

Minutes 23 FEBRUARY 2010



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 23 February 2010, commencing at 6.44pm.

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.

031	Councillor Daniel Maher Councillor Peter Kafer	It was resolved that the apology from Councillors Francis and Jordan be received and noted.
032	Councillor Daniel Maher Councillor John Nell	It was resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 9 and 16 February 2010 be confirmed.

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MAYORAL MINUTE

MAYORAL MINUTE

ITEM NO. 1

FILE NO:PSC2006-0749

INVESTIGATION CREATION OF HUNTER COAST COUNCIL

THAT COUNCIL:

- 1) Consider the Newcastle City Council request to support the Creation of Hunter Coast Council.
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ORDINARY MEETING - 23 FEBRUARY 2010

033	Councillor John Nell Councillor Bruce MacKenzie	It was resolved that Port Stephens Council oppose the creation of a Hunter Coast Council.
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Councillor Nell called for a Division.

In accordance with the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil

BACKGROUND

The purpose of this Mayoral Minute is to provide Council with the opportunity to consider a request from Newcastle City Council.

Newcastle City Council at its meeting of the 15th December 2009, considered a Notice of Motion concerning the Creation of a Hunter Coast Council. The resolution of Newcastle City Council is:

"That Council (Newcastle City Council) ask the Minister to investigate the amalgamation of Cessnock City Council, Lake Macquarie City Council, Maitland City Council, Newcastle City Council and Port Stephens Council under section 218E of the Local Government Act.

Newcastle City Council write to Cessnock City Council, Lake Macquarie City Council, Maitland City Council and Port Stephens Council to seek their support of this motion under section 218E of the Local Government Act."

Section 218E states:

"218E - WHO MAY INITIATE A PROPOSAL?

- (1) *A proposal may be made by the Minister or it may be made to the Minister by a council affected by the proposal or by an appropriate minimum number of electors.*
- (2) *An appropriate minimum number of electors is:*
 - (a) *if a proposal applies to the whole of one or more areas, 250 of the enrolled electors for each area or 10 per cent of them, whichever is the greater, or*
 - (b) *if a proposal applies to part only of an area, 250 of the enrolled electors for that part or 10 per cent of them, whichever is the lesser."*

ATTACHMENTS

- 1) A copy of the Newcastle City Council Notice of Motion.

TABLED DOCUMENTS

- 1) ATTACHMENT A from the Newcastle City Council Notice of Motion – A proposal for voluntary amalgamation.

ATTACHMENT 1

THE CITY OF NEWCASTLE

Notice of Motion

Page 1

SUBJECT: NOM 15/12/09 - HUNTER COAST CITY COUNCIL

COUNCILLOR: A BUMAN

PURPOSE

The following Notice of Motion was received on 4 December 2009 from the abovementioned Councillor:

MOTION

- 1 That Council ask the Minister to investigate the amalgamation of Cessnock City Council, Lake Macquarie City Council, Maitland City Council, Newcastle City Council and Port Stephens Council, under section 218(E) of the Local Government Act.
- 2 Newcastle City Council write to Cessnock, Lake Macquarie City Council, Maitland City Council and Port Stephens to seek their support of this motion under Section 218(E) of the Local Government Act.

BACKGROUND

Do you tell people you're a Novocastrian?

When travelling around Australia or overseas, do you tell people you're from Newcastle?

Do you believe that support for the Knight's and the Jets comes from across the whole Hunter?

Do you feel that we should work together for the common good of our area?

This year the Hunter celebrates 150 years of local government and it's timely to review how we are governed, and it's time for us all to look to the future and be sure that we facilitate the best outcome for the residents of our councils.

What harm would there be in asking the Boundaries Commission to investigate whether or not amalgamation of the 5 Lower Hunter Councils is a practical step to take? They may say no. They may indicate that we should all work closer together on particular services, however, now is the perfect time to show leadership and strength, and support such an investigation.

I encourage you to support your council in Section 218(E) of the Local Government Act.

ATTACHMENTS

Attachment A: A Proposal for Voluntary Amalgamation *(to be distributed under separate cover)*

MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: PSC2009-00384

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGERS OFFICE

RECOMMENDATION:

- 1) That pursuant to section 10A(2)(g) of the Local Government Act, 1993, the Council Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Council Committee & Ordinary Council meeting agenda namely **Campvale Landscape Supplies – Compliance Investigation**.
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information concerning the commercial arbitration and legal costs incurred and advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege
- 3) That disclosure of the information would, on balance, be contrary to the public interest, as it would prejudice Council's legal position and Council has an obligation to protect its interests and the interests of ratepayers.
- 4) That the report of the closed part of the meeting remain confidential until the matter is settled.

COUNCIL COMMITTEE – 23 FEBRUARY 2010

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Daniel Maher	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

034	Councillor Bruce MacKenzie Councillor Daniel Maher	It was resolved that the recommendation be adopted.
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ITEM NO. 2

FILE NO: PSC2009-02408

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGERS OFFICE

RECOMMENDATION:

- 1) That pursuant to section 10A(2)(c) of the Local Government Act, 1993, the Council Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Council Committee & Ordinary meeting agenda namely **Sale of Land – Proposed Lot 6 of Lot 284 DP806310, Salamander Bay.**
- 2) That the reasons for closing the meeting to the public to consider this item be that it contains commercial information of a confidential nature that would, if disclosed, confer a commercial advantage on a person with whom the Council proposes to conduct business.
- 3) In particular, the information and discussion concerns **Sale of Land – Proposed Lot 6 of Lot 284 DP806310, Salamander Bay.**
- 4) On balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as the information and discussion need to be carried out confidentially to protect the interests of both parties. Any breach of such confidentiality could prejudice Council's position.
- 5) That the minutes relating to this item be made public.

COUNCIL COMMITTEE – 23 FEBRUARY 2010

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Daniel Maher	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

035	Councillor Bruce MacKenzie Councillor Daniel Maher	It was resolved that the recommendation be adopted.
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ITEM NO. 3

FILE NO: A2004-0028

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGERS OFFICE

RECOMMENDATION:

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 2 on the Council Committee and Ordinary Council agenda namely **Newcastle Airport – Tender for an accounting System Package**.

- 2) That the reasons for closing the meeting to the public to consider this item be that:
 - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
 - ii) In particular, the report includes confidential pricing information in respect of the **Newcastle Airport – Tender for an accounting System Package**.

- 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.

- 4) That the report of the closed part of the meeting is to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179) of the Local Government (General) Regulation 2005.

COUNCIL COMMITTEE – 23 FEBRUARY 2010

RECOMMENDATION:

	<p>Councillor Bruce MacKenzie Councillor Daniel Maher</p>	<p>That the recommendation be adopted.</p>
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MINUTES FOR ORDINARY MEETING – 23 FEBRUARY 2010

ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

036	Councillor Bruce MacKenzie Councillor Daniel Maher	It was resolved that the recommendation be adopted.
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ITEM NO. 4

FILE NO: PSC2009-00384

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGERS OFFICE

RECOMMENDATION:

- 1) That pursuant to section 10A(2)(g) of the Local Government Act, 1993, the Council Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Information Paper Item 1 on the Council Committee & Ordinary Council meeting agenda namely **Unauthorised Depot : Cabbage Tree Road, Williamtown.**

- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information concerning the commercial arbitration and legal costs incurred and advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

- 3) That disclosure of the information would, on balance, be contrary to the public interest, as it would prejudice Council's legal position and Council has an obligation to protect its interests and the interests of ratepayers.

- 4) That the report of the closed part of the meeting remain confidential until the matter is settled.

COUNCIL COMMITTEE – 23 FEBRUARY 2010

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Daniel Maher	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

037	Councillor Bruce MacKenzie Councillor Daniel Maher	It was resolved that the recommendation be adopted.
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COUNCIL COMMITTEE REPORTS



ITEM NO. 1

FILE NO: DA 16-2008-291-1

REVIEW OF DEVELOPMENT APPLICATION SEEKING APPROVAL TO CONSTRUCT A SINGLE STOREY DWELLING AT 20 NOBLES ROAD, NELSONS PLAINS, PUSUANT TO SECTION 82A OF ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

**REPORT OF: KEN SOLMAN – ACTING MANAGER, DEVELOPMENT & BUILDING
GROUP: SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

Refuse the Section 82A Review of Development Application 16-2008-291-1 for the following reasons:

- 1) The proposed development is inconsistent with the provisions of *Port Stephens Local Environmental Plan 2000*, in particular, the Rural 1(a) Zone objectives and planning considerations for development on flood prone land.
- 2) The proposed development is to be located on a floodplain identified as being an area of *High Hazard* (from a hydraulic point of view ie, floodwater depth and velocity) and the *Lower Hunter Valley Floodplain Risk Management Study* (November 2001) recommends that no additional dwellings should be permitted in this location.
- 3) The proposed development is considered an inappropriate land use under the *Floodplain Development Manual 2005*.
- 4) Approving additional dwelling houses in a known flood area designated as "*High Hazard*" is likely to eventuate into an "*Extreme Planning Hazard*" by placing further demand on the already limited resources of the community as a whole, and emergency services specifically, due to domestic property protection, evacuation and/or re-supply.
- 5) Approval of this application would have an undesirable cumulative effect by increasing the community's susceptibility to flooding in terms of social, economic and environmental/ecological consequences.
- 6) It is not possible to implement an evacuation plan which provides permanent, fail safe, maintenance free measures to ensure the timely, orderly and safe evacuation of occupants.

COUNCIL COMMITTEE – 23 FEBRUARY 2010

RECOMMENDATION:

	Councillor John Nell Councillor Daniel Maher	That the recommendation be adopted.
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MINUTES FOR ORDINARY MEETING – 23 FEBRUARY 2010

In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Daniel Maher and John Nell.

Those against the Motion: Crs Peter Kafer, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

The motion on being put was lost.

	Councillor Bruce MacKenzie Councillor Peter Kafer	That Council express its support in principle for the Development Application and request the Group Manager, Sustainable Planning to draft Conditions of Consent for the next Ordinary Meeting of Council in the event that Council resolves to determine the Application in terms of Conditional Consent.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Cr John Nell.

Councillor Maher abstained from voting.

ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

038	Councillor Bruce MacKenzie Councillor Peter Kafer	It was resolved that the Council Committee 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: Crs Peter Kafer, Daniel Maher, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Cr John Nell.

BACKGROUND

The purpose of this report is to present a Section 82A Review Application to Council for determination.

Development Application 16-2008-291-1 was refused by Council on 28 November 2008. The owner/applicant has lodged a Section 82A Review seeking a formal review of Council's determination.

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

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

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

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

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

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

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

It is strongly recommended that this application be refused based upon the expected level of flood risk and associated social, economic and environmental impacts.

FINANCIAL/RESOURCE IMPLICATIONS

The financial/resource implications are difficult to determine as Council may accept a significant legal liability if consent is issued for a dwelling house on a property identified as subject to "High Hazard" flooding which is liable to become an "Extreme Planning Hazard".

LEGAL, POLICY AND RISK IMPLICATIONS

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

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

Council's solicitors, Harris Wheeler Lawyers' advise:

"This defence (Section 733(1) of the Local Government Act 1993) will be less easily established if the consent is not issued substantially in accordance with the

principles established in the Floodplain Management Manual notified under s.733(5). The Manual provides, in effect, that a site specific evacuation plan is ineffectual and should not be the basis of consent, accordingly, simply imposing a condition, including a deferred commencement condition, that an applicant obtains the SES's approval of a site specific evacuation plan, runs the risk that the consent is not in accordance with the Manual. In addition, it is understood that the SES is refusing to approve such plans, having no statutory authority or role in doing so. Accordingly, any such condition would be incapable of being satisfied and is, for that reason, also inappropriate."

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

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

The consequences of the Court's decision demonstrates its' consideration of the significance of "global" environmental factors such as greenhouse emissions and climate change on project assessments. In making his decision, Biscoe J comprehensively outlines the relevancy of Environmentally Sustainable Development (ESD) principles and the scientific data available which supports the existence of pending climate change. Further, His Honour Biscoe J found that the determining authority (in this case Council) was bound to take into account the relevant principles of ESD which fall within the public interest considerations listed in s79C of the EP&A Act. He also held that the Council was required, pursuant to s79C of the EP&A Act, to take into account the relevant principles of ESD, in particular the precautionary principle of intergenerational equity in the context of climate change when determining a development application.

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

Where there is a failure to consider these matters, the Court has demonstrated that it is not hesitant to declare the approval void.

His Honour Justice Biscoe of the NSW Land and Environment Court (LEC) recently acknowledged the efforts to date of those who have demonstrated concern and willingness to take action in bringing litigation. He stated "*The enforcement of*

Ecologically Sustainable Development (ESD) principles, including in relation to climate change, depends upon the vigilance and willingness of authorities and concerned persons to litigate where there has been an actual or threatened breach of ESD principles. The expanding case law is owed to their initiatives".

It is evident from the above decisions that the Courts appear to be inclined to pull together statutory and policy provisions and flexibly interpret and apply them in developing jurisprudence for sustainable development and allowing for adaption to climate change. This approach should give Council some confidence that decisions that reasonably take into account climate change will be upheld in courts of law.

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

To manage the development of land subject to or affected by the likelihood of flooding and/or tidal inundation defined as flood prone land in the Port Stephens Local Environmental Plan 2000.

To base the nature of the restriction applied to an affected site on the principles of the NSW Floodplain Development Manual 2005, the Port Stephens Foreshore (Floodplain) Management Study and Plan 2002, the Paterson River Floodplain Management Study and Plan 2001, the draft Lower Hunter Valley Floodplain Management Study 2001, the Williamstown/Salt Ash Flood Study and any further flooding information available to Council at the time.

To ensure that decisions in relation to the acquisition and development of land are made, having regard to the best flooding information available.

To ensure that Council complies with the provision of S733 of the *Local Government Act 1993* – Exemption from liability – flood liable land and land in coastal zones.

Specifically, the policy states that:

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

The applicant has submitted a report prepared by Molino Stewart Pty Ltd (Environment & Natural Hazards) which has shortcomings as indicated in the discussion section of the assessment.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

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

Introducing additional dwelling houses into known high flood risk areas zoned 1(a) Rural Agricultural "A" is not desirable. Refusal of this application reduces private and public losses attributed to flooding.

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

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

CONSULTATION

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

The State Emergency Service (SES) has advised that it has no statutory authority to endorse or reject development applications and/or private flood evacuation plans. A letter from the Lower Hunter Division Executive Officer of the SES (dated 9 September 1998) advises that approving the construction of dwelling houses in known flood prone areas is undesirable, placing additional demand upon already limited resources attending to property and infrastructure protection, evacuation and/or re-supply. The preparation of private evacuation plans may reduce the demand upon SES resources however these plans are usually ineffective during significant flood events and are not to be relied upon. Refusal of this application is recommended based on the level of flood risk upon the proposed development and not as a consequence of advice received by the SES.

OPTIONS

Adopt the recommendation.

Reject or amend the recommendation.

Council express its support in principle for the Development Application and request the Group Manager, Sustainable Planning to draft Conditions of Consent for the next Ordinary Meeting of Council in the event that Council resolves to determine the Application in terms of Conditional Consent.

ATTACHMENTS

Locality Plan
Assessment

COUNCILLORS ROOM

Plans and elevations

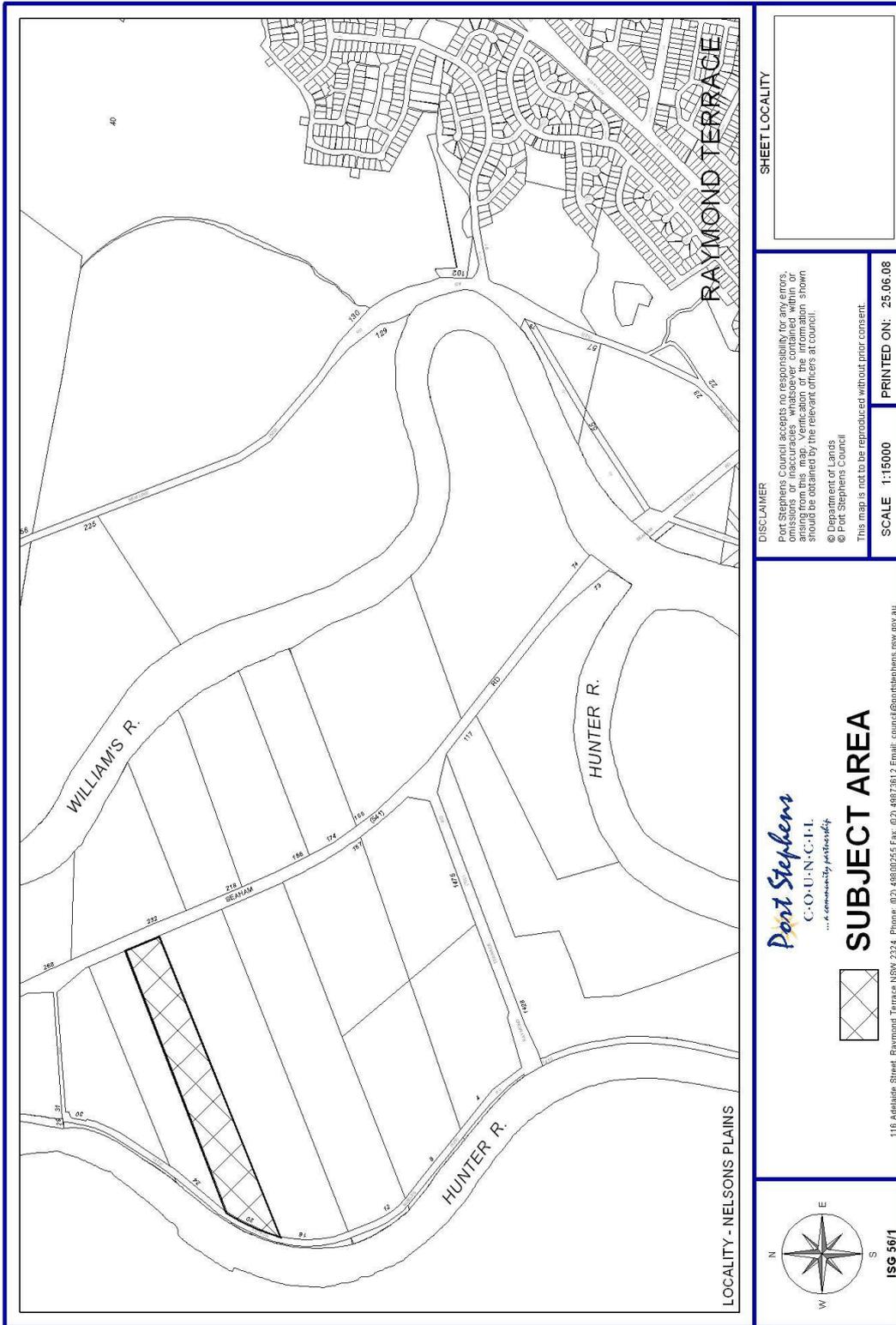
Council policy – areas affected by flooding and/or inundation

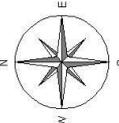
S733(4) Local Government Act 1993 – exemption from liability – flood liable land and land in coastal zone

TABLED DOCUMENTS

NIL

ATTACHMENT 1
LOCALITY PLAN



 Port Stephens COUNCIL <i>... a community partnership</i>		SUBJECT AREA 	116 Adelaide Street, Raymond Terrace NSW 2254 Phone: (02) 4980255 Fax: (02) 4973761 Email: council@portstephens.nsw.gov.au
DISCLAIMER Port Stephens Council accepts no responsibility for any errors, omissions or inaccuracies whatsoever contained within or arising from this map. Verification of the information shown should be obtained by the relevant officers at Council. © Department of Lands © Port Stephens Council This map is not to be reproduced without prior consent.		SHEET LOCALITY SCALE 1:15000 PRINTED ON: 25.06.08	
 N E S W		ISC 56/1	

**ATTACHMENT 2
ASSESSMENT**

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

THE PROPOSAL

The applicant seeks approval to construct a single storey dwelling house upon an elevated earth mound located approximately 50 metres to the east of Nobles Road, Nelsons Plains and 800 metres from the western boundary (Seaham Road). The Hunter River is approximately 70 metres to the west of the raised mound. The dwelling consists of a lounge/dining/kitchen/family/rumpus/study area, four (4) bedrooms and associated bathroom/ensuite and a two (2) vehicle garage with attached workshop.

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

THE APPLICATION

Owner	Mr Noel Martin
Applicant	Mr Noel Martin
Detail Submitted	Development plans which include site and floor plans and elevations.

THE LAND

Property Description	Lot 2, DP 784901
Address	20 Nobles Road, NELSONS PLAINS
Area	10.21 Hectares
Dimensions	Northern boundary – 874.800 metres Southern boundary – 743.270 metres East/west boundary – 109.910 metres
Characteristics	The land is generally level with an average elevation of approximately 2.00 metres AHD. The dwelling is proposed to be constructed upon an earthen mound located approximately three (3) kilometres distance from flood free land in the townships of Osterley and/or Raymond Terrace. The height of the existing earthen mound is generally 4.00 metres AHD. The submitted plans indicate that the applicant proposes to raise the height a further 715-865 mm to a final level of approximately 4.90 metres AHD

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning
Relevant Clauses

Rural 1(a) RURAL AGRICULTURAL “A”
Clause 11(2)(e) and Clauses 37 and 38
(including “**Objectives for development
on flood prone land**”)

Development Control Plan

Port Stephens Development Control Plan
2007 (Adopted 31 May 2007). This
application received 21 April 2008.

State Environmental Planning Policies

Not applicable

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
LEP Requirements			
Minimum area per dwelling	10.21 Hectares (102,000 m ²)	4000 m ² minimum	Yes
Finished Floor Level (Flood Prone Land)	5.30 metres AHD	Flood Planning Level 5.30 metres AHD	Yes*
EXTREME HAZARD ZONE	New dwelling	No habitable dwellings	No**
DCP Requirements			
Building Line Setback	Approximately 50 metres from west boundary (Nobles Road)	12 metres from west boundary (Nobles Road)	Yes
Side Boundary Setbacks	44 metres (north boundary) and 52 metres (south boundary)	900 mm	Yes
BASIX Requirements	Water Score 40 Energy Score 48	Target 40 Target 40	Yes Yes

- **Flood Planning Level (FPL). Flood levels selected for planning purposes which should be based on an understanding of the full range of flood behaviour and the associated flood risk including the social, economic and ecological consequences associated with floods of different severities. Different FPL's may be appropriate for different categories of land-use and for different flood plans.*
- ***The proposal is not consistent with Clause 52 of the Hunter Regional Management Plan, Clauses 37 and 38 of Port Stephens LEP 2000, Flood Management Manual 2001 or the Lower Hunter Valley Floodplain Risk Management Study 2001 and is the primary basis for recommending*

refusal in this instance. In a 1% Annual Exceedence Probability flood event, the proposed dwelling will be physically isolated due to severe flood inundation. The nearest flood free land in proximity to the subject land is located at Mount Osterley and/or Raymond Terrace, placing further pressure upon emergency services and potentially placing dwelling occupants and volunteer emergency personnel at risk. The June 2007 flood event was calculated as approximately a 5% Annual Exceedence Probability flood event.

Discussion

The report by Molino Stewart discusses the probability of flooding affecting the dwelling and occupants while on the mound. It does not address the issue of floodwaters affecting residents or rescuers evacuating or travelling through or relying on public utility services in the surrounding high hazard floodway. Nor does it address the cumulative effect of residences in the high hazard floodway.

The proposed dwelling is to be located on land currently zoned 'Rural 1(a)' Rural Agriculture pursuant to LEP 2000.

The proposed development is within the area classified as flood prone land under LEP 2000 and as such Council must consider the following requirements in accordance with that LEP before granting consent:

(A) THE EXTENT AND NATURE OF THE FLOODING OR INUNDATION HAZARD AFFECTING THE LAND

FLOOD DEPTHS AND VELOCITIES

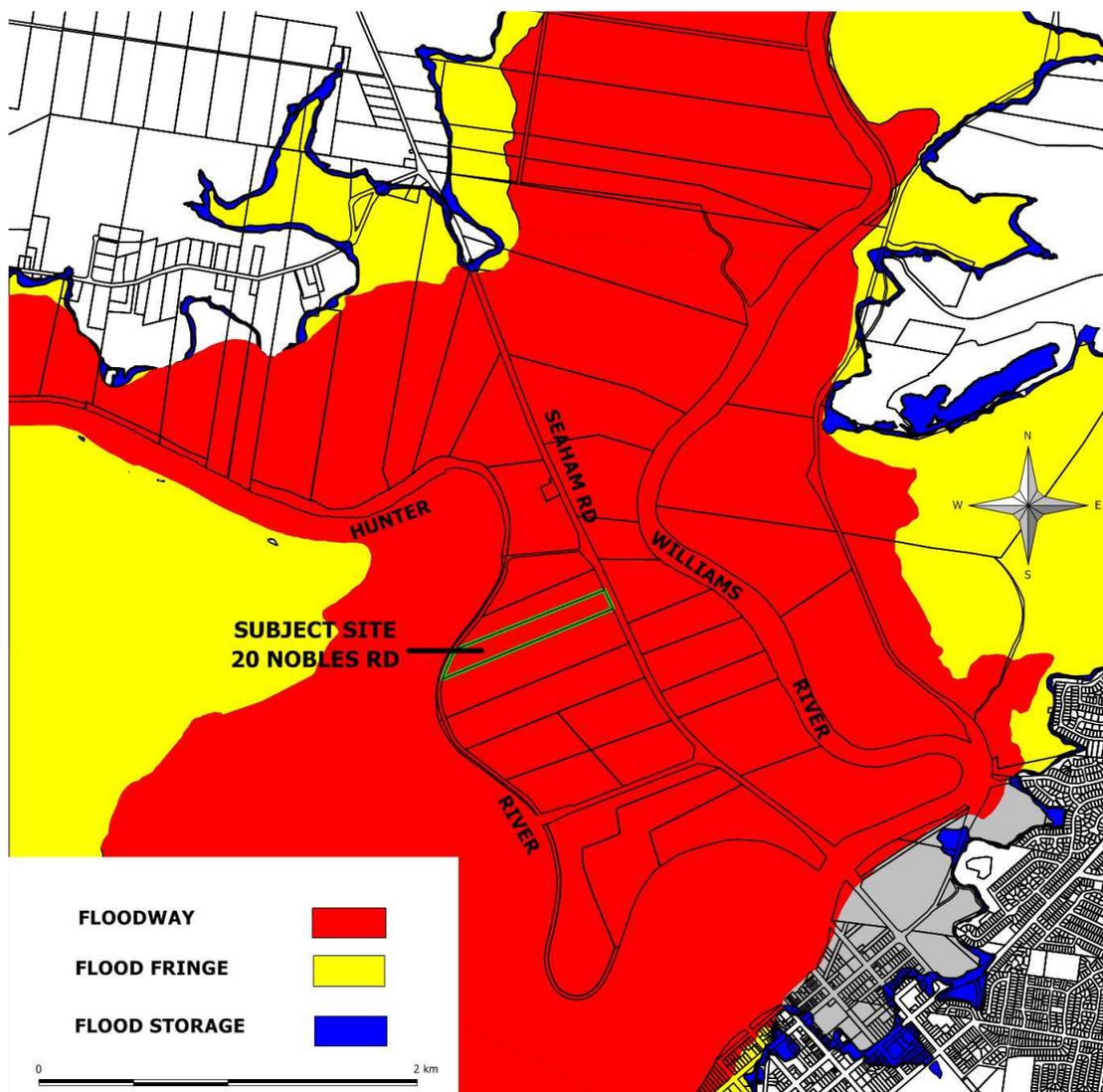
The Williams River Flood Study 2009 indicates the following information for this site, with a ground level of approx. 1.8 to 2.6 metres AHD (as indicated by the Flood Consultant report):

AEP Flood	AHD Level (Metres)	Velocity (Metres/sec)	Depth water at site (Metres)
10%	Not flooded but river (may be affected by local rainfall)		
5%	4.2	0.2 to 0.6	1.6 to 2.4
1%	4.6	0.2 to 0.6	2.0 to 2.8
0.5%	5.1	0.2 to 0.6	2.5 to 3.3
extreme	9.7	0.2 to 0.6	7.1 to 7.9

Although the site is not affected by flooding from the Williams and Hunter rivers in a 10% AEP and smaller flood, roads leading to the site may be cut off by flooding elsewhere.

FLOOD HAZARD

The Williams River Flood Study indicates that this property is in the middle of a High Hazard Floodway excluding planning provisions as shown in the following figure:



The Draft Lower Hunter River Floodplain Management Study (August 1999) recommends that no habitable dwellings should be permitted on land below the 5% AEP flood on Nelsons Plains as they are subject to this flood hazard and the risks associated with main flood flows and the obstruction to the flow of floods. The property in question is approximately 1.6 to 2.4 metres below the 5% AEP flood.

(B) WHETHER OR NOT THE PROPOSED DEVELOPMENT WOULD INCREASE THE RISK OR SEVERITY OF FLOODING OR INUNDATION AFFECTING OTHER LAND OR BUILDINGS, WORKS OR OTHER LAND USES IN THE VICINITY

The proposed development, in isolation, would not cause any detrimental affect on other properties as the filling is proposed to a height of approximately 2.5 to 3 metres above the natural ground, however there would be a visual intrusion into the landscape.

(C) WHETHER THE RISK OF FLOODING OR INUNDATION AFFECTING THE PROPOSED DEVELOPMENT COULD BE REASONABLY MITIGATED AND WHETHER CONDITIONS SHOULD BE IMPOSED ON ANY CONSENT TO FURTHER THE OBJECTIVES OF THIS PLAN

The risk of flooding on the proposed dwelling will be reduced by the adoption of the proposed pad level. Raising the access track to the level of Nobles Road would still be flooded by even the 5% AEP flood. Access to high ground is still via several flood prone roads including Nobles, Seaham and Raymond Terrace Roads which are subject to moderate flooding.

(D) THE SOCIAL IMPACT OF FLOODING ON OCCUPANTS, INCLUDING THE ABILITY OF EMERGENCY SERVICES TO ACCESS, RESCUE AND SUPPORT RESIDENTS OF FLOOD PRONE AREAS

EMERGENCY RESPONSE

The State Emergency Service has commented on similar developments on the issue that individual acceptance of responsibility for flood emergencies does not always work in practice, and that the SES does not have the resources to provide support to those that do not. Furthermore there is no telemetered flood warning system, nor does the Bureau of Meteorology advise predicted flood levels for this particular area (and downstream).

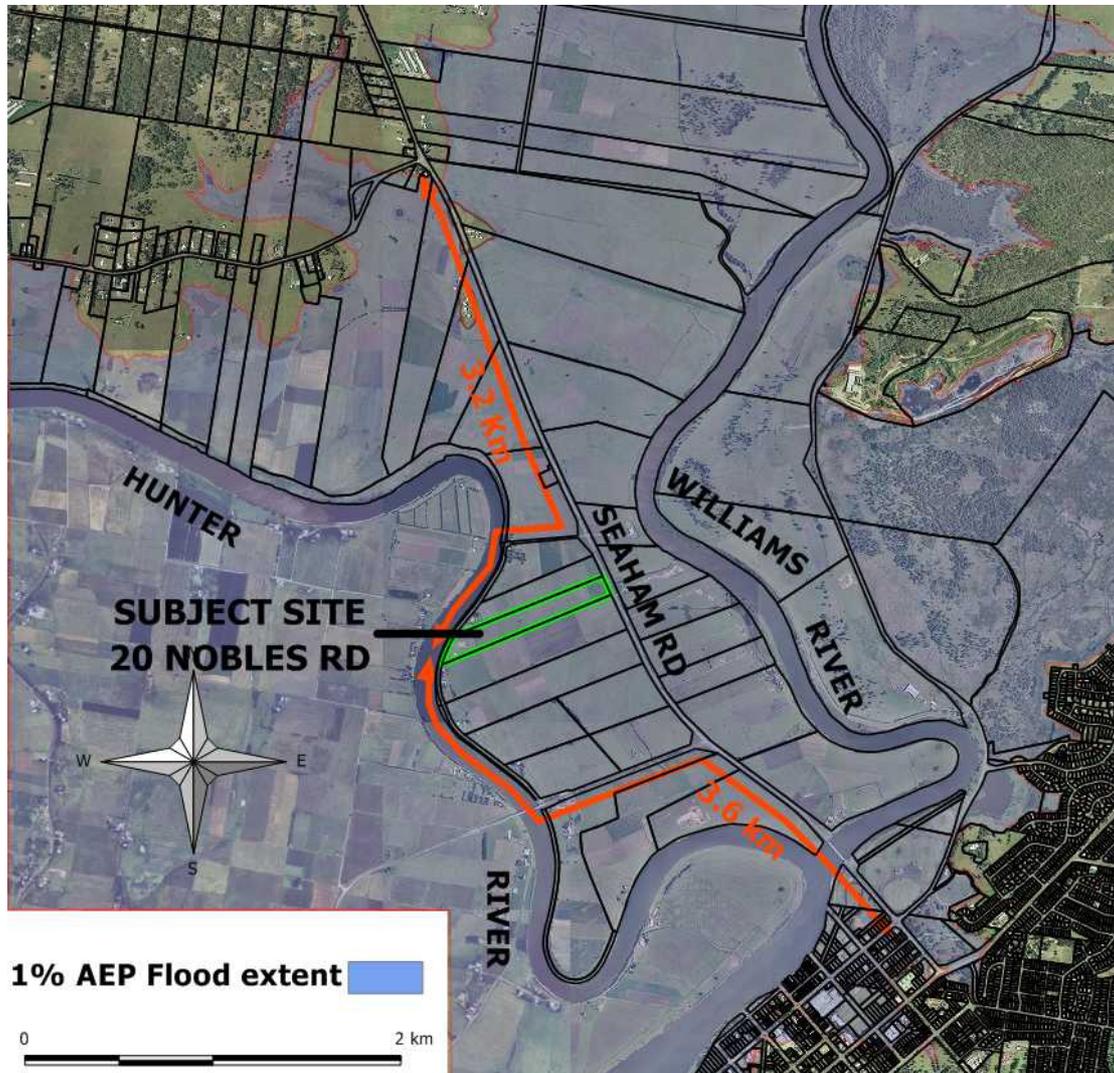
FLOOD FREQUENCY

While Council does not have records to indicate how frequently this area is flooded this repetitive occurrence must also be considered. The levee banks constructed in the Lower Hunter area, including on the Hunter and Paterson Rivers were constructed in such areas, to protect the farming lands from nuisance flooding. This means that structures in these areas, including dwellings, may be isolated by flood waters on a number of occasions during a single generation of occupation. This creates re-occurring emergency needs, possible damage or loss of property, possible loss of income and stress.

ISOLATION

This site is approximately 2.8 km to flood free land and 3.8 km to flood free land which provides access to food and medical supplies. Even though dwellings may be constructed above the 1% flood, the isolation of this area in even a moderate flood (as can occur in these areas) and the moderate frequency of flooding of Nobles, Seaham and Raymond Terrace Roads can create difficulties for emergency food and medical

supplies and possibly evacuation. Dwellings on these sites require earlier flood warning times and warning for lower floods than other flood affected sites to allow adequate time for supplies and/or evacuation. The surrounding floodwaters may damage communication and electricity supplies and cause sanitation problems. The isolation is shown in the following flood extent figure:



CUMULATIVE EFFECTS

The NSW Floodplain Management Manual (2005) advises that Councils need to consider the cumulative effects of a number of such developments in the floodplain. Whilst each development by itself may not lead to a significant increase in flood levels, risk, evacuation needs or potential damage, the Manual considers the increase occasioned by the cumulative effects of a number of such developments is often inappropriate and unacceptable. This area of Nelsons Plains has over 70 individual lots which, should dwellings be permitted, would allow over 70 households to be exposed or cause others to be exposed to high hazard floodway safety issues.

It is considered that due to Emergency Response, Flood Frequency and Isolation in this area of the floodplain and high hazard floodway, the cumulative effects of residential development is unacceptable.

(E) THE PROVISIONS OF ANY FLOODPLAIN MANAGEMENT PLAN OR DEVELOPMENT CONTROL PLAN ADOPTED BY THE COUNCIL.

While there are no Floodplain Management or Development Control Plans adopted by Council for this area, the Draft Lower Hunter River Floodplain Management Study has been referenced in the consideration of this application. That draft document does not support habitable dwellings on this site.

Further, the proposed development is inconsistent with the provisions of:

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

Port Stephens Local Environmental Plan 2000

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

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

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

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

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

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

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

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

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

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

Floodplain Development Manual 2005

The primary objective of the Floodplain Development Manual 2005 is to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone properties and to reduce private and public losses as a result of flooding.

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

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

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

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

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

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

Lower Hunter Valley Floodplain Risk Management Study (2001)

The *Lower Hunter Valley Floodplain Risk Management Study (2001)* defines *Floodways* as those areas of the floodplain where a significant discharge of water occurs during floods. They are often aligned with naturally defined channels. Floodways are areas which, even if only partially blocked, would cause a significant redistribution of flood flow, or a significant increase in flood levels. Floodways are often areas of deeper flows or areas where higher velocities occur. As for flood storage areas, the extent and behaviour of floodways may change with flood severity. Areas that are benign for small floods may cater for much greater and

more hazardous flows during larger floods. An objective of the study is to prevent intensification of the use of floodways and, wherever possible, allow for their conversion to natural waterway corridors.

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

2. Likely Impact of the Development

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

Rural Amenity

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

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

Access

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

Emergency Response

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

In this locality, the awareness of property owners/occupants is hampered by the lack of a telemetered flood warning system and the Bureau of Meteorology does not advise of predicted flood levels. The *Lower Hunter Valley Floodplain Risk Management Study 2001* suggests that a telemetered flood warning system be developed for the Lower Hunter with specific provisions for the mostly rural lands between Green Rocks and Raymond Terrace.

Cumulative Effect

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

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

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

3. Suitability of the Site

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

4. Submissions

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

5. Public Interest

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

ITEM NO. 2

FILE NO: PSC2008-1759

REVIEW OF ROADSIDE MEMORIALS POLICY

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the Roadside Memorials Policy (Attachment 1) for public exhibition.

COUNCIL COMMITTEE – 23 FEBRUARY 2010

RECOMMENDATION:

	Councillor John Nell Councillor Peter Kafer	That Council endorse the Roadside Memorials Policy (Attachment 2) for public exhibition.
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ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

039	Councillor Daniel Maher Councillor Steve Tucker	It was resolved that the Council Committee recommendation be adopted.
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BACKGROUND

The purpose of this report is to seek Council's endorsement of the revised Roadside Memorials Policy

On 28th January, 2003 Council endorsed the first Roadside Tributes & Memorials Policy (Minute Number 204). During the life of this Policy, Council Officers have been referred to, and enforced, structures on three occasions.

Changes to the Policy during the review process have been made to the size of permissible roadside tributes, consistent with Roads and Traffic Authority's Roadside Memorials Policy. The Policy Statement has been reviewed to align with the Roads Act and to provide adequate guidance to those seeking to install a Roadside Memorial.

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL, POLICY AND RISK IMPLICATIONS

There are no legal or policy implications with the recommendation of this report. Adoption and implementation of the policy will align Council with RTA policy, reduce exposure to public liability risk and is based upon road safety implications.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

Consultation has been conducted with:

The Roads and Traffic Authority, Hunter Region
Group Manager - Facilities and Services

OPTIONS

Council can:

- 1) Accept the recommendations; or
- 2) Amend the recommendations and adopt the draft policy without public exhibition; or
- 3) Reject the recommendations and require certain modifications to the draft policy before public exhibition or adoption

ATTACHMENTS

- 1) Roadside Tributes & Memorials Policy adopted on 28 January 2003
- 2) Draft Roadside Memorials and Tributes Policy

ATTACHMENT 1



Adopted:28/01/03
Minute No:024
Amended:
Minute No:

FILE NO: 5685-013

TITLE: ROADSIDE TRIBUTES AND MEMORIALS

RESPONSIBLE OFFICER: PHIL BUCHAN

POSITION TITLE: TRANSPORT PLANNING MANAGER

BACKGROUND

In December 1995 Council adopted a report prepared by the Road Safety Officer recommending the installation of white crosses marking the location of fatal road crashes within the road reservations. The initiative was supported by research from Newcastle University which suggested that young male motorists who observed roadside crosses demonstrated a lower propensity to drive at excessive speed along that section of road.

There are many examples where people have placed their own roadside tributes or memorials to mark the location where someone has been killed as a result of a car crash. An issue facing road authorities today is what to do about the inappropriate location of some tributes, particularly where a tribute is considered to be either a traffic or pedestrian hazard in close proximity to residential dwellings or public places.

An assessment of the location of fatal crashes over the past 10 years within Port Stephens has revealed that the majority occur on roads that are not under the care and control of Council. In these instances, typically on State Roads, the RTA is the appropriate road authority. As such Council is unable to install or approve these tributes. Contact with the RTA has confirmed that the Authority has its own policy dealing with "Roadside Tributes". This example has been followed to develop a Council policy supporting the principles of the RTA policy and addressing specific issues that impact on Council.

OBJECTIVE

To establish a framework that provides direction for Council staff and information to the public on issues relating to roadside tributes such as flowers and cards or memorials such as plaques and religious symbols, including small crosses.

PRINCIPLES

1. To provide consistent information on the placement, removal, modification or relocation of roadside tributes and memorials.
2. To recognise the deep emotions attached to roadside tributes and memorials and be sensitive in dealing with the issues regarding their location within or adjacent to Council's roads.
3. To limit Council's exposure to the potential road safety hazard and public liability risks of roadside tributes and memorials.
4. To assist Council to manage the road assets under its care and control.

POLICY STATEMENT

DEFINITION

A roadside tribute or memorial is an object that symbolically marks a location where a person has died as a result of a road related incident. The object, usually flowers, cards, a plaque or a cross is placed within or adjacent to the road reserve.

POSITION

Council will not encourage the placement of fixed tributes or memorials, Council recognises that some families will want to express their grief in this way. The placement of tributes and memorials within road environments will be reviewed in accordance with the following principles.

1. Council will not permit any person to place a memorial or tribute, other than a floral tribute, along a road within a build up area. (*A built up area is generally defined by existence of street lighting and having a speed limit of 60 km/hr or less*)
2. Roadside memorials such as crosses if placed in rural road environments, will not be permitted to exceed a height of 700mm and width of 400mm. The material composition and location of these memorials will be considered in respect to their potential risk to road users.
3. Council, as the Road Authority, will intervene in order to preserve road safety, to address possible exposure to public liability and to remove inappropriately located or unsightly objects and structures.

ADVICE

It is acknowledged that most tributes or memorials will appear soon after the event without anyone seeking advice from Council. Council respects the wishes of those families wanting to place these types of tributes and will provide sympathetic advice for people making inquiries of this nature. The placement of roadside floral tributes is a matter for individual families. Council will not install or maintain memorials or tributes on behalf of families or individuals.

REMOVAL

In the event there are concerns regarding a tribute or memorial placed in the road reservation, approval for the removal, relocation or modification can be given by the Facilities and Services Group Manager or a nominated delegate responsible for the local road network. In general Council will take any necessary and appropriate action to ensure that memorials do not present themselves as road side hazards. For example solid obstacles placed within a clear zone or objects that restrict the road user's line of sight. Other situations where removal or relocation may be required include road construction or maintenance activities.

RELATED POLICIES

Code of Conduct

REVIEW DATE

January 2006

RELEVANT LEGISLATIVE PROVISIONS

Roads Act 1999
Road Transport (Safety & Traffic Management) Act 1999

IMPLEMENTATION RESPONSIBILITY

Facilities & Services Group

ATTACHMENT 2



DRAFT POLICY

Adopted :# } This section
Minute No. # } should not be
Amended: # } completed by
Minute No. # } author of
policy

FILE NO: PSC2008-1759

TITLE: ROADSIDE MEMORIALS AND TRIBUTES

REPORT OF: ROAD SAFETY OFFICER

BACKGROUND

A roadside memorial or tribute symbolically marks a location where a person has died as a result of a motor vehicle crash or other road related incident. Structures such as crosses or objects such as wreaths, cards and photographs are often placed as close as possible to the location of the crash.

The policy provides guidance for Council staff in the removal of roadside memorial structures and assessing the appropriateness of crosses and items of tribute that have been installed or placed in the road environment following fatal crashes.

OBJECTIVE

To establish a framework that provides direction for Council staff and information to the public on issues relating to roadside memorials such as crosses, plaques and the placement of tributes such as flowers, cards and photographs.

PRINCIPLES

- To provide consistent information on the placement, removal, modification or relocation of roadside memorials and tributes.

- To recognise the deep emotions attached to roadside memorials and tributes and to be sensitive in dealing with the issues regarding their location within or adjacent to Council's roads.
- To limit Council's exposure to the potential road safety hazard and public liability risks to roadside memorials and tributes.
- To assist Council to manage the road assets under its care and control.

POLICY STATEMENT

Council respects the wishes of families wanting to place memorials and tributes and will provide sympathetic advice for people making enquiries of this nature. Council does not however, encourage the placement of such memorials and tributes, and will not install or maintain memorials or tributes on behalf of families or individuals.

The placement of memorials and tributes within road environments will be reviewed in accordance with the following:

- Council will not permit any person to place a memorial or tribute, other than a floral tribute, along a road within a built up area
- Roadside memorials such as crosses if placed in rural road environments will not be permitted to exceed a height of 500 mm and width of 400 mm. Structures will be made of frangible material and the location will be considered in respect to the potential risk to road users.
- Where Council is the road authority:
 - Intervention will take place in order to preserve road safety and to inhibit exposure to public liability.
 - Unsightly or inappropriately placed objects and structures will be removed.

Additionally, Section 138 of the Roads Act states:

- (1) A person must not:
- a. Erect a structure or carry out a work in, on or over a public road, or
 - b. Dig up or disturb the surface of a public road, or
 - c. Remove or interfere with a structure, work or tree on a public road,...otherwise than with the consent of the appropriate road authority.

Council will take any necessary and appropriate action to ensure that memorials do not present themselves as road side hazards. Through assessment, memorials that are constructed of solid materials, placed within a clear zone or restrict a road user's line of sight will be recommended for removal or relocation where possible in consultation with the family. In the event of road construction or maintenance activities, removal or relocation may also be necessary.

In the event there are concerns regarding a memorial or tribute, approval and action on the modification, relocation or removal will be undertaken by the Facilities and Services Group Manager or nominated delegate responsible for the local road network.

RELATED POLICIES

Port Stephens Council Code of Conduct

REVIEW DATE

2013

RELEVANT LEGISLATIVE PROVISIONS

Roads Act 1993 No 33

Section 138 Works and Structures

IMPLEMENTATION RESPONSIBILITY

Manager - Integrated Planning Section (Assessment of memorials)

Group Manager - Facilities and Services (Direction to remove, relocate or modify)

Built-up area. In relation to a length of road, means an area in which there are buildings on land next to the road, or there is street lighting, at intervals not over 100 metres for a distance of at least 500 metres or, if the road is shorter than 500 metres, for the whole road. (Australian Road Rules)

Frangible material. Designed to fracture, break away, give way or bend such that the damage to a colliding vehicle and risk of injury to vehicle occupants upon impact is minimised (Aust Roads)

Clear zone. The horizontal width measured from the edge of the traffic lane that is kept free from hazards to allow an errant vehicle to recover. (Aust Roads)

ITEM NO. 3

FILE NO: PSC2008-9730

PORT STEPHENS TOURISM STRATEGY

REPORT OF: LESLEY MORRIS - ECONOMIC DEVELOPMENT MANAGER
GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Port Stephens Tourism Strategy.

COUNCIL COMMITTEE – 23 FEBRUARY 2010
RECOMMENDATION:

	Councillor Bob Westbury Councillor John Nell	That Council: 1. Support the strategic intent of the Tourism Study and request the Port Stephens Council and Port Stephens Tourism Ltd joint working party to develop an implementation plan for Council's consideration. 2. Nominate two Councillors to sit on the joint working party.
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ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

040	Councillor Bob Westbury Councillor John Nell	It was resolved that the recommendation be adopted and that Councillors Bob Westbury, John Nell and Steve Tucker be Council's representatives on the Joint Working Party.
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BACKGROUND

The purpose of this report is to propose the adoption of the Port Stephens Tourism Strategy.

The need for a long term strategy for the tourism sector, which can guide market development, investment and infrastructure decisions in both private and public sectors, was identified in the Port Stephens Economic Development Strategy adopted by Council in December 2007 and the more recent Port Stephens Futures Strategy.

A joint project of Port Stephens Council, Port Stephens Tourism and the NSW Government (Department of Industry and Investment), the aim was to undertake a detailed assessment of the tourism industry within Port Stephens and formulate a strategic plan to take the industry forward.

FINANCIAL/RESOURCE IMPLICATIONS

Council allocates annual funding for Tourism and visitor services functions.

The recommendations of the Tourism Strategy will be implemented over a ten year period. Grant funding opportunities will be sought for some actions and there may be some re-allocation of existing funding.

LEGAL, POLICY AND RISK IMPLICATIONS

The need for a Tourism Strategy for Port Stephens has been identified in both the Port Stephens Economic Development Strategy and the Port Stephens Futures Strategy.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Tourism is one of the main industries in Port Stephens LGA and the main economic activity on the Tomaree Peninsula. A long term strategy for the Tourism industry is required to identify ways to strengthen and build the tourism sector in order for Port Stephens to realise its full potential.

The Tourism industry provides around 2,000 jobs in Port Stephens and is important to many local residents and business owners.

Port Stephens has a number of environmental assets (beaches, water ways and national parks) which make it an attractive visitor location.

CONSULTATION

During the development of the Tourism Strategy, consultation was undertaken with over 100 individuals, businesses and organisations with an involvement in tourism in Port Stephens.

OPTIONS

- 1) Adopt the Port Stephens Tourism Strategy
- 2) Reject the Port Stephens Tourism Strategy

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Port Stephens Tourism Strategy 2010 – Jenny Rand & Associates.

ITEM NO. 4

FILE NO: A2004-0242

QUARTERLY BUDGET REVIEW AS AT 31 DECEMBER 2009

REPORT OF: DAMIEN JENKINS - FINANCIAL SERVICES MANAGER

GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Notes the estimated Statement of Cash Position to 30/6/2010 as detailed in **ATTACHMENT 1** to this report.
- 2) Notes the estimated Statement of Restricted Funds Movements to 30/06/2010 as detailed in ATTACHMENT 2 to this report.
- 4) Approve the discretionary changes to the adopted recurrent budget, (totalling \$175,149, a negative effect on revenue) as detailed under separate cover as TABLE 1.1 of DOCUMENT 1 to this report and vote the necessary funds to meet the expenditure.
- 5) Approve the discretionary changes to the adopted capital budget, (totalling \$35,000 a negative effect on revenue) as detailed under separate cover as TABLE 2.1 of DOCUMENT 1 to this report and vote the necessary funds to meet the expenditure.
- 6) Notes the identified issues, which may have a future budgetary impact, as identified under separate cover as TABLE 3 of DOCUMENT 1 to this report.
- 7) Notes the estimated surplus/(deficit) from ordinary activities before capital amounts of (\$287,862).
- 8) Notes the Sources of Funds for the works carried forward to the 2009/2010 Estimates as per CM 395/2009 as identified under separate cover as TABLE 4 of DOCUMENT 1 to this report.
- 9) Notes the Quarterly Budget Review comparing Budgets to Actuals as tabled under a separate cover as DOCUMENT 2 to this report.

COUNCIL COMMITTEE – 23 FEBRUARY 2010**RECOMMENDATION:**

	Councillor John Nell Councillor Bob Westbury	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

041	Councillor Daniel Maher Councillor Peter Kafer	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to amend the Budget by bringing to Council's attention the proposals and issues that have an impact on the 2009/2010 Budget.

Council adopted its Council Plan 2009/2013 (Council Minute 169) on the 9th June, 2009 this included budget estimates for the 2009/2010 financial year.

The major changes to the Recurrent Budget in this Review are detailed in Table 1.1 of Document 1 and are summarised as follows:

- Decreased income of \$502,735 due to less interest received on cash investments (Item 3).
- Increased expenditure of \$104,648 due to asset maintenance and operating costs for Council Administration Building (Item 8).
- Increased income of \$119,318 due to Federal Government grant and contributions and increased expenditure of \$119,318 due to Innovate Port Stephens Study and Tourism Study (Item 12).
- Increased income of \$101,225 due to RFS Fire Fighting Fund reimbursements (Item 23).
- Increased income of \$280,931 due to additional tip fee income at Salamander Bay Waste Transfer Station and increased expenditure of \$280,931 due to underestimate in quantity of waste being processed. (Item 26).
- Decreased expenditure of \$100,498 due to decreased waste contract costs (Item 28).
- Increased income of \$104,996 due to increased contributions and increased expenditure of \$104,996 due to increases in Community Services programs (Item 29).

The major changes to the Capital Budget in this Review are detailed in Table 2.2 of Document 1 and are summarised as follows:

- Increased expenditure of \$451,762 due to additional property development (Item 1).
- Increased expenditure of \$300,000 due to increased drainage works (Item 5).
- Decreased expenditure of \$211,000 due to cancellation of rehabilitation works on Clarencetown Road (Item 7).
- Increased income of \$165,000 due to cycleway grant and increased expenditure of \$330,000 on Sandy Point Cycleway (Item 8).
- Increased income of \$195,000 due to Roads to Recovery grant (Item 9).
- Increased expenditure of \$395,000 due to revised estimate for President Poincare Parade road works (Item 9)
- Decreased expenditure of \$590,000 due to deferral of Tanilba Avenue road works. (Item 10).
- Increased expenditure of \$2,407,325 due to capital road construction and rehabilitation program (Item 11).

MINUTES FOR ORDINARY MEETING – 23 FEBRUARY 2010

- Increased expenditure of \$610,000 due to rescheduling of the Medowie Community Centre car park (Item 12).
- Increased income of \$360,000 due to grant funding and increased expenditure of \$512,000 due to Foreshore Capital improvements (Item 15).
- Increased income of \$118,000 due to grants for environmental protection and Increased expenditure of \$402,000 due to Foreshore Capital Improvements (item 17).
- Increased income of \$347,000 due to grant for Fingal Surf Club and increased expenditure of \$1,147,000 due to Fingal Surf Club construction costs (Item 18).
- Decreased income of \$150,000 and decreased expenditure of \$315,000 due to waterway management program not being completed (Item 19).
- Increased expenditure of \$204,687 due to implementation of Sportsfields Asset Management Plans (Item 22)
- Increased expenditure of \$125,600 due to court upgrade at Nelson Bay and Anna Bay/Boat Harbour (Item 23).
- Increased expenditure of \$717,600 due to Medowie Sportsfield improvements (Item 24).
- Increased expenditure of \$235,383 due to lighting, car park and access upgrades at Tomaree Sports Complex (Item 26).

This report also foreshadows impacts on Council's future financial position.

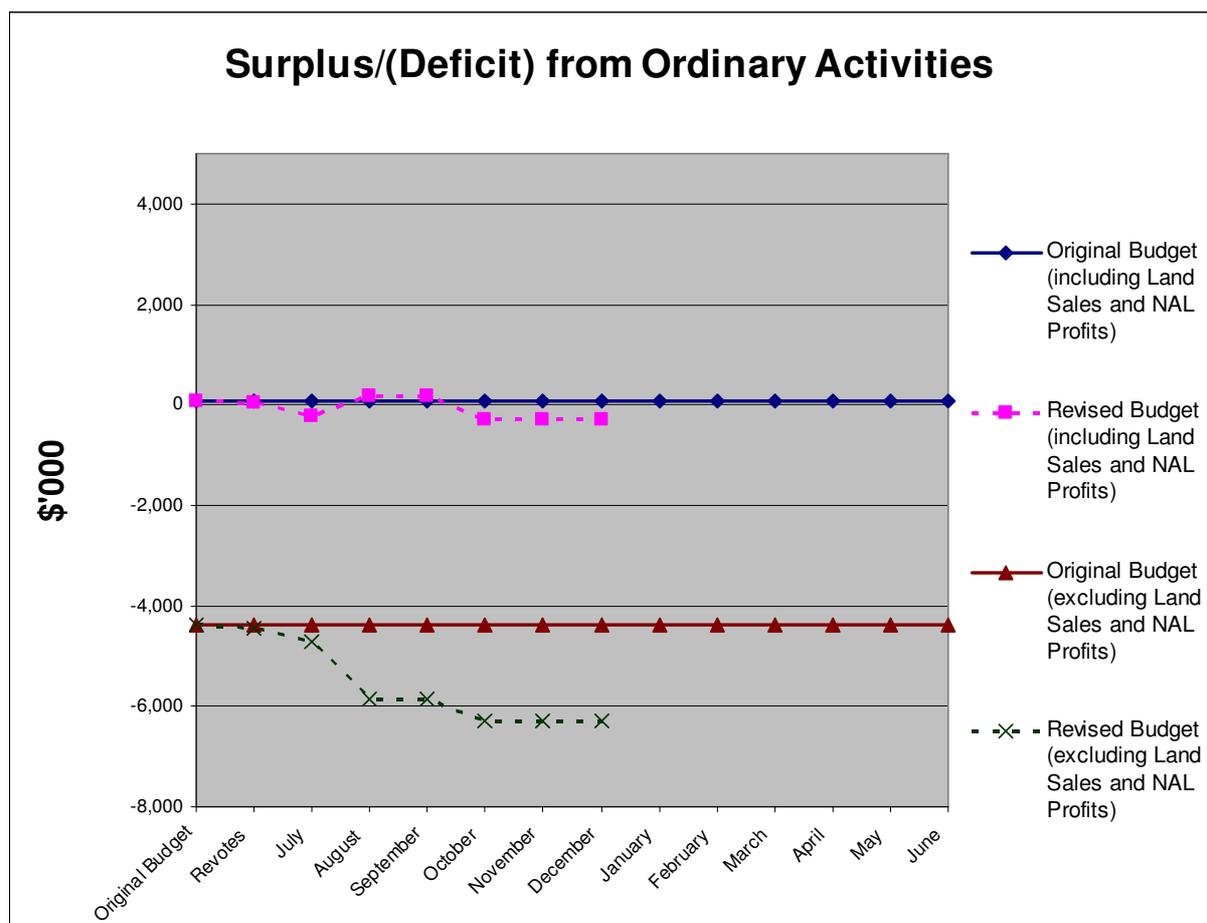
FINANCIAL/RESOURCE IMPLICATIONS

Council's Original 2009/2010 Budget estimate is a \$1,557,806 cash deficit after internal transfers, repayment of Capital lease and before depreciation of \$14.0 million. TABLE 1 of Document 1 of this report details the changes in this review. The net cash result of these changes is a projected cash deficit of \$2,112,281 (Ref N of Attachment 1), before 2010 revotes and carry forwards are taken into account and are shown in the table below;

IMPACT OF QUARTERLY BUDGET REVIEW ON COUNCIL'S ADOPTED BUDGET				
	Recurrent	Capital	Total	Ref
Document 1 Table 1.1	(\$175,149)	\$0	(\$175,149)	
Document 1 Table 2.1	\$0	(-\$35,000)	(\$35,000)	
Previous Quarterly Budget Reviews	(\$91,061)	(\$5,250)	(\$96,311)	
Original Budget after transfers and before Revenue Loans and Depreciation	(66,704)	(\$3,783,059)	(\$3,849,763)	
Repayment of Capital Lease and Loans		(574,670)	(\$574,670)	
Loan Funds to Revenue	\$1,433,027	\$1,433,600	\$2,866,627	
Net Available Surplus/(Deficit) Funds	\$1,100,113	(\$2,964,379)	(\$1,864,266)	
Revotes and Carry Forwards from previous year	(\$53,890)	(\$194,125)	(\$248,015)	
Revised 2009/2010 Cash Surplus (after transfers and before Depreciation)	\$1,219,223	(\$3,158,504)	(\$2,112,281)	N

PROJECTED FINANCIAL RESULT FOR 2009/2010

	Ref	After December Review	Original Budget
Total Operating Revenue	A	\$85,443,767	\$83,600,490
Less Total Operating Expenditure	B	(\$71,731,629)	(\$69,515,247)
Less Total Depreciation and Provisions Transferred	C	(\$14,00,000)	(\$14,000,000)
	D=B+C	(\$85,731,629)	(\$83,515,247)
Surplus/(Deficit) From Ordinary Activities Before Capital Amounts	E=A+D	(\$287,862)	\$85,243
Net Operating movement for December Review		(\$450,610)	
Total Budgeted Land Sales Profits	F	(\$3,000,000)	(\$3,000,000)
Total Budgeted Newcastle Airport (NAL) Profits	G	(\$3,003,742)	(\$1,476,242)
Surplus/(Deficit) From Ordinary Activities without Land Sale Profits, NAL Profits and Before Capital amounts	H=E-F-G	(\$6,291,604)	(\$4,390,999)



LEGAL AND POLICY IMPLICATIONS

The Local Government (General) Regulation 2005 Clause 203 requires that a Budget Review Statement be submitted to Council no later than two months after the end of each quarter and that all expenditure must be authorised and voted by Council before it is incurred. This report is submitted so that Council can review the impact of all issues, which will affect the Budget.

The General Manager has the delegated authority to approve changes up to \$10,000 within a Group.

The December Quarterly Budget Review Statement indicates that Council's financial position (excluding land sale profits) has changed significantly. Council's financial position needs to be monitored closely with particular regard to those issues contained in TABLE 2 of Document 1. Long-term financial projections will also be reviewed.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council's Budget is fundamental for operational sustainability and to the provision of facilities and services to the community.

CONSULTATION

Executive Group
Section Managers

OPTIONS

- 1) That Council accepts the discretionary changes to the adopted budget.
- 2) That Council rejects some or all of the discretionary changes to the adopted budget.

ATTACHMENTS

- 1) Attachment 1 Estimated Statement of Cash Position to 30/06/2010.
- 2) Attachment 2 Estimated Statement of Restricted Funds Movements to 30/06/2010.

TABLED DOCUMENTS

- 1) Document 1 of 2009-2010 Quarterly Budget Review for June 2010.
Table 1.1 - Discretionary Changes to the adopted Recurrent Budget.
Table 2.1 - Discretionary Changes to the adopted Capital Budget.

Table 3 - Identified issues, which may have a future budgetary impact.

Table 4.1 - Votes Carried Forward from 2008/2009.

Table 4.2 - Identified Votes Revoted from 2008/2009.

Table 4.3 - Summary of Votes Rolled Forward.

Table 4.4 - Summary of Source of Funds for Votes Rolled Forward.

- 2) Document 2 of 2009-2010 Quarterly Budget Review for December 2009, comparing Budgets to Actuals.

ATTACHMENT 1

ESTIMATED STATEMENT OF RESTRICTED FUNDS MOVEMENTS TO 30/06/2010			
2010 Decembr Qtr Review			
	Ref	2010 Decembr Qtr Review	2010 Original Budget Forecast
Total Operating Revenue	A	\$85,443,767	\$83,600,490
Less Total Operating Expenditure	B	(\$71,731,629)	(\$69,515,247)
Less Total Depreciation and Provisions Transferred	C	(\$14,000,000)	(\$14,000,000)
	D=B+C	(\$85,731,629)	(\$83,515,247)
Surplus/(Deficit) From Ordinary Activities Before Capital Amounts	E=A+D	(\$287,862)	\$85,243
Add Back: Depreciation and Provisions Transferred	C	\$14,000,000	\$14,000,000
Less Councils Share of Newcastle Airport Profit	W	(\$3,003,742)	(\$1,476,242)
Cash Surplus From Operations	F=A+B+W	\$10,708,396	\$12,609,001
Transferred to Restricted Funds	G	\$9,662,173	\$12,675,705
Cash Surplus / (Deficit) From Operations After Transfers	H=F-G	\$1,046,223	(\$66,704)
Total Capital Income	I	\$12,965,694	\$11,084,740
Total Capital Expenditure	J	(\$46,785,710)	(\$31,482,956)
Surplus/(Deficit) From Capital Works	K=I+J	(\$33,820,016)	(\$20,398,216)
Transferred from Restricted Funds	L	(\$31,236,182)	(\$16,615,157)
Cash Surplus / (Deficit) From Capital Works After Transfers	M=K-L	(\$2,583,834)	(\$3,783,059)
Total Cash Surplus / (Deficit) After Transfers	N=H+M+X	(\$2,112,281)	(\$1,557,806)
RECONCILIATION OF CASH POSITION			
Cash Position as at 01/07/2009	O	\$28,843,000	\$28,843,000
Estimated Cash Position as at 30/06/2010	P	\$13,220,326	\$26,019,972
Increase/(Decrease) in Cash Balance	Q=P-O	(\$15,622,674)	(\$6,100,269)
Represented By:			
Estimated Opening Restricted Funds Balance	R	\$34,923,774	\$34,923,774
Closing Restricted Funds Balance	S	\$21,413,381	\$30,381,311
Increase/(Decrease) in Restricted Funds Balance	T=S-R	(\$13,510,393)	(\$4,542,463)
Repayment of Capital Lease and Principal of Loans from Revenue	X	(\$574,670)	\$2,291,957
Total Cash Surplus/ (Deficit) from Operations & Capital	N=Q-T	(\$2,112,281)	(\$1,557,806)
Principal of Loan Funds Repaid From Reserves	U	(\$2,912,234)	(\$2,912,234)
Increase/(Decrease) in Cash Balance	Q=T+N	(\$15,622,674)	(\$6,100,269)

ATTACHMENT 2

ESTIMATED STATEMENT OF RESTRICTED FUNDS MOVEMENTS TO 30/06/2009 2010 November/December Budget Forecast					
RESTRICTED FUNDS	Estimated Balance as at 30/06/2009	Recurrent Budget	Capital Budget	Balance Sheet Movements	Estimated as at 30/06/2010
SECTION 94	\$12,500,025	\$368,142	(\$4,853,126)		\$8,015,041
DOMESTIC WASTE MANAGEMENT	\$2,344,186	\$1,099,146	(\$1,731,000)	(\$432,480)	\$1,279,852
Sub Total. Externally Restricted	\$14,844,211	\$1,467,288	(\$6,584,126)	(\$432,480)	\$9,294,893
BUSINESS DEVELOPMENT RESTRICTED FUND	(\$183,810)	\$2,036,713	(\$10,227,903)	\$5,480,436	(\$2,894,564)
INVESTMENT PROPERTIES DEPRECIATION FUND (INVESTMENT PROPERTIES SINKING FUND)	\$1,662,855	\$1,082,603	(\$17,150)		\$2,728,308
ASSET REHABILITATION RESERVE	\$10,320	\$500,000	(\$629,490)		(\$119,170)
FLEET MANAGEMENT (PLANT)	\$3,155,759	\$2,047,002	(\$2,824,541)	\$369,481	\$2,747,701
OTHER WASTE SERVICES	\$4,685,075	\$0	\$0		\$4,685,075
QUARRY DEVELOPMENT	\$757,413	\$12,533	\$0		\$769,946
BUSINESS OPERATIONS RESTRICTED FUND	(\$2,524,617)	\$1,643,039	(\$3,962,180)	\$566,044	(\$4,277,714)
EMPLOYEE LEAVE ENTITLEMENTS	\$4,978,625	\$0	\$0		\$4,978,625
BEACH VEHICLE PERMITS	\$6,577	\$3,500	(\$18,000)		(\$7,923)
DRAINAGE	\$281	\$821,000	(\$660,000)	(\$96,234)	\$65,047
INTERNAL LOAN	(\$384,736)	\$250,000	\$0		(\$134,736)
TRANSPORT LEVY	(\$12,650)	\$350,000	(\$380,000)		(\$42,650)
ENVIRONMENTAL LEVY	\$234,842	(\$45,000)	(\$60,000)		\$129,842
ADMINISTRATION BUILDING SINKING FUND	\$875,709	\$266,608	(\$1,220,500)		(\$78,183)
DEPOT SINKING FUND	\$994,703	\$335,899	(\$413,000)		\$917,602
RTA BYPASS ROADS M/TCE RESTRICTED FUND	\$1,899,188	\$45,078	(\$450,000)		\$1,494,266
RESTRICTED CASH	\$2,711,903	(\$2,964,101)	(\$3,026,952)	\$2,866,627	(\$412,523)
COUNCILLOR WARD FUNDS	\$176,164	\$900,000	(\$225,340)		\$850,824
INFORMATION TECHNOLOGY STRATEGY	\$235,346	(\$60,000)	(\$150,000)		\$25,346
PROVISION FOR LOCAL GOVT ELECTION	\$50,000	\$100,000	\$0		\$150,000
PARKING METER RESERVE	\$750,616	\$179,753	(\$387,000)		\$543,369
Sub Total. Internally Restricted	\$20,079,563	\$7,504,627	(\$24,652,056)	\$9,186,354	\$12,118,488
RESTRICTED FUNDS TOTAL	\$34,923,774	\$8,971,915	(\$31,236,182)	\$8,753,874	\$21,413,381
* Balance Sheet Movements are the repayments of the Principals on Loans and the funds from Loans received and the proceeds for land and fleet sales					

ITEM NO. 5

FILE NO: PSC2009-02013

QUARTERLY REPORT DECEMBER QUARTER 2009 AGAINST COUNCIL PLAN 2009-2013

REPORT OF: WAYNE WALLIS - GROUP MANAGER

GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopts the Quarterly Report December Quarter 2009 against the Council Plan 2009-2013.

COUNCIL COMMITTEE – 23 FEBRUARY 2010

RECOMMENDATION:

	Councillor John Nell Councillor Bob Westbury	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

042	Councillor Peter Kafer Councillor Bob Westbury	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to report to Council on progress in implementation of the Council Plan 2009-2013 for the December 2009 quarter.

The Local Government (Planning and Reporting) Act 2009 requires that a report be made quarterly to the Council on progress against the Council Plan.

FINANCIAL/RESOURCE IMPLICATIONS

The Quarterly Report provides summary information on financial performance including charts. A separate budget review is provided to Council quarterly.

LEGAL, POLICY AND RISK IMPLICATIONS

The Quarterly Report complies with the legislative requirements. There are no risk or policy implications.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Quarterly Report provides details of progress on the Economic, Governance, Environmental and Social/Cultural principal activities contained in the adopted Council Plan 2009-2013.

CONSULTATION

The Quarterly Report is compiled from data obtained from across all Council operations and is reviewed for accuracy by the Executive of Council prior to distribution to Councillors.

OPTIONS

Council can:

- 1) Adopt the Quarterly Report December Quarter 2009;
- 2) Amend the Quarterly Report December Quarter 2009.

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

- 1) Quarterly Report December Quarter 2009 against Council Plan 2009-2013.

ITEM NO. 6

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) Rotary Club of Salamander Bay Inc – Fees for Fundraising BBQ at Bunnings, Nelson Bay – Rapid Response – Cr Westbury - \$125.00
 - b) Rotary Club of Salamander Bay Inc – Pearson Park Fee for Paddle for Pennies – Rapid Response – Cr Nell - \$95.00
 - c) Rotary Club of Salamander – Fees for George Reserve to hold Paddle for Pennies – Rapid Response – Cr Dover- \$100.00

- 2) Publicly exhibit the proposal to provide financial assistance to Raegan Williams as a donation towards trip to New York for Dance Auditions to the value of \$200 from Central Ward Funds, for a period of 28 days.

COUNCIL COMMITTEE – 23 FEBRUARY 2010

RECOMMENDATION:

	Councillor Bob Westbury Councillor Sally Dover	It was resolved that the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

043	Councillor Bob Westbury Councillor Peter Kafer	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.

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:-

EAST WARD – Councillors Westbury, Dover, Nell, Ward

Rotary Club of Salamander Bay Inc	Fees for Fundraising BBQ at Bunnings, Nelson Bay	\$125.00
Rotary Club of Salamander Bay Inc	Fees for Pearson Park to hold Paddle for Pennies	\$95.00
Rotary Club of Salamander Inc	Fees for George Reserve to hold Paddle for Pennies	\$100.00

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.

ITEM NO. 7

FILE NO: A2004-0172

SWIMMING POOLS ACT 1992

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) That Council authorise the affixing the Seal of Council to "Authority to Enter Premises" cards for those staff appointed as "authorised officers" under the *Swimming Pools Act 1992*.
-

COUNCIL COMMITTEE – 23 FEBRUARY 2010**RECOMMENDATION:**

	Councillor Bob Westbury Councillor Peter Kafer	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

044	Councillor Daniel Maher Councillor Peter Kafer	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to seek Council's authorisation to affix the Seal of Council to "Authority to Enter Premises" cards for Council staff who are appointed as "authorised officers" under the *Swimming Pools Act 1992*.

Under the Section 28, *Swimming Pools Act 1992*, staff are required to hold an authority to enter premises card to conduct inspection at any premises under this Act. The *Swimming Pools Regulation 2008*, requires the seal of the local authority to be affixed.

FINANCIAL/RESOURCE IMPLICATIONS

All financial and resource implications are covered within existing budgets.

LEGAL, POLICY AND RISK IMPLICATIONS

Pursuant to Section 28, *Swimming Pools Act 1992*, Council staff are required to have the Seal of Council affixed to the Authority to Enter cards.

The *Local Government Act 1993*, requires a Council resolution to authorise the affixing of the Seal Of Council.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

Council Sustainable Planning staff
Harris Wheeler

OPTIONS

- 1) Adopt the recommendation.
- 2) Amend the recommendation.
- 3) Reject the recommendation.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

NOTICE OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217

LANDCOM VANTAGE ESTATE AT CORLETTE

COUNCILLOR: JOHN NELL

THAT COUNCIL:

- 1) On the hand over of the Landcom Vantage Estate at Corlette, Council immediately review the suitability of all footpath trees and if necessary remove and/or replace unsuitable trees.
-

BACKGROUND REPORT OF: MICK LOOMES –ENGINEERING SERVICE MANAGER

ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

045	Councillor John Nell Councillor Sally Dover	It was resolved that the Notice of Motion be adopted.
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BACKGROUND

The Landcom Vantage Estate at Corlette has been constructed in accordance with Council's approvals and was handed over to Council in late 2009. As part of the subdivision, Landcom has undertaken an extensive amount of advanced tree planting in the road reserve and elsewhere. Three of the species which have been planted near the footpaths have previously been found to cause damage to concrete footpaths after a number of years when tree roots have expanded and lifted up nearby sections of concrete path. Repairs to these concrete paths have proven expensive and there has been a risk exposure for pedestrians with ensuing trip hazards.

Horticultural advice has recently been sought on how best to deal with this potential issue in the new Vantage Estate. The advice received is that the likelihood of any future damage to the footpaths can be significantly reduced or eliminated by installing a vertical root barrier next to the trees. It would not be necessary to remove the trees at this time, provided the root barrier is installed soon and before the tree roots become well established.

Landcom's Project Manager has been approached seeking the installation of lengths of protective root barrier between the problem trees and the concrete footpath. The informal response has been that Landcom has completed all

landscaping in accordance with the approved plans and specifications and it cannot be expected to pay for the retro-fitting of this root barrier material now.

A formal request is being drafted seeking Landcom's cooperation and for it to undertake this measure but the letter has not yet been sent pending resolution of this Notice of Motion.

If a suitable agreement can be reached with Landcom and the root barriers are installed, it should result in a valuable long-term landscaping asset for the Estate along with a much reduced likelihood of damage to the concrete footpaths in the longer term.

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217

CONSUMPTION OF ALCOHOL

COUNCILLOR: GEOFF DINGLE

THAT COUNCIL:

- 1) Cease serving alcohol at Council meetings – before, during or at the completion of meetings – including workshops held at the Council premises, demonstrating that Council supports an alcohol free work place.
-

ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

	<p>Councillor Geoff Dingle Councillor Peter Kafer</p>	<p>That Council:</p> <ol style="list-style-type: none">1) Cease serving alcohol at Council meetings – before, during or at the completion of meetings – including workshops held at the Council premises, demonstrating that Council supports an alcohol free work place.
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The Motion on being put was lost.

BACKGROUND REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

BACKGROUND

Currently minimal alcohol is served at the conclusion of Council meetings over dinner under the supervision of an accredited "Responsible Service of Alcohol" staff member.

Alcohol is not currently served before or during Council meetings or at workshops.

CONFIDENTIAL ITEMS



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

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

046	Councillor Peter Kafer Councillor Daniel Maher	It was resolved that Council move into Confidential Session.
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CONFIDENTIAL

ITEM NO. 1

FILE NO: PSC2008-3583

CAMPVALE LANDSCAPE SUPPLIES – COMPLIANCE INVESTIGATION

REPORT OF: KEN SOLMAN - MANAGER DEVELOPMENT & BUILDING
GROUP: SUSTAINABLE PLANNING

COUNCIL COMMITTEE – 23 FEBRUARY 2010

This item was deferred at Committee to the Ordinary meeting 23 February 2010.

ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

047	Councillor Daniel Maher Councillor Peter Kafer	It was resolved that Council: 1) Allow the operator to continue the business at the Site due to the social and economic benefits and take no action in relation to the subject Site at this stage. 2. That Council be provided with a report investigating zoning and conditions for a development application that could be approved.
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In accordance with the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

CONFIDENTIAL

ITEM NO. 2

FILE NO: PSC2009-02408

**SALE OF LAND – PROPOSED LOT 6 OF LOT 284 DP806310,
SALAMANDER BAY**

**REPORT OF: CARMEL FOSTER - COMMERCIAL PROPERTY MANAGER
GROUP: COMMERCIAL SERVICES**

COUNCIL COMMITTEE – 23 FEBRUARY 2010

RECOMMENDATION:

This item was deferred at Committee to the Ordinary meeting 23 February 2010.

ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

048	Councillor Bruce MacKenzie Councillor Daniel Maher	It was resolved that Council: 1) Formally enter into an “Option to Purchase” Agreement for the sale of proposed Lot 6. 2) Authorise the Mayor and General Manager to affix the seal of Council and execute the “Option Agreement” and “Contract for Sale”.
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CONFIDENTIAL

ITEM NO. 3

FILE NO: A2004-0028

NEWCASTLE AIRPORT – TENDER FOR AN ACCOUNTING SYSTEM SOFTWARE PACKAGE

REPORT OF: PETER GESLING - GENERAL MANAGER

GROUP: GENERAL MANAGER'S OFFICE

COUNCIL COMMITTEE – 23 FEBRUARY 2010

RECOMMENDATION:

This item was deferred at Committee to the Ordinary meeting 23 February 2010.

ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

049	Councillor Peter Kafer Councillor John Nell	It was resolved that Council award the contract for the upgrade of Newcastle Airport Ltd's accounting software package to Technology One.
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ITEM NO. 4

INFORMATION PAPERS

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

COUNCIL COMMITTEE – 23 FEBRUARY 2010
RECOMMENDATION:

This item was deferred at Committee to the Ordinary meeting 23 February 2010.

ORDINARY COUNCIL MEETING – 23 FEBRUARY 2010

050	Councillor Peter Kafer Councillor Sally Dover	It was resolved that Council receive and note the Information Papers on unauthorised Depot: Cabbage Tree Road, Williamtown presented to Council on 23 February 2010.
051	Councillor Peter Kafer Councillor Daniel Maher	It was resolved that Council move out Confidential Session.

There being no further business the meeting closed at 7.35pm.

I certify that pages 1 to 69 of the Open Ordinary Minutes of Council 23 February 2010 and the pages 70 to 104 of the Confidential Ordinary Minutes of Council 23 February 2010 were confirmed by Council at its meeting held on 9 March 2010.

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Cr Bruce MacKenzie
MAYOR