMENT 2

Cash and Investments Held

Date	Cash at Bank (\$m)	Investments (\$m)	Total Funds (\$m)
Jun-08	5.899	28.907	34.806
Jul-08	1.780	29.407	31.187
Aug-08	3.939	33.846	37.785
Sep-08	4.141	32.918	37.059
Oct-08	1.934	30.418	32.352
Nov-08	3.234	28.179	31.412
Dec-08	1.031	30.179	31.210
Jan-09	3.147	27.683	30.830
Feb-09	2.364	29.187	31.551
Mar-09	0.531	30.187	29.656
Apr-09	2.234	27.187	29.421
May-09	3.160	28.193	31.353

Cash and Invested Funds for the Period ended 31/5/2009

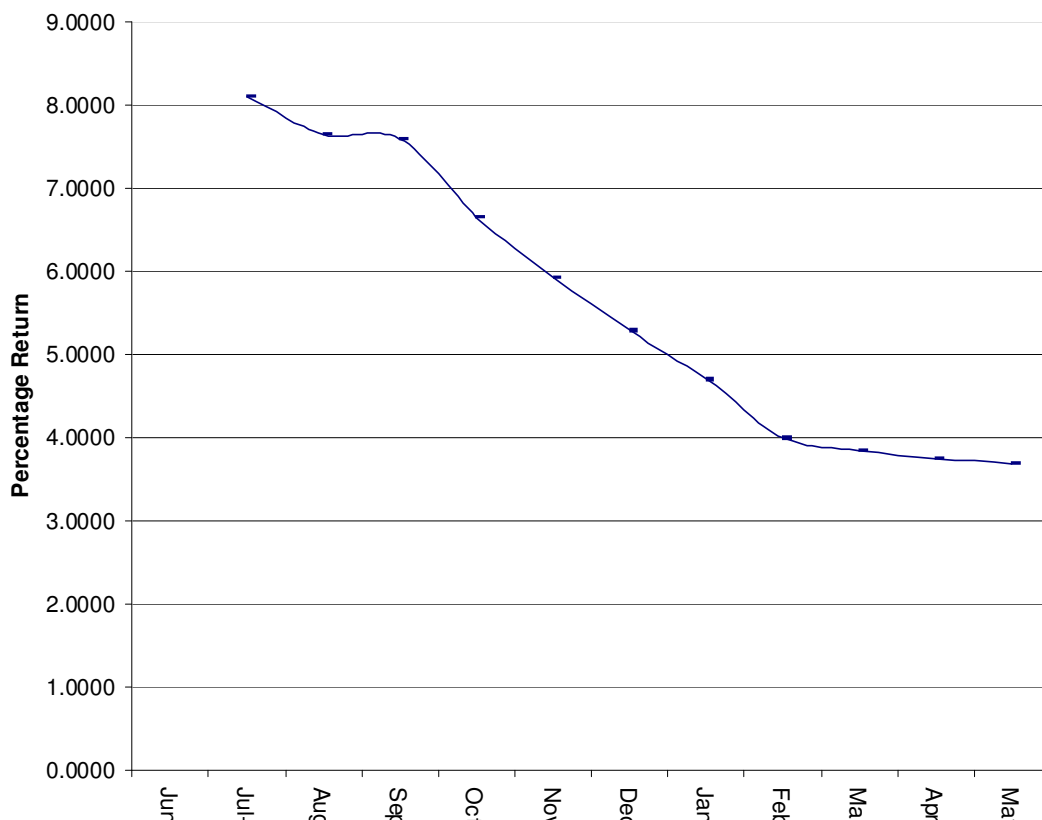


ATTACHMENT 3

Australian Term Deposit Accumulation Index

Date	Index Value (%)
Jun-08	8.1102
Jul-08	7.6563
Aug-08	7.6020
Sep-08	6.6626
Oct-08	5.9328
Nov-08	5.2972
Dec-08	4.7113
Jan-09	4.0024
Feb-09	3.8542
Mar-09	3.7513
Apr-09	3.6960
May-09	3.6960

Australian Term Deposit Index as at 31/5/2009



INFORMATION ITEM NO. 6

ACCESS TO INFORMATION – SECTION 12 LOCAL GOVERNMENT ACT
1993

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER
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 Council's Executive Officer for 2008/09 during the April to June 2009 period.

A total of 18 applications received, 9 with full access granted and 9 with restrictions as shown below.

Total received for the year to June 2009 is 59 applications.

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 one 1 application was received under the Freedom of Information Act for the period of April to June 2009. Total received for the year to March 2009 is 8 applications.

ATTACHMENTS

- 1) Listing of requests under Section 12 of the *Local Government Act 1993*.

ATTACHMENT 1

LISTING OF REQUESTS UNDER SECTION 12 OF THE LOCAL GOVERNMENT ACT 1993

No.	File No.	Information requested	Determination
1	PSC2009-01124	Seeking development application information	Part released due to copyright legislation
2	PSC2009-01246	Seeking development application information	Not held
3	PSC2009-01277	Seeking development application information	Part released due to copyright legislation and also not held
4	PSC2009-01306	Seeking information on landownership	Part released due to Privacy & Personal Information Protection Act
5	PSC2009-00094	Seeking Court information	Not held by Council
6	PSC2009-01646	Seeking development application information	Part released due to copyright legislation
7	PSC2009-01900	Seeking development information	Part released due to Privacy & Personal Information Protection Act
8	PSC2009-01949	Seeking development information	Part released due to Business Affairs
9	PSc2009-02109	Seeking a tape recording of council meeting	Not held

STRATEGIC COMMITTEE RECOMMENDATIONS

ITEM NO. 1

FILE NO: PSC2007-1942

PRINCIPAL PORT STEPHENS LOCAL ENVIRONMENTAL PLAN

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

1. Resolve to prepare the draft Port Stephens Local Environmental Plan (Principal LEP) pursuant to Section 54 of the Environmental Planning and Assessment Act 1979 (the Act) in accordance with the Standard Instrument (Local Environmental Plans) Order, 2006;
2. Advise the Director General of the NSW Department of Planning that, in Council's opinion, a local environmental study under Section 57 of the Act is not necessary on the basis that the preparation of the Port Stephens Futures Strategy and associated technical studies will inform the preparation of the draft LEP;
3. Commence referrals to the relevant government agencies in accordance with Section 62 of the Act; and
4. Review and update Development Control Plan 2007 to include consequential amendments to support the Principal LEP in accordance with the provisions of Section 74C of the Act.

STRATEGIC COMMITTEE – 07th July 2009

RECOMMENDATION:

	<p>Councillor John Nell Councillor Shirley O'Brien</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Resolve to prepare the draft Port Stephens Local Environmental Plan (Principal LEP)/planning proposal pursuant to Section 54 and 55 of the Environmental Planning and Assessment Act 1979 (the Act) in accordance with the Standard Instrument (Local Environmental Plans) Order, 2006; 2. Advise the Director General of the NSW Department of Planning that, in Council's opinion, a local environmental study under Section 57 of the Act is not necessary on the basis that the preparation of the Port Stephens Futures Strategy and associated technical studies will inform the preparation of the draft
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MINUTES FOR ORDINARY MEETING – 28 JULY 2009

		<p>LEP;</p> <p>3. Commence referrals to the relevant government agencies in accordance with Section 62 of the Act; and</p> <p>4. Review and update Development Control Plan 2007 to include consequential amendments to support the Principal LEP in accordance with the provisions of Section 74C of the Act.</p>
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Bruce MacKenzie, Sally Dover, Shirley O'Brien, Steve Tucker, Geoff Dingle, Frank Ward, John Nell, Bob Westbury, Daniel Maher, Ken Jordan and Peter Kafer.

Those against the Motion: Nil

ORDINARY COUNCIL – 28TH July 2009

232	Councillor John Nell Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Cr Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

The purpose of this Report is to recommend Council formally resolve to prepare the draft Port Stephens Local Environmental Plan (Principal LEP) under section 54 of the Environmental Planning and Assessment Act, 1979 (the Act). This Report also provides an overview of existing planning documents and work currently underway that will inform the preparation of the Principal LEP.

BACKGROUND

Local environmental plans (LEP) are an integral element of the current NSW Planning System. Although prepared by local councils, LEP's are required to be made by the Minister for Planning.

As part of the NSW Planning Reform Agenda, all councils are required to prepare a new LEP to comply with the Standard Instrument (Local Environmental Plans) Order, 2006 within a designated time period. Port Stephens Council is required to prepare a draft Principal LEP in the new Standard Instrument Template format by March 2011.

Existing Planning Position

Lower Hunter Regional Strategy (2006)

In October 2006, the NSW State Government Cabinet endorsed the Lower Hunter Regional Strategy (LHRS). The Strategy identifies that Port Stephens will be required to accommodate a significant amount of additional population. The Strategy provides that 60% of new dwellings will be provided in new release areas and 40% will be provided within the existing urban areas. The targets proposed by the Strategy are 12,500 new dwellings and 6,100 additional jobs.

Port Stephens Futures Project

The Futures Project engages with the community - residents, businesses and stakeholders - to identify how we would like Port Stephens to look in the future. The Project commenced in October 2008 with a series of workshops across the LGA, followed by a Forum in May 2009 which brought the community together to develop a set of values and a vision for the future. The findings of this Project will be presented in a report to Council proposed for later this year. It is expected that the information from this Project will provide the direction for the Principal LEP by the development of a robust future vision for the LGA.

Port Stephens Community Settlement & Infrastructure Strategy (2007)

The Community Settlement and Infrastructure Strategy (CSIS) was adopted by Council on the 24 April 2007 and seeks to plan and manage the future settlement patterns, growth, infrastructure provision and environmental management of the Port Stephens Local Government Area (LGA) up to 2031. The fundamental approach of the document is to develop sustainable communities with commercial, residential and industrial land being placed strategically to mutually support each other. Developing sustainable communities is also critical for the rural lands within the LGA in relation to the transport of goods, connections to townships for employment and services, as well as the close proximity of products/produce for the immediate area.

The CSIS is currently being updated to reflect the recent adoption of local area strategies for Anna Bay and Medowie.

Port Stephens Local Environmental Plan 2000

The current LEP has been in force since 29 December 2000. Over the years there have been several amendments to the document. The LEP 2000 will be translated into the Principal LEP where practicable and appropriate.

Port Stephens Development Control Plan 2007

Development Control Plan (DCP) 2007 was the result of consolidating Council's existing DCP's at the time into one single document and updating a range of provisions and controls. As this DCP references and supports the current practices and policies established in LEP 2000, several consequential amendments will need to occur to ensure the DCP is consistent with the Principal LEP. Also this review is a timely opportunity to consider how the document has operated over that last two years and consider feed back from the community of its application and quality of outcomes.

Port Stephens Sustainability Policy

The Port Stephens Sustainability Policy provides Council with a clear mandate to undertake all of its operations in a sustainable manner. This Policy is a major consideration in the preparation of all Council documents including LEP's. This Policy is currently under review; however, the principles are sound and will be used to inform the development of the Principal LEP.

Supporting Studies

The following studies have been identified as being required to inform the preparation of the Principal LEP to conform with the Standard Instrument Template.

Rural Lands Study

In November 2008 a rural lands study commenced. The Study aims to review the existing activities on rural zoned land, consider both the current and future role of the rural areas, identify contributory values of the rural landscape and develop an understating of the role of the rural areas in the local economy. This Study will then inform the selection of appropriate zones from the Standard Instrument Template and relevant DCP provisions. This Study is nearing completion and will form part of the exhibition material for the Principal LEP.

Retail and Commercial Centres Study

The existing LEP 2000 only has one commercial zone. This does not provide a clear distinction between the roles performed by the commercial centres. The Standard Instrument Template provides an opportunity to reinforce the commercial hierarchy to complement the hierarchy outlined in the LHRS and CSIS. This Study has now commenced and will form part of the exhibition material for the Principal LEP.

Residential Density Study

The existing LEP 2000 has two residential zones – 2(a) Residential and 2(c) Residential. The main distinction between the two zones is that the 2(c) zone allows for increased density, height and additional activities such as tourist facilities. The CSIS identifies the need for greater diversity of housing located in and around neighbourhoods, villages and town centres. As the LHRIS identifies increased population for the area and the CSIS has already established sound principles for growth, the next step is to review the current residential zones and their function in association with the community. Through this process relevant residential zones from the Standard Instrument Template will need to be identified and included in the Principal LEP. It is anticipated that this review will be undertaken early 2010. It is anticipated that this review may also inform consequential amendments to the DCP.

FINANCIAL/RESOURCE IMPLICATIONS

The financial impacts associated with the development of the Principal LEP including the background studies and community engagement have been addressed in a previous Council report which identified the legal requirements of having to prepare a Principal LEP, the background information lacking from current studies and additional technical staffing resources required to meet the timeframe set by the DoP. This Report does not request any further funding at this point in time.

LEGAL AND POLICY IMPLICATIONS

Adoption of the recommendations of this Report will formally commence the process of preparing a Principal LEP in accordance with the provisions of the Act. The legal frame work around the preparation of LEP's is extensive. The reform agenda of the DoP has further increased the requirements with the introduction of the Standard Instrument Template, additional section 117 directions, changes to the Act, new SEPPs, practice notes and planning circulars all of which are undergoing constant additions and changes/clarification in interpretation. The Standard Instrument Template, in particular, will control the content and format of the Principal LEP.

The Template provides:

- Specific definitions - no additional definitions are to be added to the Dictionary
- List of standard zones – no additional zones to be added
- Zone objectives – each zone has a set of core objectives. Councils may be able to provide up to three additional objectives to tailor the zone to the existing area
- Permitted and prohibited uses – the land use table mandates specific prohibited and permitted land uses. Councils may add to this list of land uses providing they remain consistent with the zone objectives and are taken from the specified definitions Dictionary
- Clauses – almost 40 clauses are mandated and listed as either compulsory or optional
- Local provisions – councils may address specific circumstances by adding local provisions as a new clause provided they do not undermine the intent of the mandated clauses

- Principal Development standards – clauses which address such matters as minimum lot sizes, heights of buildings and floor space ratio. Any of these provisions currently in DCP's must now be included in the Principal LEP only
- Schedules – there are currently five schedules e.g. Environmental Heritage

A local environmental study (LES) is required under section 57 of the Act to support the development of the Principal LEP. As recommended, the Department of Planning will be requested to confirm that the Futures Strategy be considered as the LES, which is further supported by existing adopted Council documents such as the CSIS, Medowie and Anna Bay Strategies.

SUSTAINABILITY IMPLICATIONS

The Principal LEP will be developed in accordance with the fundamental objective of developing/enhancing and supporting a sustainable Port Stephens community.

CONSULTATION

The preparation and public exhibition of the Principal LEP will involve extensive consultation with councillors, community members, staff, industry representatives, specific interest groups such as the heritage committee and various government agencies including the DoP. Consultation will take various forms such as workshops, presentations, informal and formal discussions, correspondence and attendance at events such as business breakfasts etc.

The existing Futures Reference Group which includes members of the business community, residents and special interest groups will also act to provide support and direction for the development of the Principal LEP.

OPTIONS

- 1) Council resolve to support the recommendations of this Report to commence the formal process of preparing a Principal LEP in accordance with the provisions of the Act. This is the recommended option.
- 2) Request changes to the recommendation. The impacts of this option would need to be considered in the context of the changes and the consequential resource implications. This is not a recommended option.
- 3) Not support the recommendation. This is not the preferred option and will inhibit the Council's ability to meet the requirements of the DoP to prepare a draft principal LEP by 2011.

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 2

FILE NO: PSC2009-00647

PARKING ENFORCEMENT POLICY

REPORT OF: BRUCE PETERSEN – MANAGER, ENVIRONMENTAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolve to place the draft Parking Enforcement Policy (Attachment 1) on public exhibition for a period of 28 days;
- 2) That after the exhibition period the draft Policy be adopted in its current form if no submissions are received, or referred back to Council for consideration if significant submissions are received.

STRATEGIC COMMITTEE – 07th July 2009

RECOMMENDATION:

	<p>Councillor Bruce MacKenzie Councillor Ken Jordan</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Resolve to place the draft Parking Enforcement Policy (Attachment 1) on public exhibition for a period of 28 days; 1. That after the exhibition period the draft Policy be referred back to Council.
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Cr Peter Kafer left the meeting at 6.56pm prior to voting on Item 2.

ORDINARY COUNCIL – 28TH July 2009

<p>233</p>	<p>Councillor Daniel Maher Councillor Bob Westbury</p>	<p>It was resolved that the matter be deferred to the next Operations Committee Meeting.</p>
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BACKGROUND

The purpose of this report is to seek Council's support of the draft Parking Policy.

The purpose of the Parking Enforcement Policy is to provide standard procedures to be followed by staff in parking enforcement, to establish good practice and to enable the public to become aware of Council's parking enforcement policy and procedures.

The Draft Policy and associated guideline (Attachment 1) has been prepared after consultation with Councillors and key staff and through analysis of other Council Policies.

FINANCIAL/RESOURCE IMPLICATIONS

The adoption of the Parking Enforcement Policy is not expected to have either financial or resource implications for Council. Council officers are already engaged in the parking enforcement function having regard to a responsibility to enforce the Australian Road Rules for safety and also to ensure fair and equitable turnover of parking spaces to support commerce.

Whilst it is not expected that the adoption of the recommended Parking Enforcement Policy would have significant financial impacts, it must be recognised that changes in focus, priorities and resourcing of this function can have budget implications.

LEGAL AND POLICY IMPLICATIONS

The draft Policy has been prepared having regard to the applicable legislation relevant to parking enforcement and does not go beyond the legislation or established parking principles. It also refers to issues such as safety, duty of care and the discretion of officers, which Council should always consider when developing enforcement policies.

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.
- 3) **SYSTEMS THINKING** – Continuously improve the system.
- 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

The community benefits from safe and fair parking enforcement with the most important objective of Council being the preservation of safety of pedestrians and drivers.

ECONOMIC IMPLICATIONS

Council's parking enforcement function can have economic impacts for Council, the general public and business. Business's benefit from parking enforcement which stimulates turnover of parking spaces and access to central business districts (CBDs). It is therefore important that Council apply parking legislation consistently and fairly.

ENVIRONMENTAL IMPLICATIONS

Nil Environmental implications.

CONSULTATION

A parking policy consultative group consisting of Councillors Westbury, Francis and Tucker was formed to consider the development of a Parking Policy. The group met once and provided valuable input to the draft Policy.

All Councillors have had the opportunity to provide input during a two way conversation on 7 April 2009.

Parking enforcement policies of Newcastle Council, City of Melbourne and ACT Government were analysed to assist in the preparation of the draft Policy.

OPTIONS

- 1) Adopt draft in principle and place on public exhibition
- 2) Request redraft of policy
- 3) Reject policy.

ATTACHMENTS

- 1) Draft Parking Enforcement Policy and associated Parking Guidelines.

ATTACHMENT 1
DRAFT POLICY



POLICY

Adopted:
Minute No:
Amended:
Minute No:

FILE NO: PSC2009-00647

TITLE: PARKING ENFORCEMENT POLICY

REPORT OF MANAGER ENVIRONMENTAL SERVICES

BACKGROUND

Council has prepared this Policy (and associated Guidelines) to guide parking enforcement (under the Australian Road Rules) in Port Stephens. The Policy and Guidelines were prepared after consultation with Councillors and key staff.

OBJECTIVES

The overriding purpose of the Policy and Guidelines is to provide Council with a means to guide Parking Enforcement.

The Parking Enforcement Policy and Guidelines promote:

- Safety
- Good customer service
- Standard procedures to be followed by staff in parking enforcement
- Good practice in parking enforcement
- Transparency so the public is aware of Council's approach to parking enforcement and associated procedures
- Consistency in parking enforcement
- Equity in the way the Australian Road Rules are enforced.

PRINCIPLES

- 1) Council is the primary responsible regulatory authority for parking enforcement in Port Stephens.
- 2) Council has a duty of care to reasonably enforce parking legislation in order to maintain pedestrian and driver safety, promote commerce through

turnover of parking spaces and to enable fair and equitable access to parking for special groups of motorists.

- 3) Council's Parking Enforcement Policy and Guidelines cannot modify or exceed or fall short of legislative requirements but can set the culture and priorities of this organisation in relation to the enforcement of the Australian Road Rules.
- 4) In applying the Policy, Council must have regard to local issues and available resources.

POLICY STATEMENT

Council will encourage the community to adhere to the Australian Road Rules and to consider the safety and convenience of other drivers and pedestrians when parking in Port Stephens.

Council will encourage a spirit of cooperation between all parties and provide educational materials to the community where appropriate.

In enforcing this Policy, Council will place a high priority on driver and pedestrian safety.

RELATED POLICIES

Compliance Policy
Prosecution Policy

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The community benefits from safe and fair parking enforcement with the most important objective being the preservation of safety of pedestrians and drivers.

ECONOMIC IMPLICATIONS

Councils parking enforcement function can have economic impacts for Council and the general public and business. Business benefits from enforcement which stimulates turnover of parking spaces and access to central business districts (CBDs). It is therefore important that Council apply parking legislation consistently and fairly.

Whilst it is not expected that the adoption of a Parking Enforcement Policy would have significant financial impacts, it must be recognised that changes in focus, priorities and resourcing of this function can have budget implications.

ENVIRONMENTAL IMPLICATIONS

Nil

RELEVANT LEGISLATIVE PROVISIONS

Australian Road Rules
Local Government Act

IMPLEMENTATION RESPONSIBILITY

Co-ordinator Environmental Health and Regulation
Rangers Team

REVIEW DATE

3 years from adoption



PARKING

ENFORCEMENT

GUIDELINES

JUNE 2009

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Part 1 - Objectives

Vision

We value safe parking practices and the provision of equitable and fair access to parking facilities for all Port Stephens residents and visitors.

1. *The purpose of the Policy*

- Provide standard procedures to be followed by all Officers.
- Provide guidelines so that all Officers can carry out their duties to the same standard and avoid using different interpretations.
- Act as an ongoing reference document for Officers, Managers and Council so that all stakeholders apply a consistent approach to parking enforcement.
- Aid new Officers during their initial training period.
- To enable the public to become aware of Council's parking enforcement procedures and policies.

2. *What is the Purpose of Parking Surveillance?*

- Monitor and promote road and pedestrian safety.
- Ensure the equitable use of kerbside parking spaces.
- Ensure parking turnover to assist commerce and trade or access to areas of high demand.
- Ensure compliance with the Australian Road Rules 1999 and associated Regulations.
- To improve vehicular and pedestrian access for residents, workers shoppers and visitors to the LGA.
- Provide Civic information.
- Investigate and act on complaints.
 - Represent Port Stephens Council in a professional and courteous manner.

• Part 2 – Officer’s Responsibilities

3. *Officer’s obligations*

- Officers conduct activities with the highest standards of ethics and integrity
- Officers ensure policies and procedures are followed and internal controls are adhered to.
- Officers take responsibility for their own decisions, performance and achievements.
- Officers support an equitable working environment by treating colleagues and customers fairly and with dignity and respect.
- Officers work within the team to achieve team goals.
- Officers embrace new ideas, technology, systems and processes.
- Officers recognise the efforts, contributions and achievements of others within the Team.
- Officers respect the diversity of individuals and value their contribution to Port Stephens Council.
- Officers must be consistent.
- Officers should be courteous and polite.
- When new signs are installed a minimum period of 1 day is to be given as a grace period unless otherwise informed by the Coordinator Environmental Health and Regulation. If an officer is unsure or notices any new installation they are to contact the Facilities and Services Group for verification of when the signs were installed.
- All signs that are missing, damaged or obscured by foliage are to be reported to the Facilities and Services Group.
- Port Stephens Council is Smoke Free workplace. There is to be no smoking in any Council building or vehicle. An Officer should not smoke while actively engaged in Council functions.

4. Officers Checklist

It is the Officers responsibility to ensure they have all equipment necessary to carry out their daily duties.

All necessary PPE equipment including Hat and Vest

- Pinforce handheld and printer
- Mobile Phone
- Digital Camera
- Notebook
- Complaint List
- Pen
- Chalk
- Offence booklet
- Business Cards
- Uniform clean and tidy
- Equipment clean and working
- Test Token

It is the Officer's responsibility to ensure that their uniform is clean and tidy, that all their equipment is charged and operational and that they are carrying enough Parking Penalty Notices.

5. Uniform and Issued Equipment

First impressions have the greatest impact and are lasting impressions

The Officer's uniform is intended to present a smart efficient appearance.

Officers should be conscious that the image projected by one Officer will influence the overall picture of how Officers are regarded or viewed in general.

Port Stephens Council issues each Officer with an allotment of uniforms sufficient to allow for frequent changing.

Uniforms are to be maintained in a neat, clean and presentable condition.

Hats or caps are to be worn at all times when an officer is in the field.

- Shoes/boots – As issued by Council.
- Safety Vests are to be worn at all times when working within a road related area This is a Workcover and Council requirement.
- Only long sleeve shirts are to be worn without a jumper or jacket in accordance with Council's Sunsafe Policy.

5a. Official Notebooks

Storage and maintenance of notebooks is the officer's responsibility. Daily entries are to be made e.g. day, date, work activities. These notebooks are to be used to record incidents, conversations or other unusual events that may take place during a shift. These entries may or may not be used in any proceedings at a later date. All entries must be made neatly and concisely. Commencing with page 1, all entries should be in order of date and time. A line should be ruled under each entry and a one line space left before commencing the next entry. When an error occurs put a line through and the wording inserted in such a manner as to leave the original legible. Note book storage is the Officers responsibility.

Notebooks are to be used as a supplement to the Pinforce hand held device. All notes that are relevant to a Parking Penalty Notice are to be recorded on the Pinforce handheld device.

5b. Mobile Phones

Mobile Phones are the property of Port Stephens Council. They are to be used for work related matters in accordance with Council's Code of Conduct and any Management Directive issued in relation to the use of mobile phones.

It is the responsibility of the Parking Officer to have their issued mobile phone fully charged at the commencement of their shift.

Note: Mobile phones are not to be placed on loud speaker or hands free by an officer while on the street.

5c. Camera

Each officer has been provided with a digital camera. Cameras are to be used in accordance with the Code of Conduct.

6. Issuing an Infringement Notice

6a .Relevant Acts

1) Local Government Act 1993

Parking can be enforced on land that is owned by the Local Authority, entrusted or controlled by the Local Authority, or where Council has entered into an agreement with private property owners to enforce parking restrictions applicable to free carparks.

Council owns time limited free carparking areas in Raymond Terrace and Nelson bay.

Council has also entered into agreements to patrol time limited carparks at Raymond Terrace Marketplace, Salamander Shopping Centre and the D'albora Marina private carparks.

2) Roads Act and Australian Road Rules

The Australian Road Rules (ARR) were adopted in NSW in December 1999. The rules govern parking on roads and road related areas and are consistent nationally. Council Officers are authorised to enforce the Australian Road Rules within all road related areas within Port Stephens. The following legislation is also applicable to Councils parking surveillance activities.

- Road Transport (Safety and Traffic Management)
- Road Rules Regulation 1999
- Road Transport (General) Act 1999

6b. What an Officer should consider before issuing a Parking Penalty Notice

An Officer should:

- Be in full view of the public and in full uniform when issuing a Parking Penalty Notice. An exemption to this is where an Officer witnesses an offence that represents a significant risk to the health and safety of the public whether the officer is on duty or not. Evidence relating to such an offence may be collected whether or not the officer is within view of the public or irrespective as to whether the officer is in official uniform or on duty.
- Form an opinion based on facts-if in doubt don't issue.
- Identify the offence vehicle is committing.
- Examine the signage, markings, ticket machine or chalk mark.
- Consult with Supervisor if necessary.

Part 3 - Specific Parking Offences

7. Procedures to be followed for Specific Parking Offences

7a. Ticket Parking Offences

During patrols of the Nelson Bay foreshore area, machines within the patrolled area are to be checked for the following:

- Correct time.
- Any lights flashing, or Out Of Order Display.
- Any visible damage to the machine.
- Or any other Indiscretion.

Where faults are detected they are to be reported to the appointed contractor immediately for repair.

Officer discretion is to be used in determining whether patrols of the area should continue having regard to the number of machines out of order and the fair and reasonable capability of drivers to access alternative machines within a short distance of the faulty machine.

7a.1 Park without Current ticket or Expired Ticket

- Check vehicles for tickets that have expired or vehicles that do not have tickets. Checking is to involve a complete view of all possible display surfaces including the front dash, car seats, and rear dash.
- If no ticket displayed or time has expired by the grace period. - **a Parking Penalty Notice is to be issued. (for grace period see Part 12)**
- If a ticket is upside down (face down) and the ticket is unable to be read, issue a Parking Penalty Notice and make a note describing the position of the ticket. Take a photo when possible.
- If two tickets are on the dashboard and were purchased within a short period of time, total the two tickets to arrive at a correct time of expiry.
- Photographs are to be taken, if possible, of the registration plate along with sufficient photographs to demonstrate that a ticket has expired or is not reasonably displayed.

7b. Permissive Parking (time limited)

A driver may park a vehicle for the period indicated on a permissive parking sign.

A number immediately to the left of the letter **P** indicates that a driver must not park on the length of road, or in the area continuously for longer than the number of hours or minutes shown.

A number together with the word minute, immediately to the right of the letter **P** indicates that a driver must not park on the length of road, or in the area continuously for longer than the number of minutes or hours shown.

If a vehicle is parked for longer than the time indicated (with the addition of the grace period)-**a Parking Penalty Notice is to be issued.**

7b.1 Exceeding Time

Vehicles suspected of being parked in a ticket or time limited parking area should be issued with a parking penalty notice if it is determined that they have exceeded time.

Various methods can be used to mark vehicles to establish that time has been exceeded. These include -

- Electronic marks or valve stemming. (not available at present time)
- Chalk mark across the tyre tread in a location which can be verified by the Officer.
- If doubt exists as to whether or not the vehicle has moved no penalty notice is to be issued.

7b.2 Exclusions

Vehicles found committing a ticket or exceed time offence are to be checked for the following permits:

- Mobility Parking Scheme - Check expired date
- Special event authority that may be issued from time to time.
- Any other note or message left by the driver to indicate that the vehicle is incapacitated or providing any other sustainable reason why the vehicle has not complied with parking requirements.

7c No Stopping

The enforcement of No Stopping Zones is important as these zones are invariably placed in locations to preserve pedestrian and driver lines of sight with the objective of preserving safety.

If a vehicle stops in an area clearly sign posted as No stopping - **a penalty notice is to be issued.**

7d No Parking

In accordance with the Australian Road Rules, the driver of a vehicle parked in a No Parking zone must be within 3 metres of the vehicle and must not exceed a stay of 2 minutes.

If an officer observes that a vehicle is unattended in accordance with the above Rule or stays in location longer than 2 minutes with the driver in attendance- **a penalty notice is to be issued.**

7e Loading Zone

The enforcement of Loading Zones is important to ensure that commercial vehicles can access central business districts for the loading and unloading of goods and passengers. When these areas are used illegally, dangerous parking practices can occur.

The New South Wales Road Rules (Road Transport - Safety and Traffic Management) indicate that in a Loading Zone the following rules apply:

- Sedans are not permitted unless they are setting down/picking up passengers
- Station Wagons or a motor bike that has 3 wheels and is constructed principally for the conveyance of goods are permitted to park for a period of up to 15 minutes
- If the vehicle is constructed principally for the conveyance of goods other than a station wagon or a 3 wheel bike you may park for a period of up to 30 minutes
- If a sedan vehicle is unattended in a loading zone,- **a parking penalty notice is to be issued.**
- **If a sedan is attended, the Officer should advise the driver to move off the loading zone immediately.** If the driver does not comply then a Parking Penalty Notice is to be issued for Stop in Loading Zone. Vehicles must not be simply waived on, but driver spoken to.

For vehicles that are permitted to park in a Loading Zone (Road Transport - Safety and Traffic Management) they are to be chalked or observed for the nominated periods (time limit plus Grace period) and issued with a Parking Penalty Notice if they exceed this time.

7f Taxi Zone

If a vehicle other than a taxi is unattended, it is to be issued with a parking penalty notice. If a person is approaching the vehicle and the officer has not commenced the parking penalty notice, the Officer should advise the driver that they are not permitted to park in a taxi zone. If the parking penalty notice has been commenced, the penalty notice is to be issued.

If the vehicle is attended, verify with the driver that the vehicle is not disabled. If the vehicle is drivable request the driver to move on immediately. If the driver refuses issue a Parking Penalty Notice for Stop in Taxi Zone.

7g Bus Zone

If a vehicle other than a bus, stops in a bus zone, a parking penalty notice is to be issued.

A vehicle, other than a bus cannot set down or pick up passengers in a bus zone. If a vehicle is observed using a bus zone in this manner, a Parking Penalty Notice is to be issued.

Buses must only use bus zones for the setting down and picking up of passengers. Where a bus is observed to be unattended (parked) in a bus zone it is to be issued with a penalty notice. If the bus is attended, the driver is to be requested to move out of the bus zone immediately. If the driver does not do this then a penalty notice is to be issued.

7h Disobey Clearway sign

If a vehicle stops on a Clearway a Parking Penalty Notice is to be issued.

7i Work Zone

Works Zones are created to allow for the delivery of materials to construction or building sites or to allow access for vehicles which are related to the building activity. The Australian Road Rules do not specify which class of vehicle is permitted to use Work Zones and therefore enforcement is difficult as the Officer needs to determine whether or not the vehicle is related to the activities on the adjacent site. Therefore Work Zones are enforced based largely upon complaint or if an Officer witnesses the parking offence. In these cases a Parking Penalty Notice is to be issued to the offending vehicles.

7j Mail Zone

Mail Zones are design so that only Australia Post vehicles may stop no other vehicles are permitted at any time. If a vehicle other than an Australia Post Vehicle is stopped or parked a Parking Penalty Notice is to be issued.

7k Truck Zone

Any vehicle *under* 4.5 tonne is not permitted to stop in a Truck Zone, however a driver is permitted to drop off or pick up passengers. If a vehicle is unattended a Parking Penalty Notice is to be issued.

7l Parking across driveway access to/from land

If a vehicle is parked across a driveway and is unattended, the Officer is to allow 2 minutes and if the vehicle remains unattended a Parking Penalty Notice is to be issued.

7m Pedestrian Crossing/Children Crossing

Vehicles are not permitted to stop on or near a Pedestrian Crossing /Children Crossing under any circumstances; a Parking Penalty Notice is to be issued. There is zero tolerance for this offence in school zones.

7n Obstruct Traffic

A vehicle parked in a manner so as to obstruct traffic is to be issued with a Parking Penalty Notice, unless the vehicle is disabled or has been involved in a collision.

7o Park on path or strip in a built up area

If a vehicle is parked across a formed footpath **a penalty notice is to be issued.**

If a vehicle is parked or partly parked on a strip or road reserve (without a formed footpath) in a manner that is ,or is likely to obstruct the movement of pedestrians or the line of site of pedestrians or drivers, the Parking Officer is to **issue a Parking Warning Notice on the first occasion.**

If the vehicle is observed to be parked on the same path or strip on subsequent occasions, a penalty notice may be issued.

7p Park on Medium Strip

If a vehicle is parked or partly parked on a median strip, the Parking Officer is to issue a Parking Penalty Notice.

7q Park across marking of space or to close to front/back of vehicle

When vehicle/s are parked in this manner, before issuing a penalty notice it has to be determined beyond reasonable doubt which vehicle was parked first. This can be determined by the officer witnessing the parking event. In this case the

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Officer would advise the driver of the parking regulations and request that the driver corrects their position. If the driver corrects his/her position, no further action is to be taken. If the driver leaves the vehicle and ignores your caution a Parking Penalty Notice is to be issued.

7r Stop on/near intersection

The regulation states that a vehicle should not be parked within 10 metres of an intersection with the exception of areas indicated by a sign. Vehicles parked within 10 metres of an intersection (No Traffic Lights) are to be issued with a Parking Penalty Notice as such parking creates a safety hazard to pedestrians and other motorists.

A vehicle must not stop or Park within 20 metres of the nearest point of an intersecting road at an intersection with *traffic lights* with the exception of an area indicated by a sign.

Vehicles parked within 20 metres of an intersection (Traffic Lights) are to be issued with a Parking Penalty Notice

7s Double Park

A driver must not stop on a road:

- If the road is a two-way road between the centre of the road and another vehicle that is parked at the side of the road. If this is witnessed by an Officer then a Penalty Notice is to be issued.
- If the road is a one-way road-between the far side of the road and another vehicle that is parked at the side of road. If this is witnessed by an officer then a Parking Penalty Notice is to issued.

A vehicle can be considered to be double parked whether or not it is attended Eg double parking to drop off or pick up a passenger is an offence.

7t Parking in marked bays

A driver must not park on a length of road, or in an area, to which a "park in bays only" sign applies, except within a parking bay.

If a vehicle is parked outside a marked bay and unattended a Parking Penalty Notice is to be issued for the offence of "Not park wholly within parking bay".

7u Position of vehicle in relation to kerb

Vehicles must be parked in accordance with directions provided on signage applicable to each parking space. Eg, rear to kerb, nose to kerb. These requirements are imposed having regard to safe parking manoeuvring and traffic safety and must be complied with whether or not all surrounding parking spaces are occupied. A vehicle parked not in accordance with signage requirements may cause a dangerous traffic hazard when entering or leaving its parking spot.

Where a vehicle is unattended and has been identified as not complying with signage directing the parking position, a penalty notice is to be issued. When the driver is present, a direction shall be given for the driver to safely reposition the vehicle to comply with signage.

Officers must ensure that reasonable visibility of signage describing vehicle position is available from the parking space.

7v Not Park in the Direction of Travel

Vehicles (including trailers, boats, caravans) must be parked in the direction of travel in accordance with Australian Road Rule 208.

Vehicles that are parked against the flow of traffic (and subsequently on the wrong side of the road in most instances) have been parked in a manner that has required crossing onto the wrong side of the roadway and departure from the parking place in all likelihood will require the same dangerous driving practice.

Vehicles parked in the wrong direction are also dangerous at night time because the reflective devices on most vehicles are prevalent on the rear and not the front and visibility of these vehicles by other drivers is compromised during periods of low visibility eg night time, rain, dawn, dusk.

The practice of parking in the wrong direction is one which is usually done for convenience and has become informally accepted due to lack of enforcement in the past.

Where a registered vehicle is noticed to have parked not in the direction of travel and is unattended, a warning notice may be issued. If the vehicle is observed to be parked in the same manner on a subsequent occasion, a penalty notice may be issued.

Where the driver is present, a direction shall be given for the vehicle to be repositioned so that it is parked correctly. If the driver does not comply with this direction immediately, then a penalty notice may be issued.

8 Mobility Parking Scheme Authority (Disabled parking)

Mobility Parking spaces are in various locations in Port Stephens.

When carrying out parking surveillance, the following action should be taken in relation to clearly signposted disabled parking areas:

- A Parking Penalty Notice should be issued to a vehicle not displaying a valid Mobility Permit in a designated Mobility Zone.
- Mobility Permit Holders who have parked over the time allowed by the Mobility Parking Scheme concession will receive a Parking Penalty Notice for exceeding time.
- Where parking is limited to more than 30 minutes the vehicle can park for an unlimited time.
- Where parking limit is 30 minutes the vehicle can park for 2 hours.
- Where the parking is limited to less than 30 minutes the vehicle can park to a maximum of 30 minutes.
- Where the Mobility Parking Symbol is displayed with a time limit on the same parking control sign, a driver must not exceed the time stipulated.
- A 7 day grace period will be given for an Expired Mobility Parking Scheme Authority.

Officers must carry out an extensive check of the vehicle prior to issuing any penalty notice. This should include checks of the dash (front and rear) seats and floor of the vehicle to determine whether a mobility parking permit is present within the vehicle and that may have been dislodged from the required display location.

Part 4 - General Procedures

9. Procedure for chalking tyres

Chalk marking of tyres is a fundamental process in policing parking controls in relation to time limits.

When marking tyres, the Officer must ensure that part of the mark is placed across the tread of the tyre and not only on the edge of the tread or side wall.

A Parking Officer must mark the tyres with the time the vehicle is initially observed correctly by using chalk.



If the mark is placed on the edge of the tyre, the mark may remain even if the vehicle is moved, because the edge of the tread may not come in contact with the road surface.

It is inappropriate to rely on any mark made on the edge of a tyre for evidence that a vehicle has parked for longer than the permitted time..

The officer must ensure that the mark is in the same place and condition when it was marked. Take a photo of the chalk mark when possible. If there is any concern don't infringe.

9a Valve Stemming

Using the location of valve stems to determine if a vehicle has moved or not is the most effective method of detecting vehicles that overstay the signposted time limits. Recording valve stems should be done in lieu of using chalk marks whenever possible.

Valve stemming is not available at present to Port Stephens officers but may be introduced in the future.

10 Road Related Area

A road related area is any of the following:-

- an area that divides a road
- a footpath or nature strip adjacent to a road
- an area that is not a road and that is open to the public and designated for use by cyclists or animals
- an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles.

11. Patrolling at Schools Zones

When patrolling a school zone the primary objective is to promote/preserve child safety. Children are vulnerable because they are small, harder to see and behave unpredictably. Parking and traffic conditions around schools are designed to preserve lines of sight and the safe set down and pick up of children.

A Zero tolerance policy applies to all parking offences detected within school zones.
In June 2006, the then Minister for Local Government issued a circular to all Councils advocating a zero tolerance policy in school zones.



The Hon. Kerry Hickey MP
Minister for Local Government

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



Ref: 05/1226
MHC: 06/3242
Doc ID: A55030

07 JUN 2006

Dear Mr Gesling

I am writing to all New South Wales councils about the important issue of road safety, particularly around school zones.

I am reminding councils and their authorised officers of their responsibility to understand and enforce the applicable provisions of the Australian Road Rules.

In particular, I encourage councils to focus their efforts on patrolling school zones on school days to enhance road safety and the safety of children, particularly near schools.

Authorised officers have some level of discretion in enforcing these Rules. However, I am aware that some officers do not patrol school zones or routinely use their discretion to issue warnings rather than penalty notices to drivers who breach the Rules, for example by double-parking or stopping on or too close to a crossing.

The routine issuing of warnings for offences is unacceptable and contrary to the ultimate aim of ensuring pedestrian safety.

I accept that the issuing of penalty notices can sometimes lead to unpleasantness. However, avoiding these situations should never be at the expense of ensuring the safety of pedestrians and particularly children. Given the recent spate of accidents and severe injury involving children in school zones or on pedestrian crossings, this has never been more obvious.

Please ensure that council reviews its priorities and this message is made clear to the management and authorised officers of your council.

Yours sincerely


Kerry Hickey MP
Minister

Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Phone: (61 2) 9228 3333 • Fax: (61 2) 9228 5551

- If a vehicle parks in an illegal manner, a parking penalty notice is to be issued.
- Where an Officer cannot issue the parking penalty notice on the spot, the details of the offence and the vehicle are to be noted in order that the parking penalty notice can be posted to the registered owner of the vehicle.
- An Officer or vehicle must be in full view of the public when patrolling school zones. It is appropriate for the officer to remain within a legally parked vehicle for the purposes of surveillance of school zones.
- Photographs may be taken of vehicles for enforcement purposes in school zones. Care should be taken to ensure that wherever possible, persons are not readily identifiable if they appear in photographs. (see section "Taking and storage of photographs") However the fact that a person may appear in a photograph does not prohibit the taking of that photograph for evidentiary purposes.

12 Grace Periods

Council acknowledges that sometimes drivers can be unavoidably delayed in returning to their vehicle within time and therefore the following periods of "Grace" apply for various offences.

Zone	Grace Period
4P, 2P and 1P Ticket or Permissive Parking	10 Minutes
1/2P or 1/4P Meter, Ticket or Permissive Parking	5 Minutes
5 Minute Parking	2 Minutes
Loading Zones – Motor Lorries, Vehicles Designed for carrying Goods	5 Minutes
Loading Zones – Station Wagons	2 Minutes
No Parking	2 Minutes

13. Infringing Trailers and Caravans.

Caravans and Trailers are considered to be vehicles, and are treated as such in accordance with the Australian Road Rules.

Parking Penalty Notices issued to Trailers or Caravans are to be posted to the registered owners.

14. Reporting damaged or Missing Sign

Where Officers notice that parking signage is damaged, missing, out of date or requires improvement, the matter is to be referred immediately to the Facilities and Services Group.

Enforcement of parking requirements is to be suspended immediately if it is considered by the Officer that enforcement is not fair and reasonable due to inadequate signage.

15. Taking and Storage of Photographs

Photographs are an important evidentiary tool in parking enforcement. Officers must consider which photographs are necessary in supporting any parking offence and where possible take appropriate photographs for each offence. When issuing a Parking Penalty Notice, photographs showing the following must always be considered –

- A photo of the registration plate in order to ensure that there is no dispute over the attendance of the vehicle.
- A photo of the vehicle's location.
- A photo of the vehicle showing its proximity to relevant signage and road markings.
- A photo of any chalk marks should also be taken for permissible time limited offences.

Photographs may not be taken from vehicles whilst in motion.

15a Storage of Photographs

Photographs may be taken with either the PINFORCE handheld device or the officer's digital camera.

All Officers are responsible for ensuring that date and time stamps on devices are correct at the beginning of each shift.

Photographs taken with the PINFORCE handheld devices are attached automatically to the infringement and uploaded to the PINFORCE database when the handheld is synchronised. These photographs are not to be otherwise downloaded or stored on any other database or personal computer.

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

Photographs taken on digital cameras shall be transferred to handheld devices and attached to applicable infringement records prior to handheld devices being synchronised. Once successfully transferred, photographs are to be deleted from digital cameras and any personal computer drive.

The PINFORCE database is only accessible by Officers having security classification.

Part 5 – Occupational Health and Safety

16. Occupational Health and Safety

Confrontation at Work

Council's objective is to ensure, so far as is reasonable and practicable, that all employees are safe and without risk to health whilst at work. Council takes all reasonable steps to minimise the likelihood of conflict and confrontation and any trauma that results from work functions.

Parking Surveillance is considered a high risk area where confrontation and conflict with the public is common. Officers must be aware of this risk and have regard to the following survival rules -

16a Survival Rules

In most instances, violence at work happens without any provocation of the offender. Officers can mitigate the risk of serious confrontation by practicing the following-

Controlling your own reaction

Stay calm, pause and think about your reaction.

Be aware of your body language

Don't act defensively. Don't raise your voice. Act in accordance with the Code of Conduct at all times.

Being aware of the other person's body language

Pay attention to their body language, facial expressions, physical appearance. Anticipate any aggressive or physical action towards you and plan evasion action and an escape route.

Pay attention to verbal signs of aggression

Actively listen, take threats seriously, listen for tone & volume of voice and do not enter a person's personal space. Be careful not to aggravate the situation through your own words.

Use assertive communication techniques

Request the behaviour to stop. Be direct, concise, and confident.

Walk Away

To prevent confrontation between customers and Parking Officers, it is imperative that Parking Officers recognise the importance of **walking away** from the confrontation. Council supports its Officers when they walk away from potentially dangerous situations.

16b Identifying the Offender

If an Officer lays a complaint to the Police about an incident, the police will require a detailed re-construction of the events and description of the offender. You will be asked to identify the offender.

When identifying the Offender, any small detail may be of assistance to the police. Things to watch for are:-

Physical Appearance:

- Height
- Age
- Build
- Colouring
- Hair
- Tattoos, scars, prominent or unusual features
- Clothing
-

Behaviour:

- Speech - accents, language used, actions
- Body Language –Behaviour
-

Other Aspects:

- Vehicle Description
- Direction of travel when left the area

16c Post Conflict Resolution

- Injured and/or traumatised officers should be reassured and medical attention sought if needed
- For all confrontations verbal or physical, an incident report form must be completed by the Officer and provided to the Co-ordinator Environmental Health and Regulation and the Occupational Health and Safety Officer.
- Council offers an Employee Assistance Program (EAP) which is an independent and completely confidential service, offering free professional guidance and counselling.

Things to remember when carrying out parking patrols.

- Be aware of your position as a provider of Customer Services.
- If a customer becomes verbally abusive or aggressive, Officers must avoid engaging in a verbal argument with the customer. Acting in accordance with the Code of Conduct Policy at all times.

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- If a member of the public asks for an Officer's name, it is the officer's choice whether or not to provide their name.

Part 6 - Officer Discretion

17. Discretion of Officers

Rangers have been advised to use their discretion in applying the Australian Road Rules having regard to the following risk concepts-

- The impact of the parking offence on safety of pedestrians and motorists.
- Local conditions such as width of roadways i.e. what are the practical matters that need to be taken into consideration?
- The volume of traffic flow and estimated risk involved.

17a Fettering Discretion

- Whilst Council officers are offered some discretion in enforcement matters there are some interesting legal opinions relating to the matter
- The Pedestrian Council of Australia believes that Councillors and Management need to tread carefully if considering directing or “fettering” officer discretion.
- The following is a legal opinion from Mallesons Legal (obtained by Sydney City Council but used by the Pedestrian Council)

“Any discretion must be exercised lawfully. It must not be exercised (or not exercised) for any improper or irrelevant reason or the exercise (or non exercise) is unlawful conduct and indeed may be even corrupt conduct depending on the circumstances.

As a consequence, it is our opinion that while the statute confers a power (rather than imposes a duty), an authorised officer, if satisfied that the offence has been committed, would only be able to exercise discretion not to issue the penalty notice in very limited circumstances. To do otherwise runs the real risk of having acted unlawfully (because of a miscarriage of the exercise of discretion)

The Authorised officer should also appreciate that a failure to issue a penalty notice, in circumstances where the offence appears to have been committed, may not only run the risk of improperly exercising discretion but may also expose the Council and the officer to claims for damages if harm is caused by the breach.

Accordingly while we are satisfied that there is a power to issue warnings rather than penalty notices, it is our view that this power is very limited.”

- Legal opinions express the view that officers have limited discretion in issuing infringements when offences are detected.

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- Not issuing infringements, particularly for safety related offences can increase Councils liability and risk in the event of an event occurring eg an accident or fatality in the area.
- Councillors and Managers must consider legal/risk ramifications of directing authorised officers to enforce or not to enforce various offences
- Fettering of discretion is referred to in Councils Compliance Policy

Part 7 - Adjudication

18. Adjudication of Representations

Council has entered into a PREMIUM servicing agreement with the State Debt Recovery Office (SDRO) for the processing and adjudication of all infringements.

A copy of the SDRO's service agreement with Council (November 2007) can be found on file PSC2007-4136.

Generally the SDRO accepts and processes all representations in accordance with their review guidelines. The SDRO review guidelines can be found at www.sdرو.nsw.gov.au. There is a link to this site on Council's website.

Under the Premium Servicing agreement, Council has the right to consider direct representations and advise the SDRO of decisions made. Council's decision is final notwithstanding whether the decision has had regard to the SDRO guidelines.

Where direct representations are made in relation to Parking Enforcement matters, the following procedure applies-

- The representation will be considered by the Co-ordinator Environmental Health and Regulation.
- Details of the offence will be obtained by the Co-ordinator from the PINFORCE database and the issuing officer.
- The Co-ordinator may consult other staff to determine the representation.
- The Co-ordinator advises SDRO my email of the decision.
- The Co-ordinator advises the defendant of the decision.
- The Co-ordinator advises the issuing officer of the decision.

Where Parking infringements are Court elected, the matter is dealt with by the Police Prosecutor to conclusion under Council's Premium agreement with SDRO. Council officers co-operate with the Police prosecutor as requested to provide evidence for Court elected matters.

ITEM NO. 3

FILE NO: PSC 2009-01335

PROPOSED AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000 TO RECLASSIFY AND REZONE VARIOUS COUNCIL OWNED PUBLIC LANDS

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

1) Pursuant to Section 54 of the Environmental Planning and Assessment Act (1979) resolve to:

a) Reclassify the following land from “community” to “operational” as identified in Attachment 1 (provided under separate cover) and rationales provided in Attachment 2 (provided under separate cover):

- Lot 279 DP 740009, 27 Garden Avenue, Raymond Terrace (Site 1)
- Lot 5 DP 261238, 9 Rosemount Drive, Raymond Terrace (Site 2)
- Lot 1 DP 1093118, 1 Sketchley Street, Raymond Terrace (Site 3)
- Lot 23 DP 843416, 77 Dawson Road, Raymond Terrace (Site 4)
- Lot 133 DP 246855, 20 Enterprise Drive, Tomago (Site 5)
- Lot 132 DP 246855, 15 Enterprise Drive, Tomago (Site 6)
- Lot 10 DP 596640, 44 Ferodale Road, Medowie (Site 7)
- Lot 39 DP 807956, 2 Coachwood Drive, Medowie (Site 8)
- Lot 38 DP 807956, 1 Coachwood Drive, Medowie (Site 9)
- Lot 64 DP 815722, 151 Ferodale Road, Medowie (Site 10)
- Lot 109 DP 243096, 1 Lyndel Close, Soldiers Point (Site 11)
- Lot 22 DP 241918, 8 Garuwa Street, Fingal Bay (Site 12)
- Lot 17 DP 805074, 154 Rocky Point Road, Fingal Bay (Site 13)
- Lot 25 DP 247555, 44A Squire Street,, Fingal Bay (Site 14)
- Lot 34 DP 580267, 13 School Drive, Tomago (Site 15)
- Lot 17 DP 231214, 35a Blanch Street, Boat Harbour (Site 16)
- Pt Lot 322 DP 636840, 9 Mitchell Street, Soldiers Point (Site 17)
- Pt Lot 2071 DP 852662, 2 Ridgeway Avenue, Soldiers Point (Site 18)

b) Rezone the following land as below as identified in Attachment 1 (provided under separate cover) and rationales provided in Attachment 2 (provided under separate cover):

- (Site 1) Lot 279 DP 740009, 27 Garden Avenue, Raymond Terrace from 6(a) Community/Recreation to 2(a) Residential

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- (Site 3) Lot 1 DP 1093118, 1 Sketchley Street, Raymond Terrace from 6(a) Community/Recreation to 2(a) Residential
- (Site 8) Lot 39 DP 807956, 2 Coachwood Drive, Medowie from 6(a) Community/Recreation to 2(a) Residential
- (Site 9) Lot 38 DP 807956, 1 Coachwood Drive, Medowie from 6(a) Community/Recreation to 2(a) Residential
- (Site 11) Lot 109 DP 243096, 1 Lyndel Close, Soldiers Point from 6(a) Community/Recreation to 2(a) Residential
- (Site 14) Lot 25 DP 247555, 44A Squire Street, Fingal Bay from 6(a) Community/Recreation to 2(a) Residential
- (Site 16) Lot 17 DP 231214, 35a Blanch Street, Boat Harbour from 6(a) Community/Recreation to 2(a) Residential
- (Site 18) Pt Lot 2071 DP 852662, 2 Ridgeway Avenue, Soldiers Point from 6(a) Community/Recreation to 3(a) Business General.

2) Note that the future classification, zone and use of community land zoned Public Recreation 6(a) Lot 10 DP 729986 at Jessie Road, Anna Bay will be considered as part of the preparation of a new Port Stephens Local Environmental Plan for 2011.

STRATEGIC COMMITTEE – 07th July 2009

RECOMMENDATION:

	<p>Councillor Bruce MacKenzie Councillor Ken Jordan</p>	<p>That Council:</p> <p>1) Pursuant to Section 54 and 55 of the Environmental Planning and Assessment Act (1979)/ resolve to initiate a planning proposal and to:</p> <p>a) Reclassify the following land from “community” to “operational” as identified in Attachment 1 (provided under separate cover) and rationales provided in Attachment 2 (provided under separate cover):</p> <ul style="list-style-type: none"> ▪ Lot 279 DP 740009, 27 Garden Avenue, Raymond Terrace (Site 1) ▪ Lot 5 DP 261238, 9 Rosemount Drive, Raymond Terrace (Site 2) ▪ Lot 1 DP 1093118, 1 Sketchley Street, Raymond Terrace (Site 3) ▪ Lot 23 DP 843416, 77 Dawson
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		<p>Road, Raymond Terrace (Site 4)</p> <ul style="list-style-type: none"> ▪ Lot 133 DP 246855, 20 Enterprise Drive, Tomago (Site 5) ▪ Lot 132 DP 246855, 15 Enterprise Drive, Tomago (Site 6) ▪ Lot 10 DP 596640, 44 Ferodale Road, Medowie (Site 7) ▪ Lot 39 DP 807956, 2 Coachwood Drive, Medowie (Site 8) ▪ Lot 38 DP 807956, 1 Coachwood Drive, Medowie (Site 9) ▪ Lot 64 DP 815722, 151 Ferodale Road, Medowie (Site 10) ▪ Lot 109 DP 243096, 1 Lyndel Close, Soldiers Point (Site 11) ▪ Lot 22 DP 241918, 8 Garuwa Street, Fingal Bay (Site 12) ▪ Lot 17 DP 805074, 154 Rocky Point Road, Fingal Bay (Site 13) ▪ Lot 25 DP 247555, 44A Squire Street,, Fingal Bay (Site 14) ▪ Lot 34 DP 580267, 13 School Drive, Tomago (Site 15) ▪ Lot 17 DP 231214, 35a Blanch Street, Boat Harbour (Site 16) ▪ Pt Lot 322 DP 636840, 9 Mitchell Street, Soldiers Point (Site 17) ▪ Pt Lot 2071 DP 852662, 2 Ridgeway Avenue, Soldiers Point (Site 18) <p>b) Initiate a Planning Proposal and to Rezone the following land as below as identified in Attachment 1 (provided under separate cover) and rationales provided in Attachment 2 (provided under separate cover)/planning proposal:</p> <ul style="list-style-type: none"> ▪ (Site 1) Lot 279 DP 740009, 27 Garden Avenue, Raymond Terrace from 6(a) Community/Recreation to 2(a) Residential ▪ (Site 3) Lot 1 DP 1093118, 1
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		<p>Sketchley Street, Raymond Terrace from 6(a) Community/Recreation to 2(a) Residential</p> <ul style="list-style-type: none"> ▪ (Site 8) Lot 39 DP 807956, 2 Coachwood Drive, Medowie from 6(a) Community/Recreation to 2(a) Residential ▪ (Site 9) Lot 38 DP 807956, 1 Coachwood Drive, Medowie from 6(a) Community/Recreation to 2(a) Residential ▪ (Site 11) Lot 109 DP 243096, 1 Lyndel Close, Soldiers Point from 6(a) Community/Recreation to 2(a) Residential ▪ (Site 14) Lot 25 DP 247555, 44A Squire Street, Fingal Bay from 6(a) Community/Recreation to 2(a) Residential ▪ (Site 16) Lot 17 DP 231214, 35a Blanch Street, Boat Harbour from 6(a) Community/Recreation to 2(a) Residential ▪ (Site 18) Pt Lot 2071 DP 852662, 2 Ridgeway Avenue, Soldiers Point from 6(a) Community/Recreation to 3(a) Business General. <p>2) Note that the future classification, zone and use of community land zoned Public Recreation 6(a) Lot 10 DP 729986 at Jessie Road, Anna Bay will be considered as part of the preparation of a new Port Stephens Local Environmental Plan for 2011.</p>
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MINUTES FOR ORDINARY MEETING – 28 JULY 2009**MATTER ARISING:**

	Councillor Peter Kafer Councillor Bruce MacKenzie	That Council incorporate the implementation of the Council resolution of 24 October 2006 (Minute No. 715) to rezone Aliceton Reserve from Residential 2 (a) to Public Open Space 6(a) into the amendments proposed above.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Bruce MacKenzie, Sally Dover, Shirley O'Brien, Steve Tucker, Geoff Dingle, Frank Ward, John Nell, Bob Westbury, Daniel Maher, Ken Jordan and Peter Kafer.

Those against the Motion: Nil.

ORDINARY COUNCIL – 28TH July 2009

Cr Peter Kafer returned to the meeting at 6.59pm prior to voting on Item 3.

234	Councillor John Nell Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Cr Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

MATTER ARISING:

235	Councillor John Nell Councillor Ken Jordan	It was resolved that Council incorporate the implementation of the Council resolution of 24 October 2006 (Minute No. 715) to rezone Aliceton Reserve from Residential 2 (a) to Public Open Space 6(a) into the amendments proposed above.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Cr Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

THE PROPOSAL

Amend Port Stephens Local environmental Plan 2000 (LEP) to reclassify and or rezone Council owned lands across the local government area.

Owner: Port Stephens Council

Proponent: Recreation Services for Council

Date of submission: October 2008

Subject land: Refer to **Attachments 1 and 2**

Existing zoning: Various

Proposed zoning: Reclassification and/or rezoning – various (**Attachment 1**)

The purpose of this report is to:

- 1) Present a reclassification/rezoning request to Council for consideration;**
 - 2) Recommend that Council support the preparation of a draft LEP over the subject lands.**
-

BACKGROUND

In November 2007 Council's Recreation Services Manager submitted a report to Council seeking authority from Council, as the land owner, to submit a request to Integrated Planning Section (representing Council as the local planning authority) to reclassify and/or rezone the subject lands (**Attachment 1 & 2**). The justification for the request is that the land was identified in the Open Space Consolidation Review 2006 and 2007 as either not required for public open space purposes or to facilitate more flexible management by Council of these lands. Council endorsed both reports.

The request from Recreational Services includes an additional 2 parcels of land that were not included in either the 2006 or 2007 report. These are at Soldiers Point (Sites 17 and 18) and are required to be reclassified so that Council can manage these more land effectively.

PLANNING ASSESSMENT

The Local Government Act 1993 (the Act) requires Council owned public land to be classified either “community” or “operational” land. In simple terms, land classified as “community” cannot be sold or exchanged but Council can grant a lease or licence as defined by the Act. “Operational” land is held by Council as:

- A temporary asset or as an investment;
- Land which facilitates the carrying out by a Council of its functions, or
- Land which may not be open to the general public, such as a works depot. Operational land can be sold or exchanged by Council.

The reclassification of council land will generally be achieved by a Local Environmental Plan (LEP) under the Environmental Planning and Assessment Act 1979. However, in some circumstances, reclassification may be achieved by resolution of council e.g. “community” land dedicated to council under Section 94 of the EP&A Act but is no longer required for the purposes that it was dedicated.

All “community” land that has been dedicated to Council under S.94 and reclassified from community to operational land by either a LEP or a resolution of Council that is then sold by council must be dealt with under the Section 94 Plan as if the net proceeds were a monetary contribution paid instead of a dedication. That is, proceeds resulting from the sale of such land must be returned back into S.94 funds and is not available as general revenue.

Justification for the proposed reclassification of lands in Attachments 1 & 2 is based on the Open Space Consolidation Review 2006 & 2007. In simple terms, the review identified the subject lands as surplus to the recreational needs of the Council. However, certain lands may also hold value to the community other than for recreational purposes. These are discussed below:

Site 6 - 15 Enterprise Drive, Tomago

The land is currently used as a stormwater detention basin for the surrounding industrial development. However, parts of the site are currently being occupied illegally through encroachment by some of the adjacent businesses. Reclassification of this land to Operational may enable Council to lease or sell the land to those businesses once the unauthorised use is legalised through a development application process. Leasing or selling the land will require Council to apply a publicly transparent process in accordance with the relevant legislation.

Site 17 & 18 - 9 Mitchell Street & 2 Ridgeway Avenue, Soldiers Point

Soldiers Point Marina currently operates over Community land without formal permission. Reclassification of this land to Operational will enable Council to consider any future proposal for the Marina to formalise the current activities.

Site 16 - 35a Blanch Street, Boat Harbour

Council's Recreation Services has determined that the active use of this site for recreation is no longer viable and is surplus to current needs. An issue has been raised regarding the reclassification of this site due to Council's subdivision code requiring all dwellings within urban areas to have access to a local park (of at least 1000m²) within a 400m walking distance.

Retention of this site in public ownership would enable this requirement to be met as the nearest park is located 700m away on the beach front cliff. The subject site is approximately 2920m². This presents Council with a unique opportunity as it is not often viable to "retrofit" a neighbourhood due to prohibitive costs associated with acquisition of land within established residential communities. This site provides an opportunity to demonstrate to the community that Council is actively participating in and implementing the principles it advocates by using this site for a local park.

Site 8, 9 & 13 – 1 & 2 Coachwood Drive, Medowie & 154 Rocky Point Road, Fingal Bay

These sites are proposed to be reclassified to operational and or rezoned to 2(a) Residential. The subject sites are under the minimum lot sizes for dwellings pursuant to Clause 19 of the Port Stephens LEP 2000 in the 2(a) residential zone and as such are unable to accommodate dwellings.

LINKS TO CORPORATE PLANS

N/A

FINANCIAL/RESOURCE IMPLICATIONS

An independent consultant will be engaged to undertake the draft LEP process including the public hearing/s required when reclassifying community land.

Council has previously been provided details of likely financial gains associated with the proposal (Council meeting - 1 August 2006). Revenue from the sale of lands acquired under Section 94 must be treated as a monetary contribution under s94 and expended in accordance with the current s94 Plan.

LEGAL AND POLICY IMPLICATIONS

The simultaneous operation of legislation over these lands is complex. For the purposes of administrative clarity and understanding, the reclassification of certain land that can be undertaken by a resolution of council only (i.e under the Local

Government Act), have been incorporated into the recommended draft LEP under the Environmental Planning and Assessment Act.

Reclassifying and/or rezoning the subject lands do not raise any significant planning policy issues primarily due to the relatively small size of each parcel of land and associated relationship to surrounding land uses. Hence the Lower Hunter Regional Strategy 2006 and the Port Stephens Community Settlement and Infrastructure Strategy 2007 are not relevant in this instance.

Some parcels contain drainage easements or provide access for infrastructure service providers to adjoining lands. Further investigations by the proponent and consultation under Section 62 with the relevant service providers will clarify and establish how easements etc will be retained and reported to Council accordingly.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The open space review identified the subject lands as surplus to the recreational needs of Council. The public exhibition and hearing process will ascertain the social implications of the proposed draft LEP.

ECONOMIC IMPLICATIONS

Due to the relatively small size of each parcel disbursed widely across the local government area, there are little to no economic implications of reclassifying and/or rezoning the subject lands upon the surrounding neighbourhoods.

ENVIRONMENTAL IMPLICATIONS

The majority of the sites are small, cleared and surrounded by existing urban development. With the exception of Site 14 (44A Squire Street, FINGAL BAY), all the sites are cleared or contain some trees and little to no undergrowth. Therefore, the sites have little to no ecological significance.

CONSULTATION

Council's Property, Engineering Services and Environmental Services Sections were consulted and their advice has been incorporated into the recommendations of this report.

Subsequent to endorsement by the Department of Planning's LEP Review Panel, formal consultation will occur under Section 62 of the Environmental Planning and Assessment Act with the Department of Environment and Climate Change, Department of Lands, Department of Primary Industry, Hunter Water Corporation, Roads and Traffic Authority, Energy Australia and Telstra.

Public exhibition of the draft LEP and a public hearing will ascertain the community issues with each parcel of land. Due to the dispersal of the subject lands across the local government area, more than one public hearing may occur.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations
- 3) Refuse the recommendations.

ATTACHMENTS

- 1) Maps of Community Lands Proposed For Reclassification and/or Rezoning (coloured maps provided under separate cover).
- 2) Reclassification and/or Rezoning Submission (A3 copy provided under separate cover)

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

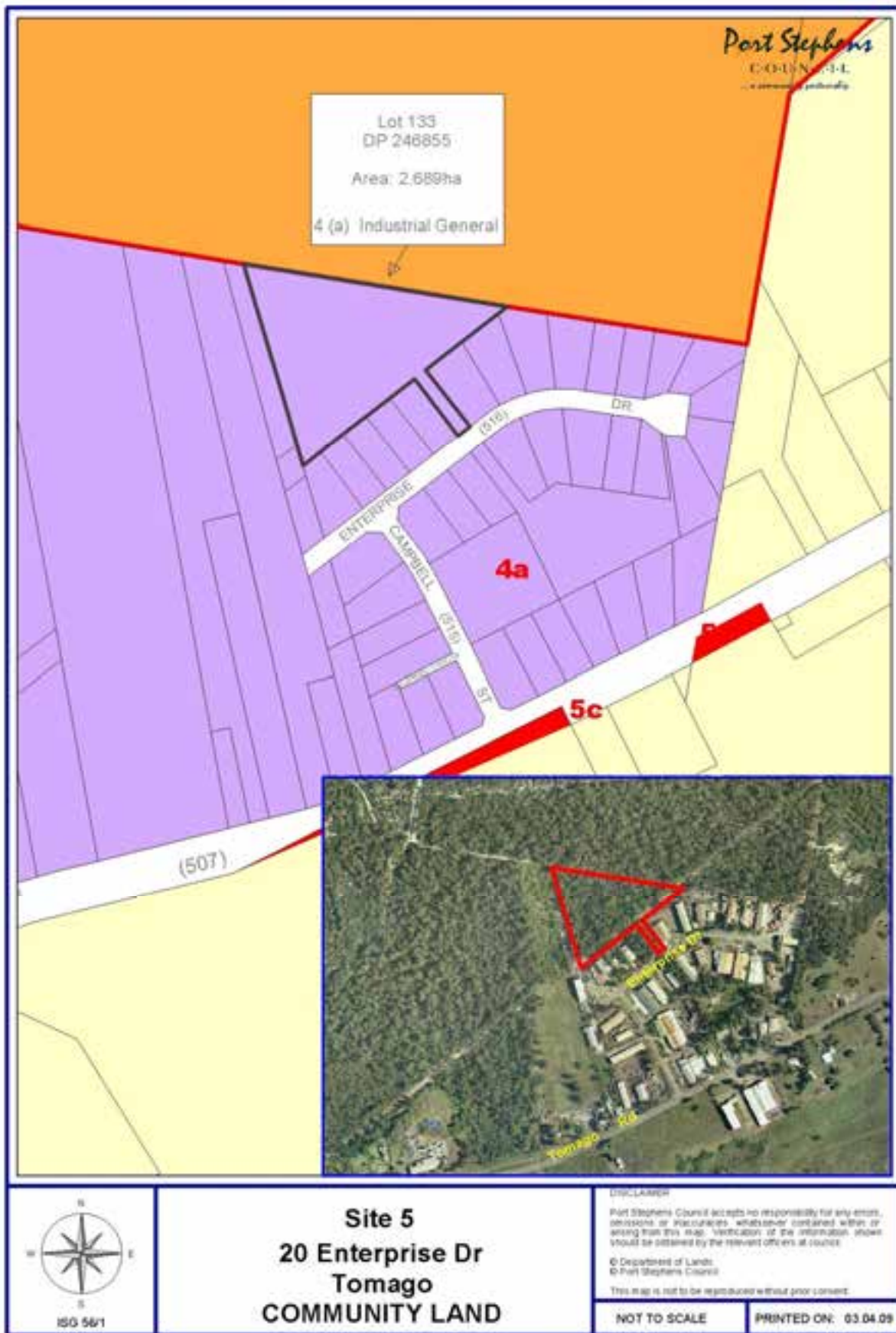
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ATTACHMENT 1
MAPS OF COMMUNITY LANDS PROPOSED FOR RECLASSIFICATION AND/OR
REZONING



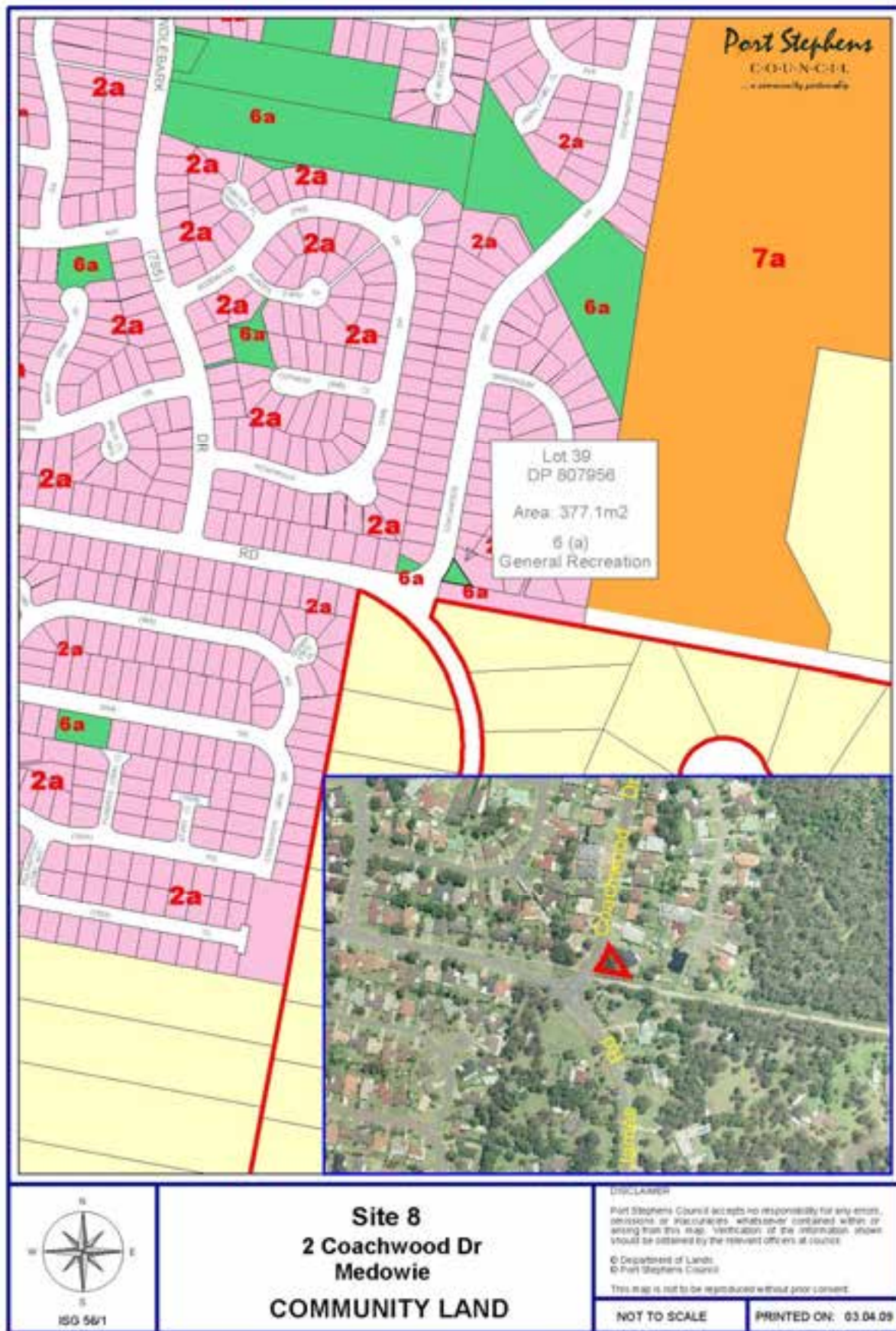


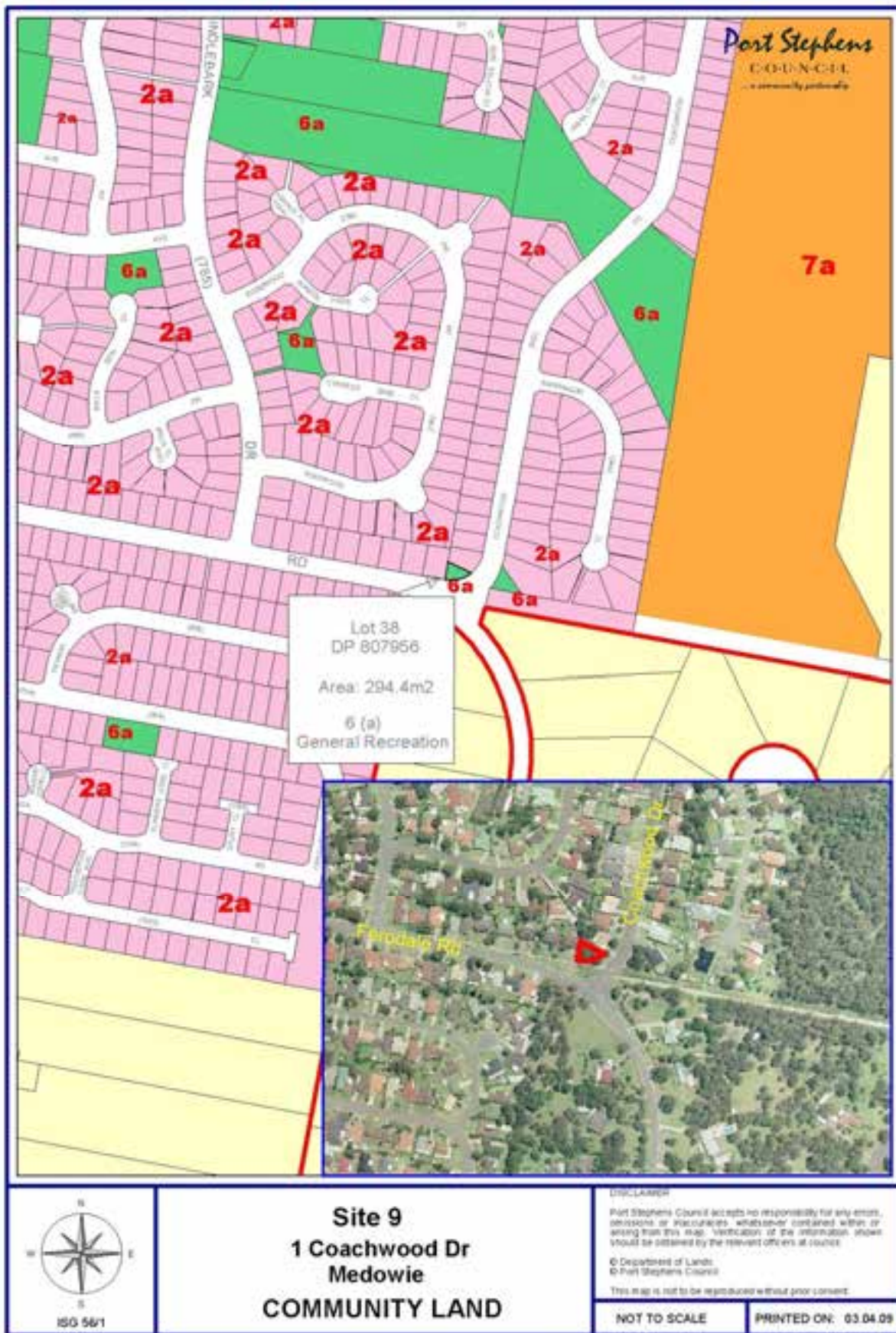


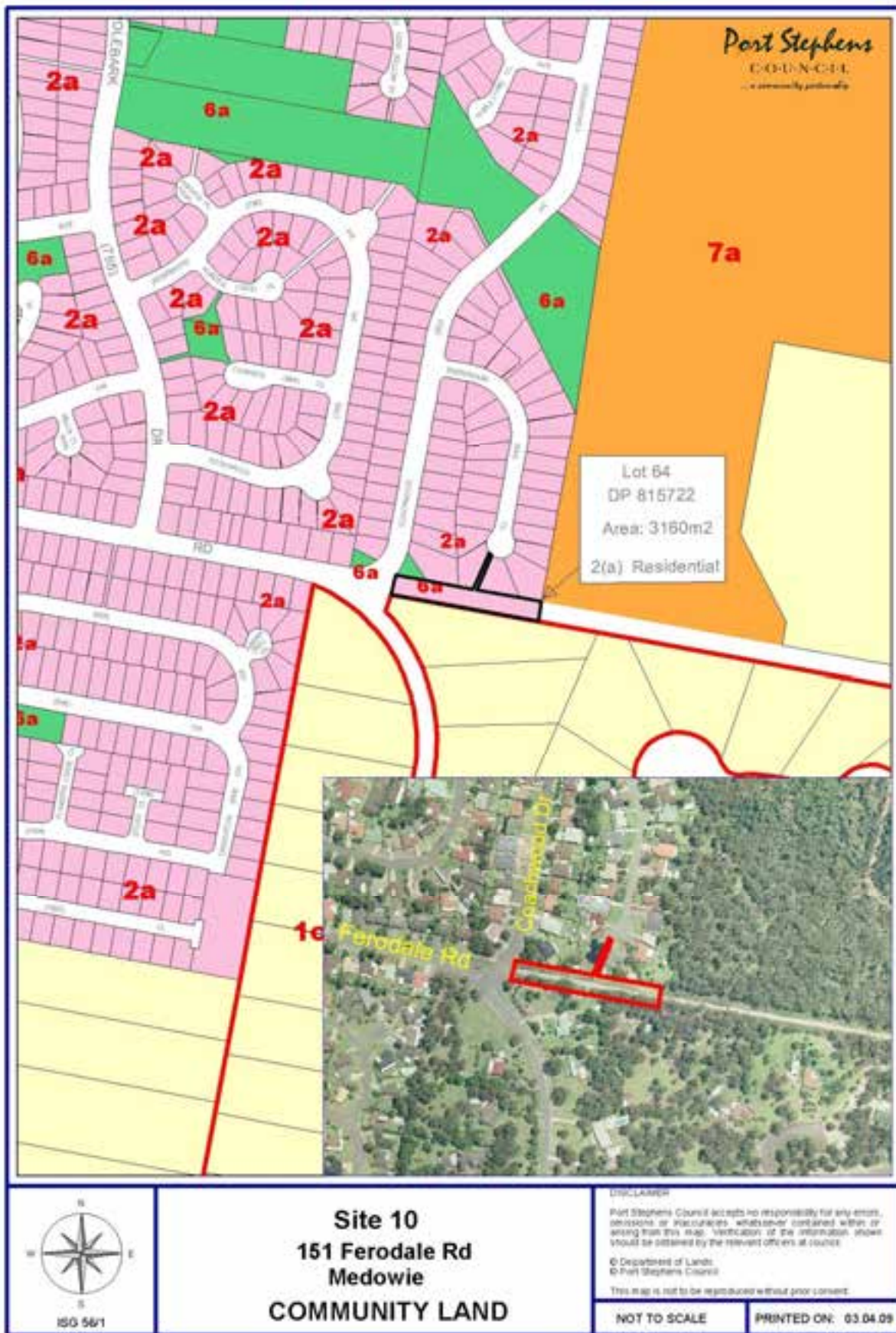












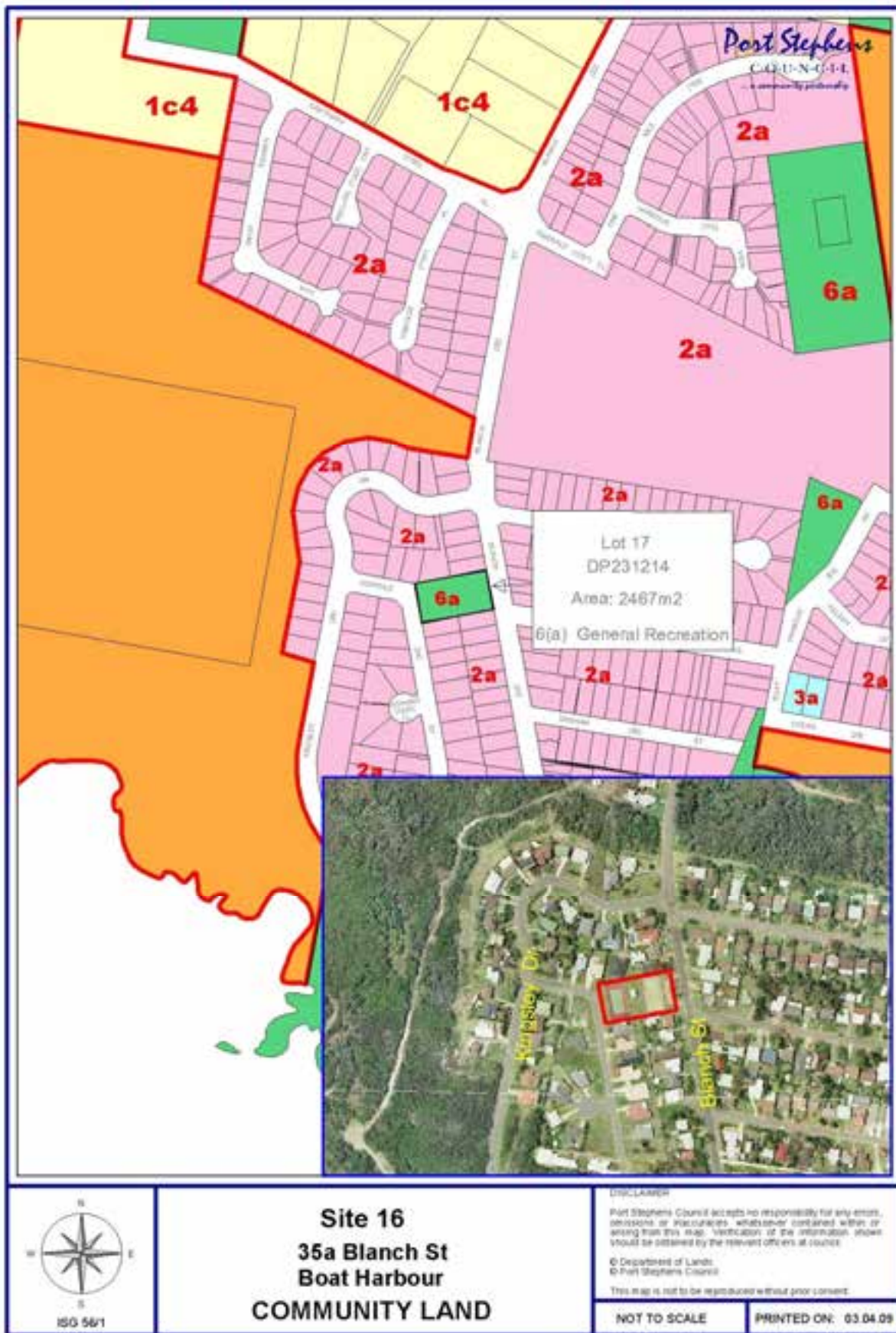
















ATTACHMENT 2

RECLASSIFICATION AND/OR REZONING SUBMISSION

Site & P.L.N.	Address	Lot / DP	Current Zoning	Community Category	Acquired by Transfer or Dedication	Does Sec. 94 Apply	Reserve Type	Plan of Management	Open Space Review by Council	Reclassification Reason	Existing Infrastructure	Can Sec. 32 Reclassify	Reasoning Necessary	Use Rezoning Process to Reclassify	Encumbrances	Notes	Proposed zone
1 21962	27 Garden Avenue Raymond Terrace	279 / 740009	Recreation 6(a)	General	Dedication D.P. 740009 29/1/1986	Yes	Public	Yes 25/5/2004	1/05/2006	Does not meet criteria - size, location, shape or access. Sale to provide funds for assets in area	None	Yes	Yes	Yes	5m Right of Way	Subdivision Possible	2(a) extension of adjoining zoning
2 16400	6 Rosemount Drive Raymond Terrace	5 / 261235	Residential 2(a)	General	Transfer 5/9/1986	Yes	None	Yes 25/5/2004	1/05/2006	Does not meet criteria - size or location. Sale to provide funds for assets in area or site for future child care centre	Drainage	Yes	No	Not Essential	Drainage Easements to be retained	Inter- lotment drainage only	Retain
3 18149	1 Sketchley St Raymond Terrace Part on North side Sketchley St	PL 1 / 1093118 Formerly PL 135 / 24855	Recreation 6(a)	Urban Park	Dedication D.P. 24855 15/3/1953 prior to EPA Act 1979	Possibly	Public Garden & Recreation Space	Yes 25/5/2004	1/05/2006	Does not meet criteria - size or access as site is enclosed by mesh proof fence for over 25 years. Local Community & Council require long term tenure for security & maintenance. Not permitted Local Govt Act 1993	Historic house & out buildings Fencing - sewer lines	Doubtful	Yes	Yes	Beverage Easement to be retained.	Northside Sketchley St only (see attached maps)	2(a) Residential
4 30273	77 Dawson Road Raymond Terrace	23 / 843416	Residential 2(a)	Urban Park	Transfer 25/9/1995	Yes	None	Yes 25/5/2004	1/05/2006	Does not meet criteria - size or location. Sale with funds to new child care building in Raymond Terrace	None	Yes	No	Not Essential	Restriction to one residential brick building only	Not utilised	Retain
5 18092	20 Enterprise Dr Tomago	133 / 246855	Industrial 4(a)	Natural Area Subcategory Buckland	Dedication D.P. 246855	Yes	Public Reserve	Yes 25/5/2004	1/05/2006	Does not meet criteria - location or shape. To create Right of Ways & boundary re- alignments to rear boundaries of adjoining properties	Water supply mains. Vegetated Current unlawful occupations by neighbours	Yes	No	Not Essential	20m Easement for pipeline 5m Easement for pipeline to be retained		Retain
6 18091	15 Enterprise Dr Tomago	132 / 246855	Industrial 4(a)	General	Dedication D.P. 246855	Yes	Public Reserve	Yes 25/5/2004	1/05/2006	Does not meet criteria - location or shape. To create Right of Ways for access to rear of adjoining properties. Not to interfere with drainage structures	Drainage inc. Detention basin	Yes	No	Not Essential	Nil		Retain
7 17432	44 Ferndale Road Medlowe	10 / 596640	Rural 1(r)(3)	General	Transfer 16/7/1935	No	None	Yes 25/5/2004	1/05/2006	Does not meet criteria of location or size - occupied by community centre. Needs more flexibility for management by leases, etc for more community benefit and control	Community Centre - parking Drainage lines	No	Yes	Yes	Nil	High Community Use - needs secure tenures	Retain
8 25246	2 Coachwood Dr Medlowe	29 / 807956	Recreation 6(a)	General	Dedication D.P. 807956 31/1/1991	Yes	Public	Yes 25/5/2004 Genetic	1/05/2006	Does not meet criteria - size shape or location. Possible addition to adjoining property by sale	Check Drainage	Yes	Yes	Yes	Nil		Residential 2(a)
9 25246	1 Coachwood Dr Medlowe	38 / 807956	Recreation 6(a)	General	Dedication D.P. 807956 31/1/1991	Yes	Public	Yes 25/5/2004 Genetic	1/05/2006	Does not meet criteria - size shape or location. Possible addition to adjoining property by sale		Yes	Yes	Yes	Nil		Residential 2(a)
10 26190	151 Ferndale Rd Medlowe	64 / 815722	Residential 2(a)	General	Dedication D.P. 815722 5/6/1992	Yes	Public	Yes 25/5/2004 Genetic	1/05/2006	Does not meet criteria - shape or location. Management purpose or sale to parcel on the east for future access from Ferndale Rd	Sewer, water and electricity mains Constructed access over	Yes	No	Not Essential	Full width subject to easements and Right of Ways	Possible good 2nd access to 1/10/19113	Retain

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Site & P.I.N.	Address	Lot / DP	Current Zoning	Community Category	Acquired by Transfer or Dedication	Does Sec 34 Apply	Reserves Type	Plan of Management	Open Space Review by Council	Reclassification Reason	Existing Infrastructure	Can Sec. 32 Reclassify	Rezoning Necessary	Use Rezoning Process to Reclassify	Encumbrances	Notes	Proposed zone
11 18079	1 Lyndel Ct Soldiers Point	109 / 243098	Recreation 6(a)	General	Dedication D.P. 243906 4/8/1972 Prior to EPA Act 1979	Possibly	Public	Yes 25/5/2004 Generic	1/05/2006	Does not meet criteria - size, shape, topography or location. Sale residential	Part occupied by neighbours with structures and planting	Doubtful	Yes	Yes	Nil	Impractical for Public Reserve	Residential 3(a)
12 2254	8 Ganwa St Fingal Bay	22 / 15 / 241918	Residential 3(a)	Natural Area Subcategory Bushland	Vested 23/4/1976	No	Public	Yes 25/5/2004 Generic	1/05/2006	Does not meet criteria - size, shape, area, location or topography - sale income to fund facilities in area	Part occupied by neighbours with structures & planting including road frontage	No	No	Yes	Nil		Retain
13 24723	154 Rocky Point Rd, Fingal Bay	17 / 805074	Residential 3(a)	General	Dedication D.P. 305074 13/9/1990	Yes	Public	Yes 25/5/2004 Generic	1/05/2006	Does not meet criteria - size or location. Sale to adjoining owners or close road and subdivide	None - Transmission line close to boundary	Yes	No - unless closure of adjoining	Not Essential	Nil		Retain
14 17447	44A Squire St Fingal Bay	25 / 5 / 247555	Recreation 6(a)	Natural Area Subcategory Bushland	Vested 23/4/1976	No	Public	Yes 25/5/2004 Generic	1/05/2006	Does not meet criteria - location or topography. Sale for development - revenue to be used for environmental works in parks at Fingal Bay	None	No	Yes	Yes	None	Neighbours store boats	Residential 3(a)
15 18098	13 School Dr Tomago Only 7m wide	34 / 580267	Industrial 4(a)	Natural Area Subcategory Bushland	Dedication D.P. 580267 12/4/1976 prior to EPA Act 1979	Possibly	Public	Yes 25/5/2004 Generic	27/11/2007	Does not meet criteria for public use. Adjoining lots had constructed access prior to L.O. Act 1993. Formalisation necessary	Constructed permanent access	Doubtful	No	Not Essential	None	Adjoining owners request for access easement	Retain
16 17296	35A Blanch St Boat Harbour	17 / 231214	Recreation 6(a)	Sportsfield	Dedication 27/4/1967 prior to EPA Act 1979	Possibly	Public	Yes 25/5/2004 Generic	27/11/2007	Poor condition of infrastructure, lack of parking, does not meet criteria - size, access or location. Approved tennis strategy to relocate new courts to more community central area. Sell for residential development	Tennis courts, shed and drainage lines	Doubtful	Yes	Yes	None - need to protect drainage infrastructure	Lack of use of current facility Subdivision possible	Residential 3(a)
17 11326	9 Mitchell St Soldiers Point	PT 222 / 636840	Pt Recreation 6(a) Pt. Business General 3(a)	Cultural Significance and Foreshore	Transfer June 1956	No	None	Yes 24/9/1999 Specific	Requested by East Ward Councillors	This part does not meet criteria - size, shape, access or location because of existing private commercial infrastructure encroachments & vehicular movements. Restricted pedestrian access and traffic causing safety concerns over this part. Long term tenures are required by adjoining marine recreation facility. Reclassification as Operational will secure safety for the whole site & provide an income stream for Council	Parking, boat ramp, access drainage, boat slip winches & conc. access ramp, vegetation, historic sites	No	No	Yes	Right of Carriageway variable width Aboriginal heritage sites	Current operations should not be on Community land	Retain

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

Site & P.I.N.	Address	Lot / DP	Current Zoning	Community Category	Acquired by Transfer or Dedication	Does Sec. 94 Apply	Reserve Type	Plan of Management	Open Space Review by Council	Reclassification Reason	Existing Infrastructure	Can Sec. 32 Reclassify	Rezoning Necessary	Use Rezoning Process to Reclassify	Encumbrances	Notes	Proposed zone
18 31354	2 Ridgeway Ave Soldiers Point Part North of HWC sewer pump station	Pt 2071 / 852662	Recreation 8(a)	Cultural Significance and Foreshore	Transfer June 1956 and Dedication 7/9/1956 prior to EPA Act 1979	No	Public Garden & Recreation Space	Yes 24/3/1999 Specific	Requested by East Ward Councilors	Does not meet criteria - size, shape or access because it is used for parking almost exclusively by customers of the adjoining marine recreation facility. Reclassification will improve pedestrian / traffic safety as well as providing tenure for commercial facility and an income stream for Council	Bitumen access, carparking and customer access to adjoining business	No	Yes	Yes	Aboriginal heritage site	Preserve public access to beach	Business General 3(a)

ITEM NO. 4**FILE NO: PSC2008-3522****REVIEW OF PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000****REPORT OF: TREVOR ALLEN - MANAGER, INTEGRATED PLANNING****RECOMMENDATION IS THAT COUNCIL:**

1. Adopt the draft Local Environmental Plan No. 31 to amend the Port Stephens Local Environmental Plan 2000 which includes the following:
 - Minor editing and clarification of clauses
 - Modification of level of significance for existing cemeteries
 - Inclusion of existing potential archaeological items in the local significance schedule
 - Modification to the definitions of "clearing", "earthworks" and "utility undertakings".

2. Pursuant to Section 69 of the Environmental Planning and Assessment Act, 1979, Council submit the draft Plan to the Department of Planning with the recommendation it be made by the Minister for Planning.

STRATEGIC COMMITTEE – 07th July 2009**RECOMMENDATION:**

	Councillor Ken Jordan Councillor Peter Kafer	That the recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Bruce MacKenzie, Sally Dover, Shirley O'Brien, Steve Tucker, Geoff Dingle, Frank Ward, John Nell, Bob Westbury, Daniel Maher, Ken Jordan and Peter Kafer.

Those against the Motion: Nil.

ORDINARY COUNCIL – 28TH July 2009

236	Councillor John Nell Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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MINUTES FOR ORDINARY MEETING– 28 JULY 2009

In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Bruce MacKenzie, Sally Dover, Shirley O'Brien, Steve Tucker, Geoff Dingle, Frank Ward, John Nell, Bob Westbury, Daniel Maher, Ken Jordan and Peter Kafer.

Those against the Motion: Nil.

BACKGROUND

On the 22 July 2008 Council resolved to prepare a draft Plan pursuant to Section 54 of the Act. The draft Plan proposed to make a number of amendments to the Port Stephens LEP 2000 as listed below:

- Minor editing and clarification of clauses;
- Deletion of the 5(g) Special Urban (Flood Affected) zone and replacement with alternative zones under the Port Stephens Local Environmental Plan 2000 zones for residential, industrial and commercial;
- Modification to level of heritage significance for existing cemeteries listed as a heritage item;
- Inclusion of the listed existing potential archaeological items as a heritage item;
- Modification to the definitions of "clearing", "earthworks" and "utility undertakings"; and
- Site specific rezonings.

The Report initially recommended the prohibition of dual occupancy development in the Rural 1(a) zone, however, Council resolved not to support this. As a result the matter was not included in the draft Plan and dual occupancy development remains permissible with consent in the Rural 1(a) zone.

The Department of Planning authorised exhibition of the draft Plan under section 65 of the Act subject to:

- Deletion of the 5(g) Special Urban (Flood Affected) zone be deferred pending the preparation of a Town Centre Study for Raymond Terrace;
- The two site specific rezonings for Medowie and one to amend the zone boundary at Taylors Beach Industrial Estate be dealt with as separate draft plans; and
- The proposed "earthworks" definition to be identical to the Standard Template LEP definition.

A full copy of the advice from the Department of Planning was provided to Councillors in March 2009.

As a result of the Department's advice the draft Plan was amended prior to exhibition and is now limited to minor editing and clarification of clauses, modification to the level of heritage significance for existing cemeteries, inclusion of listed existing potential archaeological items as heritage items and modification to the definitions of "clearing", "earthworks", and "utility undertakings".

A copy of the amended draft Plan is listed as **Attachment 1** of this Report. No changes were made to the draft Plan following exhibition as no submissions were received.

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 these amendments have been funded from the existing operational budget and using current staff resources. No additional funds are being sort for this work.

LEGAL AND POLICY IMPLICATIONS

Adoption of the recommendations of this Report will continue the formal process commenced with the Council resolution of 22 July 2008 to amend LEP 2000. All aspects of this draft LEP have been undertaken in accordance with the provisions of the Act. To continue this process Council is required to adopt the draft amending LEP and forward this onto the Minister for Planning requesting the making of the plan.

SUSTAINABILITY IMPLICATIONS

There are no significant sustainability implications.

CONSULTATION

Internal consultation was undertaken within the Sustainable Planning Group prior to the preparation of the initial draft Plan. The changes proposed to the Heritage Schedule were the recommendations of the Council's Heritage Committee and Heritage Advisor. As a result no further consultation was considered appropriate unless submissions were received.

The draft Plan, as amended by the Department of Planning, was placed on public exhibition from 28 March to 30 April 2009 and made available at Council libraries, website and Administration Office. Letters were also forwarded to property owners who currently have sites listed as potential archaeological items and are now recommend for inclusion as a heritage item of local significance in the Schedule. No submissions were received during the exhibition of the draft Plan.

The NSW Heritage Branch was consulted initially when the Council resolution (22 July) was forwarded to the Department of Planning, as well as during the exhibition process. No response has been received.

OPTIONS

- 1) Council resolve to refer the draft Plan as exhibited to the Minister seeking the making of the draft Plan. This is the recommended option.
- 2) Council may make modifications to the exhibited draft Plan which may result in a further public exhibition.
- 3) Not proceed with the draft Plan. 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) Draft Amending Local Environmental Plan No 31 (Instrument)

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 5

FILE NO: A2004-0242

BUDGET CONTROL & AUTHORISATION POLICY

REPORT OF: DAMIEN JENKINS – MANAGER, FINANCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Rescind the current Budget Control & Authorisation Policy.
 - 2) Adopt the amended Budget Control & Authorisation Policy
-

STRATEGIC COMMITTEE – 07th July 2009

RECOMMENDATION:

	Councillor Peter Kafer Councillor Shirley O'Brien	That the recommendation be adopted.
--	--	-------------------------------------

ORDINARY COUNCIL – 28TH July 2009

237	Councillor Ken Jordan Councillor John Nell	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to adopt the amended Budget Control & Authorisation Policy.

The current policy was adopted on 20 December 2005 Min. No. 384.

The objective of the policy is "To ensure that all Council expenditure is legally authorised and that effective systems of budgetary control are in place to monitor and report actual income and expenditure compared with the estimated income and expenditure."

Listed below are the amendments to the current policy.

- **Change – Background** – 28 September 2004 Minute No. 333 **to** 20 December 2005 Minute No. 384

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

- **Change – General** - Local Government (Financial Management) Regulation 1993 **to** Local Government (General) Regulation 2005
- **Change – General** - Clause 8 Local Government (Financial Management) Regulation 1993.] – **to** - Local Government (General) Regulation 2005
- **Change – Budget Review** - The General Manager will prepare and submit to Council a Quarterly Budget Review within 8 weeks of the end of each quarter – **to** - The General Manager will prepare and submit to Council a Quarterly Budget Review within 2 months after the end of each quarter.
- **Change – Relevant Legislative Provisions** – Local Government Act (Financial Management) Regulation 1993 **to** Local Government (General) Regulation 2005
- **Change - Implementation Responsibility** – Business and Support Group – Finance & Administration **to** Commercial Services – Financial Services.
- **Change – Review Date** - One year from adoption – **to** - Two years from adoption

As outlined in **ATTACHMENT 1**

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.

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 implementation of this policy will ensure sound financial management and ensure all Council expenditure is legally authorised.

LEGAL AND POLICY IMPLICATIONS

The Budget Control & Authorisation Policy will ensure that council expenditure is legally authorised under provisions contained in the Local Government Act 1993 & Local Government (General) Regulations 2005.

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.
- 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

Nil

ECONOMIC IMPLICATIONS

Council's budget is fundamental for operational sustainability and to the provision of facilities and services to the community.

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

Group Manager Commercial Services
Financial Services Manager

OPTIONS

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

ATTACHMENTS

- 1) Budget Control & Authorisation Policy with amendments

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1

Port Stephens
C-O-U-N-C-I-L
P-O-L-I-C-Y

Adopted: 21/07/98
Minute No. 336
Amended: 28/09/2004
Minute No. 333
Amended: 20/12/2005
Minute No. 384

FILE NO: A2004-0242

TITLE: BUDGET CONTROL &
AUTHORISATION

RESPONSIBLE OFFICER: MANAGEMENT
ACCOUNTANT

BACKGROUND

On the 28th September 2004 Council adopted a Budget Control and Authorisation Policy minute no. 333. Council is committed to ensuring the allocation of its resources is responsible and appropriate.

OBJECTIVE

To ensure that all Council expenditure is legally authorised and that effective systems of budgetary control are in place to monitor and report on actual income and expenditure compared with budgeted income and expenditure.

PRINCIPLES

1. The elected Council is responsible for the allocation of Council's resources for the benefit of the area (Section 232 Local Government Act 1993)
2. Council cannot delegate its authority to vote money for expenditure on works, services and facilities (Section 377 Local Government Act 1993)
3. The Council is responsible to regularly review and monitor its financial performance (Section 232 Local Government Act 1993)
4. The General Manager is responsible for the efficient and effective allocation of resources and

Changes

Delete

28th September 2004 –
Minute no. 333

Insert

20th December 2005 –
Minute no. 384

ATTACHMENT 1

ensuring appropriate policies and delegations of authority (Section 335 Local Government Act 1993)

- 5 Responsible budget officers are responsible for carrying out activities within their area of responsibility in accordance with their delegations from the General Manager

POLICY STATEMENT

GENERAL

- 1 Each year Council will approve estimated income and expenditure for works and services as Part of the Council Plan. The estimates will be submitted to Council in the form of a 3 year Profit and Loss Statement. However they will be supported by detailed estimates at activity (prime job number) level. For the purposes of the Local Government (Financial Management) Regulation 1993, Council will be deemed to have approved the Budget at Program level
- 2 No employee shall incur a liability unless Council has approved such expenditure, and they must have the necessary authority delegated to incur a liability on behalf of Council
- 3 As the responsible accounting officer the General Manager is to ensure.
 - That appropriate budgeting and accounting systems (including internal control systems) are established and maintained
 - That a system of budgetary control is established and maintained that will enable Council's actual income and expenditure to be monitored each month and to be compared with the estimate of Council's income and expenditure. If any instance arises where the actual income or expenditure of the Council is materially different from its estimated income or expenditure, the General Manager must report the instance to the next meeting of Council

Cause 8 Local Government (Financial Management) Regulation 1993]

Changes

Delete: Local Government (Financial Management) Regulation 1993

Insert: Local Government (General) Regulation 2005

Delete:
Clause 8 Local Government (Financial Management) Regulation 1993]

Insert:
Local Government (General) Regulation 2005

ATTACHMENT 1

VOTING AND AUTHORISING NEW EXPENDITURE

1. The voting and authorising of additional expenditure not included in the original budget is the statutory responsibility of Council and cannot be delegated to the General Manager or any other person. This requirement is valid irrespective of whether new items of expenditure are offset by additional income not included in the original estimates.
2. Council authority for such new items are to be obtained by either
 - Including details in a Quarterly Budget Review, or
 - In a separate report to Council
3. To ensure that all decisions by Council have taken into account the overall impact on the budget and Council priorities:
 - Reports to standing committees are to include recommendations from the relevant Manager, of the impact on the current or future budgets
 - The funding/budget implications will be referred to the Committee meeting as part of the Quarterly Budget Review, with a recommendation from Executive Team based on a corporate assessment of overall budget implications and priorities,
 - The Committee will then make a recommendation to Council after considering the full budgetary implications of all proposals, based on overall planning priorities and budget/financial implications.

Changes

TRANSFERRING VOTES

1. The General Manager has delegated authority to approve the transfer of votes, within the same Group, up to a maximum of \$10,000. Such transfers and the reasons for the transfers are to be included in the next Quarterly Budget Review.

ATTACHMENT 1

2. The transfer of votes between Groups must be submitted to Council for approval
3. The transfer of votes within Groups for amounts in excess of \$10,000 or between operational and capital, must be submitted to Council for approval

BUDGET REVIEWS

1. The General Manager will prepare and submit to Council a Quarterly Budget Review within 8 weeks of the end of each quarter
2. The Quarterly Budget Review will show the actual income and expenditure at the end of the quarter and a revised estimate of income and expenditure for the year
3. The Quarterly Budget Review will itemise any votes transferred within the same Group during the period under delegated authority, as well as any additional votes or transfers that require Council approval
4. The Quarterly Budget Review must include a report as to whether the General Manager believes that the Statement indicates if Council's financial position is satisfactory or unsatisfactory and recommendations for remedial action, if necessary

Changes

Delete:

The General Manager will prepare and submit to Council a Quarterly Budget Review within 8 weeks of the end of each quarter

Insert

The General Manager will prepare and submit to Council a Quarterly Budget Review within 2 months after the end of each quarter

UNEXPENDED VOTES (REVOTES)

1. All approvals and votes lapse at the end of the financial year or whenever the Council's term of office ends. However, this does not apply to approvals and votes relating to:
 - Work carried out, work in progress or contracted to be carried out.
 - Any service provided, or contracted to be provided.
 - Goods and materials provided, or contracted to be provided.
 - Facilities provided or contracted to be provided before the end of the year or before the term of office of the Council ends.

ATTACHMENT 1

- 2 The General Manager will be responsible to determine if the criteria in 1 above will apply and to authorise the carrying forward of a vote into the next financial year. He will submit a report to Council detailing these carried forward votes as part of the June Quarter Budget Review.
- 3 Once an approval of vote has lapsed it can only be reinstated by a resolution of the Council. In the case of a newly elected Council, a report will be submitted to the first meeting of the Council recommending the approval and voting of expenditure to enable the day to day operations of Council to continue. In the case of votes unexpended at the end of the financial year, a report is to be submitted to Council recommending the lapsed votes that in the opinion of the General Manager, should be re-voted for the next period.

RELATED POLICIES

Nil

SUSTAINABILITY IMPLICATIONS

Nil

SOCIAL IMPLICATIONS

Nil

ECONOMIC IMPLICATIONS

Council's budget is fundamental for operational sustainability and to the provision of facilities and services to the community.

ENVIRONMENTAL IMPLICATIONS

Nil

RELEVANT LEGISLATIVE PROVISIONS

Local Government Act 1993

Local Government Act (Financial Management) Regulation 1993

IMPLEMENTATION RESPONSIBILITY

Business and Support Group - Finance & Administration

REVIEW DATE

One year from adoption

Changes

Delete - Local Government Act (Financial Management) Regulation 1993

Insert - Local Government (General) Regulation 2005

Delete - Business and Support Group - Finance & Administration

Insert - Commercial Services Financial Services

Delete:

One year from adoption

Insert:

Two years from adoption

GENERAL MANAGER'S REPORT

PETER GESLING
GENERAL MANAGER

REQUEST FOR FINANCIAL ASSISTANCE

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT COUNCIL:

1. Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-
 - a) Seaham Signs (Storm Baseball Club) – Signage for naming of MACCA DIAMOND - \$550 – West Ward Funds.
 - b) Seaham Parks Committee Management Plan - \$20,000 – West Ward Funds.
 - c) Vietnam Reunion – Reimbursement of park fees to hold the Reunion at Apex Park \$92 – West Ward Funds.
 - d) Tomaree Neighbourhood Centre Inc. – Emergency Relief Program - \$1500 – East Ward Funds.
 - e) St Brigids Primary School – Fees for King Park for community fundraising event - \$325.00 – West Ward Funds
 - f) Margo Irvine – Café Church – Spencer Park Fees for fundraising event - \$95.00 – Rapid Response Cr Dover.

 - 2) Publicly exhibit the proposal to provide financial assistance to Alix Jones as a donation towards costs to enter the World Youth Endurance Championships to the value of \$200 from Mayoral Funds, for a period of 28 days.
-

ORDINARY COUNCIL – 28TH July 2009

238	Councillor John Nell Councillor Bob Westbury	It was resolved that Council: <ol style="list-style-type: none">1. Approve provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-<ol style="list-style-type: none">a) Seaham Signs (Storm Baseball Club) – Signage for naming of MACCA DIAMOND - \$550 – West Ward Funds.b) Seaham Parks Committee Management Plan - \$20,000 – West Ward Funds.c) Vietnam Reunion – Reimbursement of park fees to hold the Reunion at Apex
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MINUTES FOR ORDINARY MEETING– 28 JULY 2009

		<p>Park \$92 – East Ward Funds.</p> <p>d) Tomaree Neighbourhood Centre Inc. – Emergency Relief Program - \$1500 – East Ward Funds.</p> <p>e) St Brigids Primary School – Fees for King Park for community fundraising event - \$325.00 – West Ward Funds</p> <p>f) Margo Irvine – Café Church – Spencer Park Fees for fundraising event - \$95.00 – Rapid Response Cr Dover.</p> <p>2) Publicly exhibit the proposal to provide financial assistance to Alix Jones as a donation towards costs to enter the World Youth Endurance Championships to the value of \$200 from Mayoral Funds, for a period of 28 days.</p>
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BACKGROUND

The purpose of this report is to determine and, where required, authorise payment of financial assistance to recipients judged by Councillors as deserving of public funding. The new Financial Assistance Policy adopted by Council 19 May 2009, to commence from 1 July 2009, gives Councillors a wide discretion to either grant or to refuse any requests.

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

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

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

Items A to E in the recommendation were considered by Ward Councillors under the previous policy. Item E has been considered under the new Policy for Rapid

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

Response. Item 2 is required to be advertised given the funds will be provided to an individual.

The requests for financial assistance are shown below:-

EAST WARD – Councillors Nell, Westbury, Dover & Ward

Tomaree Neighbourhood Centre Inc	Emergency Relief Program	\$1500.00
Café Church	Refund of Spencer Park fees for holding fundraiser	\$95.00

WEST WARD – Councillors Kafer, Jordan, Francis, Maher

Seaham Signs (Storm Baseball Club)	Signage for naming of MACCA DIAMOND	\$550.00
Port Stephens Council	Seaham Parks committee Management Plan	\$20,000.00
Vietnam Reunion	Reimbursement of park fees to hold the Reunion at Apex Park	\$92.00
St Brigids Primary School	Fees for King Park for community fundraising event	\$325.00

LINKS TO CORPORATE PLANS

The links to the 2009-2013 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

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

LEGAL AND POLICY IMPLICATIONS

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

The policy interpretation required is whether the Council believes that:

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

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.
- 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

Mayor
Councillors

OPTIONS

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

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 2

FILE NO: A2004-0037

LOCAL GOVERNMENT & SHIRES ASSOCIATION SUBSCRIPTIONS 2009-2010**REPORT OF: PETER GESLING – GENERAL MANAGER****RECOMMENDATION IS THAT COUNCIL:**

- 1) Write to the Local Government & Shires Association objecting to the increase in subscription of 8%.
- 2) Seek the support of Hunter Councils in lobbying the Local Government & Shires Association with respect to the increase in subscriptions.

ORDINARY COUNCIL – 28TH July 2009

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

The purpose of this report is to inform Council on the increase of the Local Government and Shire Association (LGSA) subscriptions for 2009-2010.

In 2008-09 Council's subscription was \$40,845.20 (inc. GST). Council has been advised by the LGSA that the 2009-10 subscription will be \$44,112.82 (inc. GST), this is an 8% increase on the previous year. The LGSA basis for the increase is as a result of the review of the subscription methodology and to allow the LGSA to maintain and improve the range of quality services provided to member councils.

Given the limitations placed on Council by rate pegging and Council's ability to generated additional income of a similar increase it is suggested that Council should write to the LGSA Presidents objecting to the increase of 8%. Further that Council through Hunter Councils lobby the LGSA regarding the increase in subscriptions.

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.

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

The increase in 2009-10 subscription of 8% will require an additional \$3,267.62 from the 2009-10 Council budget.

LEGAL AND POLICY IMPLICATIONS

Council as a member of the LGSA is required as part of the Constitution to make subscription payments.

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

ECONOMIC IMPLICATIONS

If Council were to allow increases in the amount of 8% across the organisation with respect to subscriptions this would have a major impact on the ability to fund Council projects.

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

Local Government & Shires Association.

OPTIONS

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

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 3

FILE NO: A2004-0984

CODE OF CONDUCT REGISTER

REPORT OF: PETER GESLING – GENERAL MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note the report.
-

ORDINARY COUNCIL – 28TH July 2009

240	Councillor John Nell Councillor Daniel Maher	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to comply with the requirements of Section 12.33 of the Port Stephens Council Code of Conduct.

The General Manager is required to report annually to Council on the Code of Conduct complaints received.

The information required is shown in **ATTACHMENT 1** of the report.

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

All costs associated with the enquiries/investigations shown in ATTACHMENT 1 have been provided for in the 2008-09 budget.

LEGAL AND POLICY IMPLICATIONS

Council has an obligation under the *Local Government Act 1993* to have in place a Code of Conduct which is consistent with the Model Code of Conduct developed by the Department of Local 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.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Nil

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

Executive Officer

OPTIONS

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

ATTACHMENTS

- 1) Table of complaint received from June 2008 to June 2009.

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1

No.	Nature of the issue raised by Complainant	Outcome of Complaints
1	Allegation that an employee had breached the Code of Conduct by falsifying documents relating to another employee's salary assessment.	General Manager decided not to proceed with this matter under that Code on the basis that employee had been provided with clarification surrounding the allegation and found that what was first thought to of happened actually did not occur.
2	The Human Resources Manager became aware of some allegations made against several Port Stephens Council staff by a contract employee in relation to alleged inappropriate behaviour directed towards the contract employee during their casual employment in our organisation.	<p>General Manager found a Council employee had breached Sections 6.1, 6.2, 6.3 and 6.8 of the Code and as a result was issued with a written warning in relation to his conduct in this matter.</p> <p>Unable to establish during the interviews any clear breaches of the Code by other Port Stephens staff members or current contract employees</p>
3	Use of a Council Vehicle by an employee in contravention of their employment conditions with Council.	<p>General Manager decided on the following course of action:</p> <ol style="list-style-type: none"> 1. The employee was advised of the breach of the Code of Conduct. 2. The employee was issued with a first and final warning as this is the second breach of the Code. 3. Commuter use is to cease. 4. Discussion are to be arranged with the relevant Manager in relation to the approval of commuter use by staff rather than the General Manager in accordance with the Motor Vehicle Management Directive.
4	Registration of dog on companion animal register by a casual employee, without payment of accompanying fee.	<p>General Manager decided on the following course of action:</p> <ol style="list-style-type: none"> 1. The employee be advised of the breach of the Code of Conduct. 2. Casual employee's services terminated through advice to the recruitment agency. 3. Group Manager advised of the action taken.

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

		Council's Executive Officer advised ICAC of actions.
5	<p>Candidate who applied for a position with Council was advised by a Council employee that they had applied for a role within Council, this employee should not of known about the employment application.</p> <p>The candidate phoned to advise Council that their privacy has been breached, and was concerned that a) other people have been told, as there is currently a casual employee working at Council, and if this person was advised they would spread the gossip to others. The candidate is secondly concerned that as a result of this privacy breach, a current employer will learn that they had applied for another role.</p>	<p>General Manager decided the following course of action:</p> <ol style="list-style-type: none"> 1. Investigation into allegations undertaken by HR Unit. 2. Employee counselled on correct procedures. 3. No further action be taken.
6	<p>Candidate who has applied for a position with Council, making claims they had suffered Bullying from employees. The candidate was currently working as a casual employee.</p> <p>The candidate has made claims that they have been the subject of bullying by employees in the past few months of temporary employment, and in particular from a Supervisor.</p> <p>In addition, the candidate has made claims that they have observed the outright intimidation of employees by another employee.</p> <p>The candidate has advised that as a result of bullying, they would be withdrawing their application for the role.</p>	<p>General Manager decided the following course of action:</p> <ol style="list-style-type: none"> 1. Investigation into allegations undertaken by HR Unit. 2. Allegations could not be substantiated. 3. No further action given that the allegations cannot be substantiated.

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

Councillor Daniel Maher left the meeting at 7.04pm during Item 4.

ITEM NO. 4

FILE NO: PSC2007-1703

DRAFT AMENDMENT NO. 33 TO THE PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt draft Port Stephens Local Environmental Plan 2000 (Amendment No. 33) as amended post exhibition (**Attachment 1**) for land at Taylors Beach; and,
- 2) Forward draft Local Environmental Plan No.33 to the Department of Planning requesting the Minister to make the Plan.

ORDINARY COUNCIL – 28TH July 2009

241	Councillor John Nell Councillor Shirley O'Brien	It was resolved that the recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Cr Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

PROPOSAL DETAILS

Subject Land & Owners Lot 491 in DP 727810 Crown Land (Worimi)
 Lot 312 in DP 1125008 Tinlin & Others
 Lot 311 in DP 1125008 Hunter Land
 Lot 16 in DP 1010867 Cuthbertson Investments
 Lot 151 in DP 1022499 Hollier
 Lot 10 in DP 852917 Anything Australia
 Lot 122 in DP 1122650 Hollier
 Lot 121 in DP 112650 5 Star Self Storage
 SP 78791 Proprietors of the Strata Plan

Proponent Hunter Land
 Date of Submission July 2008

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

Current Zones	4(a) Industrial General & 1(a) Rural Agriculture (Attachment 2)
Proposed Zones	4(a) Industrial General & 7(a) Environment Protection

Council should note that Lot 311 in DP 1125008 is the site of a development application for a Bunning's Warehouse (DA 16-2009-200-1).

The purpose of this report is to advise Council of; submissions received during the public exhibition of draft Port Stephens LEP 2000 (Amendment No. 33) (the draft LEP); and, comments received from relevant government authorities and other bodies. Council can consider the issues raised, and resolve whether or not to proceed with rezoning the land.

BACKGROUND

Council resolved on 24th July 2007 in respect of the subject land to: prepare a draft LEP to rezone those parts of allotments that have dual zonings in Taylors Beach Estate in Trades Circuit and Kara Crescent from Rural 1(a) to Industrial 4(a), and Subject to initial investigations by the Group Manager Sustainable Planning supporting this draft LEP, request affected landowners to proportionately fund consultants for this purpose and to enable higher priority in the Strategic Planning Work Program.

Following Council's resolution, additional information was sought from the landowners to address the environmental and planning issues associated with rezoning the land (no information was submitted to support the rezoning at the time of Council's resolution). The additional information investigated the environmental characteristics of the site (**Attachment 3**) informed the zoning layout that was placed on public exhibition (**Attachment 4**).

The aims of the exhibited draft LEP are to facilitate industrial development and to provide a buffer to a wetland identified under State Environmental Planning Policy No 14 Coastal Wetlands (SEPP 14).

FINANCIAL/RESOURCE IMPLICATIONS

To date, costs incurred in Council staff time and resources preparing and administering the draft LEP have been recovered by the payment of stage 1 rezoning fees by the proponents.

Stage 2 rezoning fees are still outstanding and will be recouped prior to the draft LEP being forwarded to the Department of Planning if Council adopts the draft LEP as recommended by this report.

LEGAL AND POLICY IMPLICATIONS

The land forms part of the Taylors Beach industrial area and is shown as 'existing employment land' within the Lower Hunter Regional Strategy (LHRS) and in Council's Community Settlement and Infrastructure Strategy (CSIS). It is not identified as a new release area. However, the existing zone boundary is irregular in shape, does not reflect existing topography and does not assist the orderly development of the land. The draft LEP addresses these issues and will result in a logical expansion of the existing industrial area.

The recommended zoning map (**Attachment 1**) does not require re-exhibition because it is a minor change from the exhibited version and does not change the land to which the draft LEP applies.

SUSTAINABILITY IMPLICATIONS

SOCIAL & ECONOMIC IMPLICATIONS

The rezoning of the land is likely to have positive social and economic implications by making more land available for employment purposes. The rezoning submission estimates that the draft LEP will create approximately 40 jobs based on 10 jobs per hectare of industrial zoned land.

ENVIRONMENTAL IMPLICATIONS

The draft LEP proposes to rezone an additional 5.6 hectares of land from 1(a) Rural Agriculture to 4(a) Industrial. Much of the land that is currently zoned 1(a) Rural Agriculture is vegetated and comprises Coastal Sand Apple Blackbutt Forest.

It should be noted that there is Coastal Sand Apple Blackbutt Forest located on land that is already zoned 4(a) Industrial General and has development approval for subdivision. This is particularly relevant to Lot 311 in DP 1125008, which is the largest allotment and is subject of a development application for a Bunning's Warehouse. Development consent was granted on this lot for a 17 lot subdivision 24th March 2003.

A State Environmental Planning Policy – Coastal Wetland (SEPP 14) is on part of the subject land but primarily on allotment boundaries adjoining Crown land to the south. As part of the preparation of the draft LEP the Department of Planning required the location of the wetland to be ground-truthed and an appropriate environmental buffer applied. The location of the wetland was ground-truthed by a consultant for the landowners, and found to generally align with the southern boundary of the site. A 20m buffer has been applied and proposed to be zoned 7(a) Environment Protection. An exception to the application of a 20m buffer is Lot 121 in DP 122650 which is the site of the existing 5 Star Self Storage business. A reduced buffer is recommended in this location to address the submission from this business.

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

Council's Environment Services section was consulted with during the preparation of the draft LEP. The concerns of the section raised at a Rezoning Assessment Panel meeting on 8th November 2007 were:

Maintaining a wildlife corridor that exists between the northern and southern sides of Port Stephens Drive;

The maintenance of a wildlife corridor that exists on Lot 311 in DP 1125008 and Lot 312 in DP 1125008 via a restrictive covenant under Section 88B of the Conveyancing Act 1919 and linked to DA consent 16-2001-1700;

Maintenance of an appropriate buffer to SEPP 14 Coastal Wetlands at the rear of the subject land.

The concerns of Environment Services section are addressed by maintaining the wildlife corridor via the restrictive covenants on the relevant allotments and applying a 20m buffer to SEPP 14 Coastal Wetlands (with the exception of a reduced buffer on the site of 5 Star Self Storage).

CONSULTATION

Public Exhibition

The draft LEP was placed on public exhibition from 21st May 2009 to 19th June 2009. One (1) submission was received. The submission is summarised as follows:

The site (Lot 121 in DP 1122650) comprising the 5 Star Self Storage business) has developed to within 55m of the southern boundary;

The occupancy rate of the storage facility is close to 100% and there is potential to expand;

The provision of a buffer to the SEPP 14 wetland on the site is unwarranted and will substantially curtail the economic potential of the site and its usage;

A detention basin on the site drains to the adjacent SEPP 14 wetlands and serves as a water quality facility and has environmental value;

The most suitable breeding habitat for a threatened frog species (Wallum Froglet) on the site is within the Wetland and Swamp Open Forest (endangered ecological community) adjacent to the detention basin; and

An alternative zoning layout that places the drainage basin and adjacent vegetation within the 7(a) Environment Protection zone is a suitable offset to a reduction in the 20m buffer to the SEPP 14 wetland on the site.

Response

The zone layout has been amended to address this submission from 5 Star Self Storage. The existing zone boundary on this site (Lot 121 in DP 122650) is inappropriate because it is irregular in shape and is placed over part of the existing development. This issue is exacerbated by the removal of flexible zone provisions under SEPP 71 Coastal Protection. There is planning merit in creating a regular zone boundary on this site, as is the case for all allotments subject to the draft LEP.

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

Following from the above, the strict application of a 20m buffer to the SEPP 14 wetland on the site will not create a regular zone boundary and will perpetuate a situation that led to Council's original resolution to remove the split zoning. The recommended zone layout (**Attachment 1**) will address this issue by:

Creating a regular-shape zone boundary (albeit with a reduced setback to the SEPP 14 wetland at its northern and western sides)

Rezoning the detention basin and immediately adjacent endangered ecological communities to 7(a) Environment Protection.

Rezoning the SEPP 14 wetland to 7(a) Environment Protection, and

Government Agency Submissions

The amendment was referred for comment to a range of government agencies and authorities under section 62 of the Act. The following comments were provided:

Department of Environment and Climate Change (DECC) - provided initial comment on 6th May 2009 that information submitted with the draft LEP did not demonstrate an 'improvement or maintenance' in biodiversity values, and that this issue must be resolved prior to finalisation of the LEP. Additional advice was provided by DECC on 6th June 2009 that they had met with the main landowner (Hunter Land) and their consultant (RPS HSO) to resolve this issue. DECC advised that it had no objection to the draft LEP subject to the following:

Rezoning additional land on Lot 312 in DP 1125008 to 7(a) Environment Protection to provide a buffer to an adjacent SEPP 14 wetland,

Rehabilitate and revegetate the land to be zoned 7(a) Environment Protection and provide certainty for this by including requirements on each individual land title, and Maintain an identified wildlife corridor on Lots 311 and 312 in DP 1125008 on land already zoned 4(a) Industrial General, and rehabilitate and revegetate land (protected by an existing covenant under section 88B of the Conveyancing Act 1919).

DECC also provided comment on an alternative zone layout for the site that did not form part of the public exhibition. The alternative zone layout featured a reduced buffer to SEPP 14 wetlands on Lot 121 in DP 1122650 (the site of 5 Star Self Storage) and includes other land on this allotment with environmental value to be zoned 7(a) Environment Protection, including the detention basin and immediately adjacent endangered ecological communities. DECC provided comment in its initial advice on 6th May 2009 that it has no objection to the alternative zone layout for this part of the site.

Response - the recommended draft LEP addresses the concerns of DECC and also incorporates the alternative zone layout for Lot 121 in DP 1122650.

Roads and Traffic Authority (RTA) - provided initial advice on 22nd May 2009 that it will not object to the draft LEP, subject to satisfactory arrangements being made for contributions towards State road infrastructure. Council was subsequently advised by

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

the RTA on 29th June 2009 that the contributions are no longer required for this particular draft LEP for the following reasons:

A purpose of the draft LEP is to create a consistent zoning for the subject allotments, and

The majority of the allotments are already developed or have approval to undertake a development.

Response – initial requirements have been withdrawn and no are longer relevant.

Rural Fire Service – have no concerns or special considerations.

Worimi Local Aboriginal Land Council - advised that they have no objection to the rezoning and that they have a vested interested in the rezoning taking place by way of land ownership (Lot 491 in DP 727810).

OPTIONS

- 1) Support the draft LEP as publicly exhibited
- 2) Support the draft LEP with changes to the zone boundary - recommended
- 3) Not proceed with the draft LEP

ATTACHMENTS

- 1) Draft LEP map with changes to the zone boundaries (recommended)
- 2) Current zoning of subject land
- 3) Aerial Photograph
- 4) Draft LEP map as publicly exhibited

COUNCILLORS ROOM

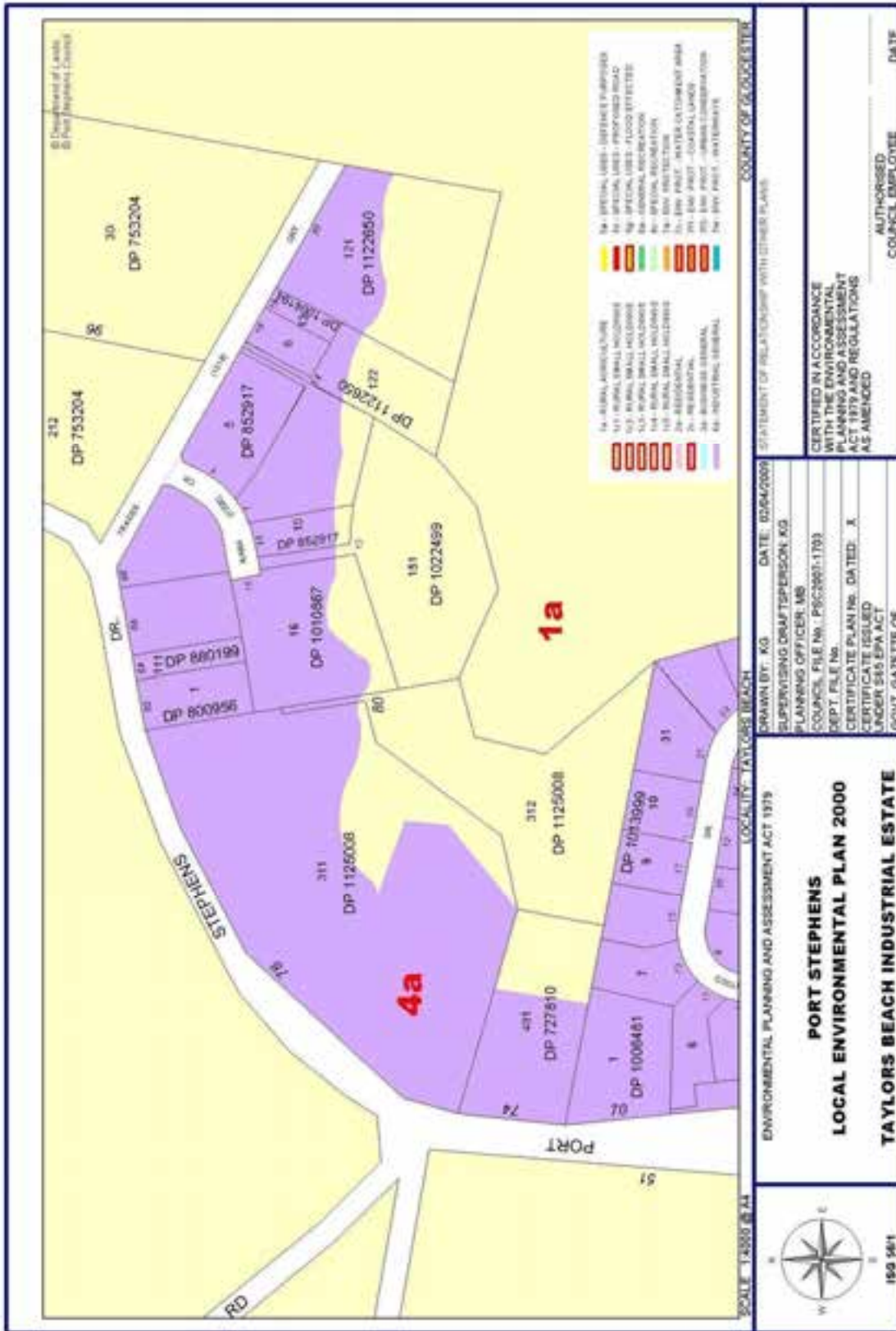
Folder containing:

- a. Strategic Planning Assessment (RPS HSO July 2008)
- b. Government agency comments
- c. Public submissions

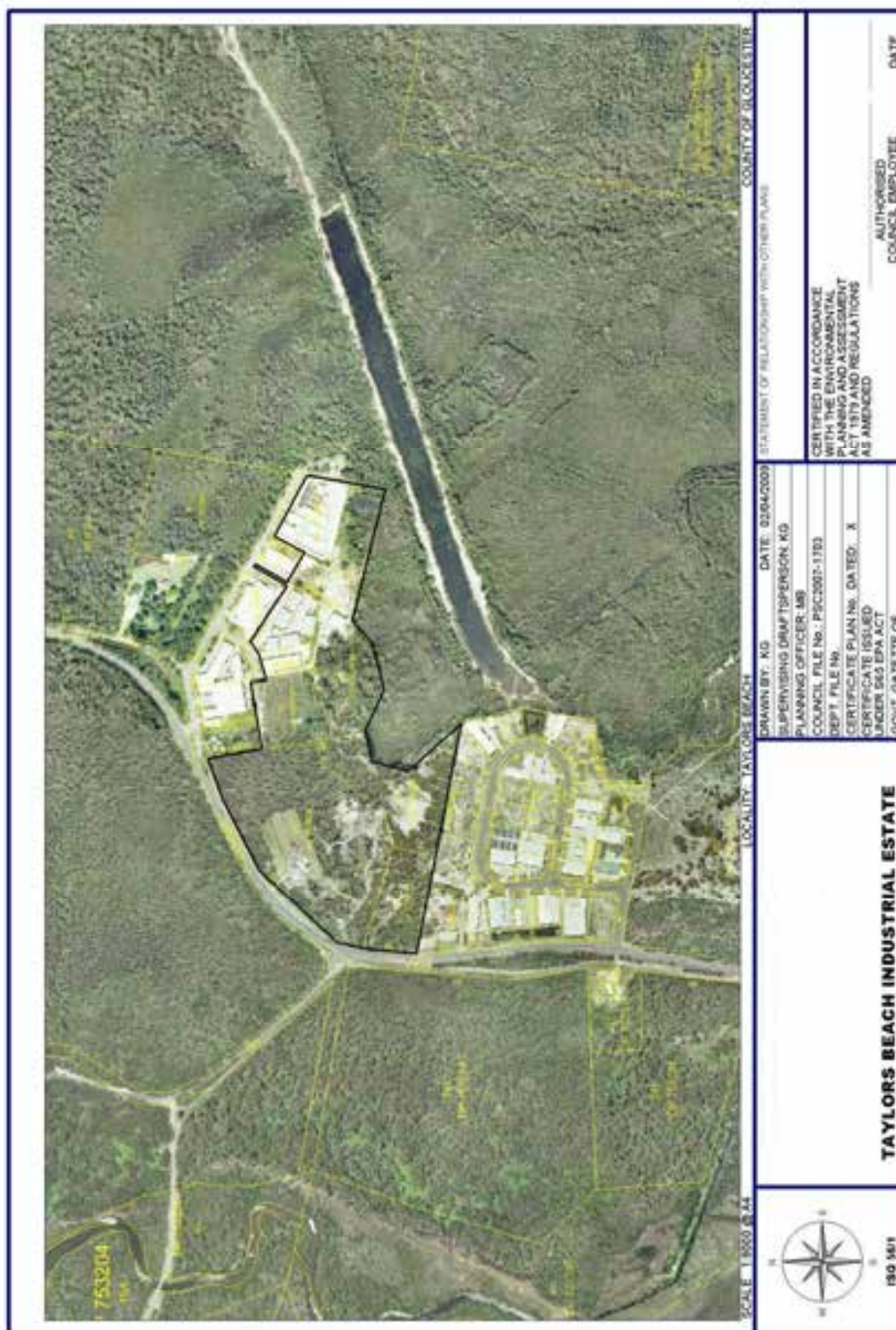
TABLED DOCUMENTS

Nil

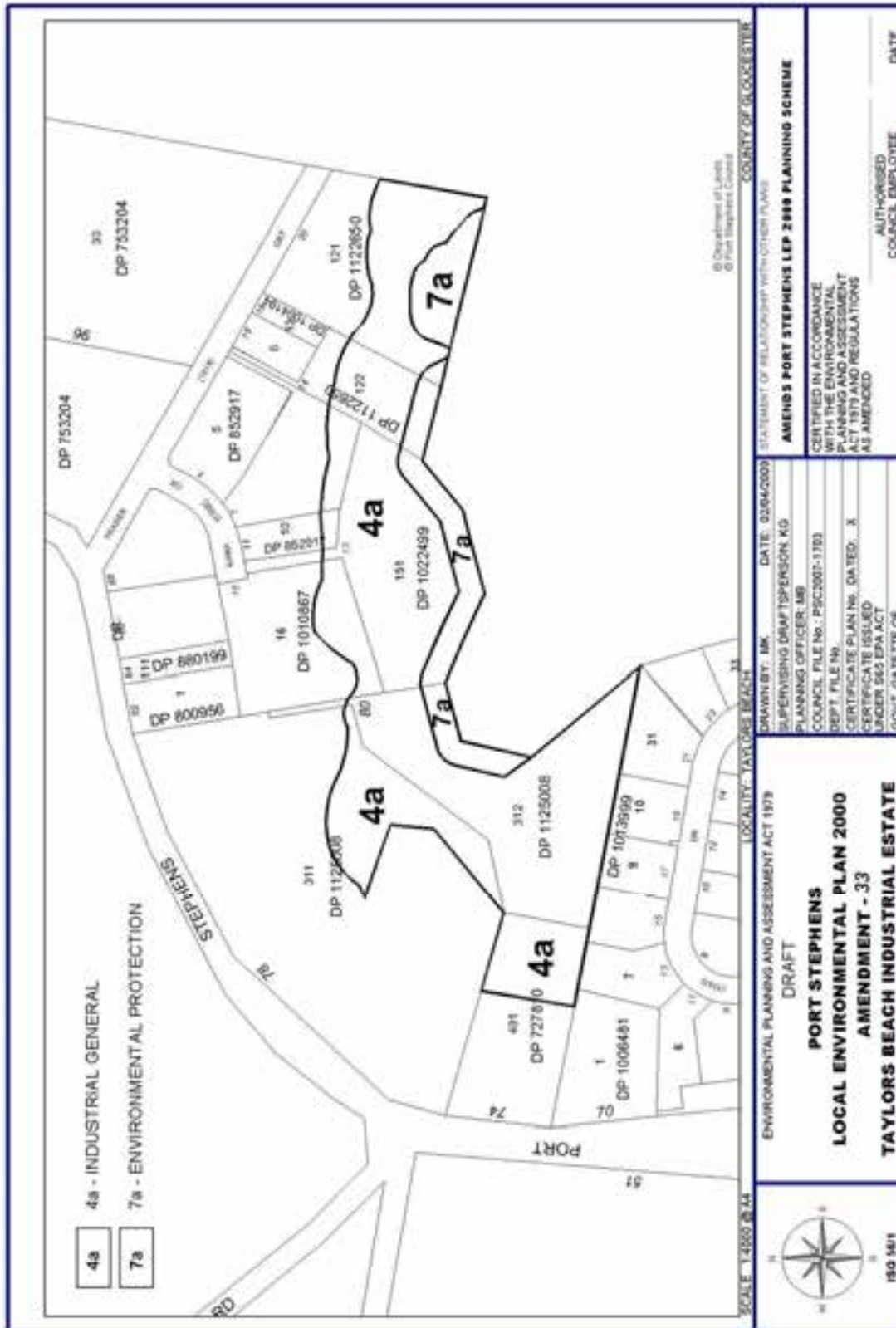
ATTACHMENT 2
CURRENT ZONING OF SUBJECT LAND



ATTACHMENT 3
AERIAL PHOTOGRAPH



ATTACHMENT 4
DRAFT LEP MAP



Councillor Daniel Maher returned to the meeting at 7.08pm prior to Item 5.

ITEM NO. 5

FILE NO: PSC2009-01064

JOINT REGIONAL PLANNING PANELS – COUNCIL NOMINATIONS

REPORT OF: DAVID BROYD – GROUP MANAGER, SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Nominate two (2) Councillors for the Joint Regional Planning Panel that will determine Development Applications in the relevant categories prescribed for their determination.

- 2) Through the General Manager, write to the NSW Minister for Planning, the Hon. Kristina Keneally:
 - a) seeking her commitment to consider, based upon the first six (6) months operation of the Panel, delegating determinations back to this Council on the evaluation of a Council submission that addresses a number of criteria such as:
 - i) timeframes for assessment and meeting certain milestones in the development assessment and reporting processes;
 - ii) the working relationship developed between Council's Group Manager, Sustainable Planning and the Chair of the Joint Regional Planning Panel and that this is working effectively and productively to achieve efficient assessment times and quality outcomes to the relevant Development Applications, and
 - iii) data that demonstrates that historically this Council has, and is, dealing efficiently with such Development Applications.

 - b) advising her that Council considers it highly inappropriate that Council will have to manage and fund any appeals to the Land and Environment Court resulting from decisions of the Panel.

ORDINARY COUNCIL – 28TH July 2009

242	Councillor Ken Jordan Councillor Sally Dover	It was resolved that the recommendation be adopted with Cr Bruce MacKenzie and Cr Bob Westbury as Council's nominees for the Joint Regional Planning Panel.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Cr Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Councillors Geoff Dingle, John Nell and Frank Ward.

AMENDMENT

	Councillor Frank Ward Councillor John Nell	That Council seek Expression of Interest from the community to represent Council on the Joint Regional Planning Panel.
--	---	--

In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Cr Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Councillors Geoff Dingle, John Nell and Frank Ward.

The amendment on being put was lost.

BACKGROUND

The purpose of this report is to advise Council of the State Government's introduction of Joint Regional Planning Panels and to recommend how Council responds to the request from the Minister for Planning for two Council nominations to be members of the Panel for the Hunter and Central Coast Region.

Joint Regional Planning Panels were legislated in June 2008 as part of the Environmental Planning & Assessment (Amendment) Act 2008.

The State Government's declared intents for introducing the Panels were based on depoliticising the determination of regional development applications and to provide more efficiency in the related assessment and decision making systems.

This follows previous consultation in a Discussion Paper and Draft Exposure Bill to which Council resolved inter alia that "Council endorses the draft submission in response to the NSW Government's Discussion Paper "Improving the NSW Planning System" and forward this to the NSW Premier, NSW Minister for Planning, the Director General of the Department of Planning, the NSW Opposition leader, the Shadow Minister for Planning and the President of the Local Government Association and the

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

Local Government Shires Association expressing strong opposition to the establishment of Joint Regional Planning Panels to determine Development Applications of a value in excess of \$50M."

The debate is obviously now closed about the general issue of removal of local democracy, Council's determination powers and the related loss of local accountability. The NSW Minister for Planning has written to Council (5 May 2009), requesting Council's advice of nominations to be on the relevant Panel.

This initial letter was supplemented by provision of a draft Code of Conduct (Attachment 1) and draft Operational Guidelines (Attachment 2) on 9 June 2009.

Composition

Joint Regional Planning Panels (JRPPs) comprise three (3) State members and two (2) nominations from each local Council comprising a Region. All representatives are appointed for a three year term. There is a Panel established for the Hunter plus Gosford and Wyong Council areas, for which the three State representatives may be common, with the two Councillor nominees sitting on the Panel to deal with a Development Application lodged in their Local Government Area. A State representative must be the Chair and the Deputy Chair.

Classes of Development to be Determined by JRPPs

The classes of Development Application to be dealt with by JRPPs are as follows:

- a) designated development
- b) development that has a capital investment value of more than \$10 million
- c) subdivisions over 250 lots
- d) certain coastal development and coastal subdivisions that were previously Part 3A projects
- e) the following development if it has a capital investment value of more than \$5 million:
 - (i) public and private infrastructure
 - (ii) Crown development
 - (iii) eco-tourism development
 - (iv) where Council is the proponent or has a conflict of interest

A limited number of applications in Port Stephens (probably less than ten (10) per annum are anticipated to go to the Panel – but they will be very significant, and of high profile, to the local community.

Timing of Introduction

The Panels formally commenced on 1 July 2009. However, this report has not been submitted until the Ordinary Council Meeting of 28 July 2009 because:

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

- a) There were no Operational Guidelines or Code of Conduct made available by the NSW Department until 9 June 2009 and these documents have been subject of extensive discussion since;
- b) The position of the Local Government Shires Association (LGSA) advising that no Councils should submit their applications until various issues about Panels' operation and the Code of Conduct are resolved. (The latest letter from the LGSA maintains opposition to panels – Attachment 3)
- c) The position of the Hunter Councils Board (Mayors of the constituent Councils in the Hunter) being that no Council in the Hunter region should nominate until a deputation has taken place to the Minister. Following that deputation and a meeting of the General Managers of Hunter Councils on 2 July, the intent is now for each Council in the Hunter to nominate. The Press Release from Hunter Councils is Attachment 4.

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.

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 Minister for Planning announced in May 2009, following the NSW State Budget, that \$2.4M will be allocated annually to fund State representatives on the Regional Panels. Council will have to fund transport etc. of its nominees as needed. A Panel Secretariat has been established in the NSW Department of Planning to provide the administrative support to the Panel.

The Panel essentially becomes the Council for determining the relevant classes of development with Council professional staff still responsible for the assessment advice and reporting. The Group Manager, Sustainable Planning and other

management and/or professional staff will be present at the Panel meetings to provide relevant advice.

The Panel can “reasonably direct” the General Manager of any Council to undertake tasks associated with the Panel’s role. General Managers can be penalised if those directions are not fulfilled.

LEGAL AND POLICY IMPLICATIONS

If Councils do not make nominations, three State members of the Regional panel will still be the determining body for those relevant classes of applications. Panel determinations are appellable to the Land & Environment Court in the same way as Council determinations, however a major implication is that Council will lead the defence of such appeals to the Land & Environment Court but:

- a) clearly will not defend an appeal on a Council application;
- b) should not have to fund the engagement of a planning consultant when the determination of the Panel is different from that recommended by the Group Manager, Sustainable Planning/Acting Manager, Development & Building.

The draft Code of Conduct makes for an inherent tension for Councillors in terms of being elected representatives of the community and being independent when sitting on one of these Panels and determining relevant applications. The Group Manager, Sustainable Planning and Acting Manager, Development and Building cannot be considered as Council representatives on the Panel because they cannot be responsible for assessment advice and recommendations and then have determination responsibilities as members of the Panel.

One of Council's nominations must have “expertise” in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism. The Department of Planning has adjusted its interpretation of this legal provision such that “extensive practical experience in a relevant field” would satisfy the provision.

Given this adjusted interpretation and the validity of Council having two Councillors as elected community representatives on the Panel, the recommendation is for two Councillors to be nominated.

Panels are asserted to be needed to depoliticise the planning system and inject more efficiency. Hence, delegations by Panels to Council Directors of Planning/equivalents are essential to determine:

DAs before reference to Panels when the applications are clearly inadequate to respond to all matters for consideration and hence warranted refusal before full assessment and reporting to a Panel, and or DAs that are fully supportable on a professional and political basis and can be determined under delegation in terms of approval without consuming more time by reporting to Panels.

The opportunity for Council as a political body to resolve its position on DAs to be determined by Panels is essential. Whether Councillors who are members of a Panel can participate in that Council meeting still needs clarification. The resulting Council Resolution would in effect be a submission to the Panel which should be given substantial weight and would need to be recorded and submitted to a Panel by an Executive Officer Governance – not the Group Manager-Sustainable Planning or his delegate. It would be unreasonable to expect Council in all cases to meet and resolve a submission within two weeks, after close of notification as is indicated in paragraph 3.8 of the draft Operational Procedures.

Explicit recording of voting at Panel meetings is essential as of course are any declarations of political donations. Endorsement of the minutes for purposes of Council issuing the determination should not wait until the next meeting of the Panel but be the responsibility of the Chairperson of the Panel within the shortest time possible after the meeting at which a determination is made.

SUSTAINABILITY IMPLICATIONS

In effect, the JRPPs assume the equivalent legal and policy obligations and responsibilities as a Council in determining the relevant applications. Therefore, it must be assumed that the same applies to the evaluation of the social, economic and environmental implications of DAs that Panels determine.

In terms of governance, Panel meetings are open to the public and the reports that the Panel considers will be made public in the same way as reports submitted to Council. Hence, the level of accountability of the Panel should be very similar to that of a Council in the assessment and determination processes.

CONSULTATION

Joint Regional Planning Panels have been subject to extensive political and professional debate across the State.

In writing this report, significant consultation has involved:

- a) the NSW Local Government Planning Directors Group (of which the Group Manager, Sustainable Planning is Chair);
- b) Hunter Councils;
- c) the Local Government Shires Association;
- d) the Executive Team, and
- d) the Executive Officer – Governance

OPTIONS

- 1) To appoint two Councillors as nominees for a three (3) year term, but does need to consider one of the Council nominees having the “relevant expertise” as explained above;
- 2) To resolve to make no nominations on the basis that the formation of these Panels is not acceptable to Council given that they undermine local democracy, remove Council's determination powers for the relevant classes of development and remove local accountability for such high profile applications;
- 3) Appoint one Councillor and a lawyer such as Martin Ball of Harris Wheeler; and
- 4) Consider another option such as one Councillor and an alternative external representative such as a local planning consultant who can demonstrate no conflict of interest in undertaking the role.

ATTACHMENTS

- 1) Code of Conduct
- 2) Operational Guidelines
- 3) Letter from LGSA
- 4) Press Release – Hunter Councils
- 5) Comments on Code of Conduct by Executive Officer – Governance

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1
CODE OF CONDUCT



Joint Regional Planning Panels
Code of Conduct

JOINT REGIONAL PLANNING PANELS



JOINT REGIONAL PLANNING PANELS

Code of Conduct

Introduction

This Code of Conduct (Code) applies to all members of Joint Regional Planning Panels (JRPPs), including:

- State appointed members
- council nominees
- alternates acting for JRPP members.

The Code outlines the standards of conduct expected of JRPP members. It is the personal responsibility of each JRPP member to comply with this Code.

The Code will be kept under review and will be subject to changes that may be required to reflect the experience of the implementation and operation of the JRPPs.

Purpose of the Code

This Code sets out the minimum requirements of behaviour for JRPP members in carrying out their functions. The Code has been developed to assist JRPP members:

- a) understand the standards of conduct that are expected of you
- b) enable you to act honestly, ethically and responsibly
- c) enable you to exercise a reasonable degree of care and diligence; and
- d) act in a way that enhances public confidence in the integrity of role of the JRPPs in the planning system.

Application of the Model Code of Conduct for Local Councils in NSW (Model Code)

Councils are required under the *Local Government Act 1993* to adopt a Code of Conduct. Such Codes must incorporate the provisions of the 'Model Code' prescribed under the *Local Government (General) Regulation 2005*.

The Council's adopted Code applies to, amongst others, councillors, the General Manager and Council staff. The Model Code does not apply to JRPP members. However parts of the Model Code have been used to assist in the development of this Code, along with other relevant Codes of Conduct applying to members of State Boards and other statutory bodies.

It is recognised that councillors and council staff may undertake functions as a member of a JRPP separate to their ordinary functions as a councillor or member of council staff. When exercising functions as a JRPP member councillors and council staff must ensure that they comply with this Code.

Council staff responsible for dealing with development matters under the *Environmental Planning and Assessment Act 1979* (EP&A Act), preparing assessment reports and/or otherwise assisting a JRPP in the exercise of its functions are not subject to this Code.

Other obligations

JRPP members are subject to the *Independent Commission Against Corruption Act 1988* and the *Ombudsman Act 1974*.

Code of Conduct

1. Key principles

Integrity

- 1.1 You must not place yourself under any financial or other obligation to any individual or organisation that might be reasonably thought to influence you in the exercise of your functions as a JRPP member.

Leadership

- 1.2 You have a duty to promote and support the key principles of this Code by demonstrating leadership and maintaining and strengthening the public's trust and confidence in JRPPs and their role in the planning system.

Selflessness

- 1.3 You have a duty to make decisions in the public interest. You must not make a decision or take action that causes or results in you obtaining:
- a financial benefit (including avoiding a financial loss)
 - other benefits for yourself, your family, friends or business interests.

Impartiality

- 1.4 You should make decisions on merit and in accordance with your statutory obligations when carrying out your functions as a JRPP member.

Accountability

- 1.5 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.

Openness

- 1.6 You have a duty to be open as possible about your decisions and actions.

Honesty

- 1.7 You have a duty to act honestly and in good faith for the proper purpose.

Respect

- 1.8 You must treat others with respect at all times.

2. General conduct obligations

General conduct

- 2.1 You must not conduct yourself in carrying out your functions as a JRPP member in a manner that is likely to bring the JRPP into disrepute. Specifically, you must not act in a way that:
- a) contravenes the EP&A Act¹
 - b) is improper or unethical
 - c) is an abuse of power
 - d) causes, comprises or involves intimidation, harassment or verbal abuse
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- 2.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions as a JRPP member, having regard to the statutory obligations under the EP&A Act.

Fairness and equity

- 2.3 You must consider issues consistently, promptly, conscientiously and fairly.
- 2.4 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.

Making decisions and taking actions

- 2.5 You must ensure that decisions and actions are reasonable, fair and for the proper purpose and that parties involved in the development process are dealt with fairly.
- 2.6 You must ensure that no action, statement or communication between yourself and others (such as applicants, objectors and councillors) conveys any suggestion of willingness to provide improper concessions or preferential treatment.
- 2.7 You should attend all meetings of the JRPP as far as is possible, and allow the necessary time to prepare for meetings.

3. Conflicts of interests

General

- 3.1 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 functions as a JRPP member.
- 3.2 You must avoid or appropriately manage any conflicts of interests. The onus is on you to identify a conflict of interests and take appropriate action.
- 3.3 Any conflicts of interests must be managed to up-hold the probity of JRPP decision making. When considering whether or not you have a conflict of interests you should consider how others would view your situation.
- 3.4 Private interests can be of two types: pecuniary or non-pecuniary.

Disclosure of pecuniary interests

- 3.5 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 person².
- 3.6 A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision of that person might make³.

² The term 'pecuniary interests' adopted by this Code is based on the definition of that term in s.442(1) of the *Local Government Act 1993*.

³ See s.442(2) *Local Government Act 1993* or if it is an interest referred to in s.448(a), (b), (e) or (g) of the *Local Government Act 1993*.

- 3.7 A member has a pecuniary interest in a matter if the pecuniary interest is the interest of the member, the member's spouse or de facto partner or a relative⁴ of the member, or a partner or employer of the member, or a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- 3.8 The obligation on JRPP members with respect to pecuniary interests are set out in clause 12 of Schedule 4 of the EP&A Act (attached at **Appendix A**). All JRPP members must comply with the requirements set out in this provision. In particular:
- (a) If a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of a JRPP and the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter the member must, as soon as possible after the relevant facts have come to the member's attention disclose the nature of the interest at a meeting of the regional panel.
- (b) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
- be present during any deliberation of the panel with respect to the matter, or
 - take part in any decision of the panel with respect to the matter.

Disclosure of non pecuniary interests

- 3.9 A non pecuniary interest is a private or personal interest that a person has that may, for example, be based on a family or personal relationship, membership of an association, society or trade union or involvement or interest in an activity which may include an interest of a financial nature⁵.
- 3.10 You should consider possible non pecuniary interests that may arise while carrying out your duties as a JRPP member. Where possible, the source of potential conflict should be removed.
- 3.11 However, where this is not possible, if a member has a non pecuniary interest in a matter and the interest appears to raise a conflict with the proper performance of the member's duties, the member must follow the procedures set out in clause 12 of Schedule 4 of the EP&A Act in the same manner as if the interest was a pecuniary interest.

Political Donations

- 3.12 JRPP members should be aware that political contributions or donations may give rise to a pecuniary or non-pecuniary interest. It is the responsibility of JRPP members to determine in each instance whether such an interest arises and whether the provisions of this Code and clause 12 of Schedule 4 of the EP&A Act applies.
- 3.13 Where a JRPP member makes a disclosure under cl.12(1)(b) of Schedule 4 to the EP&A Act with respect to an interest which arises because of a political donation,

⁴ The term 'relative' adopted by this Code is the definition of that term under s 3 of the *Local Government Act 1993*.

⁵ The term 'non-pecuniary interest' as adopted by this Code is based on the meaning of that term under the *Local Government Model Code of Conduct*.

the regional panel is required to take this into consideration in determining under cl.12(6) whether it is appropriate for the member to be present during any deliberations or take part in any decision with respect to the matter.

Other business or employment

3.14 You must ensure that any outside employment or business you engage in will not:

- a) conflict with your functions as a JRPP member
- b) involve using confidential information or resources obtained through your role as a JRPP member
- c) discredit or disadvantage the JRPP.

Personal dealings with council

3.15 You may have reason to have private dealings with a council that is within the JRPP region where you are a JRPP member (for example as a ratepayer). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your role as a JRPP member. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

4. Personal benefit

Gifts and benefits

4.1 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.

4.2 Generally speaking token gifts and benefits include:

- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - i. the discussion of matters before the JRPP
 - ii. conferences
 - iii. social functions organised by groups.
- b) invitations to and attendance at local social, cultural and sporting events.
- c) gifts of single bottles or reasonably priced alcohol at end of year functions and public occasions.
- d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

4.3 Gifts and tokens that have more than a token value include, but are not limited to, tickets to major sporting events, 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.

4.4 As a general rule, any gift from an applicant, objector or associate of an applicant or objector in relation to a matter to be determined by a JRPP would fall into a category referred to in paragraph 4.1(c) and therefore should not be accepted.

4.5 The Panel Secretariat is to maintain a Register of Gifts for each JRPP to ensure the receipt and disposal of gifts is conducted in an open and transparent manner. When offered a gift or benefit JRPP members must inform the Panel Secretariat of the following information for the purposes of making a recording on the Register of Gifts:

- the person who made the offer and the date on which the offer was made
- whether or not you accepted the gift/benefit
- whether the gift or benefit was allocated to another person or body, and
- the value of the gift or benefit.

You should also advise the JRPP Chair of any such notification to the Panel Secretariat.

5. Relationship between JRPP members, council and council staff

Obligations of JRPP members

5.1 Section 23N of the EP&A Act provides that a JRPP is entitled to:

- a) to have access to, and to make copies of and take extracts from records of a council relevant to the exercise of the JRPPs' functions, and
- b) to the use of staff and facilities of a relevant council in order to exercise the JRPP's functions.

All such requests for assistance will be made by the JRPP Chair to General Manager (or such other staff member as be nominated by the General Manager).

5.2 You have a responsibility to promote and support an effective and co-operative working relationship with the council, general manager and council staff and contractors.

Inappropriate interactions

5.3 You must not engage in inappropriate interactions when exercising your functions as a JRPP member.

5.4 In relation to council staff⁶ you must not:

- a) approach, make requests of, make enquiries or issue instructions to council staff other than through official channels and in accordance with this Code
- b) be overbearing or threatening to council staff
- c) make personal attacks on council staff in a public forum
- d) direct or pressure council staff in the performance of their work or recommendations they make
- e) influence or attempt to influence staff in the preparation of assessment reports or other information to be submitted to the JRPP.

5.5 The 'Procedures for the Operation of Joint Regional Planning Panels' recognises that there may be circumstances where it is appropriate for JRPP members to attend meetings/briefings with applicants, objectors or other third parties with an interest in proposed development. However, you:

⁶ A reference in this clause to council 'staff' includes a reference to council contractors or consultants.

- a) must not hold private meetings, briefings or discussions in respect of the matter in the absence of other JRPP members or without council staff being in attendance; and
- b) must not attend site visits unless they have been formally arranged by council staff and you are accompanied by other JRPP members and/or council staff.

Where such meetings, briefings or site visits occur:

- (a) you should not express any preliminary views in relation to the JRPP's ultimate determination of the matter; and
- (b) a written record of the discussions should be made.

Council staff - avoiding the potential for a conflict of duties

- 5.6 As a general rule it is not appropriate for council staff to be members of a JRPP, as it would be difficult for them to appropriately manage the conflicts of duties between being a council staff member and fulfilling the obligations of a JRPP member.
- 5.7 Council employees (including general managers and other senior staff) who are nominated to sit as a member of the JRPP should carefully consider what measures must be put in place to ensure they will be able to comply with the requirements of this Code.[†]
- 5.8 A conflict of duties may arise for Council employees (including general managers and other senior staff) who are nominated to sit as a member of the JRPP. A conflict of duties is a conflict between competing and incompatible public duties. For example, a conflict of duties arises where public officials hold more than one official position which requires them to address competing objectives or interests. Conflicts of duties should be avoided in most circumstances. Therefore Council employees who are nominated to sit on a JRPP must ensure that appropriate measures are in place to ensure potential conflicts are appropriately managed.
- 5.9 Council employees who are nominated to sit as JRPP members must also seek to avoid situations in which their interests as a Council employee might reasonably be perceived by members of the community to conflict with the impartial fulfilment of their functions as a JRPP member either because:
 - a) they have been directly or indirectly involved in the preparation of the assessment report for the JRPP, or
 - b) they adopt a view, without providing independent reasoning, that is perceived to be consistent with the view of the elected council in its submission to the JRPP.

6. Relationship between JRPP members and others

- 6.1 You must adhere to the Key Principles and General Conduct Obligations contained in this Code when dealing with others, including council staff, councillors, Department of Planning staff and the Panel Secretariat.

7. Protecting and using information

- 7.1 Information must be handled in accordance with section 148 of the EP&A Act.
- 7.2 In addition to the obligations under section 148 of the EP&A Act you must:

[†] In particular Part 5 of the Code.

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- 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 position as a JRPP member 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 the JRPP or any other person or body
 - f) not disclose any information discussed during a confidential session of a JRPP.

7.3 When dealing with personal information you must comply with the *Privacy and Personal Information Protection Act 1998*.

8. Use of public resources

8.1 You may be provided with equipment and other resources to perform JRPP functions. All such resources are to be used only for JRPP purposes and in accordance with any guidelines or rules about the use of those resources.

9. Public Comment/Media

9.1 The JRPP Chair is responsible for speaking to the media on behalf of the JRPP, to allow its decisions to be properly represented and communicated. The Chair can authorise another JRPP member to speak to the media on behalf of the JRPP at any time. Other non-authorised members can speak to the media about JRPP matters however, in doing so, this does not represent the views of the JRPP.

10. Reporting breaches

10.1 JRPP members are required to report suspected breaches of the Code to the JRPP Chair. If the suspected breach is by the JRPP Chair, you should report the suspected breach to the member of the Planning Assessment Commission (PAC) nominated for this purpose. If the JRPP Chair suspects a breach of the Code s/he should report the suspected breach to the nominated PAC member.

10.2 The JRPP Chair or nominated PAC member, as the case may be, may take such steps as s/he thinks appropriate to investigate and take action in respect of the alleged breach.

10.3 A person who is alleged to have breached the Code must be given:

- a) the full particulars of the alleged breach⁸;
- b) an opportunity to respond to the allegations; and
- c) the right to have a legal or other representative present during any meetings/discussions in respect of the matter.

10.4 Serious breaches of the Code may be referred to the Minister in respect of State Members or the relevant council with respect to council nominees. Proven breaches of the Code may warrant removal from office (see item 12 below)

11. Reporting possible corrupt conduct

⁸ These particulars should not include the details of the person who made the allegation

11.1 The *Protected Disclosures Act 1994* provides protection to public officials who voluntarily report suspected corrupt conduct. JRPP members can make reports concerning suspected corrupt conduct⁹ to the JRPP Chair¹⁰. The JRPP Chair is under a duty to report to the Independent Commission Against Corruption any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct¹¹.

11.2 JRPP members can also report directly to the following investigative bodies.

Disclosures concerning:

- Corrupt conduct should be made to the Independent Commission Against Corruption¹²
- Maladministration¹³ should be made to the NSW Ombudsman
- Serious and substantial waste of public money should be made to the NSW Auditor General.

12. Removal from office

12.1 The Minister may remove State members from office at any time and without notice.

12.2 The relevant council may remove its nominee/s from office at any time and without notice. If so, the Council must notify the Panel Secretariat.

12.3 The Minister may remove any member if the Independent Commission Against Corruption recommends that consideration be given to the removal of the member because of corrupt conduct by the Member.

13. Complaint handling

13.1 Complaints against JRPP members are to be handled in accordance with the JRPP Complaints Handling Policy.

⁹ Corrupt conduct has the meaning given to that term under the *Independent Commission Against Corruption Act 1988* (ICAC Act)

¹⁰ or nominated PAC member if the suspected conduct is by the JRPP Chair or the Chair is reporting suspected corrupt conduct.

¹¹ Section 11, ICAC Act.

¹² Section 10 of the ICAC Act allows any person to make a complaint to the Independent Commission Against Corruption about a matter that concerns or may concern corrupt conduct.

¹³ Maladministration is defined in s 11(2) of the *Protected Disclosures Act 1994*

Appendix A

Extract from Schedule 4 of the *Environmental Planning and Assessment Act 1979*

12 Disclosure of pecuniary interests

- (1) If:
- (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the regional panel, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the regional panel.
- (2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:
- (a) the member, or
 - (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
 - (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- (3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):
- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
 - (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.
- (4) A disclosure by a member at a meeting of the regional panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (5) Particulars of any disclosure made under this clause must be recorded by the regional panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the regional panel.
- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
- (a) be present during any deliberation of the panel with respect to the matter, or
 - (b) take part in any decision of the panel with respect to the matter.

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- (7) For the purposes of the making of a determination by the regional panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the panel for the purpose of making the determination, or
 - (b) take part in the making by the panel of the determination.
- (8) A contravention of this clause does not invalidate any decision of the regional panel.

ATTACHMENT 2
OPERATIONAL GUIDELINES



Procedures for the Operation of
Joint Regional Planning Panels

JOINT REGIONAL PLANNING PANELS



JOINT REGIONAL PLANNING PANELS

Code of Conduct

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² The term 'pecuniary interests' adopted by this Code is based on the definition of that term in s.442(1) of the *Local Government Act 1993*.

³ See s.442(2) *Local Government Act 1993* or if it is an interest referred to in s.448(a), (b), (e) or (g) of the *Local Government Act 1993*.

- 3.7 A member has a pecuniary interest in a matter if the pecuniary interest is the interest of the member, the member's spouse or de facto partner or a relative⁴ of the member, or a partner or employer of the member, or a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- 3.8 The obligation on JRPP members with respect to pecuniary interests are set out in clause 12 of Schedule 4 of the EP&A Act (attached at **Appendix A**). All JRPP members must comply with the requirements set out in this provision. In particular:
- (a) If a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of a JRPP and the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter the member must, as soon as possible after the relevant facts have come to the member's attention disclose the nature of the interest at a meeting of the regional panel.
- (b) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
- be present during any deliberation of the panel with respect to the matter, or
 - take part in any decision of the panel with respect to the matter.

Disclosure of non pecuniary interests

- 3.9 A non pecuniary interest is a private or personal interest that a person has that may, for example, be based on a family or personal relationship, membership of an association, society or trade union or involvement or interest in an activity which may include an interest of a financial nature⁵.
- 3.10 You should consider possible non pecuniary interests that may arise while carrying out your duties as a JRPP member. Where possible, the source of potential conflict should be removed.
- 3.11 However, where this is not possible, if a member has a non pecuniary interest in a matter and the interest appears to raise a conflict with the proper performance of the member's duties, the member must follow the procedures set out in clause 12 of Schedule 4 of the EP&A Act in the same manner as if the interest was a pecuniary interest.

Political Donations

- 3.12 JRPP members should be aware that political contributions or donations may give rise to a pecuniary or non-pecuniary interest. It is the responsibility of JRPP members to determine in each instance whether such an interest arises and whether the provisions of this Code and clause 12 of Schedule 4 of the EP&A Act applies.
- 3.13 Where a JRPP member makes a disclosure under cl.12(1)(b) of Schedule 4 to the EP&A Act with respect to an interest which arises because of a political donation,

⁴ The term 'relative' adopted by this Code is the definition of that term under s 3 of the *Local Government Act 1993*.

⁵ The term 'non-pecuniary interest' as adopted by this Code is based on the meaning of that term under the *Local Government Model Code of Conduct*.

the regional panel is required to take this into consideration in determining under cl.12(6) whether it is appropriate for the member to be present during any deliberations or take part in any decision with respect to the matter.

Other business or employment

3.14 You must ensure that any outside employment or business you engage in will not:

- a) conflict with your functions as a JRPP member
- b) involve using confidential information or resources obtained through your role as a JRPP member
- c) discredit or disadvantage the JRPP.

Personal dealings with council

3.15 You may have reason to have private dealings with a council that is within the JRPP region where you are a JRPP member (for example as a ratepayer). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your role as a JRPP member. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

4. Personal benefit

Gifts and benefits

4.1 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.

4.2 Generally speaking token gifts and benefits include:

- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - i. the discussion of matters before the JRPP
 - ii. conferences
 - iii. social functions organised by groups.
- b) invitations to and attendance at local social, cultural and sporting events.
- c) gifts of single bottles or reasonably priced alcohol at end of year functions and public occasions.
- d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

4.3 Gifts and tokens that have more than a token value include, but are not limited to, tickets to major sporting events, 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.

4.4 As a general rule, any gift from an applicant, objector or associate of an applicant or objector in relation to a matter to be determined by a JRPP would fall into a category referred to in paragraph 4.1(c) and therefore should not be accepted.

4.5 The Panel Secretariat is to maintain a Register of Gifts for each JRPP to ensure the receipt and disposal of gifts is conducted in an open and transparent manner. When offered a gift or benefit JRPP members must inform the Panel Secretariat of the following information for the purposes of making a recording on the Register of Gifts:

- the person who made the offer and the date on which the offer was made
- whether or not you accepted the gift/benefit
- whether the gift or benefit was allocated to another person or body, and
- the value of the gift or benefit.

You should also advise the JRPP Chair of any such notification to the Panel Secretariat.

5. Relationship between JRPP members, council and council staff

Obligations of JRPP members

5.1 Section 23N of the EP&A Act provides that a JRPP is entitled to:

- a) to have access to, and to make copies of and take extracts from records of a council relevant to the exercise of the JRPPs' functions, and
- b) to the use of staff and facilities of a relevant council in order to exercise the JRPP's functions.

All such requests for assistance will be made by the JRPP Chair to General Manager (or such other staff member as be nominated by the General Manager).

5.2 You have a responsibility to promote and support an effective and co-operative working relationship with the council, general manager and council staff and contractors.

Inappropriate interactions

5.3 You must not engage in inappropriate interactions when exercising your functions as a JRPP member.

5.4 In relation to council staff⁶ you must not:

- a) approach, make requests of, make enquiries or issue instructions to council staff other than through official channels and in accordance with this Code
- b) be overbearing or threatening to council staff
- c) make personal attacks on council staff in a public forum
- d) direct or pressure council staff in the performance of their work or recommendations they make
- e) influence or attempt to influence staff in the preparation of assessment reports or other information to be submitted to the JRPP.

5.5 The 'Procedures for the Operation of Joint Regional Planning Panels' recognises that there may be circumstances where it is appropriate for JRPP members to attend meetings/briefings with applicants, objectors or other third parties with an interest in proposed development. However, you:

⁶ A reference in this clause to council 'staff' includes a reference to council contractors or consultants.

- a) must not hold private meetings, briefings or discussions in respect of the matter in the absence of other JRPP members or without council staff being in attendance; and
- b) must not attend site visits unless they have been formally arranged by council staff and you are accompanied by other JRPP members and/or council staff.

Where such meetings, briefings or site visits occur:

- (a) you should not express any preliminary views in relation to the JRPP's ultimate determination of the matter; and
- (b) a written record of the discussions should be made.

Council staff - avoiding the potential for a conflict of duties

- 5.6 As a general rule it is not appropriate for council staff to be members of a JRPP, as it would be difficult for them to appropriately manage the conflicts of duties between being a council staff member and fulfilling the obligations of a JRPP member.
- 5.7 Council employees (including general managers and other senior staff) who are nominated to sit as a member of the JRPP should carefully consider what measures must be put in place to ensure they will be able to comply with the requirements of this Code.[†]
- 5.8 A conflict of duties may arise for Council employees (including general managers and other senior staff) who are nominated to sit as a member of the JRPP. A conflict of duties is a conflict between competing and incompatible public duties. For example, a conflict of duties arises where public officials hold more than one official position which requires them to address competing objectives or interests. Conflicts of duties should be avoided in most circumstances. Therefore Council employees who are nominated to sit on a JRPP must ensure that appropriate measures are in place to ensure potential conflicts are appropriately managed.
- 5.9 Council employees who are nominated to sit as JRPP members must also seek to avoid situations in which their interests as a Council employee might reasonably be perceived by members of the community to conflict with the impartial fulfilment of their functions as a JRPP member either because:
 - a) they have been directly or indirectly involved in the preparation of the assessment report for the JRPP, or
 - b) they adopt a view, without providing independent reasoning, that is perceived to be consistent with the view of the elected council in its submission to the JRPP.

6. Relationship between JRPP members and others

- 6.1 You must adhere to the Key Principles and General Conduct Obligations contained in this Code when dealing with others, including council staff, councillors, Department of Planning staff and the Panel Secretariat.

7. Protecting and using information

- 7.1 Information must be handled in accordance with section 148 of the EP&A Act.
- 7.2 In addition to the obligations under section 148 of the EP&A Act you must:

[†] In particular Part 5 of the Code.

-
- 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 position as a JRPP member 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 the JRPP or any other person or body
 - f) not disclose any information discussed during a confidential session of a JRPP.

7.3 When dealing with personal information you must comply with the *Privacy and Personal Information Protection Act 1998*.

8. Use of public resources

8.1 You may be provided with equipment and other resources to perform JRPP functions. All such resources are to be used only for JRPP purposes and in accordance with any guidelines or rules about the use of those resources.

9. Public Comment/Media

9.1 The JRPP Chair is responsible for speaking to the media on behalf of the JRPP, to allow its decisions to be properly represented and communicated. The Chair can authorise another JRPP member to speak to the media on behalf of the JRPP at any time. Other non-authorised members can speak to the media about JRPP matters however, in doing so, this does not represent the views of the JRPP.

10. Reporting breaches

10.1 JRPP members are required to report suspected breaches of the Code to the JRPP Chair. If the suspected breach is by the JRPP Chair, you should report the suspected breach to the member of the Planning Assessment Commission (PAC) nominated for this purpose. If the JRPP Chair suspects a breach of the Code s/he should report the suspected breach to the nominated PAC member.

10.2 The JRPP Chair or nominated PAC member, as the case may be, may take such steps as s/he thinks appropriate to investigate and take action in respect of the alleged breach.

10.3 A person who is alleged to have breached the Code must be given:

- a) the full particulars of the alleged breach⁸;
- b) an opportunity to respond to the allegations; and
- c) the right to have a legal or other representative present during any meetings/discussions in respect of the matter.

10.4 Serious breaches of the Code may be referred to the Minister in respect of State Members or the relevant council with respect to council nominees. Proven breaches of the Code may warrant removal from office (see item 12 below)

11. Reporting possible corrupt conduct

⁸ These particulars should not include the details of the person who made the allegation

11.1 The *Protected Disclosures Act 1994* provides protection to public officials who voluntarily report suspected corrupt conduct. JRPP members can make reports concerning suspected corrupt conduct⁹ to the JRPP Chair¹⁰. The JRPP Chair is under a duty to report to the Independent Commission Against Corruption any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct¹¹.

11.2 JRPP members can also report directly to the following investigative bodies.

Disclosures concerning:

- Corrupt conduct should be made to the Independent Commission Against Corruption¹²
- Maladministration¹³ should be made to the NSW Ombudsman
- Serious and substantial waste of public money should be made to the NSW Auditor General.

12. Removal from office

12.1 The Minister may remove State members from office at any time and without notice.

12.2 The relevant council may remove its nominee/s from office at any time and without notice. If so, the Council must notify the Panel Secretariat.

12.3 The Minister may remove any member if the Independent Commission Against Corruption recommends that consideration be given to the removal of the member because of corrupt conduct by the Member.

13. Complaint handling

13.1 Complaints against JRPP members are to be handled in accordance with the JRPP Complaints Handling Policy.

⁹ Corrupt conduct has the meaning given to that term under the *Independent Commission Against Corruption Act 1988* (ICAC Act)

¹⁰ or nominated PAC member if the suspected conduct is by the JRPP Chair or the Chair is reporting suspected corrupt conduct.

¹¹ Section 11, ICAC Act.

¹² Section 10 of the ICAC Act allows any person to make a complaint to the Independent Commission Against Corruption about a matter that concerns or may concern corrupt conduct.

¹³ Maladministration is defined in s 11(2) of the *Protected Disclosures Act 1994*

Appendix A

Extract from Schedule 4 of the *Environmental Planning and Assessment Act 1979*

12 Disclosure of pecuniary interests

- (1) If:
- (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the regional panel, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the regional panel.
- (2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:
- (a) the member, or
 - (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
 - (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- (3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):
- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
 - (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.
- (4) A disclosure by a member at a meeting of the regional panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (5) Particulars of any disclosure made under this clause must be recorded by the regional panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the regional panel.
- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
- (a) be present during any deliberation of the panel with respect to the matter, or
 - (b) take part in any decision of the panel with respect to the matter.

-
- (7) For the purposes of the making of a determination by the regional panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the panel for the purpose of making the determination, or
 - (b) take part in the making by the panel of the determination.
- (8) A contravention of this clause does not invalidate any decision of the regional panel.

4.7 Submission of Assessment Report to Panel Secretariat

The completed assessment report and recommendation, signed by the officer responsible for the report, is to be forwarded electronically to the Panel Secretariat immediately upon completion.

The assessment report is not required to be endorsed or presented to the Council before being forwarded to the Panel Secretariat.

The following items are to be forwarded in a digital format to the Secretariat:

- Assessment Report, any attachments and the Recommendations (including conditions);
- Development Application and Statement of Environmental Effects or Environmental Impact Statement along with any plans, drawings or other material submitted with the application if it has not previously been submitted to the Panel Secretariat;
- Copies of each submission (or a summary of submissions) received in respect of the application along with a table containing the names and addresses (preferably email addresses) of every person or body who made a submission. In the case of petitions, only the name and address of the head petitioner, if that person can be identified. A hard copy as well as a digital copy should be submitted.

Note: Copies of submissions are requested in order to enable the Regional Panel to consider the submissions for the purposes of s. 79C of the EP&A Act and to enable the Panel Secretariat to notify persons who made submissions of the time, date and venue of the Panel meeting at which the relevant application will be considered.

5. The Determination Process

5.1 Setting of meeting date and agenda

A regular schedule of proposed meeting dates will be determined in advance by the Panel Secretariat in consultation with the Chairperson. The schedule is likely to be on a 2 or 3 week cycle depending on the particular region and the likely volume of applications. If there are no items for a scheduled meeting date, the meeting will not take place.

Special meetings of a Regional Panel may be organised at the discretion of the Chairperson subject to the notice requirements discussed later.

The agenda for each meeting is approved by the Chairperson of the Regional Panel, who may consult with the General Managers (or their nominee) of the councils with items for the Regional Panel as necessary.

Preliminary agendas should be forecast as far ahead as possible, being mindful that issues may emerge during public notification that will alter the originally estimated date for completion of the assessment report. In these circumstances, the council is to notify the Panel Secretariat of the revised date for completion of the assessment report and the brief reasons for the delay.

5.2 Meeting venue

The meeting venue is determined by the Chairperson in consultation with the Regional Director of the Department of Planning, and the General Managers (or their delegates) of the councils with items for the particular Regional Panel Meeting having regard to:

- The location of the matters to be considered at the Regional Panel meeting;
- The number of persons who have expressed an interest in the different matters to be considered at the Regional Panel meeting;
- The accessibility of the proposed venue for those persons.

It is anticipated that meetings will be held at the offices of a council or at a community meeting room of the council. The aims are to:

- Maximise accessibility to people who have expressed an interest in the matters to be considered at the meeting;
- Rotate meetings between different local government areas;
- Facilitate the open exchange of information between the Panel members and other parties.

In metropolitan areas, items from a number of different local government areas might be considered in the one meeting provided the venue is reasonably accessible.

In regional areas, where there are likely to be fewer applications to consider but over a wider area, the Chairperson may need to convene meetings in a number of locations to ensure they are accessible to the greatest number of people with an interest in the application being considered.

5.3 Notice of meeting

Notice of a Regional Panel Meeting is to be given by the Panel Secretariat seven (7) days before the meeting. The notice is to be provided to the Regional Panel members, the General Managers (or their nominee) of the Councils in that region, every person who made a submission in respect of an item to be considered at the meeting and the applicants for those items. The notice is also to be included on the web-site of the councils with items to be considered at the meeting. The notice is to include details of:

- The time and date of the meeting;
- The venue for the meeting; and
- The development applications; and
- The Assessment Report and recommendations; and
- Other matters to be considered at the meeting

5.4 Distribution of meeting agenda

The meeting agenda, accompanying reports and attachments including any representations made by councils are to be distributed electronically to members of the Regional Panel by the Panel Secretariat no less than seven (7) working days prior to the meeting

5.5 Site visits

Formal visits by the Regional Panel to the site of a development application being considered may be arranged prior to the meeting at the discretion of the Chairperson. The Chairperson may also invite the responsible council assessment officer and the proponent as well as any relevant community member or representative who has requested to make a presentation. Entry on to any private land in these circumstances may only take place with the express permission of the owner of the land.

Informal visits to the locality of a matter before a Regional Panel may also be undertaken by Regional Panel members at their own discretion and in order to assist their understanding of the matter before the Panel. In such circumstances, however:

- Panel members should not enter onto any land, even if invited by the landowner or a neighbouring property owner or any other person;
- Panel members should not discuss the merits or otherwise of an application with any person, including the applicant, any person representing the applicant, or any person who made a submission in respect of the application;
- Panel members should advise the Chairperson of such visits; and
- Panel members are reminded of their obligations under section 5.5 of the Code of Conduct with respect to meetings and briefings.

5.6 Quorum for a Regional Panel Meeting

A quorum for a meeting of a Regional Panel is a majority of its members (including the Chairperson).

5.7 The Regional Panel Meeting

Regional Panel meetings are to be conducted in public, unless otherwise directed by the Minister, or unless the Chairperson is of the opinion there are justifiable reasons to conduct any part of the meeting in closed session.

Justifiable reasons to conduct any part of the meeting in closed session may include the Regional Panel's consideration of:

1. Commercial information of a confidential nature that would, if disclosed:
 - a) prejudice the commercial position of the person who supplied it; or
 - b) reveal a trade secret; or
2. Advice concerning litigation, or Regional Panel advice that would otherwise be privileged from production in legal proceedings or for other purposes on the ground of legal professional privilege;
3. Information concerning the nature and location of a place or an item of Aboriginal significance on community land;
4. A potential conflict of interest of a member; or
5. To transact business outside of a formal meeting as provided in section 5.9 of these procedures.

Before the Chairperson decides to conduct any part of a Regional Panel meeting in closed session, the Chairperson may allow members of the public to make representations as to whether that part of the meeting should be closed.

Where a Chairperson decides to close any part of a Regional Panel meeting, the reasons for closing that part of the meeting must be recorded in the minutes of the meeting.

5.8 Presentations at Regional Panel Meeting

The Chairperson will determine the order of presentations to the panel. The panel members may ask questions of those making presentations. The amount of time afforded to persons being heard will be at the discretion of the Chairperson.

(a) Presentation by the applicant

Prior to considering an item, the applicant will be given the opportunity to outline the proposal and, with the approval of the Chairperson, respond where appropriate to any issues raised during public notification or the assessment of the application.

(b) Presentation by persons or bodies who made submissions

Persons (or persons on behalf of bodies) who made a submission on a matter before the Regional Panel may request to address the Panel. Requests can be made to the Panel Secretariat prior to the meeting.

Where a large group of people have common issues, the Chairperson may ask that a spokesperson be appointed to speak on behalf of the group. The Chairperson will seek, where practicable, to ensure that all groups or individuals who request to address the Panel are heard.

(c) Presentation by person responsible for assessment

A person responsible for the assessment report and recommendations is to be present at the Regional Panel meeting during consideration of that item. Other technical experts from the council as appropriate may also be present having regard to the nature of the matter before the Regional Panel (e.g. traffic engineers and the like).

The panel may request assistance from that person or persons clarifying issues regarding the assessment or matters raised earlier by the applicant or persons who made submissions.

Note: A person responsible for the assessment report can be either the person who prepared the assessment report, or a person in a supervisory position who accepts responsibility for the report and its recommendations.

(d) Presentation by a panel appointed expert

For the purpose of determining a development application, or an application to modify a development consent, a Regional Panel may obtain independent assessment reports, advice and assistance as the panel thinks fit, particularly in relation to complex technical matters. This would be in addition to any assessment report or other information provided by the relevant council in assessing the application. Depending on the circumstances, the expert may submit a report with recommendations directly to Regional Panel. In addition, the expert may be invited to present the outcomes of the investigation at the public meeting.

5.9 Transaction of business outside formal meetings

A Regional Panel can transact any of its business, if it thinks fit, at a meeting at which members participate by electronic means including telephone and closed circuit television. The occurrence of such meetings is likely to be limited to extraordinary circumstances, and is likely to be in order to conclude business transacted substantially in a public meeting.

Clause 268I of the EP&A Reg provides that:

1. A planning body (which includes a Regional Panel) may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the planning body for the matter for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the planning body.
2. The planning body may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
3. For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),The chairperson and each member of the planning body have the same voting rights as they have at an ordinary meeting of the planning body.

4. A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the planning body.
5. Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

5.10 Obligation to consult council – if adverse financial impacts

A Regional Panel must not make a decision that will have, or that might reasonably be expected to have a significantly adverse financial impact on a council until after it has consulted with the council. These costs may be associated with the need for additional infrastructure or services.

The consultation may be in writing, with the council given a specified time to respond in writing. Where a meeting with the General Manager (or nominee) is to be held to discuss the matter, all panel members should be present and minutes kept of the meeting and its outcomes.

5.11 Making the determination

Where a decision cannot be made by consensus, the decision of the Regional Panel is to be made by majority vote. The presiding member will have a second or casting vote if required because of an equality of votes.

A decision may be deferred for any reason including the obtaining of additional information or advice. In these circumstances, the decision may be made at a subsequent meeting, including a meeting conducted by the circulation of papers or by electronic means in accordance with clause 268(i) of the *Environmental Planning and Assessment Regulation 2000*.

The Regional Panel may engage experts to obtain independent advice and assistance as the panel thinks fit, to ensure adequate and appropriate information is available for consideration in making a determination.

Where the determination is not consistent with the recommendations by the relevant council officers, the Regional Panel will be required to provide reasons.

Section 82A reviews are not available in respect of determinations by Regional Panels.

5.12 Recording of minutes

The Chairperson is responsible for ensuring that full and accurate minutes are kept of the proceedings of each meeting of a Regional Panel.

The unconfirmed minutes must be endorsed by the Chairperson and made publicly available within five (5) days of the Regional Panel meeting. A copy of the unconfirmed minutes must also be provided to the relevant councils which participated in the Regional Panel Meeting, once they have been endorsed by the Chairperson. Panel members may submit any proposed corrections of the unconfirmed minutes to the Panel Secretariat for distribution to the Panel members prior to the meeting at which the minutes are to be confirmed.

The minutes of a meeting must be submitted for confirmation at the next ordinary meeting of the Regional Panel. When the minutes have been confirmed at a subsequent meeting of the Regional Panel, the Chairperson of that meeting must sign them.

The minutes must record:

- (a) The opening and closing times of the meeting
- (b) The names of state members (or their alternates) present at the meeting
- (c) The names of the council members (or their alternates) in respect of each item
- (d) Any disclosure of interest made by a member and the reason for that disclosure of interest and whether the member making the disclosure participated in the discussion or determination of the matter
- (e) The names of each person heard by the Regional Panel in respect of an item and a summary of key issues raised
- (f) The decision of the Regional Panel for each item. Where the determination is not consistent with the recommendations by the relevant council officers, the following must be provided:
 - (i) Reasons for the decision; and
 - (ii) Any conditions of consent or changes to the recommended conditions of approval.
- (g) The names of: each member who voted for; and of each member who voted against.

Minutes are recorded by an officer of the Panel Secretariat. The Panel Secretariat is responsible for keeping records of the Regional Panels.

6. Post Meeting Procedures

6.1 Issuing the notice of determination

The notice of determination is issued by the council that received the development application following the decision of the Regional Panel and in accordance with the EP&A Act and Regulation and the council's normal procedures.

6.2 Monitoring of and compliance with conditions of approval

The council as the consent authority will continue to be responsible for the monitoring of, and enforcing compliance with, any conditions of the development consent.

6.3 Appeals against determination where Council is applicant

Appeals against the determination of a Regional Panel are to be defended by the council that received the development application as though the determination were made by the council.

However, the EP&A Regulations provide that where a council is the applicant and makes an appeal or otherwise commences Land and Environment Court proceedings concerning a Regional Panel determination in respect of the Council's application, the Regional Panel will be the relevant respondent in such proceedings.

ATTACHMENT 3
LETTER FROM LGSA

Local Government
Association of NSW



Shires Association of NSW

Our ref: R04/0065 Our 17/09

16 July 2009

Attn: Mayors and General Manager

Joint Regional Planning Panels

As councils would be aware, Joint Regional Planning Panels commenced on 1 July 2009 in five regions of the State. The Panel for the western region is due to commence soon.

The Associations continue to oppose the Panels. With a majority of State appointed members (including the Chair) and only two council executives, the Panels will undermine local decision making and local accountability. We are also concerned that they add another layer of bureaucracy and complexity to the decision making process and are likely to increase the cost and time taken to finalise development applications.

We recently met with the Minister for Planning to discuss the planning reform agenda, including Joint Regional Planning Panels, and requested that the Minister agree to:

- a formal evaluation of the performance and planning outcomes of the Panels after the first six months of operation; and
- a commitment from the Minister that the ongoing costs of the Panels (administrative costs and expenses of state members) will be funded by the State Government beyond the 2009/10 financial year.

The Minister indicated that the Department would undertake an evaluation of the panels' operation after the first six months and that there would be no transfer of the costs of the panels to Local Government while she remained as Planning Minister. The Associations will be making representations to the Premier and Treasurer to ensure that the cost of Panels are fully provided for in future State budgets.

The Associations appreciate the support shown by councils that have delayed making their nominations to the Panels until the operational guidelines and code of conduct were made available to councils and issues relating to conflicts of interest were resolved. The Department made a number of amendments to the code and guidelines in response to the Associations' representations, although we still have some concerns about aspects of the code. Being mindful of these concerns, we recommend that council's need to make their own decisions based on local circumstances.

The Associations will monitor the Panels over the course of the next few months and are happy to hear from councils about any issues relating to the Panels and their operation.

Yours sincerely

Gina McCaffery
President
Local Government Association of NSW

Brian Miller
President
Shires Association of NSW

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ATTACHMENT 4
PRESS RELEASE – HUNTER COUNCILS

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THORNTON NSW 2322
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Media Release

BOARD CALLS A HALT TO PLANNING PANEL NOMINATIONS

For release 22 May 2009:

The Board of Hunter Councils comprises the Mayors of all eleven local government areas in the Hunter Region.

At its meeting of 21 May 2009 the Board discussed the operation of the Joint Regional Planning Panels to be introduced by the State Government from 1 July 2009 and, more specifically, the required nomination of Council representatives to those Panels by 5 June 2009.

The Joint Regional Planning Panels as devised by the NSW Department of Planning will comprise three State Government-appointed members, including the Chairperson, and two representatives appointed by the local government area where the development is located. The Panels will stand in the place of a council in the determination of all commercial, residential, mixed use, retail and tourism developments valued between \$10 million and \$100 million, 'ecotourism' projects and public and community infrastructure projects valued over \$5 million, certain coastal developments currently considered under Part 3A, designated development and development over \$5 million where the council is the proponent.

According to Cr Julie Lyford, the Chair of Hunter Councils, local government in the Hunter is committed to a more efficient and effective planning system. She said, "Councillors and council staff in the Hunter Region are supportive of refinements to legislation and practice that will make the planning system in New South Wales more transparent, defensible and apolitical. At our meeting the Mayors were unanimous in the view, however, that as currently proposed the Joint Regional Planning Panels will act against planning reform because the Department of Planning has failed to consider how the Panels will actually function and how issues, for example, of conflict of interest and communication will be addressed."

She added, "Local government in the Hunter is not prepared at this stage to recommend that Councils nominate representatives to the Planning Panels because no real guidance or Code is offered as to how these representatives will manage on the one hand their 'independent from Council' role on the Panels with, on the other, their day to day activities as Council planning and development staff or as Councillors. The two roles are potentially diametrically opposed, and we cannot see – especially in the absence of any real guidelines on real life

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

operations – how possibly fatal compromise to the development assessment process can be avoided.”

As a result of the above the Board of Hunter Councils has resolved the following:

1. To support the submissions to the Department of Planning made by the NSW Local Government and Shires Associations and the Local Government Planners Directors Group in regard to the Joint Regional Planning Panels
2. To urgently seek extensions to the 5 June deadline for Panel nominations and the start date for Panel operation, and
3. To advise member Councils of Hunter Councils not to nominate representatives on the Planning Panels until such time as guidelines and codes of conduct are created.

The latter resolution is an unprecedented move for local government in the Hunter, and reflects the gravity of the situation potentially confronting the planning system in our region. The Board will also as a matter of urgency be sending a delegation to Sydney to meet with the Department of Planning and / or Planning Minister Kristina Keneally to seek deferral of the deadlines and to secure a fundamental reassessment of how the Panels will operate and be resourced.

Ends

For further information please contact:

Cr Julie Lyford, Chair, Hunter Councils on (02) 6558 1995 or mobile 0427 278 860

or

Roger Stephan, CEO Hunter Councils, on (02) 4978 4043 or mobile 0433 633 564

ATTACHMENT 5

COMMENTS ON CODE OF CONDUCT BY EXECUTIVE OFFICER - GOVERNANCE

1. General Conduct

2.1 (a) – Will the Panel be considering matters that may relate to other Acts and /or Regulations? The Code only states under this clause members of the Panel can only contravene the EP&A Act. I would suggest this should be inclusion of all Acts and Regulations as per the LG Code of Conduct.

Would this clause also need to include LEP's and DCP's?

2. Page 1, 3rd paragraph under the heading "Application of the Model Code of Conduct for Local Councils in NSW (Model Code)".

This paragraph states that whilst a councillor or staff is exercising the functions as a Panel member then the JRPP Code applies. I believe that this may give rise to conflict between this Code and the LG Code of Conduct.

3. Conflicts of Interest

3.2 – The words "appropriately manage" and "take appropriate action" are used. What is the definition of these two terms? This may give rise to confusion for some panel members given a conflict of interest exists where a reasonable and informed person would perceive a conflict. One person definition of "appropriate" will always be different to another. Needs to have a more defined language.

4. Obligations of JRPP members

5.1 (a) – There is no reference to the provisions of copyright in this clause.

5.1 (b) – Has consideration been given to the implications on Council resources?

5. Inappropriate Interactions

5.5/5.6 – There is no reference to Inappropriate Interactions with Councillors however there is of Council staff.

6. Council staff - avoiding the potential for a conflict of interest

5.8 – I have major concerns with respect to Council staff being involved as panel members as this may give rise to a conflict of interest in their Council role through the development assessment process.

7. Reporting Breaches

9.3 – this clause provides the procedure to be followed once an allegation has been made and the information that must be given to the person to whom is alleged to have breached the Code. 9.3 (a) requires that the full particulars of the alleged breach be provided. I assume this would include the name of the person/s who reported the breach. If this is the case has consideration be given to the provisions of the Protected Disclosures Act (PDA) as if the informant is a Public Servant (Local or State Government) then they can claim protected under the PDA. The Ombudsman and ICAC advice is that Councils should apply the provisions of the PDA whether requested to do so or not. There are serious implications for Council under the PDA. There is no reference in this Code of the PDA.

8. 9.4 – This Code states that while a member of the panel this Code would apply, but Clause 9.4 does not deal with breaches of this Code other than report it back to Council. I question the ability for Council to then proceed with a breach of another Code under the Council Code of Conduct

ITEM NO. 6

FILE NO: PSC2006-0060

PROPOSED VARIATION OF DEVELOPER CONTRIBUTIONS (S94) TO BE LEVIED FOR SENIORS HOUSING UNDER STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse for public exhibition a draft amendment to the Port Stephens Section 94 Development Contributions Plan, to vary the contribution levy for seniors housing permitted with consent under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (**Attachment 1**).

ORDINARY COUNCIL – 28TH July 2009

243	Councillor Ken Jordan Councillor Bob Westbury	It was resolved that the recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Cr Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to advise Council of a submission received seeking a reduction in the S94 levy for a development proposed under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The submission, relating to Development Application - DA 2008-838 for a retirement village, William Street, Raymond Terrace - states that the contributions levied for the development are considered to be excessive. The submission requests that a distinction be made between levying for residential development in Port Stephens that has an average occupancy ratio of 2.6 persons per dwellings against the average occupancy ratio for seniors living dwellings in Port Stephens of 1.3 persons per dwelling.

Developer Contributions

Under the Environmental Planning and Assessment Act, a consent authority may request development to contribute to funding local infrastructure by three alternative methods:

- s94 development contributions;
- s94A levy; or
- Voluntary Planning Agreements.
-

Section 94 (S94) development contributions are imposed by way of a condition of development consent or complying development, and can be satisfied by: Dedication of land; a monetary contribution; material public benefit; or a combination of some or all of these.

Section 94A (S94A) allows a fixed percentage levy to be imposed (up to 1% of the cost of development) when a development consent or complying development certificate is issued.

S94 and S94A levies can only be imposed if a development contributions plan is validly in place. S94 requires strict apportionment, nexus (relationship to development) and other legislative requirements.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

This report proposes an amendment to the Port Stephens Section 94 Development Contributions Plan, to substantially reduce the contribution levy for development permitted with consent under the SEPP (collectively known as *seniors housing*). Presently seniors housing is levied the same as normal residential development unless they qualify as a Social Housing Provider and are exempt pursuant to Ministerial direction.

The table in **Attachment 1** highlights the differences between community facility requirements for seniors housing compared to standard residential development and the need to reduce the development contributions (S94) levy accordingly. The principles outlined in the submission are sufficiently sound to warrant a review of developer contributions for these types of development; however the exact detail of the submission is questionable when applying it across the range of seniors housing types.

The submission focuses on just one type of facility. However, Council should consider the range of facilities from high care subsidised funded facilities to minimal care "retirement villages". It is proposed to apply one levy in the Section 94 plan across the range of facility types for *seniors housing*.

It is recognised that most Seniors or Retirement living permitted under the SEPP will require the same extent of community facilities as normal residential. However, the average occupancy rate of 1.3 is half that of normal residential development (2.6

persons per dwelling) (2006 Census of Population and Housing, ABS Customised Data Report). Similarly the average traffic generating rate of 1-2 vehicles per day for housing for aged and disabled persons is one fifth that of 9 vehicles per day for a residential dwelling (RTA Manual – Guide to Traffic Generating Developments). These factors combine to reduce the various levies in accordance with the table shown in **Attachment 1**.

FINANCIAL/RESOURCE IMPLICATIONS

There are no additional revenue costs to Council. S94 staff will amend the accounting records and processes. S94 Levies will be significantly reduced but will be on an equitable basis in accordance with the average reduced occupancy ratio for seniors housing (50% less than standard residential dwellings).

LEGAL AND POLICY IMPLICATIONS

Proposals to reduce or be exempt from all or certain levies under the Port Stephens Section 94 Contributions Plan for differing types of residential development should be considered against equity between the current and future individual resident and the current and future broader community and the need to maintain a contributions plan that is a simple, defensible and efficiently administered. Furthermore, the housing needs, physical mobility, health and wealth of seniors that the SEPP is targetting (people over the age of 55) is diverse and will become increasingly diverse with an aging population that is generally retiring wealthier than previous generations. Determining the amount of levies based upon what a current or future resident may or may not use is not considered an equitable, pragmatic and defensible policy. However, determining the amount of contributions based upon an average dwelling occupancy ratio for seniors housing that is significantly less than the average occupancy ratio for standard residential dwellings is a sound and defensible policy.

Public notice of Councils decision is required to be placed in a local newspaper within 28 days after the decision is made and the contributions plan comes into effect on the date that public notice of its approval is given, or on a later date specified in the notice.

SUSTAINABILITY IMPLICATIONS

SOCIAL AND ECONOMIC IMPLICATIONS

The proposed reduction in contributions for seniors housing under the SEPP is significant and will contribute to making this type of development on greenfield and infill land more financially attractive to the housing industry and, in turn, provide more diversified housing product in the market to meet the current and future housing needs of an aging population.

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

Other Council Development Contributions coordinators, Sustainable Planning Staff.

OPTIONS

- 1) To accept the recommendation
- 2) To amend the recommendation.
- 3) To reject the recommendation.

ATTACHMENTS

- 1) Proposed Seniors Housing Clause in Council's S94 Plan
- 2) Submission received on DA for Seniors Living

ATTACHMENT 1

Proposed Seniors Housing Clause in Council's S94 Plan

*Port Stephens Section 94 Development Contributions Plan 2007
Incorporating Port Stephens and Great Lakes Cross Boundary Section 94 Contributions Plan 2008*

2. Administration Provisions

2.1.3 DISCOUNT OF CONTRIBUTION - Housing for Seniors or People with a Disability permitted with consent under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

All new development, including housing for seniors and people with disabilities, intensifies the use of the existing resources and adds incrementally to the demand for public amenities and services. In this regard, development for the purposes of retirement housing for seniors or people with a disability, including residential care facilities or those approved under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 will be levied development contributions under this Plan.

The 2006 Census of Population and Housing Customised Data Report, Dwellings & Persons in Retirement Village (Self care) indicated an average occupancy rate of 1.3. The Developer Contribution Levy will therefore be 50% of the general levy for the above categories excluding roadworks.

The RTA Manual, Guide to Traffic Generating Developments indicates an average traffic generating rate of 1-2 vehicles per day for housing for aged and disabled persons. This compares to 9 vehicles per day for a residential dwelling. The Developer Contribution Levy will therefore be 20% of the general levy for roadworks.

Calculation of Developer Contribution:

Category	Contribution – General (additional lot or dwelling)	Seniors Contribution per unit
Civic Administration	\$377	\$189
Public Open Space, Parks and Reserves	\$2,046	\$1,023
Sports and Leisure Facilities	\$4,821	\$2,411
Cultural and Community Facilities	\$2,424	\$1,212
Roadworks	\$1,370	\$274
Fire & Emergency Services	\$188	\$94
TOTAL	\$11,226	\$5,203

The Developer Contribution (\$94) per additional Unit is \$5,203.



ATTACHMENT 2

Submission received On DA for Seniors Living

From: Richard Bennett [mailto:hilltop@hunterlink.net.au]
Sent: Tuesday, 16 June 2009 10:23 PM
To: Heather Fardy
Cc: Graham Herbert
Subject: DA2008-838 - RETIREMENT VILLAGE - WILLIAM STREET RAYMOND TERRACE - SECTION 94 LEVEES

Heather

I would appreciate if you could undertake a review of the draft Conditions, in particular **Condition 23 - Section 94 charges.**

The Condition requires payment of \$ 66,216 which is the same amount that would be levied for a seven lot subdivision capable of accommodating seven four bedroom dwellings. In our opinion the levee is excessive and there is a lack of nexus provided for in the Plan between the proposed facility and the development.

The proposal is for seven one bedroom aged units located in close proximity to the CBD with an established occupancy ratio of 1.4 persons per unit. Few of the occupants drive a vehicle.

I have examined Council's Section 94 Plan and are of the opinion that all of the elements of the Plan should be reduced.

Consideration should also be given to discounting the amount as the site currently comprises a four bedroom dwelling with an occupancy equivalent of 2.6 persons. Based upon the established occupancy ratio of 1.4 persons per retirement unit, the seven units of the development, will accommodate 9.8 persons. Deducting the 2.6 figure results in the site accommodating an additional 7.2 persons.

Civic Administration

The levee should be reduced by 50% in line with the figure for permanent caravans/mobile homes = \$188. The Plan recognises a lower occupancy rate for mobile homes of 1.7 persons/dwelling which is greater than the existing occupancy ratio in the established facility (1.4 persons per aged unit) which adjoins the subject site.

Applicable figure - $\$188 \times 6 = \1128

Public Open Space, Parks & Reserves

The figure of \$744.14 per person should be based on an occupancy rate of no greater than 1.4 persons per aged unit due to the size of the units and the established density of similarly sized units which immediately adjoin the site. The net figure equates to $\$744.14 \times 7.2 = \5257.81

Sports & Leisure Facilities

As the average age of residents in the units is over 75 years, the following facilities listed at 4.3.3 of the Plan would not be utilised by the occupants of the retirement village:

MINUTES FOR ORDINARY MEETING– 28 JULY 2009

Netball Courts; BMX Track; Tennis Courts; Skate Parks (10-19 year olds); and Sports Fields (5 - 39 year olds)

This results in a reduction to \$509.77 per person, and a net figure of \$3670.74 (\$509.77 x 7.2)

COMMUNITY FACILITIES

Multipurpose childrens space

This facility meets the needs of children. There is no nexus between the retirement village and this facility.

The figure for Community Facilities should be reduced by \$157.77 per person. This equates to \$724.25 per person = $\$724.25 \times 7.2 = \5214.60 .

ROADWORKS

The roadworks contribution is based upon trip generation from the proposed landuse. For a single dwelling this is set at 9 trips per day. Given that less than 60% of the occupants of the units will own a car, and those that do are generally infrequent travelers, it is difficult to conclude that the development will generate 63 vehicle movements per day. Allowing for a credit of 9 trips for the existing dwelling, five vehicle trips per day for four of the seven units, and three trips per day for the other three units, the net increase in the number of vehicle movements generated by the development is estimated at $9 - (5 \times 4) + (3 \times 3) = 20$ vehicle trips per day.

The calculates at $\$144 \times 20 = \2880

FIRE & EMERGENCY SERVICES

The mobile home rate of \$94 per additional unit should be applied, ie. $6 \times \$94 = \564

Therefore the total figure for Section 94 which should be applied to the development is:

Admin	\$ 1128
Open space	\$ 5257.81
Sports	\$ 3670.74
Community	\$ 5214.60
Roadworks	\$ 2880
Fire	\$ 564
TOTAL	\$ 18 715.15

It is our opinion that the Section 94 Contribution should be no greater than **\$18,715.15**.

I would appreciate if you could examine Condition 23 and determine if the levees as provided for in the draft conditions should be significantly reduced to the figure calculated above.

Regards
Richard Bennett

Hill Top Planners Phone 02 - 49300288
PO Box 489 Fax 02 - 49300290
MAITLAND NSW 2320 Mobile 0427 938250

ITEM NO. 7

FILE NO: A2004-1014

ROAD WIDENING ITALIA ROAD EAST SEAHAM

REPORT OF: CARMEL FOSTER – MANAGER, COMMERCIAL PROPERTY

RECOMMENDATION IS THAT COUNCIL:

- 1) Consents to the affixing of Council Seal to the Transfer document of the Road Widening from the owner of part of lot 303 D.P.713773.
-

ORDINARY COUNCIL – 28TH July 2009

244	Councillor Bob Westbury Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to obtain Councils formal consent to finalise the acquisition of land for road widening by affixing Councils Seal to the Transfer document.

At its meeting of 30th June 2009 Minute No:195 Council resolved to finalise the acquisition of part of the property for road. Councils Seal is required to create the document before registration at LPI.

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

Nil

LEGAL AND POLICY IMPLICATIONS

Council's Seal and endorsement is required on the Transfer document for lodgement at Land and Property Information this will then complete the matter.

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) **CONTINUOUS IMPROVEMENT** – Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.
- 3) **INFORMATION AND KNOWLEDGE** – Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.
- 4) **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

Property owners, Principal Property Advisor, Senior Survey and Land Information Manager, Engineering Services Manager.

OPTIONS

- 1) Accept recommendations
- 2) Reject recommendations

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 8**FILE NO: PSC2006-6401****IMPROVEMENT WORKS FOR NELSON BAY FORESHORE****REPORT OF: JASON LINNANE – MANAGER, RECREATION SERVICES****RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorses in principle the proposed works program for both Stages 1 and 2 of the Nelson Bay Foreshore Improvement Program.
- 2) Allocates an estimated \$387,000 from the Parking Meter Restricted Reserve and estimated \$300,000 from Section 94 to fund the proposed works outlined in Attachment 1.
- 3) Delegate to the Mayor and General Manager that correspondence be forwarded to the appropriate Director General and Minister with a formal request of acknowledgement and recognition to be received before any proposed works are undertaken. Further that this recognises Council's contribution to the Crown Reserve in accordance with its Memorandum of Understanding with the Department of Lands

ORDINARY COUNCIL – 28TH July 2009

245	Councillor John Nell Councillor Sally Dover	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is have Council endorse a works program for the Nelson Bay Foreshore and approve the source of funds for the works

In February 2008 Council adopted a Plan of Management (PoM) for the Nelson Bay Foreshore. This PoM has provided a framework for how the site is managed and improved.

As part of this planning process it was agreed that detailed planning would be undertaken as required to enable the implementation of works on the site.

Council staff have held two (2) site meetings with the East Ward Councillors and Mayor to discuss options to improve this site in the near future. A broad range for options were considered and the proposed works outlined in Attachment 1 will address all of the issues that were raised. At these meeting it was agreed that the best result for the community would be to have these works completed by mid December 2009.

Staff have discussed the proposal with staff from Department of Lands (DoL) and Marine Parks Authority (MPA). The works program was supported by these staff. DoL have advised that they are still furthering opportunities with third parties in respect to future commercial opportunities for the foreshore. It should be noted that these opportunities could deliver further public domain improvements.

The works outlined in Attachment 1 are consistent with the adopted PoM and the Waterfront Master plan that has been drafted for the public land from Corlette to Shoal Bay.

While it is fully recognised that the DoL has long term plans for this area, they will not be delivered in the short term and upgrade works are long overdue. Therefore, it is proposed that some upgrade works be “fast-tracked” at Councils expense.

Council should note that the Parking Meter Restricted Reserve indicates that funds should be expended on “parking and associated infrastructure” while funds generated from the Crown Reserve (that is some of the car-parks) should be spent on the reserve. It is therefore proposed to broaden the Restricted Reserve terms somewhat to “foreshore, traffic, parking and associated infrastructure in the surrounding area” to bring the Council and DoL policies further into line. This will be done in a subsequent report following further internal and external stakeholder discussions.

LINKS TO CORPORATE PLANS

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

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 works program outlined in Attachment 1 is estimated to cost \$687,000. The following sources of income are proposed:

Parking Meter Reserve - \$387,000
Section 94 (Open Space) - \$300,000

LEGAL AND POLICY IMPLICATIONS

The works are consistent with both the adopted Nelson Bay Foreshore PoM and the draft Waterfront Master Plan. The latter is completed but is yet to be reported to Council for adoption.

A minor part of the overall works program may require Development Approval and this will be discussed with Sustainable Planning staff in the near future.

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.
- 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 proposed works will provide opportunities for improved experiences for all users of the site create an environment that allows for greater use of the area and improve social interaction for all. The ability for the whole community to enjoy this public space is something that has been expressed in many forums to Port Stephens Council. Many people in the community believe that social outcomes are being missed due to the poor state of the site.

ECONOMIC IMPLICATIONS

A majority of the works will be tendered out which will provide extra work opportunities for the community.

The improvements to the foreshore will add to the experiences that users (residents and visitors alike) will achieve. This will have flow affects to the local business community. The improved range of facilities will also attract more people to the area and improve the local area from a tourism perspective.

ENVIRONMENTAL IMPLICATIONS

The only works that may have environmental implications are those relating to foreshore stabilisation. These have been discussed with MPA staff and these same people will be involved in the design of these works. It has not as yet been clarified if a DA is required for the works but nevertheless all environmental issues will be explored and managed appropriately.

CONSULTATION

Marine Parks Authority
Department of Lands
East Ward Councillors
Mayor
Operations staff

Those involved in the Waterfront Masterplan and Nelson Bay Foreshore PoM

OPTIONS

- 1) Reject
- 2) Approve part of works program and defer other to 2010 / 2011 financial year.

ATTACHMENTS

- 1) Proposed works program for Nelson Bay Foreshore

ATTACHMENT 1

Proposed Works Program for Nelson Bay Foreshore

TREATMENT	COST	CUMULATIVE COST
1. Install irrigation: <ul style="list-style-type: none"> ○ Via Spear point d'Albora end ○ Via town water supply Cruise Terminal end 	\$80,000	\$80,000
2. Install two seepage drainage pits to overcome stormwater drainage issues and erosion, include modifications to kerb line and provide gardens around two Norfolk pines.	\$20,000	\$100,000
3. Install catch drain, repair rock revetment and install external shower and sediment pit to overcome issues personal and cleanliness issues in toilet block	\$7,000	\$107,000
4. Remove and relocate/replace BBQ and provide kiosk for power near cruise terminal	\$30,000	\$137,000
5. Grade area near Cruise terminal to remove hollows (1% cross fall) and win material for placement in eroded areas, top dress and returf .	\$12,000	\$149,000
6. Provide eight park furniture settings (aluminium) including shade shelter	\$36,000	\$185,000
7. Rock revetment for eroded beach area north of Cruise terminal	\$43,000	\$228,000
8. Rock revetment at D'Albora end to repair erosion	\$5,000	\$235,000
9. Relocate play equipment from road side, enhance play equipment and provide new pathway around play equipment, remove fencing from roadside	\$85,000	\$320,000
10. Sails over play equipment	\$40,000	\$360,000
11. Provide steps to beach over revetment at Cruise terminal end	\$20,000	\$380,000
12. Tree Guards around fig tree roots to reduce erosion	\$7,000	\$387,000
13. Provide walkway lighting between D'Albora & Cruise terminal	\$120,000	\$507,000
14. Construct Wall (from Jersey Kerb or Brick, 500mm high) 250m long around inner harbour beach	\$180,000	\$687,000

ITEM NO. 9

INFORMATION PAPERS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 28th July, 2009.

No:	Report Title	Page:
1	Senior Staff Positions	
2	Council Resolution of 16 December 2008 – Proposed Draft Local Environment Plan 2000 Amendment No 24 in respect of certain lands at Karuah	
3	Petition against Gloucester Coal/Duralie Coal application for expansion and discharge of mine waste water	

ORDINARY COUNCIL – 28TH July 2009

246	Councillor Bruce MacKenzie Councillor Bob Westbury	It was resolved that the recommendation be adopted and that Council write to the NSW Minister for Planning and the NSW Minister for the Environment, seeking for high priority to be given to resolve the issues that are impeding progress with this rezoning in Item 2.
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In accordance with the Local Government Act 1993, a division is required for Item 2.

Those for the Motion: Cr Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

247	Councillor John Nell Councillor Glenys Francis	It was resolved that Council write to the NSW State Government concerning the discharging into waterways
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GENERAL MANAGERS INFORMATION PAPERS



INFORMATION ITEM NO. 1

SENIOR STAFF POSITIONS

REPORT OF: ANNE SCHMARR – MANAGER, ORGANISATION & DEVELOPMENT

FILE: PSC2009-02236

BACKGROUND

The purpose of this information paper is to advise Council of the current contractual obligations with senior staff.

Under Section 332 of the Local Government Act 1993 (NSW), Council is required to determine an organisation structure which consists of the various positions Council proposes to employ staff and to identify those positions within the organisation structure that are senior staff positions.

Council adopted the current structure at its meeting on 22nd July 2008. This structure saw a move to a four group structure of Commercial Services, Corporate Services, Facilities and Services and Sustainable Planning.

A senior staff position 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 (currently \$146,750).
- Senior Staff are to be employed under performance based fixed-term contracts not less than 12 months and not exceeding 5 years. These are standard contracts determined by the Department of Local Government.
- Minimum conditions of employment are governed by terms of the contract together with the Industrial Relations Act 1996 (NSW), the Workplace Relations Act 1996 (Fed), the Annual Holidays Act 1944 (NSW) and the Long Service Leave Act 1955 (NSW).
- Council is required to publish the total package value of each senior staff's employment contract in the Annual Report.

Under the current structure, adopted by Council at its meeting on 22nd July 2008, there are five senior staff positions employed under fixed term contracts of employment:

Position	Total Remuneration Package	Term of Contract
General Manager	SP 27 \$199,591- \$229,741	1/7/2005 to 30/06/10
Commercial Services Group Manager	SP26 \$170,117-\$195,242	10/11/2008 to 09/11/2013
Facilities and Services Group Manager	SP26 \$170,117-\$195,242	26/04/2008 to 25/04/2013

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

Position	Total Remuneration Package	Term of Contract
Sustainable Planning Group Manager	SP25 \$158,797-\$182,669	10/04/2006 to 08/04/2011
Corporate Services Group Manager	SP25 \$158,797-\$182,669	27/01/2009 to 27/01/2014

The total remuneration paid to senior staff is inclusive of salary, compulsory employer superannuation contributions, vehicle and other benefits including any fringe benefits tax payable on such benefits.

Senior Staff remuneration increases are determined on their anniversary of employment by reference to their contract of employment, the Mercer Salary Data and increases provided in the Statutory and Other Offices Remuneration Act, 1975.

ATTACHMENTS

Nil

INFORMATION ITEM NO. 2

**COUNCIL RESOLUTION OF 16 DECEMBER 2008 – PROPOSED DRAFT
LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT NO. 24 IN
RESPECT OF CERTAIN LANDS AT KARUAH**

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING
FILE: PSC2006-1202

BACKGROUND

The purpose of this report is to provide Councillors with an update on progress of the draft Port Stephens Local Environmental Plan Amendment No. 24.

In December 2008, Council considered draft LEP Amendment No. 24 and resolved to:

- 1) *Submit the exhibited draft Local Environmental Plan (draft Port Stephens LEP 2000 Amendment No. 24) to the Department of Planning requesting that the draft be made by the Minister;*
- 2) *Prior to the draft Plan being forwarded to the Minister, agreement be reached between the Department of Environment and Climate Change (DECC) and landowners to satisfy concerns raised by DECC in relation to bio-banking.*

The draft LEP has undergone the required legislative process including public exhibition that led to Council's adoption of the draft LEP.

Since December 2008 Council, the proponents and State Government agencies have discussed this matter on numerous occasions to progress the draft LEP consistent with Council's Resolution. Representation has also been made by the landowners to Council indicating that achieving DECC's requirements is problematic.

Council supports the NSW government's policy on "improve and maintain" for native vegetation across the State, as well as the use of "biodiversity offsets" when proposed development requires the removal of native vegetation. However, the implementation of these State government policies by Council through the rezoning process, in this instance, does not acknowledge:

- the difficulties of achieving consensus between multiple landowners who have differing biodiversity issues;
- the financial difficulties and uncertainties that biodiversity offsets impose upon individual land owners; and,

- that small landowners/developers do not necessarily have the financial capacity to absorb the short and long term costs of preparing and implementing a biodiversity offset package.

Furthermore, there is concern that State government policy is unintentionally distorting the development industry where biodiversity conservation issues become onerous such that only large developers have the financial capacity to absorb the costs and delays through the rezoning process.

The draft LEP is consistent with the Lower Hunter Regional Strategy and the Regional Conservation Plan. The draft LEP proposes to rezone land containing a State significant wetland under State Environmental Planning Policy No. 14 Coastal Wetland from Rural 1(a) that permits vegetation clearing to an Environmental Protection Zone.

Council's adoption of the draft LEP in December 2008 reflects its commitment and intention to zone the subject land appropriately to reflect the intent and desired outcomes of Council and State government policies guiding the rezoning process for urban development and biodiversity conservation.

Council does not have the legal capacity or responsibility to resolve the biodiversity issues raised by DECC. Technically, this is a matter best resolved directly between DECC and the land owners. It is a matter for the Department of Planning to clarify and determine how State government policy for urban development and biodiversity conservation should be resolved for this draft LEP. There is scope for this matter to be addressed at the Development Application stage under Part 4 of the Environmental Planning and Assessment Act.

ATTACHMENTS

- 1) Draft LEP Amendment No. 24 – Map

ATTACHMENT 1
DRAFT LEP AMENDMENT NO. 24 – MAP



INFORMATION ITEM NO. 3

**PETITION AGAINST GLOUCESTER COAL/DURALIE COAL APPLICATION
FOR EXPANSION AND DISCHARGE OF MINE WASTE WATER**

REPORT OF: PETER GESLING, GENERAL MANAGER

FILE: PSC2005-4446

BACKGROUND

The purpose of this report is to advise Council of two petitions with approximately 60 signatures which have been received. The petitions state:

We the undersigned who have attended the public meeting on Saturday 28th March 2009, at Karuah Community hall, do hereby sign in support of this attached resolution letter. We as a collective group of people ask that our Government Decision Makers, honour the 'No River Discharge' Condition of Consent, and look at the whole of the coal mining impacts of Gloucester Resources, Gloucester Coal (Stratford & Duralie Coal), and AGL Gas and the impacts these are and will have on the Gloucester/Stroud Basin, the effects on the local communities, people, rural land, water sources, tourism. We call for a Commission of Inquiry into the whole area.

and

Public Meeting – Coal Mining in Gloucester-Stroud basin held at Stroud School of Arts Hall, 4th April 2009 – We the undersigned attended the above public meeting and give our support to the attached resolution.

ATTACHMENTS

- 1) Resolution letter and Petitions.

ATTACHMENT 1

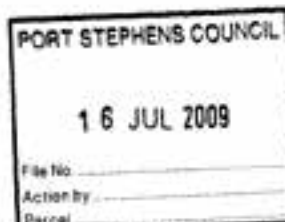
IRONSTONE COMMUNITY ACTION GROUP

Sub-Group of Barrington-Gloucester-Stroud Preservation Alliance Inc.

Attention: *Peter Gearing*

10th July 2009

Dear Sir/Madam,



Please find enclosed two resolution letters and signatures collected at public meetings held in Karuah on 28th March 2009 and Stroud 4th April 2009 villages NSW. These letters pertaining to planned expansions and 'indirect' and 'direct' river discharge into Mammy Johnsons River, which flows into the Karuah River and Port Stephens Area. With concerns of Duralie Coal Mine, in general, and Modification Application – DA 168-99MOD6, before the NSW Department of Planning at the moment.

You have received background information on the Duralie Mine and their planned expansions as well as a resolution letter and signatures already, from a public meeting held in Allworth village in May and sent to your office last month.

To date we have not received acknowledgement from you of receipt of our previous correspondence, nor have we received any comment from you or your department regarding our concerns.

Could we please request that you respond to these resolution letters and provide us with any advice as to how to proceed in this matter? We also ask how you intend to proceed with this urgent matter? We hope you join with us and publicly state; the need to have our creeks, rivers, catchment areas & our waterways protected for all times. We can then go back to the signatories of the resolution letters with your response.

As you will appreciate, there is great concern in these villages and people feel that are not being listened to and their concerns disregarded by the NSW Government. These people are already being disadvantaged by the mine presence, emotionally physically and financially. Many have lost their livelihood or have had it severely curtained, some are suffering with ill health, others find they are living in an industrial site and are all worried about the future for themselves and their family.

Thanking you in anticipation.

Yours faithfully

A. Albury
Amanda Albury
ICAG

Resolution letter – Karuah Public Meeting 28th March 2009 - Amanda Albury PFI: 4997-5979 (ICAG) Sub-group of BGSP Alliance/JCCC Inc.

(Avon River, flowing to the little Manning, Manning River Taree), or the down stream users from effects from Duralie Coal, affecting towns:- Booral, Allworth, Karuah, Port Stephens, with effects on Habitat Zone of the Karuah River, Oyster farmers, Port Stephens Marine Park, destroyed Tourism Industry for the Barrington-Gloucester-Stroud valley and the Port Stephens area and for everyone else who lives here.

Duralie Coal has admitted, On page 21 of Duralie Coal Project – Project Description and Preliminary Assessment:- “The project would include mining extensions in the Coalshaft Creek catchment area and to the North-West into the catchment of an un-named watercourse, that flows North and East to join Mammy Johnsons River approximately 4 Kms upstream of the Coalshaft Creek confluence (Figure 4).

The development of the additional open cut and waste emplacement areas would increase the operational area, and hence increase the need for water management, storage and/or disposal. The Project would therefore include extensions to agricultural irrigation areas to include areas to the North, South and East of the existing mining operations, including areas that currently drain directly to the Mammy Johnsons River (Fig 4) and a controlled release system to the Mammy Johnsons River.

Potential impacts of the Project on water storages, rivers and creeks would include:

- Additional modification of the Coalshaft Creek Catchment.
- Modification of the catchment areas of the un-named drainage line (creek/tributaries to Mammy Johnsons River) to the North-West.
- Modification to flow regimes in the long-term as a result of the long-term water management features for the project (including dams, final voids and reconstructed drainage lines), (creek, tributaries to Mammy Johnsons River).
- Alteration of stream flow, flow duration and water quality in the lower reaches of Coalshaft Creek and Mammy Johnsons River as a result of controlled releases (river discharge) of contained water (contaminated, dirty, mine waste water) in their dam, in accordance with relevant approvals (e.g. EPL conditions);
- Changes to runoff rates and runoff water quality from agricultural irrigation areas
- Increased potential for erosion and sediment movement due to increased exposure of soils during the development of mine-infrastructure and mine operation
- Surface water contamination from accidental spills (environmental failures) of hydrocarbons, explosives or other chemicals and;
- Effects on the salinity, pH and metals concentrations of runoff or seepage from waste rock emplacements or in operational areas, if PAF materials are not appropriately managed.

We the undersigned agree that mining along The Bucketts Way, Gloucester-Stroud Basin, should be looked at as a whole area from Gloucester to 12 Mile Creek and the affects on the Port Stephens area. We agree in calling for a Commission Of Inquiry, into mining in this valley area, that no further exploration licences or mining modifications be approved until such times as the Inquiry takes place and a full and Independent Environmental Impact Study is completed (not mining or Government employed), and a report on the Economic Value of the area in other industries (other than mining); farming, oyster, fishing, tourism, social/emotional, history & heritage of rural towns as a whole and the people that live here.

We the undersigned agree that the ‘No River Discharge’ Condition of Consent granted by Frank Sartor in 2006 are never modified and that discharge into this river system and connected waterways are stamped ‘Never to be Approved’, to any mining company/industry into the Mammy Johnsons River, through any means of discharge either ‘directly’ or ‘indirectly’, as any run off flows directly into this River and puts the coal toxins directly into this ecosystem, knowing the Karuah River has a preservation order over it, as a Marine Habitat Zone, taking toxins down stream to Port Stephens area, Marine Park and the ocean.

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

Resolution letter – Karuah Public Meeting 28th March 2009 - Amanda Albury PFI: 4997-5979 (ICAG) Sub-group of BGSP Alliance/JCCC Inc.

We the undersigned do not agree that Gloucester Coal be given approval in the future, now or ever, to expand their coal mining venture from Stratford Coal to Duralie Coal, which would remove prime agricultural land, rural food growing land and put this whole area/river system into direct threat.

We the undersigned find River Discharge & mining expansion in this area to be totally unacceptable! And WE DO NOT AGREE with Gloucester Coal's intentions to seek approval to expand their coal mining venture (from an 8 year boutique mine), which would have finished in 2011, to their proposal of expanding their coal mining beyond 2030. This area is not able to sustain this type of mine, because of the creeks, gullies that run directly into this river system, rich rural land, high rainfall and natural water sources.

Continued Government approvals to allow them to 'directly' or 'indirectly discharge' their mine water from their site into The Mammy Johnsons River is unacceptable and would thereby reduce this river system to a mining drain as they have already done to Coalshaft Creek, which flows directly into The Mammy Johnsons River.

We the undersigned agree that Creek & River Diversion & discharge of mining waste-water, in any capacity is unacceptable. Our rural lands and connected water-ways, belong to us all and should remain in their natural state and not be dug up and become drains for coal/other mining companies and/or industries. (end).

Yours faithfully

Attached list of Signatures

Cc:

Catchment Management Authority
Department of Fisheries – Taylors Beach
Oyster Industry Representative
NSW Farmers Group
Mid Coast Water
Great Lakes Council Managing Director, Directors, Mayor, Councillors
Great Lakes Tourism Department
Port Stephens Council Managing Director, Directors, Mayor, Councillors
Port Stephens Tourism Department
Gloucester Council Managing Director, Directors, Mayor, Councillors
Gloucester Tourism Department

28th March 2009 – Karuah Public Meeting

We the undersigned who have attended the public meeting on Saturday 28th March 2009, at Karuah Community hall, do hereby sign in support of this attached resolution letter. We as a collective group of people ask that our Government Decision Makers, honour the 'No River Discharge' Condition of Consent, and look at the whole of the coal mining impacts of Gloucester Resources, Gloucester Coal (Stratford & Duralie Coal), and AGL Gas and the impacts these are and will have on the Gloucester/Stroud Basin, the effects on the local communities, people, rural land, water sources, tourism. We call for A Commission of Inquiry into the whole area.

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

Resolution letter – Stroud Public Meeting – School of Arts Hall - 4th April 2009

2nd July 2009

To:

Kristina Kenesally – Minister for Planning, Rodfern & Waterloo
Sam Haddad – Director General of NSW Department of Planning
Ian MacDonald – Mineral Resources, Energy & State Development
David Kitto – Director of Major Development Assessment Branch, NSW Dept. of Planning
Nathan Rees – NSW State Premier
Kevin Rudd – Prime Minister of Australia
Carmel Tebbutt – Minister for Climate Change & Environment
Peter Garrett – Minister for Environment, Heritage & Art
Penny Wong – Minister for Climate Change & Water
Graeme Clarke – Department Environment Climate Change, Hunter Regional Manager
Jodi McKay – Minister for Tourism/Hunter, Science & Medical Research, Assist. Minister Health (Cancer)
Bob Baldwin – Federal Member for Patterson
Lee Rhiannon – NSW Greens MP and Mining Spokesperson
Federal Representative/s
Commonwealth Representative/s
Craig Baumann – State Member for Port Stephens
John Turner – State Member for Great Lakes
George Souris – Member for Upper Hunter

Dear Sirs/Madams,

RE: Mining in Gloucester/Stroud Valley is unsuitable due to our high rainfall in the valley basin, as foreseen in the Commission of Inquiry in 1997. 'No River Discharge' Condition of Consent.

A public meeting was held on Saturday 4th April 2009 at Stroud School of Arts Hall to discuss community concerns over mining expansion and creek/river discharge in the Gloucester to South of Stroud basin and the affects on these areas, including the Port Stephens area.

The residents who attend the meeting signed the attached resolution calling on Government decision makers to honour the 'No River Discharge' condition of consent placed on the Duralie Coal mine, and to examine the long term cumulative impacts of mining activities by Gloucester Resources, Gloucester Coal and AGL Gas (formerly Lucas Gas) in the Gloucester-Stroud basin.

Request to action: As our 'Elected Representatives' who work for the people (first) not 'Your Party' and if required; 'Cross the Floor', to 'Prevent River Discharge progressing further'. We are asking you to come out publicly and oppose Gloucester Coal/Duralie Coals Application for expansion and discharging mine waste water into Manning Johnsons River, Karuah River to Port Stephens, now or ever. Our Rivers, Creeks, Catchment Areas are Precious Natural Resources, belonging to everyone and should be protected and preserved and not turned into mining drains.

We agree that the overall impact of all mining activities along The Bucketts Way basin from Gloucester to 12 Mile Creek should be assessed in tandem, rather than assessing the impact of each mine individually. We support a moratorium on any new mining exploration licences or mining modifications until a Commission of Inquiry into the impact of mining on the region and its water resources takes place, including the Port Stephens area & Marine Park.

We look forward to receiving your earliest reply to our concerns.

Yours faithfully

The undersigned concerned residents of Barrington, Gloucester-Stroud to Port Stephens

Stroud Public Meeting 4th April 2009 - Annals Albury PH: 4991-5979 (ICAG) Sub-group of BOSP Alliance/COCC Inc.

Resolution letter – Stroud Public Meeting – School of Arts Hall - 4th April 2009

**Public Meeting – Coal Mining in Gloucester-Stroud basin
Held at Stroud School of Arts Hall, 4th April 2009**

RESOLUTION

This meeting notes:

- 1) Duralie Coal's licence came with a 'No River Discharge' Condition of Consent for the Mammy Johnsons River, which was placed on Duralie Coal by then Planning Minister Frank Sartor in 2006, and that any reversal of this position will be a betrayal of the Gloucester, Stroud, Port Stephens communities.
- 2) The Karuah River has a Preservation Order over it, as a Marine Habitat Zone, and any mining pollution in the Mammy Johnsons River catchment will flow down stream to the Karuah River and Port Stephens.
- 3) Any 'indirect' discharge into the Mammy Johnsons River via irrigation of river flats and floodplains will be as harmful as 'directly' discharging into the river.
- 4) Mining expansion poses an unacceptable threat to prime agricultural land, rural food growing lands, the rural character of the region and its river system. Our rural lands and connected waterways belong to us all and should remain so, not be dug up and used as drains for coal mining companies.

This meeting calls on the NSW Government to:

- 1) Refuse the application from Gloucester Coal Limited to discharge dirty mine waste water from Duralie Coal Mine 'directly' and/or 'indirectly' into The Mammy Johnsons River, which flows into the Karuah River at Stroud and is the drinking water of Stroud Road and Stroud townships, with a proposal to join Booral township to this water supply.
- 2) The Department of Planning must rule 'that no mine can ever be granted a licence to discharge mine water into or irrigate lands that drain into the Mammy Johnsons River'.
- 3) Where Stratford Coal has the 'right to discharge into the Avon River', refuse any future expansion towards Stroud Road and Stroud, which would put them directly into the Karuah catchment area, which will flow onto creeks and tributaries, onto Wards River, Mammy Johnsons River, Karuah River and Port Stephens area.
- 3) Support the protection of creeks, rivers and water sources in the Gloucester-Stroud basin.
- 4) Conduct a 'Commission of Inquiry' into the cumulative impact of mining in the Gloucester Stroud region, the effects on the local communities, people, rural land, water sources, environmental and tourism values of the region.
- 5) Specifically, investigate and publicly report on the effects that any mine discharge approvals would have on, and the down stream water users of the Avon River, flowing to the little Manning and Manning River in Taree, as well as Booral, Allworth, Karuah, Port Stephens, with effects on Habitat Zone of the Karuah River, Oyster farmers, Port Stephens & Marine Park.

BACKGROUND

Duralie Coal has admitted, On page 21 of Duralie Coal Project – Project Description and Preliminary Assessment: - "The project would include mining extensions in the Coalshaft Creek catchment area and to the North-West into the catchment of an un-named watercourse, that flows North and East to join Mammy Johnsons River approximately 4 Kms upstream of the Coalshaft Creek confluence (Figure 4).

The development of the additional open cut and waste emplacement areas would increase the operational area, and hence increase the need for water management, storage and/or disposal. The Project would therefore include extensions to agricultural irrigation areas to include areas to the North, South and East of the existing mining operations, including areas that currently drain directly to the Mammy Johnsons River (Fig 4) and a controlled release system to the Mammy Johnsons River.

Potential impacts of the Project on water storages, rivers and creeks would include:

- Additional modification of the Coalshaft Creek Catchment
- Modification of the catchment areas of the un-named drainage line to the North-West
- Modification to flow regimes in the long-term as a result of the long-term water management features for the project (including dams, final voids and reconstructed drainage lines).
- Alteration of stream flow, flow duration and water quality in the lower reaches of Coalshaft Creek and Mammy Johnsons River as a result of controlled releases of contained water in accordance with relevant approvals (e.g. EPL conditions);
- Changes to runoff rates and runoff water quality from agricultural irrigation areas
- Increased potential for erosion and sediment movement due to increased exposure of soils during the development of mine infrastructure and mine operation
- Surface water contamination from accidental spills of hydrocarbons, explosives or other chemicals and;
- Effects on the salinity, ph and metals concentrations of runoff or seepage from waste rock emplacements or in operational areas, if PAF materials are not appropriately managed.

This is totally unacceptable! We do not agree with Gloucester Coal's intentions to seek Government approval to expand their coal mining venture (from an 8 year boutique mine), which would have finished in 2011, to their proposal of expanding their coal mining beyond 2030. This area is not able to sustain this type of mine, because of the creeks, gullies that run directly into this river system and our high rainfall.

Continued Government approvals to allow them to directly or indirectly discharge their mine water from their site into Mammy Johnsons River, would thereby reduce this river system to a mining drain as they have already done to Coalshaft Creek, which flows directly into Mammy Johnsons River.

(all those in favour of the above have signed below).

**Public Meeting – Coal Mining in Gloucester-Stroud basin
Held at Stroud School of Arts Hall, 4th April 2009**

We the undersigned attended the above public meeting and give our support to the attached resolution.

NAME	ADDRESS	SIGNATURE
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NOTICES OF MOTION

Councillor Shirley O'Brien left the meeting at 7.40pm prior to this item.

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217 + PSC2007-1748

DEPARTMENT OF ENVIRONMENT, CONSERVATION AND CLIMATE CHANGE AUDIT & STUDY REQUIRED

COUNCILLOR: JOHN NELL

THAT COUNCIL:

- 1) Ask the Department of Environment, Conservation and Climate Change to:
 - a) Conduct an audit of surfacing marine fauna (Dolphins, turtles and penguins), and
 - b) Commission a study of the interaction between commercial and recreational boats on the long term viability of populations of surfacing marine fauna (Dolphins, turtles and penguins) in Port Stephens.
-

ORDINARY COUNCIL – 28TH July 2009

248	Councillor John Nell Councillor Bruce MacKenzie	It was resolved that the Notice of Motion be adopted.
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BACKGROUND REPORT OF: BRUCE PETERSEN – MANGER, ENVIRONMENTAL SERVICES

BACKGROUND

The Port Stephens Myall Lakes Estuary and Coastal Zone Management Committee (EMC) have discussed the impact of commercial and recreational boating on surfacing marine fauna (particularly dolphins) for a number of years. The Committee is concerned that if a limit is not placed on the number of boats approaching dolphins, that this may have a negative impact on the sustainability of the dolphin population within Port Stephens.

A number of studies, have indicated that with an increasing frequency of vessel movements in close proximity to surfacing marine fauna there is an increased risk to the health and long term viability of those animals.

Dolphins and other marine fauna form an important part of the marine environment in Port Stephens. In particular, dolphins are a critical part of the tourism industry within this Local Government Area, helping to bring millions of dollars to the local economy. Therefore, it is important that we not only support the current ecotourism industry associated with dolphin watching but also that we ensure the long term viability of dolphin populations within this estuary.

Since this area has been declared a Marine Park, it is even more important that we understand the distribution and behaviour of these surfacing marine animals.

There have never been any quantitative studies conducted within the Port Stephens Estuary to determine the number of surfacing marine fauna that may be impacted upon by commercial and recreational vessels. If such a study were to be undertaken, it should ideally be initiated by the Department of Environment and Climate Change in consultation with the Marine Park Authority.

Councillor Shirley O'Brien returned to the meeting at 7.44pm during this item.

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217, PSC2009-00431

CONFIDENTIAL REPORTS

COUNCILLOR: FRANK WARD

THAT COUNCIL:

- 1) Request the General Manager prepare a report for discussion by Council on his reasons for the decision to restrict Councillor access to confidential information that has effectively declared to the public that Councillors are untrustworthy. The General Managers report must advise Council as to what authority he has acted under in the Local Government Act and Council's Code of Practice and if the Code of Practice needs to be reviewed. The report and debate on the report should be in open Council.
-

BACKGROUND REPORT OF: PETER GESLING – GENERAL MANAGER

ORDINARY COUNCIL – 28TH July 2009

	Councillor Frank Ward Councillor John Nell	That Council request the General Manager prepare a report for discussion by Council on his reasons for the decision to restrict Councillor access to confidential information that has effectively declared to the public that Councillors are untrustworthy. The General Managers report must advise Council as to what authority he has acted under in the Local Government Act and Council's Code of Practice and if the Code of Practice needs to be reviewed. The report and debate on the report should be in open Council.
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The Notice of Motion on being put was lost.

AMENDMENT

	Councillor Glenys Francis Councillor John Nell	That Council conduct a meeting with the General Manager, only to discuss the matter and that the meeting be in an appropriate minuted environment.
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The amendment on being put was lost.

BACKGROUND

This background information is provided to Council on the recent decision taken in relation to the provision of confidential information to Councillors.

As Council is aware over the past 12 to 18 months there have been a number of breaches of the Code of Conduct and the Local Government Act with respect to the release of confidential information.

The matters which have been released to the media and the community include:-

- Information surrounding Council's confidential legal matters
- Confidential report concerning a security tender report
- Councillor Dover Code of Conduct report
- Former Councillor Hodges Code of Conduct report
- Confidential memorandum about the sale of land at Salamander Bay
- Confidential discussions surrounding development compliance matters before Council
- Release of items from the Confidential PS Newsletter to Councillors from the General Manager

As has been explained to Councillors previously there is a high level of security placed on confidential information that is before Council. The decision to put reports into a confidential session of Council is not one that is done so lightly. Council staff must ensure that the reason for a confidential report is in accordance with the *Local Government Act 1993*.

Whilst some of the items listed above occurred during the term of the previous Council it is of concern that confidential information is still being released in an inappropriate manner. A number of the items listed have only been issued to Councillors and very limited Council staff.

In accordance with the *Local Government Act 1993, Section 335*, as General Manager I am responsible for the day to day management of Council in an effective and efficient manner. The release of the information listed above is in breach of *Section 664 of the Local Government Act 1993 "Disclosure and Misuse of Information"*. The practice is also a breach of the Code of Conduct. It is my responsibility to ensure that Council does not place itself in a position whereby a breach of any legislation or other legal requirement placed upon it by law may occur or that the unauthorised release of material might prejudice Council.

Council needs to be aware of the reputation and business relationship damage that this type of action is causing in the community.

I would also remind Councillors that I have not restricted access to confidential report but introduced a new management procedure to improve the compliance of Council as an organisation. All reports are available from staff at my office on the

MINUTES FOR ORDINARY MEETING – 28 JULY 2009

Friday before the meeting. This also addresses the concern of some Councillors regarding the delivery of their weekly packages. I have also introduced a confidential briefing session for Councillors prior to the meeting to allow Councillors to be brief on the reports and for questions to be asked of staff.

NOTICE OF MOTION

ITEM NO. 3

FILE NO: A2004-0217

KARUAH STRATEGY

COUNCILLOR: PETER KAFER

THAT COUNCIL:

- 1) Prepare a Planning Strategy for the Karuah Precinct – that a suitable consultant be engaged to undertake this work under direction of Council Staff, following agreement on the scope and level of Community Engagement. The project will be funded with contribution assistance from the Councils' West Ward funds to enable the project to commence in the 2009 Financial year.
-

ORDINARY COUNCIL – 28TH July 2009

249	Councillor Peter Kafer Councillor Glenys Francis	It was resolved that Council: <ol style="list-style-type: none">1. Prepare a Planning Strategy for the Karuah Precinct – that a suitable consultant be engaged to undertake this work under direction of Council Staff, following agreement on the scope and level of Community Engagement. The project will be funded with contribution assistance from the Councils' West Ward funds to enable the project to commence in the 2009 Financial year.2. That Council seek to work with Great Lakes Council in preparation of the Strategy for Karuah.
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BACKGROUND REPORT OF: DAVID BROYD – GROUP MANAGER SUSTAINABLE PLANNING

BACKGROUND

The overall planning framework to be achieved within the next four years is currently being reviewed in conjunction with the annual review of the Business Plan for 21009/2010 for the Integrated Planning section. There is an extensive work programme for this section including:

- Completion of Port Stephens Futures;
- Substantial progress on the Port Stephens LEP for submission to Council in mid/late 2010; and
- The related work on the Community Strategic Plan as mandated by the NSW department of Local Government by the NSW Department of Local Government
- Kings Hill Planning Strategy and draft LEP Planning Strategy
- Draft LEP
- Draft Development Control Plan
- Infrastructure Planning and Funding
- Anna Bay – implementation of Planning Strategy
- Medowie – Implementation of Planning Strategy and detailed infrastructure and funding
- Nelson Bay Planning Strategy, draft LEP and draft Development Control Plan; and
- A wide range of other tasks.

Locality Plans are being prepared on the basis of criteria mainly relating to urgency to improve the Planning legalities and policies for the local areas and to enhance outcomes and social and economic benefits. It is on the basis of these criteria that locality plans have been prepared/are being prepared for Anna Bay, Nelson Bay, Lemon Tree Passage, Kings Hill, Medowie and Raymond Terrace.

Applications have been submitted to the NSW Department of Planning to fund the following two planning strategies out of this current round of funding allocations:

- Raymond Terrace Planning Strategy and draft of LEP and Development Control Plan.
- Karuah Planning Strategy with subsequent progress to draft LEP.

The latter submission for Karuah, jointly put forward by Great Lakes Council and this Council, has been primarily based upon certain draft LEP's not being requested in a timely manner due to gaps in current planning strategies and the position of the Department of Planning and Minister for Planning that a Planning strategy needs to be completed for the Karuah area as it extends into the Great Lakes local government area as well as Port Stephens. The preparation of a joint planning strategy for Karuah with Great Lakes Council is the subject of a separate Information Paper in relation to the Mid-North Coast Regional Strategy (MNCRS) released by the Department of Planning in March 2009.

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The MNCRS includes lands at north Karuah in the Great Lakes LGA for limited growth. The Strategy acknowledges there are significant issues that need resolution prior to development occurring in Karuah, including the need for joint planning between Port Stephens and Great Lakes Councils to consider the extent and footprint of development and infrastructure provision in the area. Council should note that areas of Karuah are also indentified for limited growth under the Lower Hunter Regional Strategy (LHRS). Advice is currently being sought on the timing and position with these two applications for funding.

At this stage the priority to complete the Karuah Planning Strategy, unless the State Government funding is provided, is not included in the 2009/2010 draft section of the Business plan but would be conducted in 2010/2011 or 2011/2012 depending on interim reviews of work programmes. If a funding allocation is determined by Council for this financial year, then additional planning resources will be sought to be included for the Strategic Planning Team within the Integrated Planning team to supervise relevant consultants and undertake all of the work that will be Council's responsibility to prepare a planning strategy for Karuah.

There being no further business the meeting closed at 8.11pm.

I certify that pages 1 to 325 of the Open Ordinary Minutes of Council 28 July 2009 were confirmed by Council at its meeting held on 25 August 2009.

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Cr Bruce MacKenzie
MAYOR