

Minutes 20 October 2009



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 20 October 2009, commencing at 6.39pm.

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

348	Councillor Steve Tucker Councillor Daniel Maher	It was resolved that the apology from Councillors Jordan and Francis be received and noted.
	Councillor Steve Tucker Councillor Daniel Maher	Resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 13 October 2009 be confirmed.
		Cr Steve Tucker declared a non-pecuniary conflict of interest in Items 1 and 2.

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MOTION TO CLOSE

ITEM NO. 1

FILE NO: PERS: GESLING

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION:

- 1) That pursuant to section 10A(2)(a) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Mayoral Minute Confidential Item 1 on the Ordinary Meeting agenda namely **General Manager's Contract of Employment**.
- 2) That the reasons for closing the meeting to the public to consider this item be that the report and discussion will include matters and information relating to personnel matters concerning particular individuals
- 3) That the report of the closed part of the meeting remain confidential.

ORDINARY MEETING – 20 OCTOBER 2009

		The Mayor advised the meeting that the Confidential item had been withdrawn.
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COUNCIL COMMITTEE RECOMMENDATIONS

MINUTES FOR ORDINARY MEETING – 20 OCTOBER 2009

Councillor O'Brien left the meeting at 6.41pm and returned at 6.44pm during Item 1.

ITEM NO. 1

FILE NO: 16-2008-745-1

DEVELOPMENT APPLICATION TO CONVERT EXISTING BUILDING FOR USE AS A DWELLING AND TO USE THE SITE AS A TRUCKING, EARTHMOVING & FABRICATION BUSINESS IN THE FORM OF HOME EMPLOYMENT AT 3721 NELSON BAY ROAD, BOBS FARM

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2008-745-1 subject to the conditions contained in Attachment 3.
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COUNCIL COMMITTEE MEETING – 20 OCTOBER 2009

RECOMMENDATION:

	Councillor Sally Dover Councillor Bruce MacKenzie	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, Steve Tucker, Sally Dover, Frank Ward, John Nell, Bob Westbury, Peter Kafer and Daniel Maher.

Those against the Motion: Councillors Geoff Dingle and Shirley O'Brien.

ORDINARY MEETING – 20 OCTOBER 2009

349	Councillor John Nell Councillor Sally Dover	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: Peter Kafer, Daniel Maher, Steve Tucker, John Nell, Frank Ward, Bob Westbury, Shirley Dover, and Bruce MacKenzie.

Those against the Motion: Geoff Dingle and Shirley O'Brien.

BACKGROUND

The purpose of this report is to present a development application to Council for consideration in respect of the use of 3721 Nelson Bay Road, Bobs Farm as a trucking, earth moving and fabrication business in the form of home employment.

The subject site is land locked and relies upon access being gained through the adjoining property (Lot 11, DP 1071458 known as No 774 Marsh Road, Bobs Farm).

A separate development application (16-2008-741-1) has been submitted for 774 Marsh Street, Bobs Farm (Lot 11, DP 1071458), seeking consent to use this land as a trucking business in the form of home employment.

The subject application should be considered in conjunction with Development Application 16-2008-741-1 relating to the adjoining land.

There is a considerable history of Council action in respect of the land use of the adjoining property (Lot 11). The report addressing Development Application 16.2008.741.1 which relates to Lot 11 provides details of the relevant historical events.

It is relevant to note that in conjunction with the decision to scale down the use on Lot 11 so as to become a "Home Employment" it was also decided to utilise the subject site (Lot 10) and on this basis the subject application was lodged.

It is the overall intention of the applicant to use the existing shed on Lot 11 (adjoining site) for truck maintenance until such time as a new purpose built structure is built on the subject site. Upon completion of the new shed on Lot 10 (subject site), all vehicular maintenance will be transferred to this new structure and the existing shed on Lot 11 will be used only for storage purposes. The sole access to both lots off Marsh Road will remain.

KEY ISSUES

- The unusual shape of the site and reliance on Lot 11 for access to Marsh Road.
- Range of necessary acoustic minimising works.
- Bushfire Prone land.
- Flood Prone Land.
- Council received two (2) submissions, although only one of the submissions directly relates to the subject site. The other submission is more relevant to the development on the adjoining allotment.

PROPOSAL

The application seeks consent to use the subject site as a trucking, earth moving and fabrication business in the form of home employment.

The proposed development involves:

- The carrying out of alterations and additions to the existing brick building and to use the building as a dwelling;
- The erection of a 20 metre x 30 metre Colorbond shed for use in the maintenance of the applicant's two trucks;
- Upgrading of the existing septic tank system; and
- Provision of a truck and trailer hard stand area.

By way of explanation the applicant has advised that the dominant use of the site will be the trucking and earth moving business. However, at times when there is reduced demand for the trucking business, the same staff will carry out metal fabrication in the large shed.

Vehicular access to the subject site will be over the adjacent Lot 11, DP1071458 and onto Marsh Road. This access arrangement will be formalised by the creation of an easement for access over Lot 11. The access road within this easement will be bitumen sealed in order to prevent erosion as well as controlling dust and vibration.

The proposed hours of operation will be:

7.00am to 5.00pm Monday to Friday
9.00am to 5.00pm Saturday

The principal component of the business is the trucking and earth moving operation. This will involve two trucks leaving the site between 7.00am and 8.00am and the two trucks returning between 3.30pm and 5.00pm, except for Saturdays when the trucks will enter and exit the site, so as to correspond with the actual required hours, but at all times after 9.00am and before 5.00pm.

A specific hard stand area is proposed to accommodate the parking of the two trucks.

The development will involve the employment of two staff.

Routine maintenance of the trucks will be carried out within the large shed to be erected on the site.

The proposed shed will also be used for the fabrication of metal products. Generally, the metal fabrication business will be a small component of the overall use and mostly will only operate on a when required basis.

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Council's statutory plans and policies.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The development will benefit the local community by the provision of full time employment for two persons. There will be a flow on effect through the demand for local goods and services. The proposed development complies with Council's statutory plans and policies and as such is not likely to generate any adverse social impacts, subject to the imposition of conditions.

The development is likely to generate a small degree of demand for local goods and services.

The proposal, subject to identified conditions, is considered not likely to pose any significant environmental implications.

The subject site is bush fire prone land, but no additional works are required in this regard.

CONSULTATION

The application was exhibited in accordance with Council policy and two (2) submissions were received. These submissions are discussed in the Attachments.

OPTIONS

Accept the recommendation.
Reject or amend the recommendation.

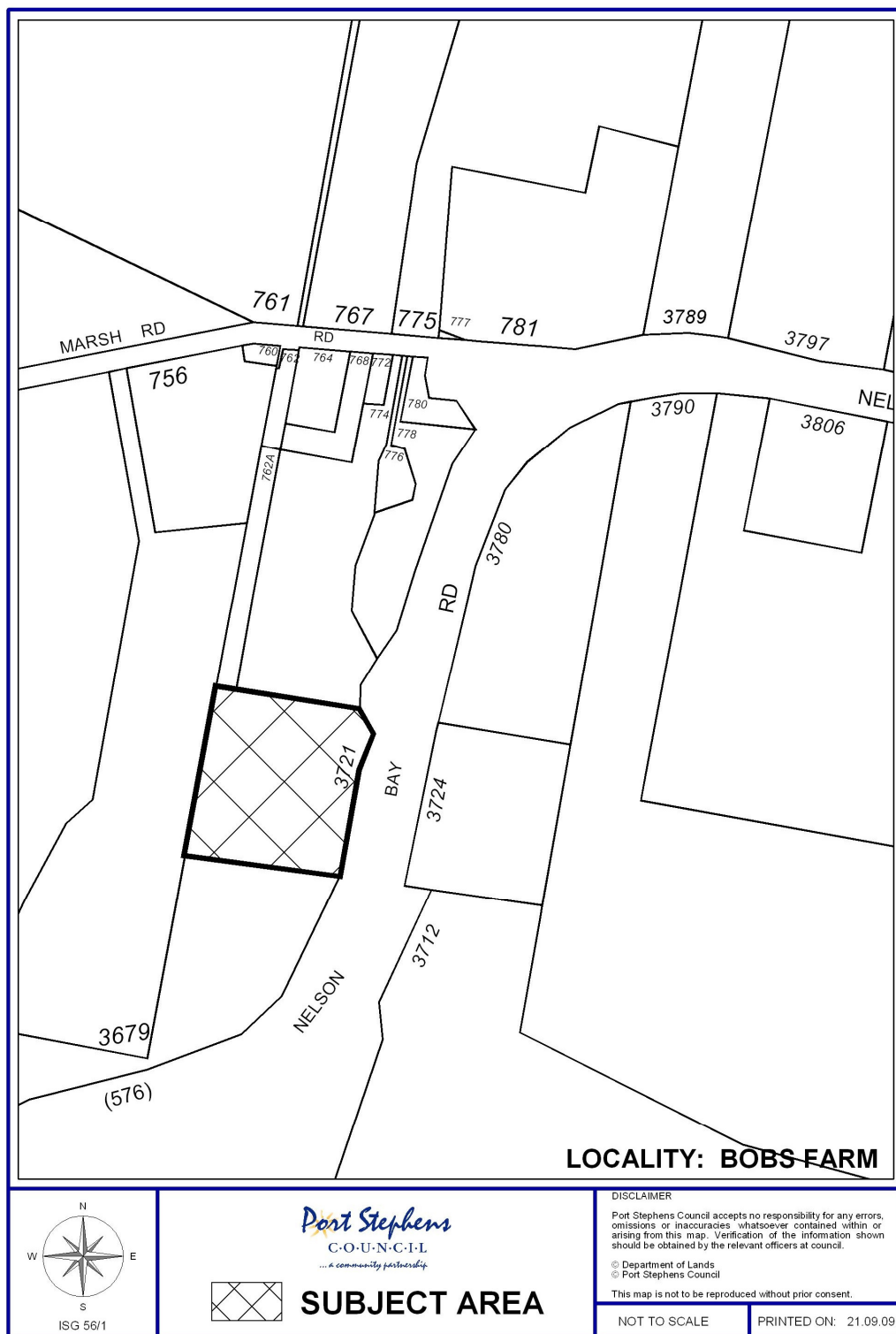
ATTACHMENTS

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

COUNCILLORS ROOM

- 1) Copy of Statement of Environmental Effects
- 2) Copy of Statement of Effect on Threatened Flora and Fauna
- 3) Copy of Bushfire Hazard Assessment
- 4) Copy Noise and Vibration Assessment
- 5) Copy of Applicant's Aerial photograph

ATTACHMENT 1 LOCATION PLAN



**ATTACHMENT 2
ASSESSMENT**

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

THE PROPOSAL

The application seeks consent to carry out alterations to existing building so it is capable of use as a dwelling, and the erection of a large shed, so as to use the subject site as a trucking, earth moving and fabrication business in the form of home employment.

An overview of the proposed development includes:

- The carrying out of alterations and additions to the existing brick building and to use the building as a dwelling;
- The erection of a 20 metre x 30 metre Colourbond shed for use in the maintenance of the applicant's two trucks;
- Upgrading of the existing septic tank system; and
- Provision of a truck and trailer hard stand area.

THE APPLICATION

Owner	New South Wales Roads & Traffic Authority
Applicant	Tattersal Surveyors Pty Ltd
Detail Submitted	Statement of Environmental Effects Noise and Vibration Impact Assessment Bushfire Hazard Assessment Statement of Effect on Threatened Flora and Fauna

THE LAND

Property Description	Lot 10, DP 1071458
Address	3721 Nelson Bay Road, Bobs Farm
Area	2.531ha
Dimensions:	Irregular in shape, western boundary is 169.56m, northern boundary is 141.7m and southern boundary is 145.9. Eastern boundary is irregular.

Characteristics	The site is generally level. There is an existing brick building which is connected to a septic system. In addition there is a large concrete water tank with a capacity of approximately 100,000 litres. There are significant levels of vegetation on the site, however, there is a large central area which has been cleared of all vegetation. This central area contains stockpiles of rocks, most likely left over from the time the site was used as a works depot by the RTA when they carried out works on Nelson Bay Road. An earth mound that is heavily vegetated separates the subject site from Nelson Bay Road.
Improvements	Unoccupied brick building with septic tank and 100,000 litre water tank.

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	1 (a) Rural Agriculture
Relevant Clauses	11, 37, 38, 44, 47 & 51A
Development Control Plan	Development Control Plan 2007
State Environmental Planning Policies	No relevant Policies

Environmental Planning and Assessment Act, 1979

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

Port Stephens Local Environmental Plan 2000

Clause 11 – Zoning Provisions

The site is zoned 1 (a) Rural Agriculture. The development is classified as “Home Employment”. Under the provisions of this zone, development for the purposes of “Home Employment” is permissible with development consent.

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

Clauses 37 & 38 – Development on Flood Prone Land

The development is situated on land classified as being flood prone land.

On the basis that the new industrial type building is not habitable, Council's Development Engineer has raised no objection to the development, subject to conditions.

Council's Development Engineer has also considered the aspect of the development that involves the upgrading of the existing building so it can be used for habitation. Again no objections have been raised, subject to conditions.

Clause 44 – Appearance of buildings

Clause 44 states:

- (1) The consent authority may consent to the development of land within view of any waterway or adjacent to any main or arterial road, public reserve or land zoned as open space, only if it takes into consideration the probable aesthetic appearance of the proposed building or work or that land when used for the proposed purpose and viewed from that waterway, main or arterial road, public reserve or land zoned as open space.*
- (2) The consent authority may consent to development of land on or near any ridgeline visible from a public road only if it is satisfied that the development would not be likely to detract substantially from the visual amenity of the locality.*

The subject site has a common boundary with Nelson Bay Road and accordingly the provisions of Clause 44(1) apply. However, there is a considerable stand of trees and associated mounding along the Nelson Bay Road frontage of the site. This effectively precludes observation of any development on the site from Nelson Bay Road.

The subject site is not near any ridgeline as described in Clause 44(2).

Clause 47 – Services

All necessary services are presently available to the existing dwelling and shed. No further services are required as a result of the development, apart from upgrading of the existing waste water system to satisfy the increased demand created by habitation of the building.

Clause 51A – Acid Sulfate Soils

The subject site is identified as being Class 4 Acid Sulfate Soils which requires a site assessment for works 2m below natural ground level.

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The development does not involve the erection of any new buildings or associated works that would result in the excavation of more than 2m of soil. Accordingly, a site assessment is not required in this instance.

Port Stephens Development Control Plan 2007

Section B10 – Home Employment applies to the proposed development.

The development is generally consistent with the principals and controls in the relevant DCP provisions relating to operational matters (ie: staff numbers, hours of operation, deliveries and the like).

ATTRIBUTE	REQUIRED	PROPOSED	COMPLIES
B10.C2 Employees	Maximum of two (2) including landowner or occupier.	Two (2) employees	Yes
B10.C3 Hours of operation	Maximum 8.00am to 6.00pm Monday to Friday and 9.00am to 5.00pm on Saturdays.	7.00am to 5.00pm Monday to Friday and 9.00am to 5.00pm on Saturday.	Yes (See Note 1 below)
	No work on Sundays or Public Holidays.	No work is proposed on Sundays or Public Holidays.	Yes
B10.C6 Deliveries to the site	Maximum of two (2) vehicle deliveries per day.	Due to nature of proposal deliveries are not normally made to the site. Mostly, if goods are required they are picked up by staff in the course of their daily travel. At a very irregular basis there may be the need for delivery of materials for the fabrication business. This would involve a truck no larger than 4.5 tonne.	Yes

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	All deliveries must be carried out during normal hours of operation.	Refer to previous comment.	Yes
B10.C9 Retail sales	No retail sales are permitted.	No retail sales are proposed.	Yes
B10.C10 Traffic generation.	Development must not generate additional on-street car parking.	No additional on-street car parking will be generated. As the subject site comprises 2.531ha there is adequate space to accommodate vehicles.	Yes
B10.C12 Noise impacts	Require submission of Acoustic Report.	An Acoustic Impact report forms part of the application. This report contains a number of recommendations which have been included as conditions of consent.	Yes
B10.C13 Privacy of adjoining properties.	Screening, fencing or landscaping may be required to ensure privacy of adjoining properties.	Given that the subject site has an area of 2.531ha, and the existence of a significant amount of vegetation, mostly trees, around the perimeter of the site and an earth mound running along the Nelson Bay Road frontage. This arrangement should ameliorate any possible privacy issues with dwellings in the general locality.	Yes
B10.C14 Advertising signs.	A sign may be located at the	No advertising signage will be	Yes

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	front of the premises identifying the name and occupation of the resident.	provided on the subject site.	
B10.C15 Size of sign	The maximum permitted sign is 1.2m x 0.6m. Maximum height above ground is 1.5m.	No advertising signage will be provided on the subject site.	Yes
B10.C29 No disturbance.	Activity must operate without causing disturbance to or interfering with adjacent properties.	Flowing out of the Acoustic Report is the requirement for operational requirements for the proposed shed. These works should protect the amenity of adjoining properties.	Yes
B10.C30 Adjoining properties.	Activity shall not be viewed from adjoining properties or a public road.	Refer to previous comments relevant to B10.C13.	Yes
B10.C31 Storage of vehicles	A maximum of two vehicles may be stored within the site.	The proposal will only involve the storage of two vehicles.	Yes
B10.C32 Mechanical work.	Mechanical work must be limited to routine servicing only.	Only routine mechanical maintenance of the two trucks will be carried out on the site.	Yes
B10.C33 Mechanical work.	Mechanical work must be carried out within the confines of a building.	All mechanical work will be limited to routine maintenance and will be carried out in the proposed shed to be erected on the property.	Yes
B10.C34 Maximum	A maximum of two trucks or two	Only two trucks will be stored on the	Yes

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number of trucks	prime movers shall be located on site at any time.	site.	
B10.C35 Location of trucks	The application must identify area for location of trucks.	The application identifies a specific hard stand area for truck parking.	Yes
B10.C36 Location of trucks	The truck parking area must be behind the building line.	The subject site is land locked and relies upon an easement for access over the adjoining Lot 11.	Yes
B10.C37 Truck parking area.	Truck parking area must not be visible from public road or place.	The truck parking area will not be visible from and public road or public place.	Yes

Notes:

1. The proposed development indicates a starting time of 7.00am instead of the 8.00am as indicated in DCP 2007.

As detailed in the Assessment Report on Development Application 16.2008.741.1, appropriate acoustic treatment is proposed in respect of the dwelling located at 772 Marsh Road, including:

- suitably acoustically treated;
- protected by an acoustic fence along the side boundary; and
- suitable landscaping provided along the access driveway,

This should satisfactorily protect the amenity of the dwelling particularly when combined with the low number of truck movements (anticipated two out in morning and two in at night).

Further, the Principal of Bobs Farm Public School has raised concerns relevant to truck movements at the same time the school's students are in the locality. With trucks exiting the site at approximately 7.00am there should be no possibility of conflict with school children.

Therefore, in view of the above elements it is considered that there should be no adverse impact upon the amenity of the dwelling at 772 Marsh Road created by vehicles using the access driveway from 7.00am instead of 8.00am on Mondays to Fridays.

2. Likely Impact of the Development

Acoustic Impact

Given the low level of truck movement in associated with the proposed development, (Anticipated two movements out in the morning and two movements in at evening) the only identified likely impact is that of acoustic.

The application included an Acoustic Report which identified the following works that are necessary to protect the amenity of adjoining properties:

- Limitation of the hours of operation to prevent night time use;
- Regular periodic maintenance of the sealed access road between Marsh Road and the shed/workshop;
- Speed restriction on the entrance roadway to 10km/hr;
- The earth mounds on the southern side of the workshop shall be extended to the east to provide shielding to residences across Nelson Bay Road. The top of the mounds shall be approximately 4 metres above the final ground level of the yard area;
- Roller shutter doors located on the southern side of the shed/workshop may remain open during approved hours of operation. The doors must be closed outside of approved hours of operation;
- Internal walls of the proposed shed/workshop shall be lined with 6mm fibre cement sheeting or 10-15 construction plywood from floor to a height of 2400mm. large gaps at wall/roof junctions are to be sealed with materials of equivalent mass to wall construction, while smaller penetrations are to be sealed with a non-setting sealant, bituminous compound, eaves filler strips or similar.
- The compressor shall be located within the workshop building or in a shielded location away from nearest residences;
- A 75mm foil faced building blanket must be installed beneath the roof sheeting in the shed/workshop; and
- Employees should undertake some form of training relevant to the need to reduce noise within the site.

Appropriate conditions of consent are recommended with respect to the recomm

Bushfire Impact

The subject site has been identified as Bush Fire Prone land. The application included a Bushfire Assessment of the proposed development on Lot 10. The assessment concluded that the proposal was in compliance with Planning for Bushfire Protection Guidelines (2006) and as such no conditions of consent were necessary.

Flora and Fauna

A Flora, Fauna and habitat study has been carried out in respect of the subject site. The report concludes:

- *Despite targeted searches no threatened flora species were recorded during the survey. Suitable habitat areas were found to be present for Leafless Tongue Orchid, Tomaree Doubletail and Rough Doubletail.*
- *The proposal will result in an incremental loss of habitat however would be unlikely to cause the extinction of any local population of these flora species.*
- *No other threatened fauna species were recorded within the site as a result of the survey. It was considered that foraging/hunting/nesting resources were available for 30 of the 39 remaining fauna species assessed.*
- *The proposal will result in a small incremental loss of habitat within the local area. However, with the implementation of the recommendations given in this report and taking into consideration the fact that the majority of the proposal will predominately occur within a currently cleared area it is believed that the proposal will avoid adversely impacting upon any threatened species, threatened populations or endangered ecological communities in this report.*

The conclusions of the Flora and Fauna Study are considered to be fair and reasonable. It should be noted that the development will be occurring almost totally within a presently cleared portion of the site.

3. Suitability of the Site

Flood Prone Land

The subject site has been identified as being flood prone land.

On the basis that the proposed new building is not habitable, Council's Development Engineer has raised no objection to the development, subject to conditions.

Impact on adjoining lands

The subject site is land locked and relies upon a right-of-way over the adjoining land (Lot 11) to access Marsh Road.

The site is heavily vegetated, except for a central cleared area where the proposed industrial shed is to be erected.

The adjoining properties are separated from the proposed development site by a lot of vegetation and this should protect the amenity of adjoining rural/residential properties.

4. Submissions

Council has received two (2) submissions objecting to the proposed development.

The issues raised in the submissions have been considered and addressed in the following comments. The identified issues are not considered such to warrant refusal of the application. One of the submissions came from The NSW Department of Education and Training on behalf of the Principal of Bobs Farm Public School.

Noise and dust pollution from the movement of trucks will adversely impact upon the learning environment in Bobs Farm Public School.

Comment:

Given that the proposal mostly relates to two (2) trucks leaving the site in the morning and then returning at night, and conditions of consent have been imposed as recommended in the Acoustic Report, it is considered that the learning environment of the Bobs Farm Public School will be protected.

Adverse effects from diesel exhaust fumes being emitted from the trucks.

Comment:

As previously detailed, the low level of truck movement to and from the site is not likely to sufficient exhaust fumes that would be an adverse impact upon the locality.

Adverse effects from vibration created as the trucks enter and leave the site.

Comment:

The recommended conditions of consent will limit the speed of the trucks within the site to 10km/hr and will also require the access driveway between Marsh Road and the workshop shed to be sealed. These conditions should prevent vibration from the trucks being felt in adjoining properties.

Marsh Road has a 3 tonne load limit.

Comment:

NSW traffic regulations permit trucks in excess of 3 tonne from using the road if they are accessing their base or the like.

The movement of trucks in and out of the subject site during student arrival and departure times could present safety issues for students and parents.

Comment:

The application identifies that truck movements will mostly be carried out during week days and between the hours of 7.00am and 8.00am and 4.00pm and 5.00pm. This is outside of the school children arrival and departure period. Nevertheless, in the event a truck needs to arrive or depart during times when school children are in the area, it will be the responsibility of the driver to be alert for school children.

The development is prohibited in the rural zoning of the site.

Comment:

The proposal is classified as "home employment" and as such is permissible in the 1(a) Rural Agriculture zoning of the site.

5. Public Interest

The proposed development complies with the relevant environmental planning instruments and is unlikely to result in any unreasonable or detrimental impacts on adjoining properties or the locality in general. It is concluded that the proposal is consistent with the public interest.

ATTACHMENT 3
CONDITIONS

1. 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.
2. 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.
3. All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.
4. 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.
5. 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 L₁₀ 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.

6. 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.
7. 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.
8. Speed restriction signs shall be erected at the entrance to the subject site and at the workshop site limiting traffic speed to 10km/hr.

9. The earth mound along Nelson Bay Road frontage of the site shall be enlarged and extended, so the top of the mound is approximately 4 metres above the ground level surrounding the proposed industrial shed. **Prior to the issue of a Construction Certificate** a Landscape Plan shall be submitted to Council detailing the proposed landscaping, including seeding and ground cover, of the enlarged mound.
10. The roller door located on the eastern elevation of the proposed industrial shed shall be only opened to facilitate entry or exit of trucks. At all other times the roller door shall be kept close
11. Internal walls of the proposed workshop building shall be lined with 6mm fibre cement sheeting or 10-15mm construction plywood from floor to ceiling to a height of 2400mm. larger gaps at wall/roof junctions shall be sealed with materials of equivalent mass to wall construction, while smaller penetrations are to be sealed with a non-setting sealant, bituminous compound, eaves filler strips, or similar.
12. Clear roof sheeting shall be limited to no more than 1m² for every 10m² of roof area.
13. Ventilation devises, if required, shall be located at opposite ends of the building and shall be located so that other parts of the roof interrupt any viewing of the vents from adjoining properties.
14. Any compressor shall be located within the workshop building or in a acoustically shielded location away from residences.
15. A 75mm foil faced building blanket shall be installed beneath the roof sheeting in the workshop building.
16. Any extraction outlets at roof level that produce a sound pressure level in excess of 68dB(A) at a distance of 3 metres must have acoustic barriers constructed at the fan discharged. Barriers must fully enclose at least three sides towards any residence. The barrier must extend at least 600mm above and below the fan centre and/or discharge outlet. The barrier must be no closer than 500mm and no further than 1200 from the edges of the exhaust. Barrier construction is to consist of an outer layer of 12mm fibre cement sheeting or 20mm construction plywood with an absorbent inner surface of Woodtex fixed to furring channels, with a cavity infill of S1.5 polyester insulation.
17. The operator of the proposed development shall provide an education program to both employees and contractors relevant to the need to ensure satisfactory noise levels are maintained in nearby residences.

18. **Prior to release of the Construction Certificate** all relevant documentation shall be forwarded to Reverb Acoustics for certification that all required acoustic treatments have been incorporated into the design of the workshop building.
19. The development shall, at all times, be used as a "Home Employment" as defined within the Port Stephens Local Environmental Plan 2000, as follows:

home employment means the use of any land or buildings within an allotment on which a dwelling is located, for any office, industry or business, but only where such use:

- (a) is undertaken by the permanent residents of the dwelling whether or not others are also employed, and
 - (b) does not interfere with the amenity of the adjoining properties or the locality in which the dwelling is situated, and
 - (c) does not involve exposure to view from any adjacent premises or from any public place of any unsightly matter, and
 - (d) does not require the provision of any essential service main of a greater capacity than that available in the locality,
- but does not include the use of the land or buildings for a home occupation or a brothel.
20. An Easement for Access shall be created over the adjoining land (Lot 11, DP 1071458) and shall cover the area of the access driveway. The easement shall be registered at the Lands Title Office **prior to the issuing of any Occupation Certificate**.
21. All site drainage shall be designed to ensure that diesel and other pollutants are contained within the area of the spill and do not impact on surrounding areas.
22. Erosion and sediment control mechanisms are to be in place during and after construction. A sediment fence shall be constructed alongside the northern access road adjacent to the Swamp Forest before it is sealed to prevent sediment moving into this community. Control mechanisms are to be implemented before any works start on the site.
23. Weed control within the site shall be carried out during and after construction is completed.
24. The stockpiling of unclean fill shall be monitored to prevent the spread of weeds.
25. The periphery of the development site is to be clearly marked to prevent the possibility of removal of vegetation outside of the development site.

26. The proposed development will require the removal of a small number of habitat trees within the southern area of the subject site. A suitably qualified person shall be on site to supervise the removal of habitat trees so as to reduce the likely impact on any fauna species, which may be present. Trees to be removed should be clearly marked prior to felling.
27. Installation of suitable nest boxes shall be installed within the surrounding bushland. Two nest boxes shall be provided for every hollow that is removed.
28. Habitat in the form of hollow logs on the ground or retrieved from the felling of habitat trees are to be relocated to a safe area of bushland outside of the development footprint.
29. No area of Swamp Mahogany – Paperbark Forest are to be removed or disturbed within the subject site.
30. Any proposed fencing shall be constructed so as to allow for the safe movement of Koala's.

Fencing should not compromise the potential for safe movement of koalas across the site. The preferred option for minimising restrictions to safe koala movement is that there be no fencing, however suitable fencing may include:

- i. fences where the bottom of the fence is a minimum of 200mm above ground level that would allow koalas to move underneath;
 - ii. fences that facilitate easy climbing by koalas; for example, sturdy chain mesh fences, or solid style fences with timber posts on both sides at regular intervals of approximately 20m; or
 - iii. open post and rail or post and wire (definitely not barbed wire on the bottom strand).
31. The hours of operation of the premises shall be limited to the period 7.00am to 6.00pm Monday to Friday and 9.00am and 5.00pm Saturday. No work shall be carried out on Sunday or Public Holidays.
 32. 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.
 33. 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.

34. Submission of Works-As-Executed plans and report prepared and certified by a suitability qualified engineer confirming all driveway and manoeuvring areas (levels, grades, location) 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 drainage flow paths are not compromised and vehicles will not bottom out.

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

35. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
36. 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.**

37. The access road/right of carriageway shall be graded so that water runoff is shed to the adjacent grassed/landscaped areas. Details are to be approved by the Certifying Authority **prior to issue of the Construction Certificate**
38. 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.**
39. The stormwater infiltration system shall be designed and built in accordance with the approved concept plan. Impervious surface and roof water shall be disposed to the infiltration drainage system. A drainage design indicating all engineering details relevant to site regrading and the collection and disposal of the stormwater from the site is to be submitted to and approved by the certifying authority **prior to the issue of a Construction Certificate.** Details are to include pit

sizes, infiltration system details, existing site levels, finished levels, pipeline sizes, invert levels, pipe grades and calculations.

40. **Prior to occupation** access roads, parking and turning area shall be maintained in perpetuity by the existing or future owners and occupiers of the property(s).
41. The vehicle access road along the full length of the right of carriageway shall be constructed as follows:
- i) a minimum trafficable width of 4 meters
 - ii) a granular pavement designed and constructed to cater for the expected traffic loads.
 - iii) sealed with a two coat flush bitumen seal
 - iv) turning and manoeuvring areas shall have sufficient sealed width to cater for design vehicle paths determined by AS2890.2-2002
 - v) the constructed driveway (trafficable width) shall have an offset of 300mm or greater from obstructions higher than 150mm.

Full details, shall be approved by an accredited certifier or Council **Prior to issue of the Construction Certificate.**

42. The internal driveway/access road being constructed in accordance with the approved concept plans. Details are to be approved by Council **prior to issue of the Construction Certificate.**
43. No construction or demolition work shall obstruct pedestrian or vehicular traffic in a public place, a hoarding or fence must be erected between the construction site and the public place.
44. Approved toilet accommodation for all tradespersons on the building site is to be provided from the time work commences until the building is complete. The toilet shall not be placed on the road reserve, without separate approval from Council.
45. 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.**
46. Retaining Walls, not clearly noted on the approved plans or outside the parameters set in Council's Exempt and Complying Development criteria, are to be subject to a separate development application.

Such application shall be lodged and approved prior to any works relating to the retaining wall taking place.

47. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with AS2601-2001 and Workcover Authority requirements.

All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

48. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment, the person undertaking the excavation must preserve and protect the building from damage, which may involve underpinning and supporting the building in an approved manner.

The adjoining property owner shall be given 7 days notice before excavating below the level of the base of the footings of a building on an adjoining allotment of land. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, allotment of land includes a public road and any other public place.

49. 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.

50. 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.
51. **Prior to the commencement of work**, provide a 3m wide all weather vehicle access from the kerb and gutter to the building under construction for the delivery of materials & trades to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.
52. All stockpiled materials shall be retained within the property boundaries. Stockpiles of topsoil, sand, aggregate, spoil or other materials shall be stored clear of the all weather vehicle access and drainage lines.

53. 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.
54. **Prior to occupying the approved dwelling(s)**, contact Council's Mapping Section on 49800304 to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.
55. **Prior to commencement of any works** within the road reserve for the provision of a driveway crossing, the applicant or their nominated contractor shall make application to Council and receive approval for the construction of the driveway.

Application shall be made on Council's Driveway Construction Application form, **a copy of which is attached** to this consent for your convenience. For further information on this condition please contact Council's Facilities and Services Group.

The construction of the footpath crossing must be completed **prior to issue of Final Occupation Certificate**.

56. 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.
57. 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.

58. Full details of conversion of the existing non habitable garage building to a dwelling is to be provided **prior to issue of the construction certificate.**
59. A structural engineer is to certify the structural adequacy of the existing garage building **prior to any works on the building.**
60. A separate wastewater application for the installation of a waste treatment device human waste storage facility shall be approved by Council **prior to the issue of any Construction Certificate** for works associated with this Development Consent. The application is to be accompanied by full details of the proposed system including a site assessment complying with Division 4 of the Local Government (General) Regulation, 2005 and Council requirements.
61. 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.
62. 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.
63. 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.

ITEM NO. 2**FILE NO: 16-2008-741-1****DEVELOPMENT APPLICATION TO USE THE SITE AS A TRUCKING BUSINESS IN THE FORM OF HOME EMPLOYMENT AT 774 MARSH ROAD, BOBS FARM****REPORT OF: ANTHONY RANDALL – ACTING MANAGER, DEVELOPMENT AND BUILDING GROUP:
SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2008-741-1 subject to the conditions contained in Attachment 3.
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COUNCIL COMMITTEE MEETING – 20 OCTOBER 2009**RECOMMENDATION:**

	Councillor Sally Dover Councillor Bruce MacKenzie	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, Steve Tucker, Sally Dover, Frank Ward, John Nell, Bob Westbury, Peter Kafer and Daniel Maher.

Those against the Motion: Councillors Geoff Dingle and Shirley O'Brien.

ORDINARY MEETING – 20 OCTOBER 2009

350	Councillor John Nell Councillor Sally Dover	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: Peter Kafer, Daniel Maher, Steve Tucker, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Geoff Dingle and Shirley O'Brien.

BACKGROUND

The purpose of this report is to present a development application to Council for consideration in respect of the use of 774 Marsh Road, Bobs Farm as a trucking business in the form of home employment.

On 13 January 2003 a Development Application was lodged for use of the property as a depot.

On 5 September 2003 Clause 11 of the Port Stephens Local Environmental Plan 2000 was amended to prohibit Depots in Zone No. 1(a)(Rural Agriculture).

On 1 October 2003 Council refused a Development Application for use of the property as a Depot.

On 24 March 2006 a Development Application was lodged seeking permission to use the property as Home Employment including an Engineering Contracting & Earth Moving Business.

On 27 June 2006 this Development Application was refused by Council.

On 28 November 2006 Council resolved that the applicant be provided the opportunity of demonstrating the site enjoyed existing use rights. Failing this action it was resolved to initiate action in the Land & Environment Court regarding the unauthorised use of the site.

On 19 June 2007 a Mediation Conference was conducted prior to Council commencing action in the Land & Environment Court.

Subsequently, on 22 August 2007 an application under Section 82A of the Environmental Planning & Assessment Act 1979, was submitted seeking review of the decision of Council to refuse the application.

However, on 8 July 2008 Council refused the Section 82A application for the following reasons:

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

- 5) The development poses an unacceptable acoustic and vibration impact associated with the earth moving component;
- 6) The development poses an unacceptable social impact on properties in the locality;
- 7) The development is contrary to the public interest and expectations of an orderly and predictable environment.

After consideration of the above detailed reasons for refusal, the applicant decided to scale down the proposal to now align with the definition of "Home Employment" and on 16 September 2008 the subject application was lodged.

On 19 September 2008 another Development Application was lodged in respect of the adjoining parcel of land (3721 Nelson Bay Road) seeking consent for a Home Employment in conjunction with the subject site.

The application originally related to land described as Lot 10, DP 1071458. However, the application included an Acoustic Report that provided a recommendation that the adjoining residence (No. 772 Marsh Road) be treated with acoustic windows so as to reduce the noise impact upon the residents of that dwelling.

It is not possible to require the applicant to carry out works outside of the subject site. Accordingly, on 5 August 2009, the owner of Lot 1, DP 337287 (No. 772 Marsh Road) provided consent to the inclusion of their site into the site that is the subject of Development Application 741/2008. This will permit conditions of consent to be imposed relevant to the existing dwelling at 772 Marsh Road.

It is noted that the subject application was lodged on 18 September 2008 and a significant portion of the assessment time since lodgement, has involved discussions with the owner of No. 772 Marsh Road concerning the bringing of their dwelling into the subject development application.

This course of action was pursued because the alternative was to require the construction of a significant acoustic wall barrier to protect No. 772 Marsh Road from adverse acoustic impacts. The acoustic wall would have adverse visual impacts on the locality and would impact upon the amenity of the occupiers of the dwelling. Appropriate treatment of the windows of No. 772 Marsh Road was the preferred outcome.

A separate development application (16-2008-745-1) has been submitted for 3721 Nelson Bay Road, Bobs Farm (Lot 10, DP 1071458), seeking consent to use this land as a trucking, earth moving and fabrication business in the form of home employment.

The subject application should be considered in conjunction with Development Application 16-2008-745-1 relating to the adjoining land.

It is the overall intention of the applicant to use the existing shed on Lot 11 for truck maintenance until such time as a new purpose built structure is built on the adjoining

Lot 10 (Development Application 16.2008.745.1). Upon completion of the new shed on Lot 10, all vehicular maintenance will be transferred to this new structure and the existing shed on the subject site will be used only for storage purposes.

The sole access to both lots is off Marsh Road, and this will remain. It will be necessary to create an easement for access over the subject site in favour of Lot 10.

KEY ISSUES

- The unusual shape of the site and narrow access off Marsh Road and proximity of adjoining dwelling.
- Range of necessary acoustic minimising works.
- Bushfire Prone land, but no additional works required.
- Flood Prone Land.
- Council received two (2) submissions objecting to the proposal, including one from Bobs Farm Public School.

PROPOSAL

The application seeks consent to use the subject site as a trucking business in the form of home employment.

The rural shed erected on the site will be used for the routine maintenance of the two trucks that form part of the business.

Trucks will normally be stored on the southern portion of the site.

Concurrent with this application is another Development Application (No. 2008/745) lodged in respect of Lot 10, DP 1071458 (No. 3721 Nelson Bay Road, Bobs Farm) which adjoins the southern boundary of the subject site. This application includes the erection of a 20m x 30m shed. After approval of DA2008/745 and construction of the shed, all truck maintenance associated with the trucking business will be relocated to this site and in particular, the new shed. The existing shed on the subject site will revert to use as general storage purposes.

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Council's statutory plans and policies.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The development will benefit the local community by the provision of full time employment for two persons. There will be a flow on effect through the demand for local goods and services. The proposed development complies with Council's statutory plans and policies and as such is not likely to generate any adverse social impacts, subject to the imposition of conditions.

The development is likely to generate a small degree of demand for local goods and services.

The proposal, subject to identified conditions, is considered not likely to pose any significant environmental implications.

The subject site is bush fire prone land, but no additional works are required in this regard.

CONSULTATION

The application was exhibited in accordance with Council policy and two (2) submissions were received. These submissions are discussed in the Attachments.

OPTIONS

Accept the recommendation.
Reject or amend the recommendation.

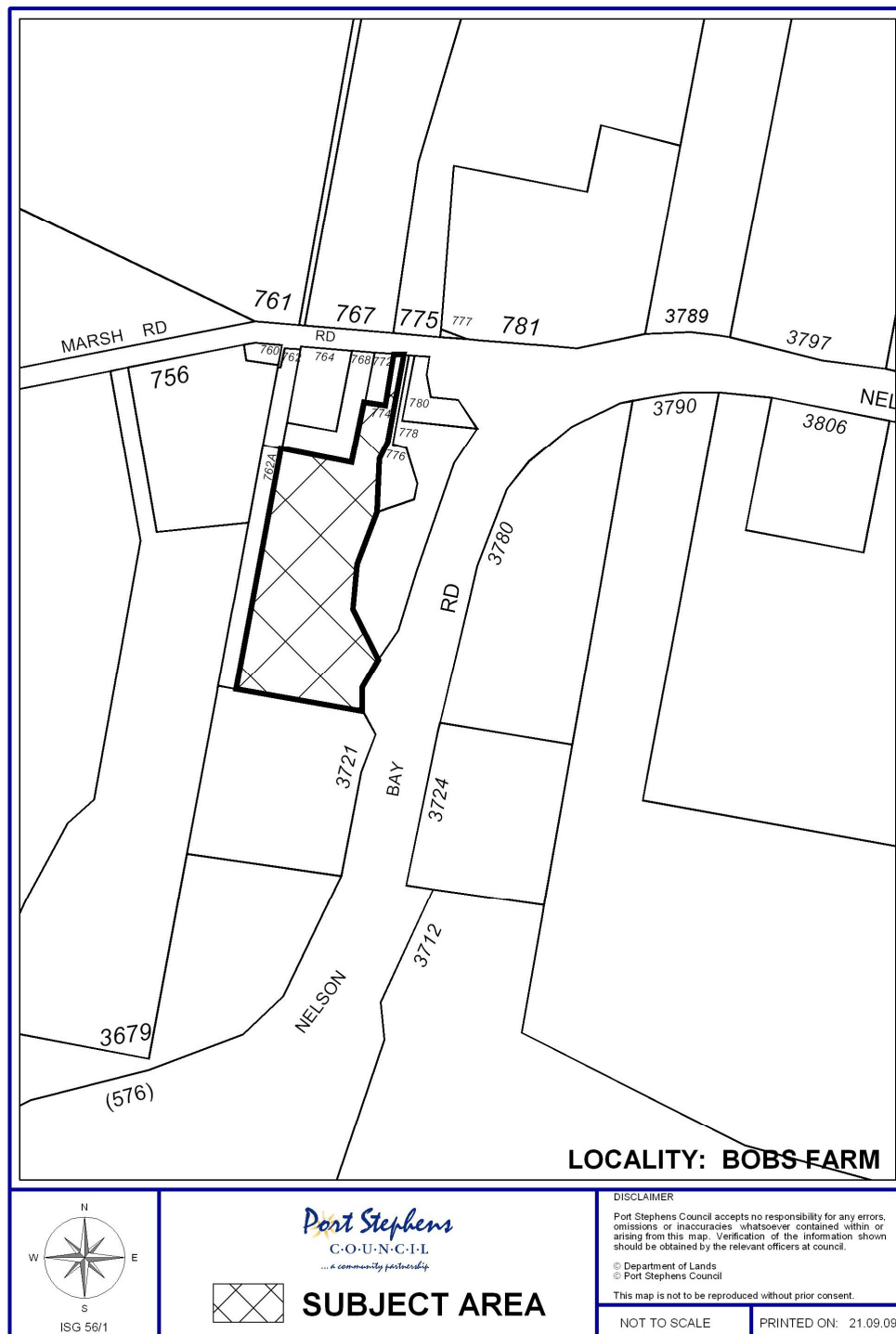
ATTACHMENTS

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

COUNCILLORS ROOM

- 1) Copy of Statement of Environmental Effects
- 2) Copy of Applicant's Aerial Photograph

ATTACHMENT 1 LOCATION PLAN



ATTACHMENT 2**ASSESSMENT**

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

THE PROPOSAL

The application seeks consent to use the subject site as a trucking business in the form of home employment.

The business will predominantly operate off site, however operational aspects of the business, including the routine maintenance of the two trucks will be carried out in the rural shed presently erected on the site.

Trucks will normally be stored on the southern portion of the site.

The proposal also includes the acoustic treatment of the dwelling-house known as No. 772 Marsh Road which forms part of the subject application in order for these acoustic works to be undertaken in accordance with conditions of consent..

THE APPLICATION

Owner	Mr A I & Mrs E C Hay (No. 774 Marsh Road) Mr R J & Mrs L A Pettit (No. 772 Marsh Road)
Applicant	Tattersal Surveyors Pty Ltd
Detail Submitted	Statement of Environmental Effects Noise and Vibration Impact Assessment

THE LAND

Property Description	Lot 11, DP 1071458 & Lot 1, DP 337287
Address	772 and 774 Marsh Road, Bobs Farm
Area	No. 774: 2.892ha No. 772: 1016.6m ²
Dimensions:	No. 774: Highly irregular "L" shaped allotment. No. 772: 20.21m x 50.29m
Characteristics	No. 774: Generally flat, however towards southern boundary it becomes elevated. No. 772: Relatively level dwelling site.
Improvements	No. 774: A dwelling, large shed and office. No. 772: A dwelling and out building.

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	1 (a) Rural Agriculture
Relevant Clauses	11, 37, 38, 44, 47 & 51A
Development Control Plan	Development Control Plan 2007
State Environmental Planning Policies	No relevant Policies

Environmental Planning and Assessment Act, 1979

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

Port Stephens Local Environmental Plan 2000

Clause 11 – Zoning Provisions

The site is zoned 1 (a) Rural Agriculture. The development is classified as “Home Employment”. Under the provisions of this zone, development for the purposes of “Home Employment” is permissible with development consent.

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

Clauses 37 & 38 – Development on Flood Prone Land

The development is situated on land classified as being flood prone land.

On the basis that no new building is proposed Council's Development Engineer has raised no objection to the development, subject to conditions.

Clause 44 – Appearance of buildings

No new buildings are proposed.

Clause 47 – Services

All necessary services are presently available to the existing dwelling and shed. No further services are required as a result of the development.

Clause 51A – Acid Sulfate Soils

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The subject site is identified as being Class 4 Acid Sulfate Soils which requires a site assessment for works 2m below natural ground level.

The development does not involve the erection of any new buildings or associated works that would result in the excavation of more than 2m of soil. Accordingly, a site assessment is not required in this instance.

Port Stephens Development Control Plan 2007

Section B10 – Home Employment applies to the proposed development.

The development is generally consistent with the principals and controls in the relevant DCP provisions relating to operational matters (ie: staff numbers, hours of operation, deliveries and the like).

ATTRIBUTE	REQUIRED	PROPOSED	COMPLIES
B10.C2 Employees	Maximum of two (2) including landowner or occupier.	Two (2) employees	Yes
B10.C3 Hours of operation	Maximum 8.00am to 6.00pm Monday to Friday and 9.00am and 5.00pm on Saturdays.	7.00am to 5.00pm Monday to Friday and 9.00am to 5.00pm on Saturday.	Yes (See Note 1 below)
	No work on Sundays or Public Holidays.	No work is proposed on Sundays or Public Holidays.	Yes
B10.C6 Deliveries to the site	Maximum of two (2) vehicle deliveries per day.	Due to nature of proposal deliveries are not normally made to the site. Mostly, if goods are required they are picked up by staff in the course of their daily travel.	Yes
	All deliveries must be carried out during normal hours of operation.	Refer to previous comment.	Yes
B10.C9 Retail sales	No retail sales are permitted.	No retail sales are proposed.	Yes
B10.C10 Traffic generation.	Development must not generate additional on-street car parking.	No additional on-street car parking will be generated. As the subject site comprises 2.892ha there is adequate space to accommodate vehicles.	Yes

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B10.C12 Noise impacts	Require submission of Acoustic Report.	An Acoustic Impact report forms part of the application. This report contains a number of recommendations which have been included as conditions of consent.	Yes
B10.C13 Privacy of adjoining properties.	Screening, fencing or landscaping may be required to ensure privacy of adjoining properties.	Given that the subject site has an area of 2.892ha, and the access way is fenced and the large shed will accommodate vehicle maintenance, it is unlikely that the adjoining properties will be adversely impacted by the proposal. Nevertheless, it is proposed to increase the height of the colourbond fence between No. 772 Marsh Road to 1.8m as required by Acoustic report.	Yes
B10.C14 Advertising signs.	A sign may be located at the front of the premises identifying the name and occupation of the resident.	A sign is located at entry to the property that describes the occupation, name and contact number.	Yes
B10.C15 Size of sign	The maximum permitted sign is 1.2m x 0.6m. Maximum height above ground is 1.5m.	Existing sign is 600mm x 900mm. The sign is 1.5m above ground.	Yes
B10.C29 No disturbance.	Activity must operate without causing disturbance to or interfering with adjacent properties.	Flowing out of the Acoustic Report is the requirement for additional acoustic works including fencing and window treatment of adjoining dwelling. These works should protect the amenity of adjoining properties.	Yes

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B10.C30 Adjoining properties.	Activity shall not be viewed from adjoining properties or a public road.	Refer to previous comments relevant to B10.C13.	Yes
B10.C31 Storage of vehicles	A maximum of two vehicles may be stored within the site.	The proposal will only involve the storage of two vehicles.	Yes
B10.C32 Mechanical work.	Mechanical work must be limited to routine servicing only.	Only routine mechanical maintenance of the two trucks will be carried out on the site.	Yes
B10.C33 Mechanical work.	Mechanical work must be carried out within the confines of a building.	All mechanical work will be limited to routine maintenance and will be carried out in the existing shed on the property.	Yes
B10.C34 Maximum number of trucks	A maximum of two trucks or two prime movers shall be located on site at any time.	Only two trucks will be stored on the site.	Yes
B10.C35 Location of trucks	The application must identify area for location of trucks.	The application identifies the area next to the shed as the truck parking area.	Yes
B10.C36 Location of trucks	The truck parking area must be behind the building line.	The subject site is essentially a battle-axe shaped allotment. The truck parking area is located well away from the street.	Yes
B10.C37 Truck parking area.	Truck parking area must not be visible from public road or place.	The truck parking area will not be visible from and public road or public place.	Yes

Notes:

2. The proposed development indicates a starting time of 7.00am instead of the 8.00am as indicated in DCP 2007. Due to the dwelling-house at No. 772 Marsh Road being:
 - a. suitably acoustically treated;
 - b. protected by an acoustic fence along the side boundary; and
 - c. suitable landscaping provided along the access driveway,
 and the utilisation of only two trucks, it is considered no purpose would be achieved in limiting the starting time during Monday to Friday to 8.00am.

Further, the Principal of Bobs Farm Public School has raised concerns relevant to truck movements at the same time the school's students are in the locality. With trucks exiting the site at approximately 7.00am there should be no possibility of conflict with school children.

Therefore, in view of the above elements it is considered that there should be no adverse impact upon the amenity of the dwelling at 772 Marsh Road created by vehicles using the access driveway from 7.00am instead of 8.00am on Mondays to Fridays.

3. Likely Impact of the Development

Acoustic Impact

Given the low level of truck movement associated with the proposed development, (Proposed two movements out in the morning and two movements in at evening) the only identified likely impact is that of acoustic.

The application included an Acoustic Report which identified the following works that are necessary to protect the amenity of adjoining properties:

- Limitation of the hours of operation to prevent night time use;
- Regular periodic maintenance of the sealed access road between Marsh Road and the workshop;
- Speed restriction on the entrance roadway to 10km/hr;
- An acoustic fence 1800mm high to be erected along the site boundary between 772 Marsh Road and access roadway;
- Retention of the existing metal fence at the school boundary;
- Windows along the eastern and southern facades of the dwelling known as 772 Marsh Road shall be upgraded to acoustic windows; and
- Employees should undertake some form of training relevant to the need to reduce noise within the site.

Appropriate conditions of consent are recommended with respect to the recommendations contained within the Acoustic Report.

Bushfire Impact

The subject site has been identified as Bush Fire Prone land. The application included a Bushfire Assessment of the proposed development on Lot 10. The assessment concluded that the proposal was in compliance with Planning for Bushfire Protection Guidelines (2006) and as such no conditions of consent were necessary.

4. Suitability of the Site

Flood Prone Land

The subject site has been identified as being flood prone land.

On the basis that no new building is proposed Council's Development Engineer has raised no objection to the development, subject to conditions.

Impact on adjoining lands

The subject site is irregular in shape and in the vicinity of Marsh Road there is residential development. Further to the south the adjoining land uses are generally rural.

A number of acoustic matters, including window treatment and acoustic fencing, have previously been detailed. These matters together with the low number of truck movements anticipated each day, should protect the residential area and accordingly ensure the proposal is a suitable form of development.

5. Submissions

Council has received two (2) submissions objecting to the proposed development.

The issues raised in the submissions have been considered and addressed in the following comments. The identified issues are not considered such to warrant refusal of the application. One of the submissions came from The NSW Department of Education and Training on behalf of the Principal of Bobs Farm Public School.

Noise and dust pollution from the movement of trucks will adversely impact upon the learning environment in Bobs Farm Public School.

Comment:

Given that the proposal mostly relates to two (2) trucks leaving the site in the morning and then returning at night, and conditions of consent have been imposed as recommended in the Acoustic Report, it is considered that the learning environment of the Bobs Farm Public School will be protected.

Adverse effects from diesel exhaust fumes being emitted from the trucks.

Comment:

As previously detailed, the low level of truck movement to and from the site is not likely to sufficient exhaust fumes that would be an adverse impact upon the locality.

Adverse effects from vibration created as the trucks enter and leave the site.

Comment:

The recommended conditions of consent will limit the speed of the trucks within the site to 10km/hr and will also require the access driveway between Marsh Road and the workshop shed to be sealed. These conditions should prevent vibration from the trucks being felt in adjoining properties.

Marsh Road has a 3 tonne load limit.

Comment:

NSW traffic regulations permit trucks in excess of 3 tonne from using the road if they are accessing their base or the like.

The movement of trucks in and out of the subject site during student arrival and departure times could present safety issues for students and parents.

Comment:

The application identifies that truck movements will mostly be carried out during week days and between the hours of 7.00am and 8.00am and 4.00pm and 5.00pm. This is outside of the school children arrival and departure period. Nevertheless, in the event a truck needs to arrive or depart during times when school children are in the area, it will be the responsibility of the driver to be alert for school children.

The development is prohibited in the rural zoning of the site.

Comment:

The proposal is classified as "home employment" and as such is permissible in the 1(a) Rural Agriculture zoning of the site.

5. Public Interest

The proposed development complies with the relevant environmental planning instruments and is unlikely to result in any unreasonable or detrimental impacts on adjoining properties or the locality in general. It is concluded that the proposal is consistent with the public interest.

**ATTACHMENT 3
CONDITIONS**

1. 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.
2. 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.
3. All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.
4. 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.
5. 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 L10 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.

6. 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.
7. 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.
31. The proposed access road shall be sealed for its entire length, that is, from the Marsh Road entrance to the workshop building. Regular maintenance shall be carried out to ensure the road remains operational.

32. Speed restriction signs shall be erected at the entrance to the subject site and at the workshop site limiting traffic speed to 10km/hr.
33. Prior to commencement of the development, an acoustic fence 1800mm high shall be erected along the site boundary between No 772 Marsh Road and the access road. The existing metal fence at the school boundary is to be retained. An acoustic fence is one which is impervious from the ground to the required height. No significant gaps should remain in the fence to allow the passage of sound below the required height.
34. Prior to commencement of the development, the windows contained in the east and south facades of the dwelling at No. 772 Marsh Road shall be upgraded to acoustic windows. The method of acoustic treatment shall be in accordance with the detail contained in the Noise and Vibration Impact Assessment prepared by Reverb Acoustics dated September 2008.
35. Prior to commencement of the development all relevant documentation shall be forwarded to Reverb Acoustics for certification that all required acoustic treatments, as detailed in this consent have been completed.
36. The operator of the proposed development shall provide an education program to both employees and contractors relevant to the need to ensure satisfactory noise levels are maintained in nearby residences.
37. Site perimeter landscaping as detailed on Drawing No. 208179/1 prepared by Tattersall Surveyors, shall be carried out prior to commencement of the trucking business. Prior to commencement of the development, Tattersall Surveyors shall submit to Council certification that the required landscaping has been completed.
38. The development shall, at all times, be used as a "Home Employment" as defined within the Port Stephens Local Environmental Plan 2000, as follows:

home employment means the use of any land or buildings within an allotment on which a dwelling is located, for any office, industry or business, but only where such use:

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

but does not include the use of the land or buildings for a home occupation or a brothel.

16. The hours of operation of the premises shall be limited to the period 7.00am to 6.00pm Monday to Friday and 9.00am and 5.00pm Saturday. No work shall be carried out on Sunday or Public Holidays.
17. 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.
18. 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.
19. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
20. No trees are to be removed without the consent of Council.
21. The use of the existing shed as a workshop shall cease within two (2) months of the issuing of an Occupation Certificate for the workshop building on the adjoining Lot 10, DP 107458. Upon cessation of the workshop use on the subject site, the building will be used only for storage purposes.

ITEM NO. 3**FILE NO: PSC2007-0060****DRAFT PORT STEPHENS LOCAL ENVIRONMENTAL PLAN AMENDMENT
NO 30 – RECLASSIFICATION OF 1B BOURKE STREET RAYMOND
TERRACE (LOT 21 IN DP 788588) FROM COMMUNITY TO
OPERATIONAL LAND****REPORT OF: TREVOR ALLEN – INTEGRATED PLANNING MANAGER
GROUP: SUSTAINABLE PLANNING****RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt draft Port Stephens Local Environmental Plan 2000 (Amendment No 30) which seeks to reclassify Lot 21 in DP 788588 from Community to Operational land; and
- 2) Forward draft Port Stephens Local Environmental Plan 2000 (Amendment No 30) to the NSW Department of Planning and request that the Minister make the Plan.

COUNCIL COMMITTEE MEETING – 20 OCTOBER 2009**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor John Nell	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, Steve Tucker, Sally Dover, Frank Ward, John Nell, Bob Westbury, Peter Kafer, Geoff Dingle, Shirley O'Brien and Daniel Maher .

Those against the Motion: Nil.

ORDINARY MEETING – 20 OCTOBER 2009

351	Councillor Geoff Dingle Councillor John Nell	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: Peter Kafer, Daniel Maher, Steve Tucker, 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 Lot 21 in DP 788588 (1B Bourke Street Raymond Terrace)

Owner Port Stephens Council

Current Zone 5(g) Special Urban (Flood Affected) Zone

Proposed Zone 5(g) Special Urban (Flood Affected) Zone

Current Classification Community Land

Proposed Classification Operational Land

The location of the land is shown in **Attachment 1**.

Copies of the draft LEP written instrument and draft LEP map are at **Attachment 2** and **Attachment 3** respectively.

BACKGROUND

The purpose of this report is to advise Council that the draft plan to reclassify the subject land from community to operational has been publicly exhibited. As required under the Local Government Act 1993, a public hearing has also been held into the matter. Council is now able to request that the Minister make the plan and reclassify the land.

On 26th February 2008 Council resolved to prepare an amendment to the Port Stephens Local Environmental Plan 2000 to reclassify Lot 21 in DP 788588 from 'community' to 'operational' land under the Local Government Act 1993. Reclassifying the site from community to operational land provides increased flexibility for Council in dealing with the land by permitting its long-term lease or sale.

The site has a car park constructed upon it in accordance with development application 16-2006-1370. This car park services the employees of a commercial building on the corner of King Street and William Street that is owned by a private developer and leased to a government department.

Under the current classification as community land, the car park is under a short-term (5 year) lease arrangement. If the site is reclassified to operational land Council will be provided with much greater flexibility in making commercial arrangements involving the car park.

FINANCIAL/RESOURCE IMPLICATIONS

Council currently receives an income from leasing the land as a car park to the owner of a nearby commercial building. The length of the lease, and Council's ability to deal with the site in a more flexible manner, is limited due to the site's current classification as community land. Proceeding with the reclassification of the site to operational land will have positive financial implications for Council by allowing for a long-term lease to be made with increased certainty to the existing tenant.

LEGAL, POLICY AND RISK IMPLICATIONS

Preparation of the draft plan to reclassify the land has been undertaken in accordance with the Environmental Planning and Assessment Act 1979. This has included the public exhibition of the draft plan and a public hearing.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The economic implications of reclassifying the land are positive for Council. Although Council already receives income from leasing the site under its current classification, the ability to enter into commercial arrangements will be less constrained if the classification is changed to operational.

The car park is linked to the occupation of a commercial building on the corner of King and William Street that employs approximately 180 persons. This is a significant number of employees in Raymond Terrace and there are associated social and economic benefits. Reclassifying the land will enable Council to enter into a long-term lease arrangement so that parking can continue to be provided to those employees.

The site is constructed as a car park and accordingly there are no environmental issues associated with reclassifying the site.

Reclassifying the land will result in a reduction in the area of land classified as community in Raymond Terrace by approximately 1600m². This reduction is considered to be minor, given that the Port Stephens Development Contributions Plan 1999 determined that the ratio of public open space and parkland to population in Raymond Terrace is 17.2 hectares per 1000 persons.

CONSULTATION

Public Exhibition

The draft plan was placed on public exhibition from 26th February to 26th March 2009.

No submissions were received.

Public Hearing

A public hearing was held into the proposed reclassification of the land on 3rd September 2009. Public notice of the hearing was placed in the local newspaper on 6th August 2009.

No members of the public attended.

The public hearing was independently chaired by planning consultant David Crofts (Strategy Hunter) and his report is at **Attachment 4**.

OPTIONS

Support the draft plan and proceed with reclassifying the site to operational.

Not support the draft plan and retain the sites current classification as community land.

ATTACHMENTS

- 1) Locality Map
- 2) Draft LEP Written Instrument
- 3) Draft LEP Map
- 4) Report into Public Hearing by David Crofts (Strategy Hunter)

ATTACHMENT 1
LOCALITY MAP



ATTACHMENT 2
DRAFT LEP WRITTEN INSTRUMENT

draft



**Port Stephens Local Environmental
Plan 2000 (Amendment No 30)**

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the
Environmental Planning and Assessment Act 1979. (N08/00043/PC-1)

Minister for Planning

draft

Port Stephens Local Environmental Plan 2000 (Amendment No 30)

Clause 1

**Port Stephens Local Environmental Plan 2000
(Amendment No 30)**

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is Port Stephens Local Environmental Plan 2000 (Amendment No 30).

2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

3 Aim of Plan

This Plan aims to reclassify the land to which this Plan applies from community land to operational land within the meaning of the *Local Government Act 1993* to facilitate the long-term lease of the land for a car park that is associated with a nearby commercial development on Lot 123, DP 1124019, 30 King Street, Raymond Terrace.

4 Land to which Plan applies

This Plan applies to Lot 21, DP 788588, 1B Bourke Street, Raymond Terrace, being land within Zone No 5 (g) Special Urban (Flood Affected) Zone, as shown edged heavy black on the map marked "Port Stephens Local Environmental Plan 2000 (Amendment No 30)" deposited in the office of Port Stephens Council.

Page 2

e2009-065-09/d02/e2009-065BOD.fm 15/6/09, 05:11 pm

draft

Port Stephens Local Environmental Plan 2000 (Amendment No 30)

Amendment of Port Stephens Local Environmental Plan 2000

Schedule 1

**Schedule 1 Amendment of Port Stephens Local
Environmental Plan 2000**

**Schedule 1 Classification and reclassification of public land as
operational land**

Insert in alphabetical order of street name under the heading “Raymond
Terrace” in Columns 1, 2 and 3, respectively:

1B Bourke Street

Lot 21, DP 788588, as shown edged Nil.
heavy black and lettered
“Operational” on the map marked
“Port Stephens Local Environmental
Plan 2000 (Amendment No 30)”

Page 3

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DRAFT LEP MAP



ATTACHMENT 4
REPORT INTO PUBLIC HEARING BY DAVID CROFTS (STRATEGY HUNTER)

Public Hearing into the Reclassification of Land at 1B Bourke Street Raymond Terrace (Lot 21 DP 788588)

3 September 2009

Training Rooms, Port Stephens Council Administration Centre, Raymond Terrace

Report by the Chair/Facilitator, David Crofts MPIA, FAIM, FAICD

Attendees:

PSC Strategic Planner Matthew Borsato,
PSC Planning Administration Officer Joanne Atkins,
PSC Property Officer Alecia Baker,
PSC Property Investment Co-ordinator Brett Field,
Public hearing chair/facilitator David Crofts

Background:

The subject land is classified as Community Land, and categorised as General Community Use, pursuant to the Local Government Act 1993.

On 24 February 2008 Port Stephens Council resolved to amend the Port Stephens Local Environmental Plan to reclassify the land from Community Land to Operational Land, pursuant to the provisions of Section 27 of the Local Government Act 1993, and Section 54 of the Environmental Planning and Assessment Act 1979.

The draft Plan was exhibited from 26 February 2009 to 26 March 2009. No submissions were received.

Pursuant to Section 29 of the Local Government Act, a public hearing must be arranged by the Council under Section 57 of the Environmental Planning and Assessment Act 1979, following the exhibition of a draft Plan seeking to reclassify Community Land to Operational Land. This public hearing was held to meet that requirement. The public hearing was notified in the Port Stephens Examiner on 6 August 2009.

Prior to the hearing, there were no requests from the public or any organisation to provide a presentation to the public hearing.

Public Hearing

On the evening of the meeting, notices were erected within the Council Administration Centre to direct potential attendees to the hearing. In addition, a Council staff member was stationed at the entrance to the Council building from 5pm to 5.30pm to direct potential attendees to the hearing.

The Public Hearing commenced at 5pm.

No members of the public attended the hearing. Consequently no presentations or submissions were made, and no issues were raised.

The hearing concluded at 5.30pm, due to an absence of attendees from the general public. All Council officers attended until that time.

ITEM NO. 4**FILE NO: PSC2009-1148****ACCESS COMMITTEE OF PORT STEPHENS – PROPOSED FUTURE DIRECTIONS**

REPORT OF: TREVOR ALLEN - MANAGER INTEGRATED PLANNING
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Disband 355B Access Committee of Port Stephens;
 - 2) Endorse proposed framework as outlined in this report (Attachment 1), and
 - 3) Express appreciation to current and former members of Access Committee for their service, and invite them to participate in the new framework.
-

COUNCIL COMMITTEE MEETING – 20 OCTOBER 2009**RECOMMENDATION:**

	Councillor Bob Westbury Councillor Sally Dover	<p>That Council:</p> <ol style="list-style-type: none">1) Disband 355B Access Committee of Port Stephens;2) Endorse proposed framework as outlined in this report (Attachment 1), and3) Express appreciation to current and former members of Access Committee for their service, and invite them to participate in the new framework.4) Develop a proposal for a regular forum of relevant persons to monitor the framework.
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ORDINARY MEETING – 20 OCTOBER 2009

352	Councillor Steve Tucker Councillor Bob Westbury	It was resolved that the Committee recommendation be adopted.
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BACKGROUND

The purpose of this report is to recommend to Council that the Access Committee of Port Stephens be replaced with an alternate framework, which will provide opportunities for people with disabilities to participate in Council's planning and decision making.

History of Committee

The Access Committee of Port Stephens commenced in the early 1990s. The function of the Committee is to provide a community forum for the discussion of universal access issues and barriers (i.e. access for people with disabilities, the elderly, parents with prams, people with injuries and the general community).

The Committee has been an advisory committee to Council since its inception. The operating functions of the committee are undertaken by the Community Planner ~ Ageing & Disability. Meetings are held monthly alternating between Nelson Bay and Raymond Terrace.

In accordance with the committees constitution, the Access Committee role has been to:

- Raise awareness of and provide advice to Council and community on universal access.
- Promote the integration of the entire community through universal access.
- Contribute to the development of Council policies on access and monitor their implementation.
- Report findings to Council of access surveys in the community.
- Review and advise provisions in development applications for sites with public access

Achievements of Access Committee

The achievements of the Committee since its inception include: -

- Initiation of repairs and subsequent re-reinstatement of the Little Beach Wharf following the Committee's recommendations. This wharf allows those in

wheelchairs to access the water by providing water wheelchairs and a ramp that leads into the water

- Implementation of ramps in public areas such as banks and shopping centres, automatic doors, toilet facilities which are accessible for those in wheelchairs, tactile ground surface indicators and Braille signs in public areas
- Provision of accessible toilets at the main STOP, REVIVE, SURVIVE amenity at the end of the F3 North at Hexham following the Committee's advise to the RTA
- Input and advice into the assessment of development applications to ensure appropriate access provisions
- Expanding the position of Disability Access Officer from 14 hours a week to a full-time Community Planner ~ Ageing & Disability of 35 hours a week to:

- create a greater awareness within Council of the barriers and legislation related to universal access for the whole community

- Strengthen the assessment and formal conditioning of relevant Development Applications regarding legislation and access, condition the requirement of the relevant Australian Standards, the Building Code of Australia and the Disability Discrimination Act

- Advocate for people with disabilities and older persons

- Increase emphasis placed on planning for the aged and greater promotion and coordination of programs for seniors.

Current Committee Status

Over the last 4 years the Committee has been experiencing a decline in attendance numbers. The reasons for this may be attributed to:

- disability service providers being unable to attend meetings due to workloads and competing priorities of other networks and forums such as Port Stephens Community Services Forum, and Port Stephens Interagency
- increased incidence of ageing members battling sickness and sadly some members have passed away after long battles with illness. During the last 4 years a number of long term members have resigned due to declining health
- difficulties attending meetings due to the lack of accessible and affordable transport for people with disabilities and rising fuel costs
- narrowing focus of Committee and diminishing advisory role as a result of requirements placed upon Council that Development Applications can only be conditioned by an Accredited Access Appraiser. (Note: This appraisal is provided by Council's Community Planner – Ageing & Disability ie; expanded Disability Access Officer role who is an accredited Access Appraiser).
- Community access issues previously raised at meetings are now phoned directed to the Community Planner ~ Ageing & Disability and to customer service for reporting and actioning through Council's Customer Request System. This has

enabled access issues previously raised at the Committee meetings to be dealt with more effectively and efficiently.

The above has prompted a review of the role of the Committee and its benefits to Access Committee members, the community and Council.

Review and Consultation

An initial consultation was undertaken comprising of one on one conversations with key stakeholders including the Committee's Chairperson, relevant Council Officers and Councillors who have had a long association with the Committee. Discussions were also undertaken with other Hunter Councils to ascertain the effectiveness of similar Committees. This review indicated that the issues impacting upon the Access Committee are common to other Councils who were in some cases in the midst of carrying out similar reviews.

This was followed by a discussion with the Access Committee at its meeting on 7 July 2009. The Committee agreed with the issues impacting on meeting attendance and were in favour of other options being explored including the cessation of the Committee and the introduction of a new framework.

The one on one conversations with key stakeholders showed general recognition and acceptance of the issues which had prompted the review and support for alternative options to be considered. However some individuals expressed a desire for a broader consultation process to be undertaken to ensure all Committee members and people with an interest in the Committee had the opportunity to contribute and suggest potential options. As a result a survey was undertaken of Committee members and local disability service providers. The survey was forwarded to 51 members of the Access Committee. The following statistics were gathered.

QUESTIONS ASKED IN REVIEW	OUTCOME
Do you attend the PS Access Committee Meetings?	50% Yes 50% No NOTE: The results of this question do not accurately reflect attendance. The minutes indicate that average attendance is 4 or 2 members per meeting from a possible 52. This average attendance figure excludes Councillors and Council Officers who attend.
Do the Minutes from the Access Committee meetings assist you with matters?	60% Yes 40% No
Do you know what the role of the Access Committee is?	100% Yes
Would you find information and updates on relevant ageing & disability news useful if sent to you via	100% Yes

MINUTES FOR ORDINARY MEETING – 20 OCTOBER 2009

email?	
Would you be interested in becoming a member of the PS Residents Panel to provide information to Council as required?	50% Yes 50% No
Would it assist you to talk directly to the Community Planner ~ Ageing & Disability to discuss access issues, ageing and disability matters concerning you or your area?	83% Yes 17% No
Would it be important to you to hold annual meetings with services in your area to discuss what your needs are in your area for ageing & disability?	50% Yes 50% No
Do think it is important to hold annual Lifestyle Awareness activities to educate residents and service providers regarding access barriers for disabilities, seniors and the general community?	83% Yes 17% No
Would it be important that PS Council website provide you with information on Seniors and disabilities maybe showing a calendar with things you can attend or information regarding disability and seniors news?	100% Yes

Proposed Framework (Attachment 1)

As indicated from the survey the framework will benefit the existing members, the community and Council.

The framework will allow the few attending members and inactive members of the current committee and residents to still have a voice and access to information without attending meetings.

After the review and consultation with Access Committee members, managers and Councillors, it was deemed that the current purpose of the Committee had been absorbed by the full-time Community Planner – Ageing and Disability.

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL, POLICY AND RISK IMPLICATIONS

There is no requirement by the Human Rights Commission for Council to provide an access advisory group or committee. The review of the mandatory Disability Action Plan will need to be conducted and is undertaken by Council's Community Planner – Ageing & Disability.

A review of Council by the Department of Local Government found that there were too many 355B Committees currently operating within Council. The recommendations of this report are consistent with the Department of Local Government's review.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The new framework will provide all committee members and the broader community an opportunity to voice their concerns with access and barriers in planning and development issues under Council's responsibility. The framework will build upon an existing awareness that has been created by the committee over numerous years. The framework will allow for members to be included in the decision making process within Council.

OPTIONS

- 1) Adopt the recommendation
- 2) Amend the recommendation and initiate an alternative Forum to meet in the near future to 'workshop' the Alternative Framework and then annually to review the adopted Framework. That Forum could encompass representatives of:
 - Aged persons in the community
 - Disabled persons in the community
 - The Human Rights Commission
 - The Development Industry – Property Council, Urban Development Institute of Australia, Master Builders Association and/or the Housing Industry Association
 - Other members of the community
- 3) Reject the recommendations and require more information

ATTACHMENTS

- 1) Alternative Framework for Managing the Ageing and Disability Issues

ATTACHMENT 1

ALTERNATIVE FRAMEWORK FOR MANAGING THE AGEING & DISABILITY ISSUES

	Item	Details
Information	Information Sheet	Bi-Monthly information sheet provided as mailout or email to residents of Port Stephens as requested. This would contain all the information currently presented in the format of meeting minutes
	Website	Port Stephens Council Website for information and updates. This would be regularly updated to contain the above information for community members who are not currently registered with the Committee.
	Human Rights Commission (HRC) Information	Information provided by HRC regarding compliance issues, including a CD containing building and development codes as well as non-compliant examples of developments.
Participation	Current members of Access Committee New Directions	Opportunity for current members to join the Port Stephens Residents' Panel for consultation purposes. This will provide the few members concerned about the closure of the Committee an opportunity to voice opinions and thoughts.
	Partnership with Human Rights Commission	Continued partnership with HRC to advise developers, planners, local organisations and community members of access requirements. This will ensure our information and guidelines are continually updated and current.
Complaints and Queries	Direct access to Community Planner – Ageing and Disability	Formalise access for direct contact with disability representative for reassurance of current members, providing an assurance that issues will be dealt with directly and promptly without the Committee.
Lifestyle Day	Annual Lifestyle Day	Organisation of an Annual Lifestyle Day within Council and the community for information and engagement. This will provide an opportunity for increased awareness and participation within the community and Council staff.
Human Rights Commission Requirements	No requirement for Council to have an Access Committee	It is not a requirement by HRC for Councils to provide accessible advisory committees, meaning the current Committee would be better served by a qualified representative on Council - the Community Planner – Ageing & Disability.

ITEM NO. 5

FILE NO: PSC2009-06551

POLICY FOR CHARGING ADJOINING PROPERTY OWNERS A CONTRIBUTION TOWARDS THE COST OF KERB AND GUTTER CONSTRUCTION

REPORT OF: MICK LOOMES - ENGINEERING SERVICES MANAGER
GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolves to place the draft policy on "Contributions to Works for Kerb and Gutter Construction" (Attachment 1) on public exhibition for a period of 28 days.
 - 2) After the exhibition period and receipt of any submissions, a further report be prepared for Council's consideration.
-

COUNCIL COMMITTEE MEETING – 20 OCTOBER 2009**RECOMMENDATION:**

	Councillor John Nell Councillor Steve Tucker	That the recommendation be adopted.
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ORDINARY MEETING – 20 OCTOBER 2009

353	Councillor John Nell Councillor Steve Tucker	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to put a new draft policy to Council which separates out the "*kerb and gutter*" element from the existing policy document which relates to both kerb and gutter construction and footpath and cycleway construction. A separate report is provided elsewhere in this business paper for the "*footpath and cycleway*" draft policy.

Over the years, Council has considered a number of reports regarding the levying of contributions towards kerb and gutter construction as part of the current policy. The policy was again confirmed on 18 July 2000 and more recently the 2009-13 Council Plan and “Fees and Charges” were adopted which puts this policy into practice for 2009/10.

Council's existing policy for kerb and gutter contributions element limits them to being applied to properties in residential 2(a) and 2(c), rural 1(c4) and 1(c5), business 3(a), industrial 4(a) and special urban 5(g) zonings only.

Council has undertaken a number of projects throughout its area in the last few months and new kerb and gutter and footpath or cycleway construction has been an integral part of the project in all cases. While there have been a number of complaints registered by both letter and phone calls from some landowners objecting to contributing towards the cost of footpath/cycleway paving, there have been minimal objections to contributing towards kerb and gutter.

Landowners generally appear to recognise the great benefit to their property provided by new kerb and gutter and so objections to this element of the existing policy have been few and far between.

FINANCIAL/RESOURCE IMPLICATIONS

Council's 2009/10 transport capital works program budget contains a number of projects within it where new kerb and gutter is to be built as an integral part of the work. In 2009/10 it is envisaged that contributions towards kerb and gutter construction will amount to approximately \$150,000. If Council decided to discontinue its practice of seeking contributions from adjoining landowners for kerb and gutter, then there would be a shortfall of funding of this amount this year and Council would either need to increase its deficit or defer some essential works to meet the reduced funding position.

Depending on the actual projects prioritised in Council's Integrated Works Program, contributions for kerb and gutter would be in the order of \$75,000 to \$175,000 per annum, that is \$375,000 to \$875,000 over 5 years.

LEGAL, POLICY AND RISK IMPLICATIONS

Section 217 of the Roads Act 1993 allows the roads authority (Council) to recover up to 50% of the costs of kerb and gutter construction if Council has resolved to do so.

The recommendation of this report is to continue this practice of charging landowners for kerb and gutter and to do so by advertising the attached draft policy for a period of 28 days seeking public comment. On the expiry of this exhibition period, it is intended to present a further report to Council which would make a recommendation on whether to adopt the new draft policy or not.

Council's within the Hunter Councils Group have been contacted to determine their policy on this issue and a table is presented in Attachment 2 showing each Council's approach. Port Stephens ' approach, as presented in this report, is consistent with the majority of Hunter Councils.

SUSTAINABILITY IMPLICATIONS

Social, economic and environmental implications are included below.

Kerb and gutter provides a clear boundary between the road pavement and the footpath reserve. It functions to collect and control stormwater runoff from both private properties and the roadway. Landowners, especially in urban areas, consider kerb and gutter an integral and necessary part of any road network.

Adequate control of stormwater minimises erosion and sediment impacts to the environment. Kerb and gutter contributions assist funding of necessary community infrastructure in the long term.

Kerb and gutter contributions for an "average" property in an urban area in 2009/10 will amount to approximately \$940 for a property with one frontage. Some landowners have difficulty meeting one-off levies of this amount so Council has adopted a practice of allowing landowners to progressively pay off their debt over a number of years. Most landowners generally accept that kerb and gutter adds to the value of their property as well as adding protection from stormwater runoff.

CONSULTATION

Consultation has involved staff within Council's Corporate Management Group, Corporate Services, Sustainable Planning and Facilities & Services Groups as well as other Hunter Councils.

OPTIONS

- 1) As per the recommendation.
- 2) Amend the amount charged to (say) 25%.
- 3) Reject the recommendation and discontinue its practice of charging landowners a contribution towards kerb and gutter construction from a date to be nominated after further resolution following public exhibition..

ATTACHMENTS

- 1) New draft policy entitled Policy for Charging Adjoining Property Owners a Contribution Towards the Cost of Kerb and Gutter".
- 2) Table showing contribution practices for other Hunter Councils.
- 3) Existing policy adopted on 18/7/2000 titled "Contributions to Work for Kerb and Gutter Construction and Footpath Paving/Cycleway Construction".

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1



POLICY

Adopted:
Minute No:
Amended:
Minute No:

FILE NO: PSC2009-06551

**TITLE: POLICY FOR CHARGING ADJOINING PROPERTY OWNERS A
CONTRIBUTION TO WORKS FOR KERB AND GUTTER CONSTRUCTION**

REPORT OF MICK LOOMES, ENGINEERING SERVICES MANAGER

BACKGROUND

Over the years, Council has considered several reports regarding the levying of contributions to work for kerb and gutter and footpath construction, which sought to clarify when and how contributions should apply. Some of the more significant reports are listed as follows:

- 24/4/79 (Minute No. 372): Contribution rate be 50%
- 11/7/95 (Minute No. 287) Council to continue charging adjoining property owners for footpath construction.
- 30/1/96 (Minute No. 36): Method of charging be amended by adding a provision for corner lots to pay 2/3 of the frontage rate for the length of the construction.
- 20/7/99 (Minute No. 324) Council continue charging the property owner for footpath and kerb and gutter construction.
- 18/7/00 (Minute No. 360) Policy document adopted by Council for contributions to works for kerb and gutter construction and footpath/cycleway construction.

This new draft policy has been prepared to separate out the "kerb and gutter" component of the previous policy adopted on 18/7/00 which was for contributions to both footpath paving and kerb and gutter. This new draft policy deals only with contributions for kerb and gutter. It has been prepared to ensure that Council is able to apply a contribution criteria and costing structure that is easily understood and

ensures equity and consistency in its application with respect to contributions by adjoining property owners towards the cost of kerb and gutter construction.

OBJECTIVE

- This policy is related to Council's goal of success & sustainability in asset management which seeks to: "provide quality facilities & services to the community".
- Funds generated under this policy will assist in achieving other objectives in its plans: "achieve additional external income from fees & charges"

PRINCIPLES

- 1) That the contribution structure be fair and equitable and accepted by the general community.
- 2) The Council when constructing new kerb and gutter for the community within a public road, will require a contribution from those adjoining property owners that benefit directly from these facilities.
- 3) That Council makes every endeavour to notify the property owners affected prior to commencing the work and provides details of work to be carried out and approximate amount of contribution to be paid. In exceptional circumstances when Council is unable to notify property owners prior to works and of costs, the owners are still liable to pay the contribution. That this policy detail all of the different situations and that contributions are consistently applied, to prevent any exceptions occurring.

POLICY STATEMENT

- Maximum fees are to be reviewed annually and must be approved by Council.
- The amount charged is not to be more than half of the actual cost of construction.
- The owner of the property becomes liable to pay the amount on receiving the notice. If the property is sold after notification has been given, the liability to pay the contribution will be the responsibility of the new owner.
- Council will advise potential new property owners by indicating what liabilities exist when issuing a certificate under section 603.
- Contributions are not applicable when the Group Manager of Facilities & Services determines that no direct benefit can be derived from the construction, i.e. no feasible access or significant difference in level between property boundary and kerb and gutter to be constructed.

- Any person on written application may be permitted to pay their contribution by instalments to pay off the debt over a period of time (minimum fortnightly/monthly instalments) as agreed by Council.
- Regardless of the original source of funding for the construction of kerb and gutter (original source must be less than 100% of the total cost of construction), Council will require owners' contribution in all cases where such construction fronts privately owned land as zoned below.

Assessing the Application Based on Land Zoning

The applicability of any contribution is based on the land zoning of the property.

List of land zones where a contribution is applicable for Kerb and Gutter:

- Rural 1(c4) and 1(c5);
- Residential 2(a) and 2(c);
- Business 3(a);
- Industrial 4(a); and
- Special Urban 5(g).

Boundary Location & Calculations of Construction Costs.

There are three different rate structures to be applied once the zone applicability has been established:

Front boundaries:	50.0% of the average construction cost
Corner Lots - Side & Front boundaries:	33.3% of the average construction cost
Rear boundaries:	25.0% of the average construction cost

The length used in the calculations is the length of the property boundary, but not more than the actual length of the kerb and gutter being constructed.

In the case of properties with strata title or community title the cost shall be shared equally between all strata title or community title holders.

RELATED POLICIES

That Council maintains consistency with Council's Subdivision Code and other relevant policies including Council's Local Environmental Plan and Schedule of Fees for the current period.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications.

Kerb and gutter provides a clear boundary between the road pavement and the footpath reserve. It functions to collect and control stormwater runoff from both

private properties and the roadway. Landowners, especially in urban areas, consider kerb and gutter an integral and necessary part of any road network.

Kerb and gutter contributions for an “average” property in an urban area in 2009/10 will amount to approximately \$940 for a property with one frontage. Some landowners have difficulty meeting one-off levies of this amount so Council has adopted a practice of allowing landowners to progressively pay off their debt over a number of years. Most landowners accept that kerb and gutter adds to the value of their property.

RELEVANT LEGISLATIVE PROVISIONS

To comply with the provisions of Section 217 of the Roads Act 1993.

Section 217 of the Roads Act 1993

Division 3 Kerbing and guttering etc by roads authorities

217 Roads authority may recover cost of paving, kerbing and guttering footways

- (1) The owner of land adjoining a public road is liable to contribute to the cost incurred by a roads authority in constructing or paving any kerb, gutter or footway along the side of the public road adjacent to the land.*
- (2) The amount of the contribution is to be such amount (not more than half of the cost) as the roads authority may determine...[except as provided by S217].*

IMPLEMENTATION RESPONSIBILITY

- Engineering Services Section's Design & Project Development Engineer is responsible for the implementation and administration of the policy and procedures (notification of work notices to property owners, calculation of fees etc).
- Commercial Services Group's Revenue Co-ordinator is responsible for the invoicing and collection of contributions for the works

REVIEW DATE

This policy will be reviewed after twelve months of its implementation to ensure that it is operating effectively and achieving its objectives.

ATTACHMENT 2

HUNTER COUNCIL'S CONTRIBUTIONS POLICIES		
<i>Council</i>	<i>Footpath & Cycleway Contributions</i>	<i>Kerb and Guttering Contributions</i>
Cessnock	Do not seek contribution	Policy- 50% F, 33.3% C, 25% R
Dungog	Policy- 50% up to 1.2m 33% >1.2m	Policy- 50%
Gloucester	Policy- 50% up to 1.2m wide	Policy- 50% F, 40% C, 40% R and lane
Greater Taree	Policy- 51 % Base +10% admin cost	Policy 51 % Base +10% admin cost
Great Lakes	Policy- 50% F, 40% C, 40% R	Policy- 50% F, 40% C, 40% R
Lake Macquarie	Policy- 50% under review	Policy- 50% under review
Maitland	Policy- 50% commercial only	Policy- 50% F & R, 33% one side of corner
Muswellbrook	No Policy, do not seek contribution	No Policy, do not seek contribution
Newcastle	Do not seek contribution	Do not seek contribution
Port Stephens	Policy- 50% F, 33% C, 25% C up to 1.2m wide (under review)	Policy- 50% F, 33% C, 25% C under review
Singleton	Policy – 50% up to \$400 max	Policy – 50%
Upper Hunter	Policy- 50% F (corner and rear under review)	Policy- 50% F (corner and rear under review)

Notes

F- Front

C- Corner

R- Rear

ATTACHMENT 3



Adopted :18/07/2000
Minute No. 360
Amended: #
Minute No. #

FILE NO: E5255-000 & E5075-000

TITLE: CONTRIBUTION TO WORKS FOR KERB & GUTTER CONSTRUCTION & FOOTPATH PAVING/CYCLEWAY CONSTRUCTION

BACKGROUND

Over the years Council has considered several reports regarding the levying of contributions to works for kerb and gutter construction and footpath paving which sought to clarify when and how contributions should apply. Some of the more significant reports have been listed and the adopted recommendations summarised below:

- 24/04/79 - minute no. 372 – Contribution rate be 50% of the rate.
- 13/12/94 - minute no. 738 – Council donation to a private owner to assist them to pay for a large kerb and gutter project.
- 11/07/95 - minute no. 287 - Council continue charging adjoining property owners for footpath construction.
- 30/01/96 - minute no. 26 – Method for charging be amended by adding a provision for corner lots to pay $\frac{2}{3}$ of the frontage rate for the length of construction.
- 20/07/99 - minute no. 324 – Council continue charging owner kerb and gutter and footpath paving when notified prior to works. The second recommendation to charge when no prior notice given, was deferred for further consideration.

The policy has been amended to ensure that Council is able to apply a contribution criteria and costing structure that is easily understood and equitable for all parties and that it is comprehensive enough to direct a course of action for the various situations that occur in relation to kerb and gutter construction and/or footpath paving/cycleway construction.

OBJECTIVE

- This policy is primarily related to the goal in the Engineering Services Transport Infrastructure Program of Council's Management Plan, to provide:

“A SAFE, EFFICIENT AND EFFECTIVE NETWORK TO TRANSPORT PEOPLE AND GOODS WITHIN AND THROUGH PORT STEPHENS.”

- Funds generated under this policy will assist in achieving other objectives in this Management Plan.
- To provide a fair and systematic method for collecting contributions from adjoining property owners when Council constructs new kerb and guttering or new footpaths/cycleways.

PRINCIPLES

1. That the contribution structure be fair and equitable and accepted by the general community.
2. The Council when constructing new kerb and gutter or footpath/cycleway, for the community within a public road, will require a contribution from those adjoining property owners that benefit directly from these facilities.
3. That Council makes every endeavour to notify the property owners affected prior to commencing the work and provides details of work to be carried out and approximate amount of contribution to be paid. In exceptional circumstances when Council is unable to notify property owners prior to works and of costs, the owners are still liable to pay the contribution. That this policy detail all of the different situations and that contributions are consistently applied, to prevent any exceptions occurring.
4. In all areas of expenditure, the Council needs to achieve the best value and return to all residents and ratepayers.

POLICY STATEMENT

- Maximum fees are to be reviewed annually and must be approved by Council.
- The amount charged is not to be more than half of the actual cost of construction.
- The owner of the property becomes liable to pay the amount on receiving the notice. If the property is sold after notification has been given, the liability to pay the contribution will be the responsibility of the new owner.
- Council will advise potential new property owners by indicating what liabilities exist when issuing a certificate under section 603.
- Contributions are not applicable when the Manager of Engineering Services determines that no direct benefit can be derived from the construction, i.e. no feasible access or significant difference in level between property boundary and kerb and gutter to be constructed.
- Any person on written application may be permitted to pay their contribution by instalments to pay off the debt over a period of time (minimum fortnightly/monthly instalments) as agreed by Council.

- Regardless of the original source of funding for the construction of kerb and gutter and/or footpath/cycleway (*original source must be less than 100% of the total cost of construction*), Council will require owners' contribution in all cases where such construction fronts privately owned land as zoned below.

ASSESSING THE APPLICATION BASED ON LAND ZONING

The applicability of the any contribution is based on the land zoning of the property.

List of land zones where a contribution ***is applicable*** for Kerb and Guttering:

- Rural 1(c4) and 1(c5);
- Residential 2(a) and 2(c);
- Business 3(a);
- Industrial 4(a); and
- Special Urban 5(g).

List of land zones where a contribution ***is applicable*** for Footpath Paving and Cycleway Construction:

- Residential 2(a) and 2(c);
- Business 3(a);
- Industrial 4(a); and
- Special Urban 5(g).

BOUNDARY LOCATION & CALCULATIONS OF CONSTRUCTION COSTS.

There are three different rate structures to be applied once the zone applicability has been established:

- | | | |
|----|---------------------------------------|--|
| 1. | Front boundaries | 50.0% of the average construction cost |
| 2. | Corner Lots - Side & Front boundaries | 33.3% of the average construction cost |
| 3. | Rear boundaries | 25.0% of the average construction cost |

- The **length** used in the calculations is the length of the property boundary, but not more than the actual length of the kerb and gutter being constructed.
- The **width** used in the calculation of footpath or cycleway construction (total construction width of shared footpath/cycleways is normally 2.5m) will be charged to property owners at an amount equal to the construction of 1.2m wide, which is considered as the footpath component.

In the case of properties with strata title or community title the cost shall be shared equally between all strata title or community title holders.

RELATED POLICIES

That Council maintains consistency with Council's Subdivision Code and other relevant policies including Council's Local Environmental Plan and Schedule of Fees for the current period.

REVIEW DATE

This policy will be reviewed after twelve months of its implementation to ensure that it is operating effectively and achieving its objectives.

RELEVANT LEGISLATIVE PROVISIONS

To comply with the provisions of Section 217 of the Roads Act 1993.

SECTION 217 OF THE ROADS ACT 1993

DIVISION 3 KERBING AND GUTTERING ETC BY ROADS AUTHORITIES

217 Roads authority may recover cost of paving, kerbing and guttering footways

- (1) The owner of land adjoining a public road is liable to contribute to the cost incurred by a roads authority in constructing or paving any kerb, gutter or footway along the side of the public road adjacent to the land.*
- (2) The amount of the contribution is to be such amount (not more than half of the cost) as the roads authority may determine...[except as provided by S217].*

IMPLEMENTATION RESPONSIBILITY

- Engineering Services Department's Civil Asset Development Engineer is responsible for the implementation and administration of the policy and procedures (notification of work notices to property owners, calculation of fees etc).
- Corporate Services Department's Debtors Clerk is responsible for the invoicing and collection of contributions for the works.

ITEM NO. 6**FILE NO: PSC2009-02962****POLICY FOR CHARGING ADJOINING PROPERTY OWNERS A CONTRIBUTION TOWARDS THE COST OF FOOTPATH/CYCLEWAY CONSTRUCTION****REPORT OF: MICK LOOMES - ENGINEERING SERVICES MANAGER**
GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolves to place the draft policy "Contributions to Works for Footpath/Cycleway Construction (Attachment 1) on public exhibition for a period of 28 days.
 - 2) After the exhibition period and receipt of any submissions a further report be prepared for Council's consideration.
-

COUNCIL COMMITTEE MEETING – 20 OCTOBER 2009**RECOMMENDATION:**

	Councillor John Nell Councillor Bruce MacKenzie	That Council: 1) That the recommendation be adopted. 2) That alternatives such as pensioner concessions, time to pay and Council's Hardship Policy be considered as part of the public exhibition period.
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ORDINARY MEETING – 20 OCTOBER 2009

354	Councillor John Nell Councillor Steve Tucker	It was resolved that the Committee recommendation be adopted.
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BACKGROUND

The purpose of this report is to put a new draft policy to Council to continue to seek contributions from adjoining landowners towards the construction of footpath/cycleway works.

This report follows up on the Notice of Motion which was presented to Council's Ordinary Meeting on 25 August 2009 which sought a review of its policy in this area (see Attachment 2).

Council has a current policy for seeking contributions from adjoining landowners towards both footpath/cycleway construction as well as kerb and gutter contributions (see Attachment 3).

A new draft policy has been prepared for the “*footpath/cycleway*” element of the existing policy and this is found in Attachment 1 of this report which is referred to in the recommendations above.

Elsewhere a new draft policy document has been prepared for the “*kerb and gutter*” element of the existing policy and this is provided in a separate report in this business paper entitled “*Policy for Charging Adjoining Property Owners a Contribution Towards the Cost of Kerb and Gutter Construction*”.

Accordingly, this report deals with the issue of contribution towards “*footpath/cycleway*” construction only.

Over the years, Council has considered a number of reports regarding the levying of contributions towards footpath and cycleway construction. The policy was confirmed on 18 July 2000 and more recently the 2009/13 Council Plan and “*Fees and Charges*” were adopted which puts this policy into practice for 2009/10.

Council's existing policy for footpath/cycleway contributions limits them to being applied to properties in residential 2(a) and 2(c), business 3(a), industrial 4(a) and special urban 5 zonings only. Footpaths/cycleways constructed in rural and other zonings do not attract a contribution from adjoining landowners mainly due to the large frontages usually involved and other considerations.

Over the last 6-12 months, Council has undertaken a number of projects throughout its area which have included new footpaths. Footpaths have been built in Boat Harbour, Tanilba Bay, Karuah and Nelson Bay as part of larger road reconstruction projects. Additionally, a number of footpaths have been installed following additional Federal grants for local infrastructure improvements and these footpaths were built as individual projects in streets which (generally) were already well established but did not have any footpaths. Work was undertaken in the streets in Boat Harbour, Anna Bay and Raymond Terrace and further work of this nature is

planned for Medowie later this year. The projects were taken from Council's Forward Works Program and are also to be found in Council's Bike Plan.

Advance notice has been provided to adjoining landowners prior to the footpaths being constructed, advising them of the need for them to contribute to the cost of the works in accordance with Council's policy. A number of property owners have objected to being charged for the footpaths and there have been individual *"letters to the Editor"* of the Examiner which have criticised Council's policy in this area.

Some property owners have already commenced paying for their footpath contributions for works completed recently, whilst many have not yet done so and are awaiting Council's decision on whether it will confirm its earlier resolutions and require a contribution towards footpaths, or alternatively discontinue this practice in accordance with its foreshadowed resolution. Other landowners from previous years works have completed or are in the process of paying off their contributions.

As with most issues, there are both positive and negative aspects to the issue in question of requiring a contribution towards the cost of construction of footpath/cycleways:

Pros:

Provides contributing income to Council so it can construct facilities which are seen by the general community as very desirable and which would not be constructed as soon otherwise.

Previous generations or owners have similarly contributed towards these works and if the policy is discontinued they might be concerned that other property owners are not being treated the same as owners in new subdivisions who have also contributed to new footpaths/cycleways.

This is consistent with the practice of the majority of other Hunter Councils.

Cons:

Retrofitted footpaths are generally on one side of the road only hence property owners on that side have to pay a contribution whilst landowners on the other side do not in accordance with the existing legislation.

Some landowners may find it difficult to pay the amounts involved, notwithstanding Council's practice of allowing time to pay off the contribution.

Some landowners just do not want a footpath over their frontage or in their street.

It should also be noted that there are a number of footpath projects which have been constructed recently and invoices have already been sent to landowners requiring their payment. Some of these landowners have already paid whilst others have held back payment whilst Council considers this issue.

No new footpath paving work has actually been undertaken since the Notice of Motion of 25 August 2009. However, much work has been completed prior to this date so all property owners who have actually had footpath constructed over their property boundary would normally need to pay their contributions as they were

implemented under the old policy. This includes some of those landowners who have lobbied for a change to the policy.

FINANCIAL/RESOURCE IMPLICATIONS

Council's 2009/10 transport capital works program budget has many projects which were expected to obtain contributions towards the cost of footpath/cycleway from adjoining residents. Annual contributions normally range between \$100,000 and \$200,000 per annum depending on matching grants and other funding.

If Council decides to discontinue its contributions policy then the following amounts will be normally collected or potentially foregone this year.

Project	Contributions from Adjoining Landowners
Already Completed 2009/10	
Dixon Street, Seaham	\$ 5,186
Clemenceau Cres, Tanilba Bay	\$13,613
Robinson Street, Anna Bay	\$ 9,742
Mt Hall Road, Raymond Tce	\$ 1,897
Watt Street, Raymond Tce	\$ 2,952
Payton Street, Raymond Tce	\$ 1,717
Subtotal (to be collected)	\$ 35,107
 To be Completed Later in 2009/10	
Paths in Medowie (Various)	\$14,916
Rigney Street, Shoal Bay	\$17,512
Trafalgar Street, Nelson Bay	\$ 8,311
President Poincare Pde, Tanilba Bay	\$11,725
James Paterson Street, Anna Bay	\$22,709
Sandy Pt Road, Corlette	\$41,351
Subtotal (to be foregone)	<u>\$116,524</u>
Total	\$138,018

It should be noted also that Council has applied for a number of State and Federal Government grants in the last few months and many of these will require a 50% Council contribution towards the work involved should they be offered and accepted.

Should Council decide to discontinue seeking contributions towards footpath/cycleway construction, it will need to either increase its deficit or review its current work program and reduce the number of projects it can undertake in the year. It is likely that one road reconstruction project will need to be deferred as a probable consequence.

At current funding levels this would effectively mean that two minor or one major road construction up to \$1,000,000 (including footpaths etc) could not proceed each and every five years into the future.

Council's Section 94 plans do not contain a footpath component within them for footpath or cycleway contributions. These facilities can be funded from S94A contributions, however, in reality, S94A funds actually received by Council over the last 2 years are minimal.

LEGAL, POLICY AND RISK IMPLICATIONS

Section 217 of the Roads Act 1993 allows the Roads Authority (Council) to recover up to 50% of the costs of footpath paving if Council has resolved to do so.

If Council decides to discontinue this policy (which currently includes kerb and gutter contributions as well) then it will need to also consider its approach and policy for kerb and gutter contributions. A separate report has been provided in this business paper for Council to consider a contribution policy for kerb and gutter.

Council's within the Hunter Council's Group have been contacted to determine their policy on this issue and a table is presented in Attachment 4 showing each Council's approach. Port Stephens' approach as presented in this report is consistent with the majority of Hunter Councils.

SUSTAINABILITY IMPLICATIONS

Social, economic and environmental implications are included below.

Footpaths and cycleways have been provided by Council to provide access, connectivity and amenity to residents and visitors in moving about its road network. Concrete paths provide safe and convenient ways of recreation and travel for both the disabled and able bodied, the young and old and arguably, the social/economically disadvantaged members of the community.

New footpaths/cycleways from part of Council's Subdivision Code and one routinely built by developers as part of necessary community infrastructure.

However, some landowners do not like being required to contribute towards the cost of footpath paving adjoining their property and they do not consider a pathway as an actual improvement to the value of a property. Notwithstanding the legislation to this effect, most expect these facilities to be provided and funded by other means such as general rates or grants. Landowners see inequity in that owners on one side of a street have to contribute whereas owners on the other side of a street do not. Note that in the case of new subdivisions though both sides contribute indirectly to new footpaths/cycleways. Some landowners find it difficult to pay the contributions so Council has adopted a practice of allowing payment overtime.

With the average contribution for paving recently around \$1,250 per property.

CONSULTATION

Consultation has involved staff within Council's Corporate Management, Corporate Services, Sustainable Planning and Facilities and Services Groups as well as other Hunter Councils.

OPTIONS

To allow community debate, the following recommendation is made:

- 1) Adopt the new draft policy for footpath/cycleway paving (Attachment 1) which is almost identical to the previous policy which has been in place for a number of years and seeks up to a 50% contribution towards footpath/cycleway work for adjoining landowners; or
- 2) Adopt the new draft policy with another contribution rate (say) up to 25% and/or other amendments and varied terms.
- 3) Reject the recommendation.

ATTACHMENTS

- 1) Policy Contribution to Works for Footpath Paving and Cycleway Construction.
- 2) Notice of Motion to Review Council's Policy to Charge Property Owners 50% of Cost of Installing Concrete Footpaths on Council Owned Verge Areas.
- 3) Existing Policy adopted on 18 July 2000 entitled "Contributions to Work for Kerb and Gutter Construction and Footpath Paving/Cycleway Construction".
- 4) Table showing contribution practices for other Hunter Councils.

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1



POLICY

FILE NO: PSC2009-0292

TITLE: CONTRIBUTION TO WORKS FOR FOOTPATH PAVING & CYCLEWAY CONSTRUCTION

BACKGROUND

Over the years Council has considered several reports regarding the levying of contributions to works for footpath paving (as well as kerb & guttering) which sought to clarify when and how contributions should apply. Some of the more significant reports have been listed and the adopted recommendations summarised below:

- 24/04/79 - Minute No. 372 – Contribution rate be 50% of the rate.
- 11/07/95 - Minute No. 287 - Council continue charging adjoining property owners for footpath construction.
- 30/01/96 - Minute No. 26 – Method for charging be amended by adding a provision for corner lots to pay $\frac{2}{3}$ of the frontage rate for the length of construction.
- 20/07/99 - Minute No. 324 – Council continue charging owner kerb and gutter and footpath paving when notified prior to works. The second recommendation to charge when no prior notice given, was deferred for further consideration.
- 25/08/09 - Notice of Motion no.3: Council review its policy on the charging for footpath paving.
- 18/07/2000 - Minute No. 360 - Policy document adopted by Council for contribution to work for kerb & gutter construction & footpath/cycleway construction.

This new draft policy has been prepared to separate out the "footpath and cycleway" component of the previous policy adopted on 180700 which works for contributions to both footpath paving and kerb and gutter. This new draft policy deals only with contributions towards footpaths and cycleways. It has been prepared to ensure that Council is able to apply a contribution criteria and costing structure that is easily understood and ensures equity and consistency in its application with respect to contributions by adjoining owners towards the cost of footpath paving/cycleway construction.

OBJECTIVE

- This policy is related to Council's goal of success and sustainability in asset management which seeks to *"provide quality facilities and services to the community"*. Funds generated under this policy will assist in achieving other objectives in its plans *"achieve additional external income from fees and charges"*.

PRINCIPLES

5. That the contribution structure be fair and equitable and accepted by the general community.
6. When constructing new footpaths or cycleways within a public road, Council will require a contribution from those adjoining property owners that benefit from the facilities.
7. Council endeavours to notify all property owners affected prior to commencing the work, providing details of the work and the approximate amount of the contribution to be paid.

POLICY STATEMENT

- Maximum fees are to be reviewed annually and must be approved by Council.
- The amount charged is not to be more than half of the actual cost of construction.
- The owner of the property becomes liable to pay the amount on receiving the notice. If the property is sold after notification has been given, the liability to pay the contribution will be the responsibility of the new owner.
- Council will advise potential new property owners by indicating what liabilities exist when issuing a certificate under section 603.
- Contributions are not applicable when the Group Manager of Facilities & Services determines that no direct benefit can be derived from the construction work.
- Any person on written application may be permitted to pay their contribution by instalments to pay off the debt over a period of time (minimum fortnightly/monthly instalments) as agreed by Council.
- Regardless of the original source of funding for the construction of kerb and gutter and/or footpath/cycleway (*original source must be less than 100% of the total cost of construction*), Council will require owners' contribution in all cases where such construction fronts privately owned land as zoned below.

ASSESSING THE APPLICATION BASED ON LAND ZONING

The applicability of the any contribution is based on the land zoning of the property.
List of land zones where a contribution **is applicable** for footpath/cycleway construction:

- Residential 2(a) and 2(c);
- Business 3(a);
- Industrial 4(a); and
- Special Urban 5(g).

BOUNDARY LOCATION & CALCULATIONS OF CONSTRUCTION COSTS.

There are three different rate structures to be applied once the zone applicability has been established:

- | | | |
|----|---------------------------------------|--|
| 4. | Front boundaries | 50.0% of the average construction cost |
| 5. | Corner Lots - Side & Front boundaries | 33.3% of the average construction cost |
| 6. | Rear boundaries | 25.0% of the average construction cost |

- The **length** used in the calculations is the length of the property boundary, but not more than the actual length of the footpath or cycleway being constructed.
- The **width** used in the calculation of footpath or cycleway construction (total construction width of shared footpath/cycleways is normally 2.5m) will be charged to property owners at an amount equal to the construction of 1.2m wide, which is considered as the footpath component.

In the case of properties with strata title or community title the cost shall be shared equally between all strata title or community title holders.

RELATED POLICIES

That Council maintains consistency with Council's Subdivision Code and other relevant policies including Council's Local Environmental Plan and Schedule of Fees for the current period.

REVIEW DATE

This policy will be reviewed after twelve months of its implementation to ensure that it is operating effectively and achieving its objectives.

RELEVANT LEGISLATIVE PROVISIONS

To comply with the provisions of Section 217 of the Roads Act 1993.

SECTION 217 OF THE ROADS ACT 1993

DIVISION 3 KERBING AND GUTTERING ETC BY ROADS AUTHORITIES

217 Roads authority may recover cost of paving, kerbing and guttering footways

- (3) The owner of land adjoining a public road is liable to contribute to the cost incurred by a roads authority in constructing or paving any kerb, gutter or footway along the side of the public road adjacent to the land.*
- (4) The amount of the contribution is to be such amount (not more than half of the cost) as the roads authority may determine...[except as provided by S217].*

IMPLEMENTATION RESPONSIBILITY

- Engineering Services Department's Civil Asset Development Engineer is responsible for the implementation and administration of the policy and procedures (notification of work notices to property owners, calculation of fees etc).
- Corporate Services Department's Debtors Clerk is responsible for the invoicing and collection of contributions for the works.

ATTACHMENT 2

MINUTES ORDINARY COUNCIL – 25 AUGUST 2009

NOTICE OF MOTION

ITEM NO. 3

FILE NO: A2004-0217; PSC2009-02962

REVIEW COUNCILS POLICY TO CHARGE PROPERTY OWNERS 50% OF COST OF INSTALLING CONCRETE FOOTPATHS ON COUNCIL OWNED VERGE AREAS.

COUNCILLORS: GEOFF DINGLE & PETER KAER

THAT COUNCIL:

- 1) Review its policy on the charging of residents for a proportion of the installation of footpaths on verges surrounding private properties.
 - a) That Council cease charging residents for the installation of footpaths on the Council owned verge areas and instead use section 94 funding and capital grant to carry out these works. That Council determines a fairer way to distribute the cost to the community members who will benefit from the installation of this infrastructure.

COUNCILLORS BACKGROUND

While collection of a proportion of fees for the construction of footpaths is part of Councils current policy, and State legislation allows Councils to charge residents up to half the cost of footpaths bordering their properties, it is not compulsory. Many of these footpaths are the connecting sections between new estates and existing residential areas, the cost of this infrastructure in new estates is covered by developer contributions and costs adsorbed into the purchase of property.

Residents are often completely unaware of these charges until they receive the invoice. For self funded retirees or pensioners, it is a shock to them that they have to find between \$1000 and \$2000 dollars without warning. Many residents have complained they are given no warning and not part of any discussion about these arrangements and the first thing they know about it is when the bill arrives, at that point it is a fait accompli. The suggestion that they can pay this off is no consolation as they are often have very restricted incomes and little in the way of disposable reserves.

These people are often very upset and angry that they are expected to pay 50% of the cost of infrastructure that every other member of the community will benefit from yet the costs are not distributed evenly. While less grass has to be mowed with installation of these paths, it also make it more difficult to maintain with more edges and grass patches to access, the verge is after all Council property and we know that Council will never have the resources to maintain property verges.

MINUTES ORDINARY COUNCIL – 25 AUGUST 2009**ORDINARY COUNCIL – 25 August 2009**

287	Councillor Geoff Dingle Councillor Peter Kafer	It was resolved that the Notice of Motion be adopted.
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BACKGROUND REPORT OF: MICK LOOMES – MANAGER, ENGINEERING SERVICES**BACKGROUND**

Over the years, Council has considered several reports regarding the levying of contributions for footpath paving, kerb and guttering. The policy was confirmed on 18 July 2000 and more recently the 2009-13 Council Plan and "Fees and Charges" were adopted which puts this policy into practice for 2009/10.

Council's policy for footpath contributions limits them to being applied to properties in residential 2a and 2c, business 3a, industrial 4a and special urban 5 zonings only. Footpaths constructed in rural and other zonings do not attract a contribution from adjoining landowners. The policy also provides delegation to the Group Manager of Facilities and Services to exempt certain properties in the urban and business zonings if there is no direct benefit to the adjoining property.

Legislation

Section 217 of the Road Act 1993 allows the Roads Authority (Council) to recover up to 50% of the costs of footpath paving if Council has resolved to do so.

Procedures and Notification

In urban road reconstruction, in older settled areas, Council has routinely included footpath paving as part of major upgrades of the roads. As plans and specifications are being prepared, Council provides advance notification to adjacent property owners of the likely cost of any footpath or kerb and guttering contributions. The construction work is then carried out, often weeks or months later and only when the works are completed does Council send out the accurate invoice requesting payment. It would be most unusual for any landowner to not receive a prior notification of the works and likely contribution prior to an invoice being raised.

Funding Alternatives

Council's Section 94 plans do not contain a footpath component within them for footpath or cyclepath contributions. Developers are required to fund this infrastructure as part of new development. Council predominantly only builds "infill" footpaths within already established areas where footpath infrastructure was not provided in earlier decades when estates were developed. Footpaths can be funded from Section 94A contributions, however, in reality, S94A funds actually received by Council over the last 2 years are minimal. Grant funds are occasionally available for footpath construction and generally they require matching funds from Council and any adjoining landowner contributions can provide a proportion of Council's share in those cases.

MINUTES ORDINARY COUNCIL – 25 AUGUST 2009

Implications for 2009/10 Budget

- There are a number of projects which have recently been completed and for which invoices for footpath contributions have been issued and some owners have already paid their contributions or have made arrangements to do so over time.
- There are a number of projects currently underway where the advance notifications have been sent out but the work has not yet been completed.
- There are a number of projects which have not yet been fully designed and where advance notification has yet to be issued to the landowners.
- If Council decides to change its footpath contributions policy following the NOM then there will be a \$170,000 shortfall in funding in 2009/10 and Council will need to either increase its deficit or review its current works program and reduce the number of projects it can undertake in the year.

In effect, the current practices mean that property owners in new subdivisions share between them 10% of the cost of all infrastructure including adjacent footpaths. Some adjoining property owners share 50% of the cost of footpaths (only) retro-fitted in the older subdivisions with the general ratepayer base providing the other 50% of funds.

ATTACHMENT 3



Adopted :18/07/2000
Minute No. 360
Amended: #
Minute No. #

FILE NO: E5255-000 & E5075-000

TITLE: CONTRIBUTION TO WORKS FOR KERB & GUTTER CONSTRUCTION & FOOTPATH PAVING/CYCLEWAY CONSTRUCTION

BACKGROUND

Over the years Council has considered several reports regarding the levying of contributions to works for kerb and gutter construction and footpath paving which sought to clarify when and how contributions should apply. Some of the more significant reports have been listed and the adopted recommendations summarised below:

- 24/04/79 - minute no. 372 – Contribution rate be 50% of the rate.
- 13/12/94 - minute no. 738 – Council donation to a private owner to assist them to pay for a large kerb and gutter project.
- 11/07/95 - minute no. 287 - Council continue charging adjoining property owners for footpath construction.
- 30/01/96 - minute no. 26 – Method for charging be amended by adding a provision for corner lots to pay $\frac{2}{3}$ of the frontage rate for the length of construction.
- 20/07/99 - minute no. 324 – Council continue charging owner kerb and gutter and footpath paving when notified prior to works. The second recommendation to charge when no prior notice given, was deferred for further consideration.

The policy has been amended to ensure that Council is able to apply a contribution criteria and costing structure that is easily understood and equitable for all parties and that it is comprehensive enough to direct a course of action for the various situations that occur in relation to kerb and gutter construction and/or footpath paving/cycleway construction.

OBJECTIVE

- This policy is primarily related to the goal in the Engineering Services Transport Infrastructure Program of Council's Management Plan, to provide:

“A SAFE, EFFICIENT AND EFFECTIVE NETWORK TO TRANSPORT PEOPLE AND GOODS WITHIN AND THROUGH PORT STEPHENS.”

- Funds generated under this policy will assist in achieving other objectives in this Management Plan.
- To provide a fair and systematic method for collecting contributions from adjoining property owners when Council constructs new kerb and guttering or new footpaths/cycleways.

PRINCIPLES

8. That the contribution structure be fair and equitable and accepted by the general community.
9. The Council when constructing new kerb and gutter or footpath/cycleway, for the community within a public road, will require a contribution from those adjoining property owners that benefit directly from these facilities.
10. That Council makes every endeavour to notify the property owners affected prior to commencing the work and provides details of work to be carried out and approximate amount of contribution to be paid. In exceptional circumstances when Council is unable to notify property owners prior to works and of costs, the owners are still liable to pay the contribution. That this policy detail all of the different situations and that contributions are consistently applied, to prevent any exceptions occurring.
11. In all areas of expenditure, the Council needs to achieve the best value and return to all residents and ratepayers.

POLICY STATEMENT

- Maximum fees are to be reviewed annually and must be approved by Council.
- The amount charged is not to be more than half of the actual cost of construction.
- The owner of the property becomes liable to pay the amount on receiving the notice. If the property is sold after notification has been given, the liability to pay the contribution will be the responsibility of the new owner.
- Council will advise potential new property owners by indicating what liabilities exist when issuing a certificate under section 603.
- Contributions are not applicable when the Manager of Engineering Services determines that no direct benefit can be derived from the construction, i.e. no feasible access or significant difference in level between property boundary and kerb and gutter to be constructed.
- Any person on written application may be permitted to pay their contribution by instalments to pay off the debt over a period of time (minimum fortnightly/monthly instalments) as agreed by Council.

- Regardless of the original source of funding for the construction of kerb and gutter and/or footpath/cycleway (*original source must be less than 100% of the total cost of construction*), Council will require owners' contribution in all cases where such construction fronts privately owned land as zoned below.

ASSESSING THE APPLICATION BASED ON LAND ZONING

The applicability of the any contribution is based on the land zoning of the property.

List of land zones where a contribution ***is applicable*** for Kerb and Guttering:

- Rural 1(c4) and 1(c5);
- Residential 2(a) and 2(c);
- Business 3(a);
- Industrial 4(a); and
- Special Urban 5(g).

List of land zones where a contribution ***is applicable*** for Footpath Paving and Cycleway Construction:

- Residential 2(a) and 2(c);
- Business 3(a);
- Industrial 4(a); and
- Special Urban 5(g).

BOUNDARY LOCATION & CALCULATIONS OF CONSTRUCTION COSTS.

There are three different rate structures to be applied once the zone applicability has been established:

- | | | |
|----|---------------------------------------|--|
| 7. | Front boundaries | 50.0% of the average construction cost |
| 8. | Corner Lots - Side & Front boundaries | 33.3% of the average construction cost |
| 9. | Rear boundaries | 25.0% of the average construction cost |

- The **length** used in the calculations is the length of the property boundary, but not more than the actual length of the kerb and gutter being constructed.
- The **width** used in the calculation of footpath or cycleway construction (total construction width of shared footpath/cycleways is normally 2.5m) will be charged to property owners at an amount equal to the construction of 1.2m wide, which is considered as the footpath component.

In the case of properties with strata title or community title the cost shall be shared equally between all strata title or community title holders.

RELATED POLICIES

That Council maintains consistency with Council's Subdivision Code and other relevant policies including Council's Local Environmental Plan and Schedule of Fees for the current period.

REVIEW DATE

This policy will be reviewed after twelve months of its implementation to ensure that it is operating effectively and achieving its objectives.

RELEVANT LEGISLATIVE PROVISIONS

To comply with the provisions of Section 217 of the Roads Act 1993.

SECTION 217 OF THE ROADS ACT 1993

DIVISION 3 KERBING AND GUTTERING ETC BY ROADS AUTHORITIES

217 Roads authority may recover cost of paving, kerbing and guttering footways

- (5) The owner of land adjoining a public road is liable to contribute to the cost incurred by a roads authority in constructing or paving any kerb, gutter or footway along the side of the public road adjacent to the land.*
- (6) The amount of the contribution is to be such amount (not more than half of the cost) as the roads authority may determine...[except as provided by S217].*

IMPLEMENTATION RESPONSIBILITY

- Engineering Services Department's Civil Asset Development Engineer is responsible for the implementation and administration of the policy and procedures (notification of work notices to property owners, calculation of fees etc).
- Corporate Services Department's Debtors Clerk is responsible for the invoicing and collection of contributions for the works.

ATTACHMENT 4

HUNTER COUNCIL'S CONTRIBUTIONS POLICIES		
<i>Council</i>	<i>Footpath & Cycleway Contributions</i>	<i>Kerb and Guttering Contributions</i>
Cessnock	Do not seek contribution	Policy- 50% F, 33.3% C, 25% R
Dungog	Policy- 50% up to 1.2m 33% >1.2m	Policy- 50%
Gloucester	Policy- 50% up to 1.2m wide	Policy- 50% F, 40% C, 40% R and lane
Greater Taree	Policy- 51 % Base +10% admin cost	Policy - 51 % Base +10% admin cost
Great Lakes	Policy- 50% F, 40% C, 40% R	Policy- 50% F, 40% C, 40% R
Lake Macquarie	Policy- 50% under review	Policy- 50% under review
Maitland	Policy- 50% commercial only	Policy- 50% F & R, 33% one side of corner
Muswellbrook	No Policy, do not seek contribution	No Policy, do not seek contribution
Newcastle	Do not seek contribution	Do not seek contribution
Port Stephens	Policy- 50% F, 33% C, 25% C up to 1.2m wide (under review)	Policy- 50% F, 33% C, 25% C under review
Singleton	Policy - 50% up to \$400 max	Policy - 50%
Upper Hunter	Policy- 50% F (corner and rear under review)	Policy- 50% F (corner and rear under review)

Notes

F- Front

C- Corner

R- Rear

ITEM NO. 7**FILE NO: A2004-0125****APPOINTMENT OF AN ACTING GENERAL MANAGER**

REPORT OF: PETER GESLING - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Appoint the four (4) Group Manager's (Sustainable Planning, Facilities & Services, Commercial Services and Corporate Services) as acting General Manager's on a rotational basis, in the absence of the General Manager.
 - 2) The Mayor and General Manager be authorise to establish a rotational calendar for the acting General Manager's role.
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COUNCIL COMMITTEE MEETING – 20 OCTOBER 2009**RECOMMENDATION:**

	Councillor Bob Westbury Councillor Bruce MacKenzie	That the recommendation be adopted.
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ORDINARY MEETING – 20 OCTOBER 2009

355	Councillor Steve Tucker Councillor Shirley O'Brien	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to request Council to appointment the four (4) Group Manager's as acting General Manager's in my absence.

Pursuant to Section 334 of the *Local Government Act 1993*, the role of General Manager is the only role Council can appoint. Council cannot delegate this function to any other body or person. A person may also be temporarily appointed to the role should be General Manager be absent or sick (Section 335), provided it is no longer than 12 months.

It is recommended to Council that the four (4) Group Managers (Sustainable Planning, Facilities & Services, Commercial Services and Corporate Services) be appointed to the role on a rotational basis, once every three (3) months, in the absence of the General Manager.

FINANCIAL/RESOURCE IMPLICATIONS

All financial implications are accounted for in the current budget.

LEGAL, POLICY AND RISK IMPLICATIONS

Section 334 & 335 of the Local Government 1993 requires Council to appoint a person to the role of General Manager, either in a full time or temporary capacity.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil

CONSULTATION

Harris Wheeler
Executive Officer

OPTIONS

Adopt the recommendation
Amended the recommendation
Reject the recommendation

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 8**FILE NO: 1190-001****REQUEST FOR FINANCIAL ASSISTANCE****REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER****GROUP: GENERAL MANAGER'S OFFICE****RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-
- a) Dun's Creek Rural Fire Brigade – Donation towards 50 Years Celebration - \$200.00 – Rapid Response – Cr Francis.
 - b) Medowie Tidy Towns Committee – Donation towards assembly and installation of outdoor seating - \$495.00– Community Capacity Building – Central Ward.

COUNCIL COMMITTEE MEETING – 20 OCTOBER 2009**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor John Nell	That the recommendation be adopted.
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ORDINARY MEETING – 20 OCTOBER 2009

356	Councillor Peter Kafer Councillor Steve Tucker	It was resolved that the recommendation be adopted.
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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.

MINUTES FOR ORDINARY MEETING – 20 OCTOBER 2009

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

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

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

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

WEST WARD – Councillors Francis, Jordan, Kafer & Maher

Duns Creek Rural Fire Brigade	Donation towards 50 Years Celebration – Rapid Response	\$200.00
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CENTRAL WARD – Councillors Dingle, MacKenzie, O'Brien & Tucker

Medowie Tidy Towns Committee	Donation towards assembly and installation of outdoor seating	\$495.00
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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.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil

CONSULTATION

Mayor
Councillors
Port Stephens Community

OPTIONS

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

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

MINUTES FOR ORDINARY MEETING – 20 OCTOBER 2009

Councillor Tucker left the meeting at 6.50pm and did not return.

ITEM NO. 9

INFORMATION PAPERS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER
GROUP: GENERAL MANAGERS OFFICE

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 20 October, 2009.

No:	Report Title	Page:
1	Access to Information – Section 12, Local Government Act 1993	
2	Designated Persons – Pecuniary Interests	

COUNCIL COMMITTEE MEETING – 20 OCTOBER 2009

RECOMMENDATION:

	Councillor John Nell Councillor Bruce MacKenzie	That the recommendation be adopted.
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ORDINARY MEETING – 20 OCTOBER 2009

357	Councillor Peter Kafer Councillor Sally Dover	It was resolved that the recommendation be adopted.
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COUNCIL COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

**ACCESS TO INFORMATION – SECTION 12 LOCAL GOVERNMENT ACT
1993**

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

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 2009/10 during the June to September 2009 period.

A total of 17 applications received, 12 with full access granted and 5 with restrictions as shown below.

Total received for the year to September 2009 is 17 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 three (3) applications were received under the Freedom of Information Act for the period of June to September 2009. Total received for the year to September 2009 is 3 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	PSC2009-02237	Seeking correspondence	Not held by Council
	PSC2009-2927	Seeking Council meeting tapes	Not held by Council
2	PSC2009-02871	Seeking development application information	Part released due to Privacy & Personal Information Protection Act & Copyright
3	PSC2009-02996	Seeking development application information	Access provided by inspection - no copies requested.
4	PSC2009-02729	Seeking development application information	Part released due to Privacy & Personal Information Protection Act & Copyright
5	PSC2009-02871	Seeking development application information	Part released due to Privacy & Personal Information Protection Act & Copyright

INFORMATION ITEM NO. 2

DESIGNATED PERSONS – PECUNIARY INTERESTS

AUTHOR: PETER GESLING – GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE
FILE: A2004-0030

BACKGROUND

The purpose of this report is to advise Council of designated persons who have submitted returns.

Councillors (past and present)

Cr Bruce MacKenzie
Cr Shirley O'Brien
Cr Daniel Maher
Cr Peter Kafer
Cr Frank Ward
Cr Steve Tucker
Cr Geoff Dingle
Cr Bob Westbury
Cr John Nell
Cr Sally Dover
Cr Ken Jordan
Cr Glenys Francis
Cr Helen Brown
Cr Ron Swan
Cr Geoff Robinson
Cr Josh Hodges

General Manager's office

General Manager
Executive Manager Corporate Management
Executive Officer

Corporate Services

Group Manager Corporate Services
Legal Services Manager
Communications & Customer Relations Manager
Corporate Strategy & Planning Coordinator

Information Management Manager
Publications Coordinator
Organisation Development Manager
Human Resources Manager
IT Coordinator

Sustainable Planning

Group Manager Sustainable Planning
Development and Building Manager
Building Coordinator
Integrated Planning Manager
Strategic Planning Coordinator
Senior Land Use Planner
Strategic Planner (2)
Customer Support Coordinator
Engineering Coordinator
Development Coordinator
Senior Development Planner (3)
Senior Policy Planner
Development Planners (2)
Senior Building Surveyors (2)
Health and Building Surveyors (5)
Subdivision Engineer
Section 94 Engineer
Social Planning Coordinator
Development Engineer
Infrastructure Planning Coordinator
Traffic Engineer
Environmental Services Manager
Coordinator Environmental Compliance & Community Health
Coordinator Natural Resources
Compliance Officer
Executive Planner
Environmental Health Team Leader

Commercial Services

Group Manager Commercial Services
Resources Manager
Principal Property Advisor
Property Unit Coordinator
Business Development Manager
Commercial Property Services Manager
Business Operations Manager
Tourism Manager
Financial Services Manager
Fleet Management Coordinator

Finance & Assets Coordinator
Financial Accountant
Economic Development Manager
Procurement & Contracts Coordinator
Mechanical Services Coordinator

Facilities & Services

Group Manager Facilities & Services
Community and Library Services Manager
Engineering Services Manager
Project Services Manager
Operations Manager
Recreation Services Manager
Sports Facilities Coordinator
Parks Facilities Coordinator
Contracts & Halls Coordinator

TABLED DOCUMENTS

Pecuniary Interest Returns

MINUTES FOR ORDINARY MEETING – 20 OCTOBER 2009

Mr Wayne Wallis, Corporate Services Group Manager presented Council with recent Awards Council had won.

The Awards were for:

Leadership & Excellence Award for Rural Councils at the Local Government Managers Association

Diversity@Work Award

There being no further business the meeting closed at 6.53pm

I certify that pages 1 to 109 of the Open Ordinary Minutes of Council 20 October 2009 were confirmed by Council at its meeting held on 10 November 2009.

.....
Cr Bruce MacKenzie
MAYOR