

Minutes 24 AUGUST 2010



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 24 August 2010, commencing at 7.27pm.

PRESENT:

Councillors B. MacKenzie (Mayor); R. Westbury (Deputy Mayor); G. Dingle; S. Dover, C. De Lyall, G. Francis; P. Kafer; K. Jordan; 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.

254	Councillor Ken Jordan Councillor Steve Tucker	Resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 10 August 2010 be confirmed.
		Cr Bruce MacKenzie declared a pecuniary Interest in Item No. 1 of the General Manager's Report. The nature of the interest a family trust owns affected land.

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Presentations were made by Jeff Smith, Bruce Petersen and Peter Gesling to the Mayor with respect to a number of Awards Council recently received.

- Soldiers Point Holiday Park for Best North Coast Holiday Park 3.5 to 4 stars (less than 100 sites).
- Halifax Holiday Park, Hunter Central Coast Tourism Awards Winner Tourist & Caravan Park category.
- Samurai Beach Resort – North Coast Tourism Awards for Ecotourism.
- Heart Foundation – Local Government Award 2010 NSW Category Winner "Tobacco" for Council's Outdoor Smoking Policy.
- 2010 National Award " New Affiliation" Sister Cities.
- 2010 Sister Cities Australia – Best National Awards Display for Tateyama.

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MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: PSC T09- 2010

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 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 1 on the Ordinary Council agenda namely **T0-2010; Tender Bush Regeneration Services**.
- 2) That the reasons for closing the meeting to the public to consider this item be that:
 - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
 - ii) In particular, the report includes confidential pricing information in respect of the **T0-2010; Tender Bush Regeneration Services**.
- 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
- 4) That the report 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.

ORDINARY COUNCIL MEETING – 24 AUGUST 2010

255	Councillor Shirley O'Brien Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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COUNCIL COMMITTEE RECOMMENDATIONS

ITEM NO. 1

FILE NO: 2007-1204

NELSON BAY PLANNING STRATEGY - STRATEGIC PRINCIPLES

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the broadening of the Nelson Bay Planning Strategy area to include the Nelson Bay Foreshore;
- 2) Endorse the Nelson Bay Strategic Principles (**Attachment 1 – provided under separate cover**); for purposes of
 - a. Forwarding to Ardent Leisure, the NSW Department of Land & Property Information and the NSW Department of Planning as Council's strategic statement for consideration under the Part 3A concept planning processes for the Nelson Bay foreshore; and
 - b. Presenting as appropriate at community workshops to be convened by Consultants on behalf of Ardent Leisure and the NSW Department of Land & Property Information for consultation purposes in relation to the preparation of a concept plan for the Nelson Bay Foreshore in accordance with Part 3A of the Environmental Planning & Assessment Act as amended.

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RECOMMENDATION:

	Councillor Sally Dover Councillor Frank Ward	That Council:- <ol style="list-style-type: none">1. Adopt the recommendation.2. Specify in Principle 7, two (2) view corridors through the carpark to the beach and from Stockton Street through the Marina buildings to the water.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Crs John Nell and Glenys Francis.

The amendment on being put became the motion which was put and carried

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DIVISION FOR THE MOTION

In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Ken Jordan, Peter Kafer, Caroline De Lyall, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover, John Nell and Glenys Francis

Those against the Motion: Nil.

ORDINARY COUNCIL MEETING – 24 AUGUST 2010

256	Councillor John Nell Councillor Sally Dover	It was resolved that the Council Committee recommendation be adopted.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Caroline De Lyall, Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover, John Nell and Glenys Francis.

Those against the Motion: Nil.

BACKGROUND

The purposes of this report are:

- 1) To seek Council's endorsement of strategic principles to be significant input in the consultation processes about to be initiated under Part 3A of the Environmental Planning & Assessment Act by consultants on behalf of Ardent Leisure and the NSW Department of Land & Property Information.**
- 2) Form a foundation for the subsequent finalisation of the Nelson Bay Planning Strategy and related planning documents (to be submitted to Council in late 2010).**

At the Council meeting on 10 August 2010 Council resolved as follows:

That the matter be deferred to allow for consultation with East Ward Councillors and reported back to Council at the Council Committee on 24 August 2010.

The Group Manager, Sustainable Planning has met with Ward Councillors and also with representatives of local interest groups : the Tomaree Residents & Ratepayers Association, the Business Chamber, EcoNetwork and the Town Management

Committee and the revised draft document : "Nelson Bay : Policy for Future Development of the Town Centre and Foreshore – Strategic Planning Principles" is Attachment 1 and is now recommended for adoption.

The principles will:

- 1) be considered during consultations proposed by NSW Land and Management Authority and Ardent Leisure to draft a Concept Plan as part of the Nelson Bay Boat Harbour and Foreshore Revitalisation process; and
- 2) guide the finalising of the draft Nelson Bay 2030 Strategy and draft Development Controls for reporting to Council.

Nelson Bay 2030 Strategy

Following exhibition of the draft Nelson Bay Strategy (2007) (draft Strategy) Patrick Partners and Design Urban consultants were engaged to evaluate submissions and provide urban design advice. The consultants submitted a draft Design Code and Background Report (draft Patrick Partners Report) to Council in October 2009 that included possible development outcomes on the Nelson Bay Foreshore – an area that the project brief for the Nelson Bay Strategy did not include.

In accordance with Council's resolution on 15 December 2009, the draft Code was placed on Council's website, copies were provided to community groups upon request and a consultation workshop was held on 12th March 2010 with *Patrick Partners* and *Design Urban*. A key issue from this consultation was concern that foreshore controls were not being considered as part of the draft Strategy.

Nelson Bay Strategic Principles

The Nelson Bay Strategic Principles have been drawn from the detailed urban design work undertaken to date for the draft Nelson Bay Strategy plus consultation with Councillors on the 6th July 2010. These Principles are proposed to guide the Foreshore Concept Planning process and support the integration of the Town Centre and Foreshore Planning processes and desired outcomes.

The Patrick Partners Report concluded that the future of Nelson Bay lies in the town and foreshore being connected. The Report concluded that the following issues need to be addressed to achieve this connection and deliver a town that inspires visitation:

The lack of investment attraction and the sustainability of the Nelson Bay economy in the future

Lack of Critical Mass of Facilities at the Waterfront that generates pedestrian activity and inspire the journey from the town centre.

Lack of connection between functions carried out in the Town and on the Water front – people do different things at the waterfront to the town centre.

The Open Space between the Town and Waterfront – whilst attractive, it separates the two places and reduces the desire to travel between them.

Orientation of Waterfront Buildings – the buildings back on to the Town Centre.

The behaviour of Traffic and the Design of Street Interfaces – slow traffic down before reaching Stockton Street.

The location of the primary Retail and Commercial Core of the Town Centre two to three blocks back from the waterfront.

Lack of Major Anchors (& using consolidated car parking as an anchor)

No ability to directly access the Waterfront from the Town Centre by car.

Current Development Controls

The Nelson Bay Town Centre is zoned 3(a) Business General under Port Stephens LEP 2000 (**Attachment 2**) and subject to, amongst other controls, a maximum height of 15m for some sectors under Port Stephens DCP 2007 Section C4. Section C4 of DCP 2007 is subject to review as part of the Nelson Bay Strategy process.

The Nelson Bay foreshore area is also zoned 3(a) Business General and is subject to, amongst other controls, a maximum height of 8m under Port Stephens DCP 2007 Section B4.6. The historical decision to zone the marina and foreshore to the 3(a) zone was intended to allow commercial development to occur in this location and take advantage of the amenity of the Port and as a place of social and economic exchange. Extending the scope of the Nelson Bay Strategy 2030 is therefore, a logical extension of and consistent with the 3(a) land use zone.

Revitalisation of Nelson Bay Foreshore

NSW Land and Management Authority (NSW LAPM), formerly NSW Lands, has been consulting with Council and the community to revitalise the Nelson Bay foreshore. A Vision and Plan of Management (see **Attachment 3** for coverage) for the Foreshore was finalised in 2008. Expressions of Interest for the Lease and Redevelopment Opportunity of the Foreshore area closed in July 2008. Ardent Leisure has been appointed by NSW LAPM as the preferred partner.

Process under Part 3A of the Environmental Planning and Assessment Act

Under Part 3A Ardent Leisure has lodged an application with the Department of Planning seeking the Minister's authorisation to prepare and lodge a Concept Plan within the area identified in **Attachment 4** and to seek the Director General's requirements for the Concept Planning process.

It is NSW LAPM and Ardent Leisure's intention that the Concept Plan be prepared in consultation with the community and Council. This is anticipated to be a requirement of any approval from the Department of Planning to accept the Concept Plan as a Part 3A project. Therefore, opportunity exists for Council to work with NSW LAPM and Ardent Leisure in reviewing, designing and developing controls for the Nelson Bay foreshore. The final Concept Plan requires approval by the Minister for Planning.

Integrating Nelson Bay Strategy (Council) and Part 3A (NSW LAPM) Processes

Broadening the scope of the revised draft Nelson Bay 2030 Strategy to include the Foreshore was suggested during the consultation with the community. Doing so will

enable the Nelson Bay Foreshore Concept Planning process to integrate with the draft Strategy process and desired outcomes.

Finalising the Draft Strategy and DCP controls

While the Concept Planning process is being undertaken work in expanding and refining the draft Nelson Bay Strategy will include:

A land economics feasibility review to quantify the floor area achieved under proposed controls and Infrastructure implications;

Infrastructure Study: Expressions of Interest will be sought and a detailed Infrastructure (including Traffic and Parking) will be undertaken. Discussions will be held with LAPM to consider the Foreshore area as part of this brief.

Meetings with key landholders in conjunction with Council's Economic Development Unit to discuss Strategic Principles for Nelson Bay.

Incorporate all additional information into the revised draft Nelson Bay 2030 Strategy documents

Reporting to Council

The revised draft Nelson Bay 2030 Strategy and draft development controls are anticipated to be reported back to Council in late September 2010 in conjunction with the completion of the Part 3A Concept Planning process.

FINANCIAL/RESOURCE IMPLICATIONS

The recommendations of this report will utilise staff resources more effectively. They will provide direction staff involvement in the NSW LAPM Concept Planning process and enable the integration of additional information into the draft Nelson Bay Strategy process.

LEGAL, POLICY AND RISK IMPLICATIONS

The Principles provide Council with a policy position for consideration as part of the proposed Nelson Bay Foreshore Concept Planning process.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Nelson Bay Strategic Principles are based upon sustainability and are consistent with those of the current draft Nelson Bay Strategy and the Community Settlement and Infrastructure Strategy 2007.

CONSULTATION

Facilitated Workshops with the community were conducted on 22 June 2009 by Council's consultants to review the comments made in submissions to the draft Strategy and to provide information for additional urban design work.

Two way conversations with Councillors were held on 20 October 2009, March 2010 and 6th July 2010. The latter specifically discussed the principles and the comments

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and feedback has been included into the document that is the subject of this report.

A presentation was provided to the Bay Business Breakfast meeting on Wednesday 21 October and the Codes were discussed at the Nelson Bay Business Breakfast on 12th March 2010. A workshop with community group representatives, Council staff and consultants was also held on 12th March 2010. Council staff also met with the Nelson Bay Advisory Group to discuss the Codes.

OPTIONS

- 1) To adopt the recommendations and direct that the Nelson Bay Strategic Planning principles be submitted to Ardent Leisure, the NSW Department of Land & Property Management and the NSW Department of Planning as Council's strategic position in relation to the Part 3A consultation process about to be initiated for the Nelson Bay Foreshore.
- 2) Defer any adoption of the recommended strategic planning principles pending the finalisation of a Draft Nelson Bay Planning Strategy and related draft Development Control Plan.
- 3) Direct that the background report and draft Design Code prepared by Patrick & Partners be applied as Council's main statement of position for the development outcomes on the Nelson Bay Foreshore.

ATTACHMENTS

- 1) Nelson Bay Strategic Principles – under separate cover.
- 2) Current land use zoning under the Port Stephens LEP 2000.
- 3) Area covered by NSW LAPM Plan of Management for Foreshore.
- 4) Area subject to Part 3A application.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

Nelson Bay Strategic Principles

PROVIDED UNDER SEPARATE COVER

ATTACHMENT 2
Land use zones applying to Nelson Bay town centre and foreshore.



ATTACHMENT 3

NSW LAPM Plan of Management area for Nelson Bay Foreshore.



ATTACHMENT 4

Area subject to Part 3A Planning Concept proposal



Figure 1.1 – Concept Planning Area

ITEM NO. 2

FILE NO: 16-2009-293-2

SECTION 96 APPLICATION TO MODIFY DEVELOPMENT CONSENT NO. 16-2009-293-1 AT NO. 30 REFLECTIONS DRIVE ONE MILE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Section 96 Application 16-2010-293-2 for the reasons below:
- (a) The development is inconsistent with the provisions of Port Stephens Local Environmental Plan 2000, in particular the planning considerations for development on flood prone land.
 - (b) The development is considered inconsistent with the principles of the Floodplain Management Manual 2005, as the development does not comply with the current Flood Planning Level.
 - (c) The modification would result in a development which has no freeboard of the floor level to current 1% AEP Flood levels.
 - (d) Approving the modification to allow a development with a finished floor level (FFL) below the Flood Planning Level in high risk flood areas places further demand on already limited SES resources by way of domestic property protection, evacuation and/or resupply. Furthermore, approval of the modification leaves Council exposed to litigation in the future.
 - (e) Approval of this application would have an undesirable cumulative effect by increasing the community's susceptibility to flooding, in terms of social and economic consequences.
 - (f) The development is contrary to the public interests and expectations of an orderly and predictable built environment.

COUNCIL COMMITTEE MEETING – 24 AUGUST 2010
RECOMMENDATION:

		Item 2 was withdrawn at the meeting.
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ORDINARY COUNCIL MEETING – 24 AUGUST 2010

		Item 2 was withdrawn at the meeting.
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BACKGROUND

The purpose of this report is to present a Section 96 application to Council for consideration in regard to a proposed amendment to Development Consent No. 16-2009-293-1 at the request of Councillor Dover.

Development Application 16-2009-293-1 related to the development of a dual occupancy and garage at the subject property.

This application seeks approval to modify determination No.16-2009-293-1, so as to amend the approved finished floor level (FFL) from 2.91 metres AHD to 2.19 metres AHD. This is requested by the applicant as the floors of the buildings were inadvertently constructed at 720mm below the approved floor level on flood prone land.

Presently, the site contains a dual occupancy and garage at 'lock-up stage'. This application seeks approval to retain the partly constructed dwellings at their existing level (2.19mAHD), which is contrary to the approved level of 2.91 metres AHD. It is considered that development of this site should comply with the original approval (16-2009-293-1).

Council's assessing officer carried out a site inspection on 26 June 2009 and was informed by plans as submitted which clearly stated that the road level was RL 2.65 (AHD). The RL on the approved plans for the road has since been proven to be incorrect, which has resulted in the buildings being constructed 720mm below the approved design level. Council was not involved in the building certification and accordingly carried out no progress inspections during construction.

Please note the following documentation submitted with the Section 96 Modification by the applicant which explains the situation and has been submitted as justification for the proposed amendment:

"On 24 February 2009 my parents and I signed a building contract with Capital Homes Pty Ltd (licence:193138C) to build a dual dwelling on lot 19, No. 30 Reflections Drive, One Mile Beach. Capital Homes designed the homes, had plans drawn and submitted them to Port Stephens Council for DA approval. The DA (1070133) was approved by Port Stephens Council on 18 August 2009.

Capital homes went into liquidation on 10 November 2009 and ceased all building work. You may remember that we had many conversations about the copyright of the plans and how we could get Council to release them so that we could continue building. We eventually found a new builder, GJ Gardner to complete our homes and signed contracts on 25 February 2010. Building commenced shortly thereafter.

On 9 June 2010 we went to inspect the property prior to paying the "close up" instalment. A neighbour was clearing their block prior to constructing a slab. We noticed that their slab was substantially height than ours and started making enquiries. After much investigation we found an error on the approved plan. The road level was shown as 2.65AHD instead of 1.965AHD. Since this level was used to set all the other levels on the property, the finished floor level is now 2.19AHD instead of 2.91 AHD. We have since had the reference level and floor level re-surveyed to confirm their heights, and have attached the latest findings.

The error was traced back to the DA approved plans. It appears that Capital Homes made the error when drafting the original plans, that Council passed them with the error and that GJ Gardner and the private certifier assumed the levels on the plans to be correct.

The private certifier, City Plan Services, has indicated that since the finished floor level is not in accordance with the approved plan and the requirements of the 88B instrument affecting the property, that it will have to be demolished or that the 88B affection will have to be changed. We have received an estimate from GJ Gardner to demolish and rebuild both homes, whilst saving the frame, windows and a few other items, of two hundred and ninety thousand dollars. This is clearly not an option for us and so we are pursuing the second option of getting the existing finished floor level approved.

We are appealing to Council to approved the attached Section 96 to allow us to complete the homes without having to go through the trauma and cost of demolishing and rebuilding, The building process has so far been extremely traumatic with the initial liquidation, copyright of the plans and now this. We and our aged parents have paid out 75% of the cost of the homes and are still having to finance our rental homes – we can't afford this for much longer and so would appreciate it if you could give this matter your urgent attention. We should be moving in in 6 weeks, not facing an extended legal battle"

The applicant appears to be in an unfortunate situation through no fault of their own. However, it is not reasonable to approve the building and the floor level proposed. The circumstances do not justify approving the modification which essentially seeks approval for a dual occupancy that is 720mm below the approved floor level. It is recommended that the application be refused.

Council must give due regard to the fact that a reduction in the height of the finished floor level (FFL) is considered to be unsatisfactory in relation to the social impacts of flooding given the constraints on the land.

FINANCIAL/RESOURCE IMPLICATIONS

Approval of the modification is unlikely to have any direct financial or resource implication for Council. However, Council should consider its potential liability, and the associated financial implications of this liability, should the application be approved (refer to comments below).

LEGAL, POLICY AND RISK IMPLICATIONS

The Section 96 Modification is inconsistent with Council's Policy. Determination of this application must involve consideration of the potential precedent by approving an application that is inconsistent with Council's Flood Plain Management Manual.

Furthermore, approving the modification may potentially put Council at risk if there is a loss of life, or damage to property, as a result of flooding.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The subject site is located on flood prone land and approval of the modification would result in a development built significantly below the recommended Flood Planning Level for the site. The development is therefore likely to have social impacts on future occupants due to flooding, as well as impacts in respect to the ability of emergency services to access, rescue and support residents situated in flood prone areas.

If Council approves the proposed modification to amend the finished floor level (FFL) below the Flood Planning Level rather than enforce compliance with the approved plans, then the development will be contrary to the public interest and expectations of an orderly and predictable built environment.

Council should actively discourage the occupation of a dwelling which has not been built to a safe and appropriate standard. It is likely to flood within the expected life of the building.

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

It is noted that requiring compliance with the approved plans (Determination No.16-2009-293-1) will likely incur costs to the applicant. The development is now at 'lock-up stage' and refusal of the application will result in the need to at least partially demolish the constructed dwellings and garage and submission of accurate amended plans to allow construction at the approved floor level.

There are no environmental implications likely to result from the proposed modification.

CONSULTATION

In accordance with Council policy, the amendment was not required to be exhibited.

OPTIONS

- 1) Adopt the recommendation and refuse the Section 96 modification for the reasons stipulated. Action should then be taken with regards to the rectification of the building to allow construction at the approved floor level.
- 2) Reject the recommendation and approve the application subject to restrictive conditions. It is noted that approval of the modification would require conditions of consent to consider the safety aspects of electrical installation, buoyancy uplift, heights of plumbing fixtures, consideration of flood compatible materials and more.

ATTACHMENTS

- 1) Locality Plan
- 2) Assessment

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



**ATTACHMENT 2
ASSESSMENT**

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

THE PROPOSAL

The applicant, Mr N G Ballard, proposes to amend Determination No.16-2010-293-1, so as to amend the approved finished floor level (FFL) from 2.91 metres AHD to 2.19 metres AHD.

THE APPLICATION

Owner	Norman George Ballard
Applicant	Norman Georg Ballard
Detailed Submitted	Statement accompanying Section 96 application form, Correspondence from City Plan Services (Private Certifier), Survey Information

THE LAND

Property Description	Lot 19, DP 1070133
Address	30 Reflections Drive, ONE MILE
Area	4270sqm
Dimensions	Irregular frontage to Reflections Drive, approximately 39.86metres in width. 106.75m depth Eastern Elevation 109.765m depth Western Elevation.
Characteristics	The site is accessed via Reflections Drive and is surrounded by two (2) storey and single storey residences. The property is flood prone and contains significant vegetation on site (Koala Habitat and an Endangered Ecological Community)

THE ASSESSMENT**1. Planning Provisions**

EP&A Act	Section 96
SEPPs	SEPP No.55 SEPP No.71 SEPP BASIX SEPP No.44
LEP 2000 – Zoning	7(f3) – Urban Conservation

Relevant Clauses	Clause 32 - Environmental Protection Zonings Clause 35 - Development within all Environmental Protection Zones Clause 37 - Objectives for development on flood prone land. Clause 38 - Development on flood prone land
Development Control Plan	DCP 2007
Section 94 Contributions Plan	Nil

Environmental Planning and Assessment Act – Section 96

The development as modified is substantially the same development as that which was approved under 16-2010-293-1.

State Environmental Planning Policies

The proposed development is not inconsistent with the relevant State Environmental Policies applicable to the site.

Port Stephens Local Environmental Plan 2000

Clause 32 – Environmental Protection Zonings

Dual occupancy developments are permissible within the 7(f3) Environmental Protection zone. The proposal is not inconsistent with the zone objectives.

Clause 37 and Clause 38 – Development on flood prone land

Approval of the proposed modification, and subsequent retention of the existing structures on site, is not considered acceptable with regards to the severity or risk of flooding on or around the site.

Approval of any dwellings under the Flood Planning Level (in this instance 3.5 metres AHD), increases the risk of damage to property and increases the demand on emergency services which may be required to evacuate residents in a flood event.

The applicant has not submitted any information with regards to the associated flood risk involved in retaining the existing structures on-site at 2.19m AHD.

Council's Infrastructure Planning Section has provided advice on the proposed Section 96 application and considers that approval of the modification is not acceptable.

The risk of flooding affecting the proposed development could be reasonably mitigated via demolition of the existing structures on site, and reconstruction on the approved dwelling in accordance with the recommended Flood Planning Level.

The proposed modification is not considered acceptable with regards to Clause 37 and 38 of Port Stephens Local Environmental Plan 2000 and should not be supported by Council.

Development Control Plan 2007

The proposed modification is not inconsistent with the general objectives and provisions held within Council's Development Control Plan 2007.

Section 94 Contribution Plan

Section 94 Contributions were levied under the original approval (16-2009-293-1).

2. Likely Impact of the Development

Concerns exist in relation to approving the Section 96 Modification which would result in a development below the Flood Planning Level and the subsequent demand placed on emergency services in times of flooding.

3. Suitability of the Site

The subject site is zoned 7(f3) – Urban Conservation, within which dual occupancy developments are permissible. However, given that the subject site is identified as flood prone, and the modification results in a development significantly below the Flood Planning Level it is considered that the site is unsuitable for this modification.

4. Submissions

In accordance with Council's notification policy, the amendment was not exhibited.

5. Public Interest

The proposed modification is inconsistent with Council's flood planning requirements and as such it would not be in the public interest to support the application to reduce the floor level to below the identified Flood Planning Level.

ITEM NO. 3

FILE NO: 16-2009-840-2

AMENDMENT TO DEVELOPMENT APPLICATION FOR SINGLE STOREY DWELLING AT NO. 3 MEEHAN ROAD, RAYMOND TERRACE

**REPORT OF: KEN SOLMAN- ACTING MANAGER, DEVELOPMENT AND BUILDING
GROUP: SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

Refuse Development Application (S96 modification) 16-2009-840-2 for the following reasons:

1. Construction of a new dwelling without appropriate noise attenuation would be inconsistent with the provisions of Australian Standard AS2021-2000 – Acoustics – Aircraft Noise Intrusion – Building Siting and Construction;
 2. Construction of a new dwelling without appropriate noise attenuation would be inconsistent with the provisions of Australian Standard AS2021-2000, and Port Stephens Council DCP 2007 – Section B2.13 – Aircraft Noise, and
 3. Construction of a new dwelling without appropriate noise attenuation would be inconsistent with the objectives of the Department of Planning Ministerial (117) Direction on development near licensed aerodromes.
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COUNCIL COMMITTEE MEETING – 24 AUGUST 2010

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Caroline De Lyall	That the Development Application (S96 modification) 16-2009-840-2 be approved.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Caroline De Lyall, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover, Ken Jordan and Glenys Francis.

Those against the Motion: Cr John Nell.

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257	Councillor Peter Kafer Councillor Ken Jordan	It was resolved that the Council Committee recommendation be adopted.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Caroline De Lyall, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover, Ken Jordan and Glenys Francis.

Those against the Motion: Cr John Nell.

BACKGROUND

The purpose of this report is to present a S96 modification application (to development consent) to Council for determination.

The applicant lodged the original application for a single storey dwelling with council on 5 November 2009. The site fell within the 20-25 contours under the ANEF 2025 map. In accordance with Council policy the applicant was advised of the requirement to lodge an aircraft noise assessment report to progress the application.

The applicant submitted an Aircraft Noise Impact Assessment (report) on 26 February 2010. The development consent was issued on March 5 2010 referencing the submitted report (condition 23).

23. The development shall be constructed in accordance with the recommendations contained in the acoustic report prepared by Reverb Acoustics and dated February 2010. Prior to the issue of any Occupation Certificate, submit to the Principal Certifying Authority, certification confirming that the measures recommended in the acoustic report have been fully implemented. This certification should confirm specific details of measures and materials/methods of construction.

The applicant seeks by way of a section 96 modification to remove the 'acoustic requirements' (condition 23) of the development consent.

The site has always been affected by aircraft noise although was previously not captured under the ANEF 2012 mapping contours. As recognition of the noise impacts at the subject site together with the increased noise levels and subsequent increased exposure expected by the JSF aircraft the site falls within the 20-25 contours under the ANEF 2025 map. It should be understood that certain sites within

even the lower ANEF zones can experience noise levels high enough to be on the threshold of current design parameters. The subject site is one such example.

The subject site has returned a predicted Lmax of 94dB(A) when tested in reference to the Department of Defences TNIP data as referenced by the submitted acoustic report. This 94dB(A) represents an increase of 6dB(A) over the ANEF 2012 noise levels. These high levels represent the subject site being situated in close proximity to the Williamstown RAAF instrument landing system (ILS) approaches. The nature of aircraft preparation under an ILS landing dictates the high noise levels.

The high noise levels suggested by the applicant's submitted acoustic report would indicate that under ANEF 2025 the subject site would experience very high levels of aircraft noise and should be subject to the requirements of AS2012-2000.

The stated dB(A) levels represent the thresholds of attainable attenuation levels available with standard building designs and materials. It is a clear indication of the requirement of the approved attenuation measures to be incorporated in the building. The applicant's reasons for the removal of the requirement to install acoustic attenuation is stated in the letter accompanying the application which states:

"We are writing this letter in objection to the acoustic requirements imposed on these developments.

Our argument on this matter is that the original 2012 Contour Plan, these two blocks were not affected. Now under the 2025 Contour Plan they are affected. This would be a satisfactory requirement if these developments were in a new estate and all the surrounding blocks were also required to carry out these acoustic requirements.

The fact of the matter is these developments are the last two remaining in the street, where none of the other existing properties have been affected by this imposition and extra cost involved in building there houses.

In conclusion we are asking that the acoustic requirements for these developments be waived due to them being the only two in the existing street.

Your understanding and interpretation of our argument towards this matter in our favour would be greatly appreciated."

FINANCIAL/RESOURCE IMPLICATIONS

Approval of this S96 amendment to the development consent and the subsequent removal of condition 23 (noise attenuation requirements) could represent significant claims being brought against council in respect to nearby properties being situated now and previously in close proximity to the various ANEF mapping contours.

Alternatively approval could lead to a marked increase of similar S96 modifications being brought to council for consideration.

LEGAL AND POLICY IMPLICATIONS

The proposed amendment to the development application is inconsistent with Council's long standing policy on aircraft noise and legal advice on the issue.

The proposal would represent a major departure from previous and current council policy and could leave Council with significant legal exposure.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social impacts would be represented by an increased number of individuals exposed to unacceptable levels of environmental noise.

The economic impacts can be far reaching if dwelling occupants are sensitive to the levels of noise. These can include significant effects on health and amenity.

CONSULTATION

The original application was exhibited in accordance with Council policy and one (1) submission was received. The submission was in relation to the proposed provision of a retaining wall between the subject property and the downhill neighbour and is not considered an issue in the context of this S96 modification application.

This S96 modification was not exhibited given the proposed removal of the requested consent condition does not pose an issue that warrants exhibition.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan with ANEF 2025 Contours
- 2) Locality Plan with ANEF 2012 Contours
- 3) Assessment

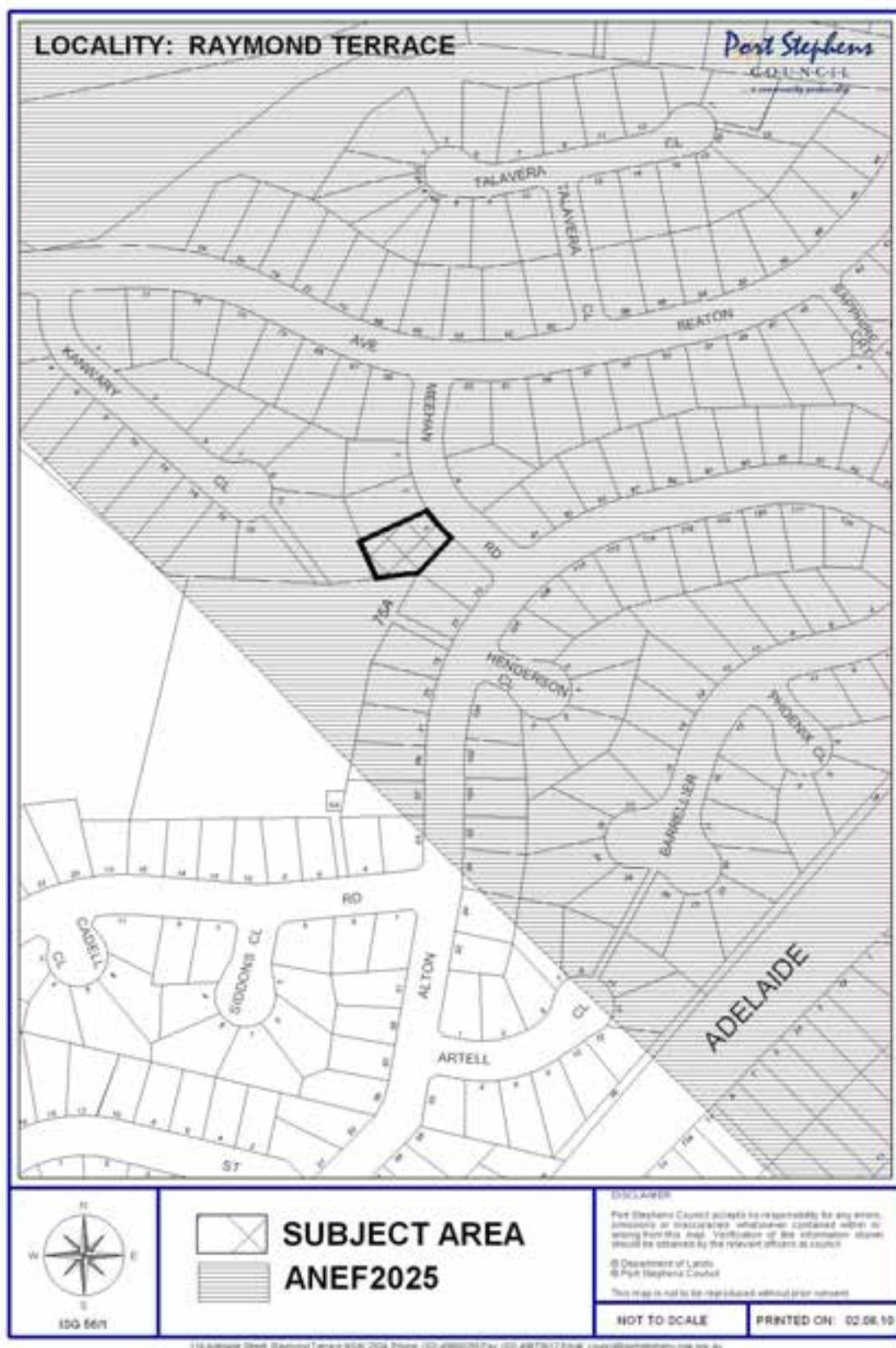
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

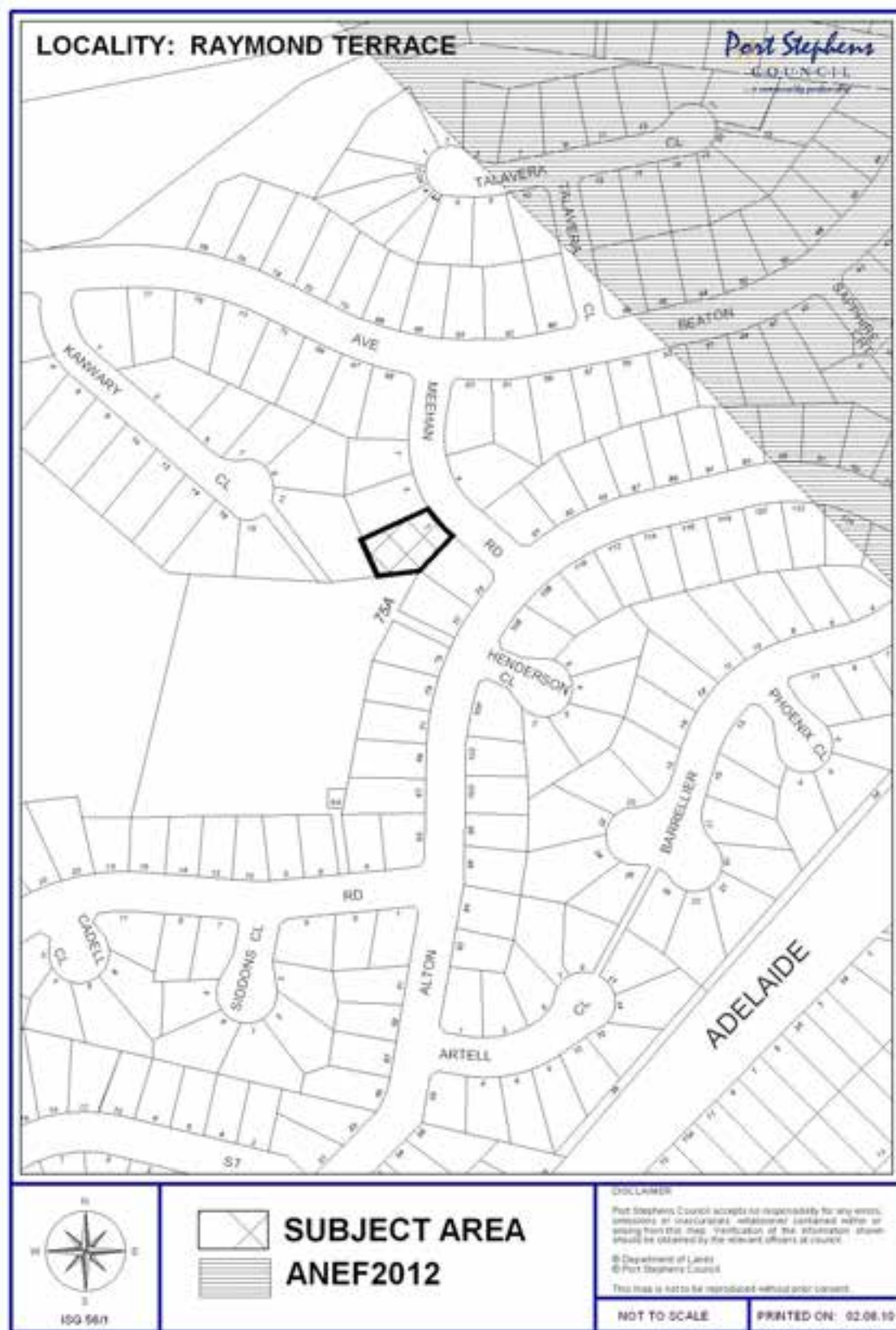
- 1) Applicants S96 modification application and associated documentation.

ATTACHMENT 1
LOCALITY PLAN WITH ANEF 2025 CONTOURS



ATTACHMENT 2

LOCALITY PLAN WITH ANEF 2012 CONTOURS



ATTACHMENT 3**ASSESSMENT**

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

THE PROPOSAL

To amend the original development consent by way of removal of condition 23, (noise attenuation condition).

THE APPLICATION

Owner	Luke Lidbury
Applicant	Luke Lidbury
Detail Submitted	The applicant's submitted justification for the removal of the subject condition and associated ANEF maps.

THE LAND

Property Description	Residential block of average size, slopes to rear corner of block by approx 2m and is surrounded by single and double storey residences.
Address	3 Meehan Rd Raymond Terrace
Area	850.7 square metres
Dimensions	Approx 40m long, Approx 19m wide (and variable)
Characteristics	Slopes to left rear of the block

THE ASSESSMENT**1. Planning Provisions**

LEP 2000 – Zoning	Residential 2(a)
Relevant Clauses	Clause 16 – Objectives of the zone
	Objective 2(e) states that the consent authority must ensure that the design of residential areas takes into account environmental constraints. Aircraft noise is an identified environmental constraint and is clearly identified by virtue of the promulgated ANEF maps and the data tabled within the applicant's submitted reports in regard to on-site predicted noise levels based on Joint Strike Fighter data from the Department of Defence.

It is considered extremely inappropriate to remove the requirement of noise attenuation to this property as it presents an inconsistency with the Department of Planning 117 Direction in regard to Aircraft Noise, Australian Standard AS2021-2000 – Acoustics – Aircraft noise intrusion – Building siting and construction, Council adopted standard procedure DCP2007, Department of Defence advice and Council's legal advice on the issue.

It also, of course, is recommended to protect the health and lifestyle of all future occupants of the dwelling.

2. Likely Impact of the Development

The environmental impact of the development is negligible.

3. Suitability of the Site

The suitability of the site is satisfactory in respect to the proposed development, subject to conditions of consent in respect to aircraft noise.

4. Submissions

One (1) submission was received on the original application and as discussed previously did not present an issue that should present a consideration in the context of this modification.

5. Public Interest

There is no significant interest to the public realm in respect to the development other than those highlighted within other sections.

ITEM NO. 4

FILE NO: 16-2009-768-2

**SECTION 96 APPLICATION TO MODIFY DEVELOPMENT CONSENT FOR
DETACHED DUAL OCCUPANCY & TWO LOT TORRENS TITLE
SUBDIVISION AT NO. 4 MEEHAN ROAD, RAYMOND TERRACE**

**REPORT OF: KEN SOLMAN - ACTING MANAGER, DEVELOPMENT AND BUILDING
GROUP: SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

Refuse Development Application 16-2009-768-2 for the following reasons:

- 1) Construction of a new Dual Occupancy without appropriate noise attenuation would result in occupants being exposed to unacceptable aircraft noise impacts and unacceptable indoor sound levels.
- 2) Construction of a new Dual Occupancy without appropriate noise attenuation would be inconsistent with the provisions of Australian Standard AS2021-2000, Acoustics – Aircraft noise intrusion – Building siting and construction and Port Stephens Council DCP 2007 – Section B2.13 – Aircraft Noise
- 3) Construction of a new dwelling without appropriate noise attenuation would be inconsistent with the objectives of the Department of Planning Ministerial (117) Direction on development near licensed aerodromes.

**COUNCIL COMMITTEE MEETING – 24 AUGUST 2010
RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Caroline De Lyall	That the Development Application (S96 modification) 16-2009-768-2 be approved.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Caroline De Lyall, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover, Ken Jordan and Glenys Francis.

Those against the Motion: Cr John Nell.

MINUTES FOR ORDINARY MEETING – 24 AUGUST 2010

ORDINARY COUNCIL MEETING – 24 AUGUST 2010

258	Councillor Peter Kafer Councillor Ken Jordan	It was resolved that the Council Committee recommendation be adopted.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Caroline De Lyall, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover, Ken Jordan and Glenys Francis.

Those against the Motion: Cr John Nell.

BACKGROUND

The purpose of this report is to present a Section 96 development application to Council for determination at the request of Mayor Mackenzie.

The applicant lodged the original application for a detached dual occupancy and two lot Torrens title subdivision with Council on 14 October 2009. The site fell within the 20-25 contours under the ANEF 2025 map. In accordance with Council policy the applicant was advised of the requirement to lodge an aircraft noise assessment report to progress the application.

The applicant submitted an Aircraft Noise Impact assessment report, however it related to the wrong property description and only a single dwelling. The development consent was issued on 30 March 2010 including condition 53:

53) Two copies of an amended Aircraft Noise Impact Assessment for each dwelling shall be submitted to and approved by Council prior to the issue of Construction Certificate, referencing the correct property description/address and plans submitted with the application. The development shall be constructed in accordance with the recommendations contained in the amended acoustic report.

Prior to the issue of any Occupation Certificate, submit to the Principal Certifying Authority, certification confirming that the measures recommended in the acoustic report have been fully implemented. This certification should confirm specific details of measures and materials/methods of construction.

The applicant seeks by way of a section 96 modification to remove the "acoustic requirements" (condition 53) of the development consent.

The site has always been affected by aircraft noise although was previously not captured under the ANEF 2012 mapping contours. As recognition of the noise

impacts at the subject site together with increased noise levels and subsequent increased exposure expected by the Joint Strike Fighter aircraft the site falls within the 20-25 contours under the ANEF 2025 map. It should be understood that certain sites within even the lower ANEF zones can experience noise levels high enough to be on the threshold of current design parameters. The subject site is one such example.

The subject site has returned a predicted Lmax of 94dB(A) when tested in reference to the Department of Defence TNIP data as referenced by the submitted acoustic report. This 94dB(A) represents an increase of 6dB(A) over the ANEF 2012 noise levels. These high levels represent the subject site being situated in close proximity to the Williamstown RAAF Instrument Landing System (ILS) approaches. The nature of aircraft preparation under the ILS landing dictates the high noise levels.

The high noise levels suggested by the applicant's submitted acoustic report would indicate that under ANEF 2025 the subject site would experience very high levels of aircraft noise and should be subject to the requirements of AS2012-2000.

The stated dB(A) levels represent the thresholds of attainable attenuation levels available with standard building designs and materials. It is a clear indication of the requirements of the approved attenuation to be incorporated in the buildings.

The applicant's reasons for the removal of the requirement to install acoustic attenuation is stated in the letter accompanying the application –

“Our argument on this matter is that the original 2012 Contour Plan, [this block was] not affected. Now under the 2025 Contour Plan [it is] affected. This would be a satisfactory requirement if [the development was] in the new estate and all surrounding blocks were also required to carry out these acoustic requirements.

The fact of the matter is [this development is one of] the last two remaining in the street, where none of the other existing properties have been affected by this imposition and extra cost involved in building there houses.

In conclusion we are asking that the acoustic requirements for [this development] be waived due to them being the only two in the existing street.”

FINANCIAL/RESOURCE IMPLICATIONS

Approval of this S96 amendment to the development consent and the subsequent removal of condition 53 (noise attenuation requirements) could represent significant claims being brought against Council in respect to nearby properties being situated now and previously in close proximity to the various ANEF mapping contours.

Alternatively approval could lead to a marked increase of similar S96 modifications being brought to Council for consideration.

LEGAL, POLICY AND RISK IMPLICATIONS

The proposed amendment to the development application is inconsistent with Council's long standing policy on aircraft noise and legal advice on the issue.

The proposal would represent a major departure from previous and current Council policy and could leave Council with significant legal exposure.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social impacts would be represented by an increased number of individuals exposed to unacceptable levels of environmental noise.

The economic impacts can be far reaching if dwelling occupants are sensitive to the levels of noise. These can include significant effects on health and amenity.

CONSULTATION

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

This S96 modification was not exhibited given the proposed removal of the requested consent condition does not pose an issue that warrants exhibition.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan with ANEF 2025 contours.
- 2) Locality Plan with ANEF 2012 contours.
- 3) Assessment.

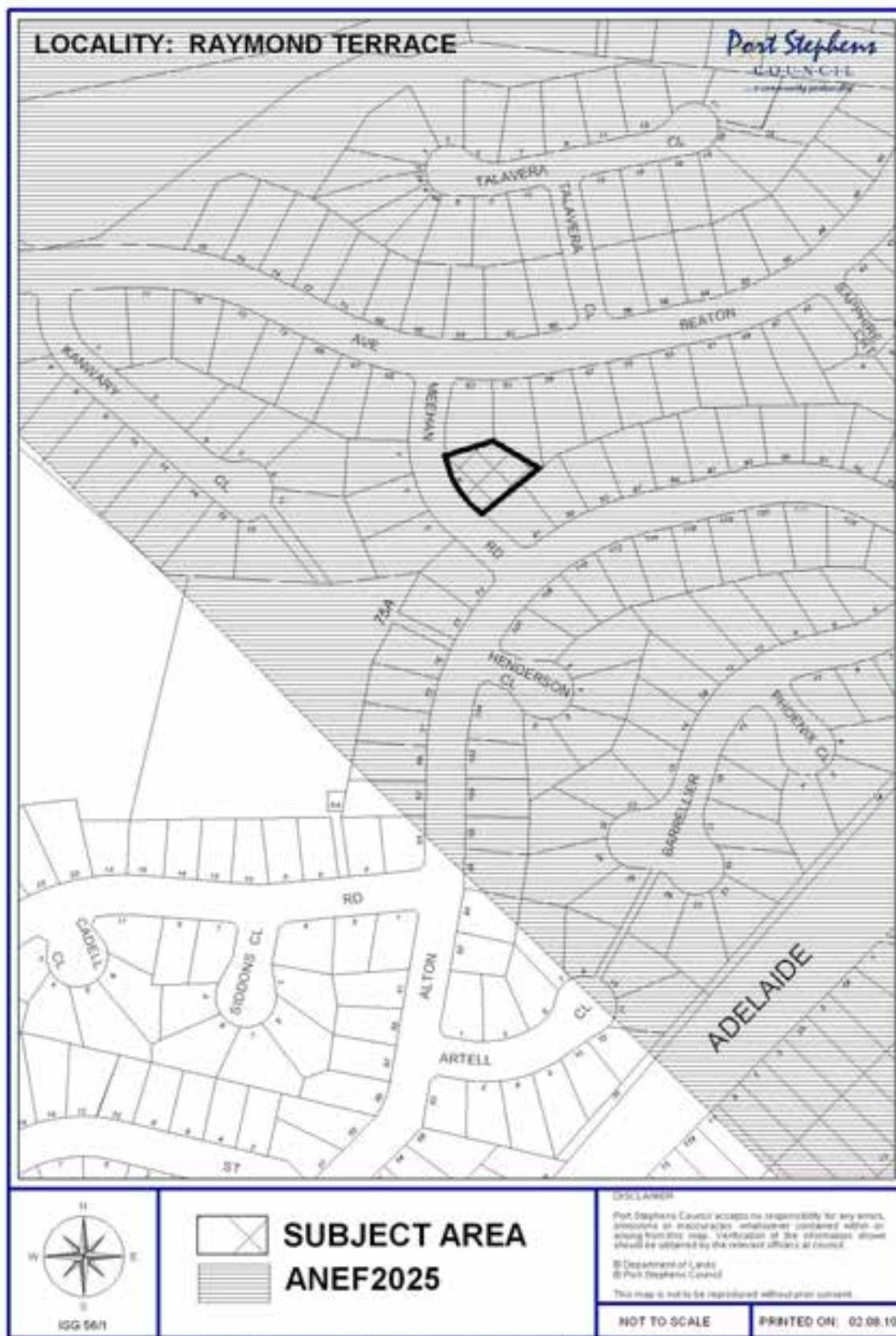
COUNCILLORS ROOM

Nil.

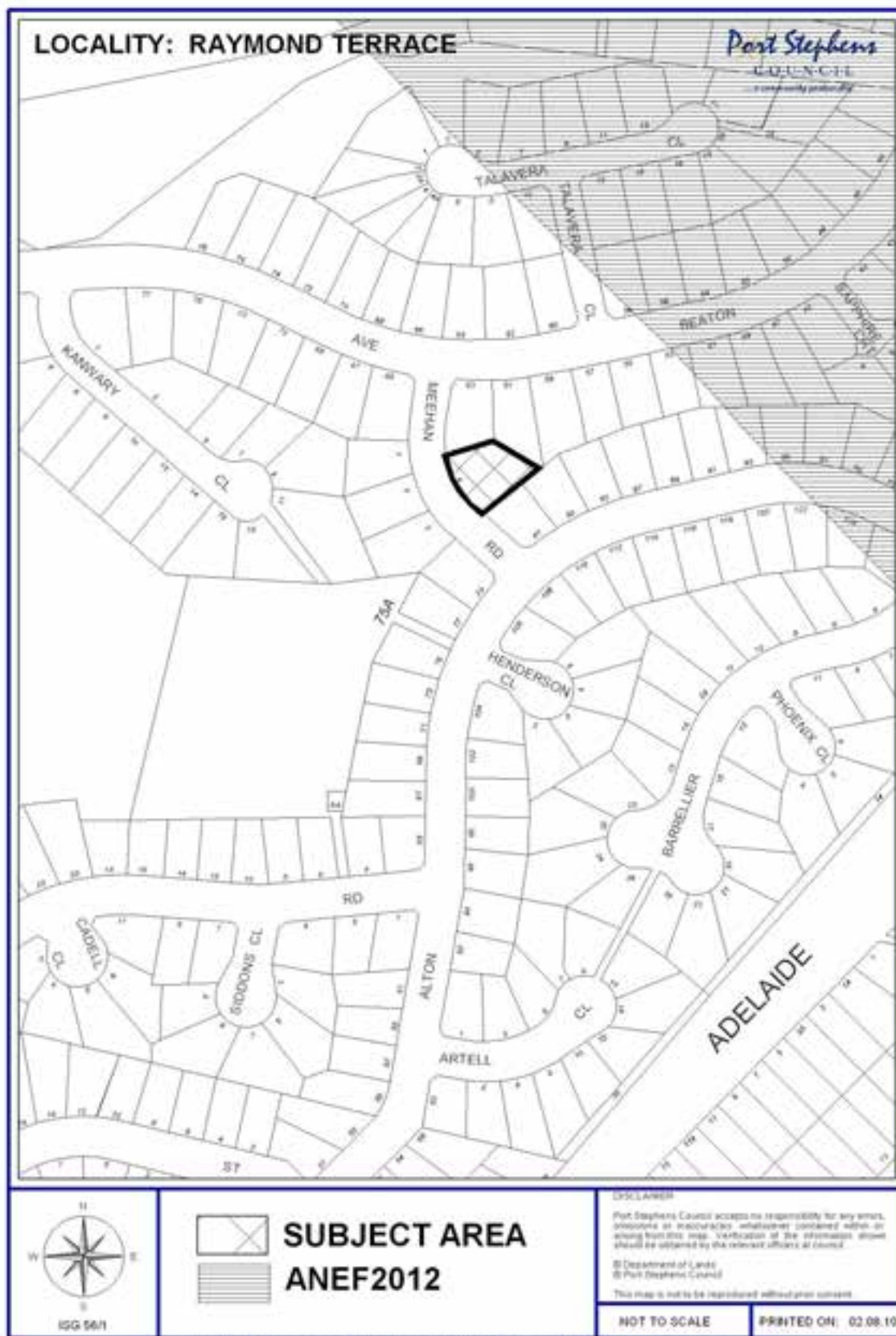
TABLED DOCUMENTS

Nil.

ATTACHMENT 1
-LOCALITY PLAN WITH ANEF 2025 CONTOURS



ATTACHMENT 2
LOCALITY PLAN WITH ANEF 2012 CONTOURS



**ATTACHMENT 3
ASSESSMENT**

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

THE PROPOSAL

To amend the original development consent by way of removal of condition 53 (noise attenuation condition).

THE APPLICATION

Owner	Chad Lidbury
Applicant	Chad Lidbury
Detail submitted	The applicant's submitted justification for the removal of the subject condition.

THE LAND

Property description	Lot 48 DP 845840
Address	4 Meehan Road Raymond Terrace
Area	838.5m ²
Dimensions	25.079m x 24m x 37m x 48.142m
Characteristics	Irregular shaped with fall of approximately 15% to the south. Frontage to Meehan Road.

THE ASSESSMENT**1. Planning Provisions**

LEP 2000 – Zoning	Residential 2(a)
Relevant Clauses	Cl 16 Objectives of the zone

Objective 2(e) states that the consent authority must ensure that the design of residential areas takes into account environmental constraints. Aircraft noise is an identified environmental constraint and is clearly identified by virtue of the promulgated ANEF maps and the data tabled within the applicant's submitted reports in regard to on-site predicted noise levels based on Joint Strike Fighter data from the Department of Defence

Development Control Plan	Section B2.13 Aircraft Noise
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State Environmental Planning Policies	Nil
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Other Relevant Planning Documentation

Ministerial direction 117 (effective 1 July 2009)

Item 3.5 1(c)

The direction tables discussion on development near licensed aerodromes and is intended to ensure that development for residential purposes or human occupation, if situated on land within the Australian Noise Exposure Forecast (ANEF) contours of between 20 and 25, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.

Australian Standard AS2021-2000 – Acoustics – Aircraft noise intrusion – Building siting and construction

Clause 2.3.2 – Discussion on conditional acceptability of structures in regard to site acceptability under Table 2.1

Table 2.1 – determines site acceptability based on ANEF mapping contours

Section 3 – determines building construction against aircraft noise intrusion

Table 3.3 – Determines indoor design noise levels.

Discussion

The applicant wishes to remove consent condition 53 relating to the reference of the submitted aircraft noise assessment report.

The block is clearly defined within the 20-25 contours of the ANEF 2025 map (the map which predicts noise impacts of the Joint Strike Fighter). The original application incorporated attenuation measures to adequately offset the noise experienced at the site in respect to the military and domestic ILS flight path. The site has noise levels within a range that would suggest that even though it fell outside the ANEF 2012 contours it should have been considered to be subjected to the requirements of AS2021-2000 in accordance with Note 1 of table 2.1.

("The actual location of the 20ANEF contour is difficult to define accurately, mainly because of variation of flight paths. Because of this, the procedure of Clause 2.3.2 may be followed for building sites outside but near to the 20 ANEF contour").

Given that Council has not traditionally applied AS2021-2000 outside the adopted ANEF map contour the site would have been previously removed from attenuation requirements and as a result would have experienced unacceptable indoor noise levels.

As recognition of the high level of aircraft noise exposure, and when extensively reviewed during the analysis leading to the ANEF 2025 map the site has been included within the 20-25 contours.

It is considered extremely inappropriate to remove the requirement of noise attenuation to this property as it presents an inconsistency with the Department of Planning (117) Direction in regard to Aircraft Noise, Australian Standard AS2021-2000 – Acoustics – Aircraft noise intrusion – Building siting and construction, Council adopted standard procedures, DCP2007, Department of Defence advice and Council's legal advice on the issue.

It also, of course, is recommended to protect the health and lifestyle of all future occupants of the dwelling.

2. Likely Impact of Development

The environmental impact of the development is negligible.

3. Suitability of the Site

The suitability of the site is satisfactory in respect to the proposed development, subject to conditions of consent in respect to aircraft noise.

4. Submissions

No submissions were received on the original application. This S96 modification was not exhibited given the proposed removal of the requested consent condition does not pose an issue that warrants exhibition.

5. Public Interest

The development is contrary to the public interests and expectations, of an orderly and predictable built environment.

ITEM NO. 5

FILE NO: PSC2006-6662

**KINGS HILL DRAFT LOCAL ENVIRONMENTAL PLAN 2010 – PROPOSED
REZONING OF LAND AT NEWLINE ROAD ADJOINING THE
BEDMINSTER WASTE MANAGEMENT FACILITY – CONSIDERATION OF
LATEST DEPT. OF DEFENCE AIRCRAFT NOISE ADVICE**

REPORT OF: DAVID BROYD – GROUP MANAGER
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Request that the NSW Department of Planning issue a certificate under section 65 of the Act to enable public exhibition of the draft Local Environmental Plan to amend the Kings Hill draft LEP with respect to Part Lot 3 in DP 1098770 to rezone the land to R1 General Residential and E2 Environmental Conservation (**Attachment 1**).
-

COUNCIL COMMITTEE MEETING – 24 AUGUST 2010
RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Glenys Francis	That Council invite the noise consultant to address Council and that the report be deferred until such time.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Caroline De Lyall, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover, Ken Jordan, Glenys Francis and John Nell.

Those against the Motion: Nil.

The amendment on being put became the motion which was put and carried.

ORDINARY COUNCIL MEETING – 24 AUGUST 2010

259	Councillor Bruce MacKenzie Councillor Ken Jordan	It was resolved that Council: <ol style="list-style-type: none">1. Request that the NSW Department of Planning issue a certificate under section 65 of the Act to enable public exhibition of the draft Local Environmental Plan to amend the Kings Hill draft LEP with respect to Lot 3 in DP 1098770 and Lot 11 in DP 37340, Newline Road, Raymond Terrace to rezone the land to R1 General Residential and E2 Environmental Conservation (Attachment 2).2) Invite the noise consultant to address Council.3) Incorporate the same clause/s as was drafted for the overall Kings Hill LEP in relation to odour.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Caroline De Lyall, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover, Ken Jordan, Glenys Francis and John Nell.

Those against the Motion: Nil.

The motion on being put was carried.

AMENDMENT

	Councillor Glenys Francis Councillor Peter Kafer	That Council invite the noise consultant to address Council and that the report be deferred until such time.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer and Glenys Francis.

Those against the Motion: Crs Caroline De Lyall, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Bob Westbury, Frank Ward, Sally Dover and Bruce MacKenzie.

The amendment on be put was lost.

BACKGROUND

The purpose of this report is to advise Council of additional information received from Department of Defence (DoD) under section 62 of the Environmental Planning and Assessment Act 1979 (the Act).

This information should be considered by Council prior to furthering its request made on 9th May 2010 to the NSW Department of Planning to publicly exhibit the draft LEP.

On 18th December 2007 Council considered a request to rezone the subject land (**Attachment 2**) and resolved to:

- a) Support a rezoning request over a portion of Lot 3 DP 1098770 and Lot 11 DP 37430 Newline Road, Raymond Terrace with the appropriate buffers to be established through the rezoning process and to be agreed by Council in a subsequent report to Council post exhibition of the draft LE;
- b) The draft LEP and associated Development Control Plan being integrated with the Kings Hill draft LEP and DCP, Section 94 and/or developer agreements to ensure coordination and integration of the development of the town of Kings Hill with the subject land;
- c) Council receiving formal commitment from the landowner to fund the undertaking of the third party review of noise and odour issues above and beyond the fee attracted by the rezoning request to inform Council of these issues associated with the King Hill draft Local Environmental Plan.

Council should note that:

the two eastern parcels of land are already included within the Kings Hill draft LEP that Council adopted to be forwarded to the Department of Planning requesting the Minister to make that Plan on 25th May 2010; and
the western parcel is the subject of this report (**Attachment 1**).

Preparation of the Draft LEP has been delayed since 2007 due to the establishment of the Aircraft Noise Working Group by the former NSW Minister for Planning and the former federal Minister for Defence in 2008 to determine if Kings Hill could be developed relative to noise pollution associated with the proposed introduction of the Joint Strike Fighter (JSF) in 2018. This lead to the promulgation of the Australian Noise Exposure Forecast 2025 (ANEF) by DoD in October 2010. The new ANEF affects approximately 1/3 of the eastern area of Kings Hill within the 20-25 ANEF contour i.e. residential dwellings are conditionally permissible.

Military Aircraft Noise - Department of Defence Advice

DoD advised on 30th September 2009 (**Attachment 3**) prior to the promulgation of ANEF 2025 that:

- *Defence has strong reservations over the use of the Kings Hill site for residential purposes.*
- *The site is presently affected by aircraft noise and the levels of aircraft noise are predicted to increase with the introduction of the New Air Combat Capability at RAAF Base Williamtown.*
- *Defences position on the subject site is the same for Kings Hill as the issues are the same and it should undergo consistent assessment and ultimately result in a consistent outcome.*
- *In the event Council and the NSW Government pursue the draft LEP it is important that mechanisms be established to ensure future residents are not exposed to the upper most levels of aircraft noise, that future residents are aware of the noise impacts prior to purchase, and that additional design provisions are required during construction to minimise these impacts in the future. To address these concerns Defence strongly requests:*
 - *That no area of the site be rezoned for residential use where subsequent development would be unable to achieve those indoor noise levels in AS 2021-2000 regardless of location relative to any ANEF contour. Further, that the issues of lifestyle and affordability be given appropriate consideration in this regard.*
 - *That all prospective purchasers are advised of military noise occurring at the site, that this noise is likely to increase over time, and that particular design requirements are necessary during construction.*

On 30th April 2010 DoD provided advice on the aircraft noise at various locations across Port Stephens and noise reduction achieved as a result of two sets of construction methods for buildings (**Attachment 4**). Council sought further advice on the implications of this for the land subject to this report. On 28th June 2010 DoD advised of the relevant ANEF contours and the average maximum noise levels for the Hornet and Joint Strike Fighter that apply to the subject site. Council mapped this data (**Attachment 5**). DoD advise that:

- *The site of the proposed rezoning is influenced by aircraft noise from a number of separate flight tracks and profiles.*
- *Under the 2025 ANEF the majority of the site is inside or within 1km of the 20 ANEF contour.*
- *Land beyond the 20 ANEF contour is still subject to aircraft noise and the maps show very high average maximum noise levels across the proposed development site and in the south western corner of the Kings Hill site. At these average maximum noise levels it can be very difficult to achieve the degree of noise controls required to comply with the indoor sound design levels in AS 2021-2000.*
- *Defence notes the conclusions contained in the NSW Department of Planning's Independent Review of Australian Noise Exposure Concepts for RAAF Base Williamtown (May 2009) that it may be prudent to consider delaying that part of*

the development of the Kings Hill site in the south western corner, where noise levels may exceed 85 dB(A). These noise levels have now been confirmed.

- ***Given the average maximum noise levels and due to the difficulty of achieving the degree of noise controls and due to the difficulty of achieving the degree of noise controls required to comply with AS 2021-2000 residential development to the west of Grid Point 9C should not occur.***
- *If a decision is made to support the rezoning to permit residential development which would be inconsistent with AS 2021-2000 Defence would not accept responsibility for any future liabilities.*
- *Should this rezoning proceed it is essential that both the NSW Department of Planning and Council ensure prospective buyers are aware both the EWT and Kings Hill sites are affected by aircraft noise to varying degrees.*

Odour - Department of Environment, Conservation, Climate Change and Water (DECCW) advice

DECCW provided comment on the draft LEP on 21st September 2009 and 22nd December 2009. The 21st September 2009 advice is based primarily on the relevant Council report and independent review at the time and is summarised as follows:

DECCW concurs with the recommended 1000m buffer as an appropriate precautionary interim measure to protect against odour impacts given:

The Bedminster facility has a history of causing odour complaints up to two kilometres away

Effective odour control requires good operation and housekeeping

Development is unlikely to occur on the subject land for 5 to 10 years

The 1000m buffer zone could be refined in the future based on:

A demonstrated history of the Bedminster operation to operate without causing adverse odour impacts during 'normal' operations

A revised modelling based assessment for 'normal' operations

A demonstrated history of the Bedminster operation to avoid plant upsets resulting in odour incidents

DECCW subsequently revised its advice on 22nd December 2009 and is summarised as follows:

The proposed rezoning should not result in odour conflicts as compliance with the terms of the restrictive covenant should ensure that all potentially odorous operations from the Bedminster Facility are consistent with residential development on any part of the site subject of the draft LEP.

Advice provided on 21st September 2009 was provided without an understanding of the requirements of the restrictive covenant on the title of the land on which the Bedminster Facility is located.

The requirements of the restrictive covenant are such that odour emissions must be managed so that they are highly unlikely to cause offensive odour on land subject to the draft LEP.

It is understood that SITA CEC Environmental Solutions agreed to the restrictive covenant when purchasing the land and composting facility from Newline Resources. As such SITA CEC is likely to have the expectation that the land subject to the draft LEP would change to residential. Regardless of expectations, SITA CEC

essentially agreed upon purchase to take sole responsibility for avoiding future odour conflicts.

From DECCW's understanding of the operations of the facility, it is technically feasible for the operator to comply with the terms of the restrictive covenant.

The issue of odour has not influenced the recommendation of this report.

FINANCIAL/RESOURCE IMPLICATIONS

Stage 1 rezoning fees of \$34 755 were paid on 13th April 2007.

If the rezoning proceeds to public exhibition stage 2 rezoning fees will be sought from the applicant in accordance with Council's Fees and Charges Schedule.

LEGAL, POLICY AND RISK IMPLICATIONS

DoD advice that residential development should not occur west of Point C in **Attachment 5** raises the question as to what weight Council – as the local planning authority - should give to this advice for land outside of ANEF contours. DoD has verbally advised that DoD data that is mapped in **Attachment 5** will not lead to amendments to the ANEF 2025.

Whilst awaiting DoD clarification on the frequency of the noise events to calculate the average maximum noise level, it is reasonable to conclude that the frequency of noise events to generate an average maximum noise levels beyond the ANEF 2025 is not sufficient to warrant inclusion within the ANEF contours. There are likely to be many locations across Port Stephens where average maximum noise levels may preclude residential development occurring but noise events are statistically of insufficient frequency to not warrant inclusion of such locations into the ANEF. Therefore, for land use planning purposes, it would not be appropriate to act on DoD advice for land outside of the ANEF 2025.

Council advised Department of Planning concerning the Kings Hill draft LEP on 21st July 2010 that Council can only rely on ANEF 2025 to make land use planning decisions as this is the Australian system recognised by Federal, state and local governments for guiding land use planning decisions and aircraft noise.

However, for land within the ANEF contours DoD advice has greater weight and should be used for considering land use planning matters.

Draft Aircraft Noise Policy

Council's draft aircraft noise policy, on exhibition until 27th August 2010, establishes an approach to the rezoning of land affected by aircraft noise. The draft policy, if adopted by Council, will apply to planning proposals including the subject draft LEP. The draft policy identifies that Council has a duty of care when exercising its planning functions and must have regard for ANEF maps in accordance section 117 Ministerial Direction 3.5 *Development near Licensed Aerodromes* under the Act.

The draft policy identifies three criteria for planning proposals within the aircraft noise area:

- Aircraft noise burden
- Site suitability
- Aircraft noise reduction (ANR)

Aircraft noise thresholds are defined in terms of ANEF values under AS 2021-2000 and all building types are classed as acceptable where the ANEF value is less than 20. That is, no attenuation measures are required. Notwithstanding DoD comments regarding land outside the ANEF having a high average maximum noise level, Council has no alternative other than to be guided by the 2025 ANEF map and A.S 2021-2000. Such land outside the ANEF is considered suitable for residential purposes both under the AS 2021-2000 and section 117 Direction 3.5 and therefore does not add to an increase in the aircraft noise burden.

In respect to where the land is affected by ANEF 2025 having regard to the forecast average maximum noise levels for the site provided by the DoD, Council has a duty of care to ensure the land is suitable for the intended residential land use, and must rely on AS 2021-2000 for site suitability and aircraft noise reduction requirements. In this regard the site complies with the site suitability table being within the 20-25 ANEF contours. However, the question arises whether it is practicable and reasonable for future dwelling to meet the level of aircraft noise reduction required by AS 2021-2000. Whether it is practicable and reasonable to build on part of the site within the ANEF contour on the site is discussed in the Sustainability Implications section of this report.

Odour

The proponent's odour modelling has lead to the proponent applying a restricted covenant between its land (**Attachment 2**) and that of the owner of the Bedminster Waste Transfer Station to the south i.e. the issue of odour and the risk of future emissions from the plant stops at the property boundary of the subject land. Council's legal adviser, Harris Wheeler has advised that restrictive covenants cannot be used by Council to manage land use planning conflicts under Part 3 of the Act. If Council supports the recommendations of this report, then odour becomes less of an issue due to the affected land largely falling within the ANEF 20 contour (**Attachment 4**).

If Council resolves to disregard the military aircraft noise issues raised by this report and include all the land into the draft LEP, then advice will be sought from the Department of Planning on the appropriateness of using restrictive covenants as the proponent is advocating. The outcome of this would be reported to Council post exhibition in accordance with its resolution of 2007.

It should be noted that Council deferred the odour clause and "potential odour affectation" map from the draft Kings Hill LEP 2010 when it adopted this LEP in May 2010. Due to advice from the Department of Planning, the approval of the owner of this land (Mondell Properties) and to not further delay the Department of Planning's assessment of the draft LEP, the proposed E2 and R1 zoning of the "potential odour area" has also been deferred.

SOCIAL, ECONOMIC AND ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

The requirements to build dwellings on any future residential lots should be considered by Council in rezoning land. To progress with rezoning the western part of the site, Council should give consideration to whether it is reasonable and practicable to build a dwelling on land affected by average maximum noise levels of 90-95 decibels. There are significant financial implications for future purchasers of land where development will be conditionally acceptable and subject to high average maximum noise levels due to the construction materials and methods needed to meet the indoor design sound levels of AS 2021-2000.

The Renzo Tonin draft *North Raymond Terrace Independent Review of Aircraft Noise Impacts* (2008) identifies the likely construction methods required to build a dwelling on land affected by average maximum noise levels of 90 to 95 decibels compared to lower average maximum noise levels of up to 70 decibels (**Attachment 7**).

The advice provided by DoD on 30th April 2010 on the aircraft noise reduction achieved at various sites within the LGA as a result of two sets of construction methods also provides a useful indication of the implications for future construction on the western part of the site.

The extract from Renzo Tonin 2008 and advice from Department of Defence shows that if a dwelling is constructed on the western part of the site it is likely to be subject to onerous construction methods and very high construction costs compared to a typical dwelling with lower exposure to aircraft noise.

The proponent was provided with a copy of the aircraft noise information from the DoD (**Attachment 5**). In response the proponent has submitted recommendations from acoustic consultants Reverb Acoustics (**Attachment 8**) that identifies dwelling design and orientation measures for future dwellings to meet the indoor design sound levels of AS 2021-2000 on land subject to average maximum noise levels of 90 to 95 decibels. The report states that an Lmax noise level of 95 dB(A) is the upper limit where a residence can be economically designed to reduce internal aircraft noise levels to comply with AS 2021-2000. The recommendations are not quantified by the proponent in terms of cost to future applicants.

A further matter to consider is the typical dwelling design that applicants will seek to build on the site. The usual approach is to choose from a set range of designs offered by building companies that are generally not designed with aircraft noise as a primary consideration. The construction methods required to meet AS 2021-2000 are usually a 'retro fit' of an existing house design. The usual approach by applicants has been to be present an existing design to an acoustic consultant to recommend compliance measures.

The design and cost implications of building in an area mapped as affected by aircraft noise usually become apparent when a development application is prepared and lodged with Council. This is regardless of notification on planning certificates issued under section 149 of the Environmental Planning and Assessment Act 1979 that the property is mapped as affected by aircraft noise. No formal mechanism, other than a general reference to affectation in 149 certificates, has

been explored or suggested to make future purchasers of land aware of the extent of design requirements and additional cost required.

Council is usually placed in the position of enforcing compliance with the regulatory framework for development in areas mapped as affected by aircraft noise. This will be the case for the western part of the site in the event that it is rezoned for residential development. This creates significant conflict between Council and applicants during the assessment of development applications for dwellings, because Council is seen as enforcing onerous development standards and costs even though it is not responsible for ANEF mapping, AS 2021-2000 and NSW section 117 Direction 3.5 for *Development Near Licensed Aerodromes*.

This is being experienced by Council at the present time following the release of the ANEF 2025. It follows that rezoning land for residential development in areas of very high average maximum noise levels, such the western part of the site, will perpetuate this issue and is likely to create an environment for future conflict between applicants and Council.

Based on the advice from the DoD and in consistent with ANEF 2025, it is recommended that only the eastern half of the western portion of land outside of the ANEF 2025 be considered for residential development as per **Attachment 1**.

CONSULTATION

The Department of Planning has not yet endorsed Council's request to certify the draft LEP to allow Council to exhibit the draft Plan. Whilst the Department advised Council on the 22nd July 2010 that its request was incomplete, it has not been prepared to issue a certificate until it was clear how Council was intending to manage aircraft noise and odour. The issue of noise has been addressed in this report.

DECCW initially advised that an odour buffer area of 1000m that was recommended in the report to Council in 2007 was appropriate given the history of odour complaints up to 2 kms from the Bedminster Waste Transfer Station. However, subsequent to a meeting between DECCW officers, the proponent and Council staff, DECCW advised that a restrictive covenant between 2 private parties (i.e. the owner of the waste transfer station and a residential land owner/s) was sufficient for DECCW to have no objection to the draft LEP proceeding.

However, Harris Wheeler advised Council that a restrictive covenant between two private parties was not an instrument that Council can rely on to make land use planning decisions and avoid or manage land use planning conflicts. Council is awaiting advice in writing from the Department of Planning to ascertain if it considers that it is appropriate to use restrictive covenants to determine land use planning matters under Part 3 of the Environmental Planning and Assessment Act.

Other advice has been received from agencies under Section 62 consultations that have or will influence the draft LEP. However, they are not significant enough to warrant at this point in the process, to be brought to council's attention for further consideration. They will be detailed in the post exhibition report to council.

OPTIONS

- 1) Adopt the recommendations of this report
- 2) Amend the recommendations of this report
- 3) Reject the recommendations of this report

ATTACHMENTS

- 1) Recommended zone layout
- 2) Zone layout 18th December 2007
- 3) Composite 2012-2025 ANEF Average Maximum Noise Level Map
- 4) Department of Defence advice 28th June 2010
- 5) Department of Defence advice 30th April 2010
- 6) Department of Defence advice 30th September 2009
- 7) Extract from Draft North Raymond Terrace Independent Review of Aircraft Noise Impacts (Renzo Tonin 2008)
- 8) Reverb Acoustics Report 28th July 2010

COUNCILLORS ROOM

Nil.

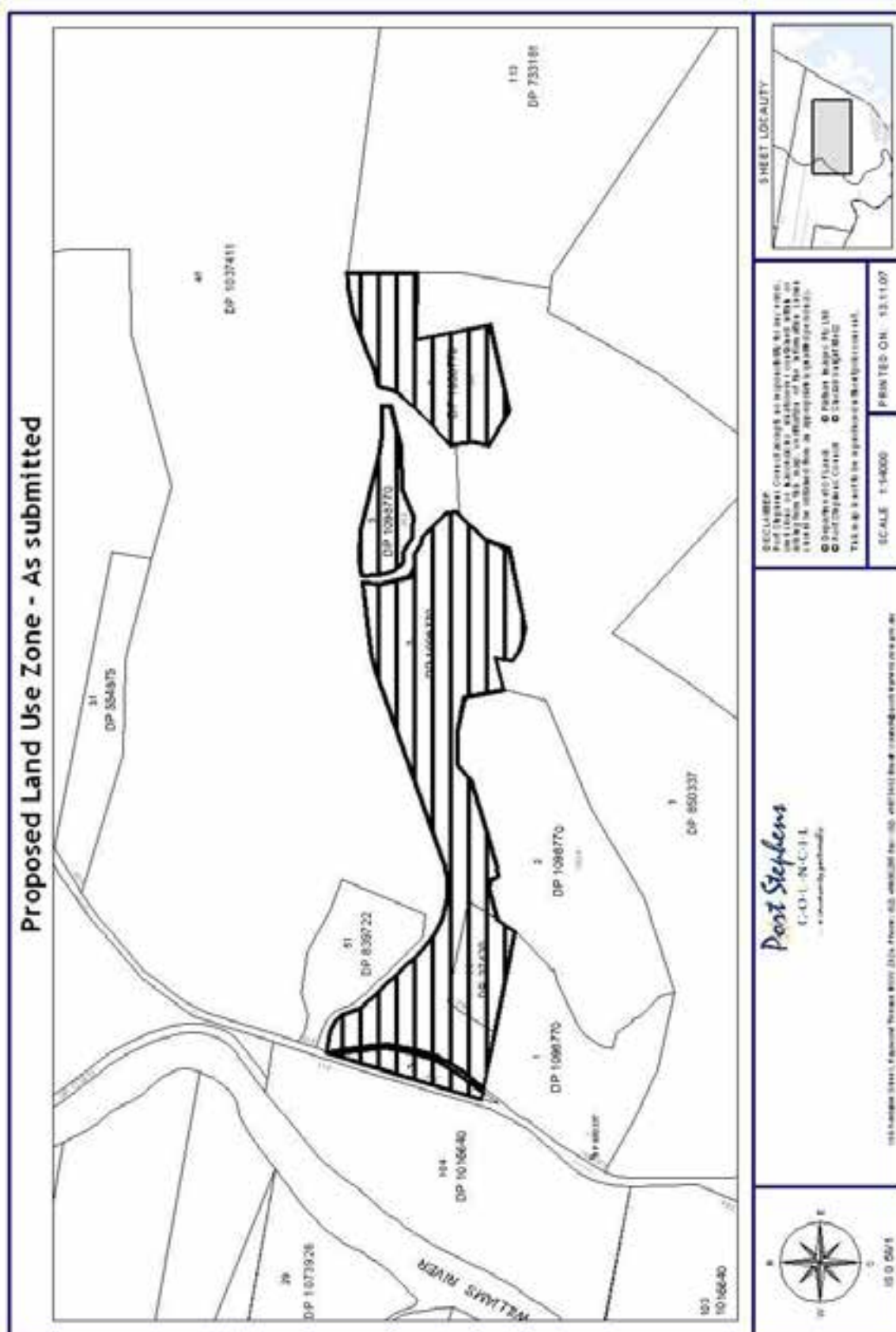
TABLED DOCUMENTS

Nil.

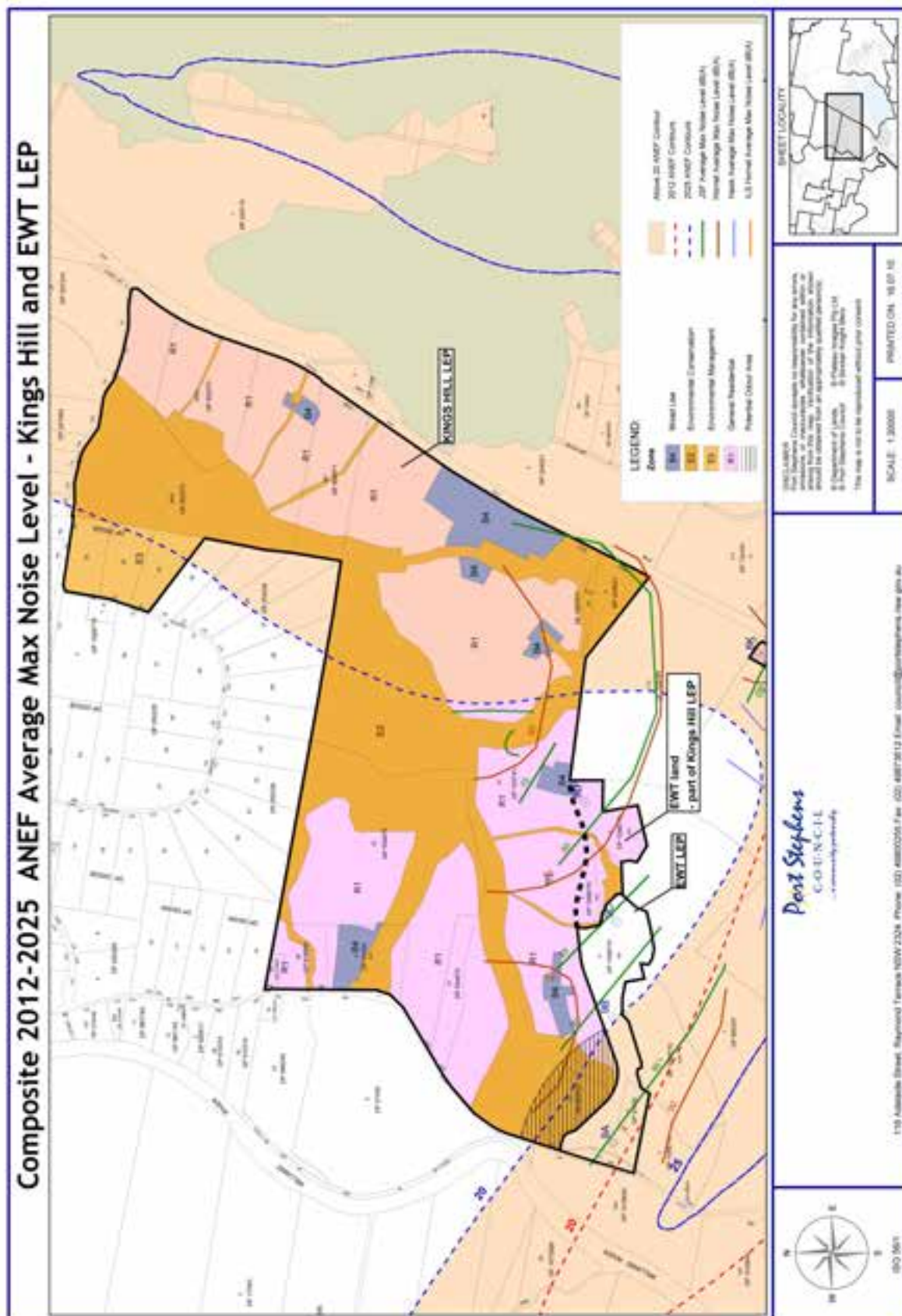
ATTACHMENT 1
RECOMMENDED ZONE LAYOUT



ATTACHMENT 2
PROPOSED FIRE LAYOUT



ATTACHMENT 3
COMPOSITE 2012-2025 ANEF MAP



ATTACHMENT 4
DEPARTMENT OF DEFENCE ADVICE 28TH JUNE 2010

2005/1112532/7
Our ref: AF4457852

Mr Bruce Petersen
Acting Group Manager, Sustainable Planning
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Dear Bruce,

**Re: Draft Amendment to Port Stephens Local Environmental (LEP) 2000
Part Lot 3 DP 10987770 and Part Lot 11 DP 37430, Kings Hill, North Raymond
Terrace**

Since the beginning of the Draft Public Environment Report for the Joint Strike Fighter (JSF) in October 2009, noise information concerning Australian Noise Exposure Forecast (ANEF) 2012 and 2025, including absolute maximum noise levels and frequency of movements for all areas in the vicinity of RAAF Base Williamtown and Salt Ash Air Weapons Range (SAAWR) has been in the public domain at nextairgeneration.com.au.

At the workshop held on 12 April 2010 to work through a number of aircraft noise management issues associated with the introduction into service of the JSF to RAAF Base Williamtown and the promulgation of ANEF 2025, Defence presented average maximum noise level information for 9 development sites nominated by Council. The "EWT" or "Newline Resources" site was not one of these. Council and the local acoustic consultants would have been aware from this workshop, however, that average maximum noise levels in accordance with Australian Standard AS2021-2000 can be lower than the absolute maximum noise levels presented through the Transparent Noise Information Package (TNIP) which is available at the abovementioned website.

Nevertheless, Council's letter of 11 May 2010 requested additional average maximum noise level information over the land known as "EWT" or "Newline Resources" site to the south of Kings Hill (to the west of location 9 of the nine 'hotspots' identified by Council) for current and future aircraft movements.

Please find attached maps for the Hornet and the JSF with the calculated average maximum noise levels contours. Whilst AS2021-2000 gives applicable average maximum noise levels for a range of civilian aircraft, it advises that, for military aircraft, appropriate noise levels should be obtained by contacting Defence. This information for the Hornet aircraft has been available from Defence for the past 10 years.

The site of the proposed rezoning is influenced by aircraft noise from a number of separate flight tracks and profiles. These are associated with Instrument Landing System (ILS) approaches to Runway 12 (from the direction of Raymond Terrace/Grahamstown Dam to the Base) and departures on Runway 30 (from the Base towards Raymond Terrace/Grahamstown Dam). In the case of the existing Hornet aircraft, noise levels at the proposed site are further influenced by the initial and pitch arrival movements to Runway 12.

AS 2021-2000 notes that the actual location of the 20 ANEF contour is difficult to define accurately, because of variations in aircraft flight paths, pilot operating techniques, and the effect of meteorological conditions on noise propagation. For that reason, the 20 ANEF contour is shown as a broken line on ANEF maps. Although under the 2012 ANEF contours only a small portion of the west of the development site is within the 20 ANEF contour (inside the red dotted line on the maps), we note that under 2025 ANEF map the majority of the site is inside or within 1km of the 20 ANEF contour.

Land beyond the 20 ANEF contour is still exposed to aircraft noise (Defence receives complaints from residents outside of the 20 ANEF contour), and the maps show very high average maximum noise levels across the proposed development site and in the south western corner of the Kings Hill site. The workshop held with your staff on 12 April noted that, at these average maximum noise levels, it can be very difficult to achieve the degree of noise controls required to comply with the indoor design sound levels prescribed at Table 3.3 in Australian Standard 2021-2000.

Further, we note the Conclusions contained in the NSW Department of Planning's *Independent Review of Australian Noise Exposure Concepts for RAAF Base Williamtown* (May 2009) concluded that it may be prudent to consider delaying that part of the development of the Kings Hill site in the south western corner, where noise levels may exceed 85 dB(A). The attached maps confirm such noise levels.

On the basis of the composite 2012-2025 ANEF map which, as proposed by Council, combines the 20 ANEF contours of the former 2012 ANEF and the current 2025 ANEF, one should consider noise controls across the entire development site and in the south western corner of the Kings Hill site. Such controls would need to take into account the existing Hornet average maximum noise levels, particularly those shown on the map titled "Composite 2012-2025 ANEF Location – EWT 9A-9C Hornet Average Max. Noise Level", as well as JSF average maximum noise levels.

The "Composite 2012-2025 ANEF Location – EWT 9A-9C JSF Average Max. Noise Level" map shows average maximum noise level contours for the JSF generally going in a north-west to south easterly direction across the development site and in the south western corner of the Kings Hill site. Although not modelled, I am advised these contours would continue across the south western corner of the Kings Hill site to Newline Rd, generally parallel to the 20 ANEF 2025 contour. Again, given these average maximum noise levels and due to the difficulty of achieving the degree of noise controls required to comply with Table 3.3 of AS2021-2000 as noted at the workshop with Council officers on 12 April, residential development to the west of Grid Point 9C should not occur.

As raised in previous correspondence to Council, the operations of military aircraft differ from those of their civilian counterparts. For instance, military jet aircraft are much noisier than civilian aircraft operating at Williamtown, particularly against rural ambient background noise levels. Military aircraft also fly in formation consisting of two or more aircraft. This results in a prolonged noise event and higher levels than a corresponding location for a domestic/international airport. The ANEF system does not adequately reflect intense or irregular periods of activity and

corresponding high noise impacts during exercises. Finally, its accuracy depends on forecasts and assumptions.


Nevertheless, the ANEF system is industry best practice, and the best available tool for land planning purposes at this time that is accepted in Australia. The Australian Government has recognised there is scope to improve current strategies for assessing and managing aircraft noise around airports and under flight paths. I will be raising these matters at the National Aerodromes Safeguarding Advisory Group which is chaired by the Department of Infrastructure, Transport, Regional Development and Local Government, and comprises representatives from Defence, State and Territory planning agencies, including the NSW Department of Planning.

In conclusion, Defence does not support the rezoning of this land for the reasons outlined above. However, I have requested further advice from our consultants that compares the modelled average maximum noise levels given for the Hornet to actual average maximum noise levels derived from the Noise and Flight Path Monitoring System in place in this locality. This information will be available by the end of July.

If a decision is made to support the rezoning to permit residential development in a manner which would be inconsistent with AS2021-2000, Defence would not accept responsibility for any future liabilities. Should this rezoning go ahead, it is essential for both the NSW Department of Planning and Council ensure prospective purchasers are aware both the EWT and Kings Hill sites are affected by aircraft noise to varying degrees.

I trust this information will be of assistance to you. Should you require additional information or wish to discuss the matter further, please contact Jim Ponton on (02) 6266 8186, or by email at jim.ponton@defence.gov.au.

Yours sincerely



John Kerwan
Director Land Planning & Spatial Information
Department of Defence
BP3-1-A052
Brindabella Park
Canberra ACT 2600

28 June 2010

Cc: RD DSO NNSW
Michael Leavey, Regional Director, Hunter Office, NSW Department of Planning.

ATTACHMENT 5
DEPARTMENT OF DEFENCE ADVICE 30TH APRIL 2010



Australian Government
Department of Defence
Defence Support Group

2005/1112532/7
LPS1/OUT/2010/52

David Broyd
Group Manager, Sustainable Planning
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Dear David,

Re: Aircraft Noise Management

I refer to your letter of 2 March 2010 and to the workshops held on 12 April 2010 to work through a number of aircraft noise management issues associated with the proposed introduction into service of the Joint Strike Fighter (JSF) to RAAF Base Williamtown and Salt Ash Weapons Range (SAWR) and the promulgation of Australian Noise Exposure Forecast 2025 (ANEF 2025).

I also refer to Council's request on 1 March 2010 for more specific noise level information in relation to 9 development sites in your Council's Local Government Area.

Aircraft Noise Levels

At the workshops, Defence presented average maximum noise level information for each development site. Enclosed please find this information which identifies the arithmetic average of maximum noise levels for current and future military aircraft at each development site.

In considering the impacts of the F/A-18 Hornet, Hawk Lead-In Fighter and JSF military aircraft at each development site, Defence determined the calculated and forecasted noise level for each aircraft operation on each of the separate flight tracks (for example, flights down the Instrument Landing System, Initial and Pitch tracks, "Touch and Go" circuits around the base and other standard arrival and departure tracks) that may impact each site, then arithmetically averaged the results for each operation/mode. In accordance with Australian Standard AS2021-2000 - 2000 - *Acoustics, Aircraft Noise Intrusion - Building Siting and Construction* (AS2021) the highest average maximum level for the various operation/mode becomes the external aircraft noise level at each site.

Defence understands the average maximum noise levels for the various operation/modes is the only concept that can be used to determine the aircraft noise levels and in turn, the appropriate noise control measures defined as the Aircraft Noise Reduction in AS2021. At the afternoon workshop, local acoustic consultants noted this is the information they require to determine the degree of aircraft noise reduction in order to comply with AS2021.

In the near future, Defence intends to provide Council with additional noise data for land along Rees James Road (development site 8) to assist Council and the NSW Department of Planning in the determination of this rezoning proposal.

Defending Australia and its National Interests

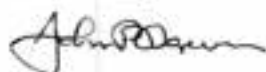
Aircraft Noise Reduction

Defence noted Council's desire to work towards a more standardised approach to noise attenuation, design and construction in accordance with AS2021. Accordingly, Defence engaged an acoustic consultant to identify the outcome of two conceptual noise control measures that could be used, in conjunction with the average maximum noise levels, to assess whether or not the indoor design sound levels given at Table 3.3 in AS2021-2000 can be achieved.

Enclosed please find information relating to aircraft noise reduction and indicative noise control measures that can be used to assess compliance or otherwise with the indoor design sound levels given at Table 3.3 in AS2021-2000. Also enclosed is a table identifying the external average maximum noise levels at each of the development sites and corresponding indoor design sound levels that are obtained firstly from typical residential construction and secondly by using either of the acoustic upgrade alternatives given. The spectral data for the JSF, which is required to be considered in instances where the average maximum noise levels exceed 85dBA has now been declassified and is also included. This information can be made available to the local acoustic consultants.

I trust this information will be of assistance to Council. Please do not hesitate to contact me if you wish to discuss the information further.

Yours sincerely



John Kerwan
Director Land Planning & Spatial Information
Department of Defence
BP3-1-A052
Brindabella Park
Canberra ACT 2600

30 April 2010

Cc: Michael Leavey, Regional Director, Hunter and Central Coast Region, NSW Department of Planning.

Indicative Aircraft Noise Levels

	2012 ANEF		
Development Hot-Spots	Hornet	Hawk	JSF
1. DAREZ (Industrial)	88	78	94
2. Medowie East	79	66	87
3. Medowie South East	76	61	83
4. Medowie South West	77	61	84
5. Oyster Cove	83	74	89
6. Salt Ash	89	77	91
7. Richardson Road	95	84	101
8. Riverview Ridge	92	76	96
9. Kings Hill (Riding School)	81	76	79
		2025 ANEF	

NOISE CONTROL CONCEPTS

AS2021 requires use of the external noise level (average maximum) as the basis of determining the building constructions to achieve compliance with recommended internal levels set out in Table 3.3.

For bedrooms of a residence the internal design level is not exceeding 50 dB(A).

If doors and windows are required to be closed to achieve the internal noise target then mechanical ventilation is required.

For consideration of Noise Control measures assume the following"

- A bedroom 3.5m x 3m x 2.5m
- The bedroom has two external walls. The other two walls adjoin other rooms in the residence (attenuation via other rooms of residence to the bedroom is 10 dB).
- 1 external wall has a 2m² window
- Aircraft above the building, a 3 dB attenuation due to directivity is allocated for the external window

The starting point refers to a **typical** brick veneer construction but with the assumption of thicker glass than normal:

- Pitched tile roof with sisalation + 14 kg/m³ batts + 10 mm plasterboard ceiling
- Brick veneer construction (internal plasterboard 10mm)
- 6.4 mm thick laminated glass.
- 1 bed + 1 bookcase + 1 adult
- Carpet on floor

For noise control concepts there are two alternatives assessed. Acoustic upgrade 1 is upgrading the walls and ceiling with more plasterboard and double glazing, whilst alternative 2 is a much more significant construction.

Acoustic upgrade 1:

- Pitched roof ceramic tiles + 100 insulation + 2 x 13mm layers of plasterboard
- Brick veneer with 100mm insulation + 1 layer of 16 mm plasterboard
- Double glazed window being - 3mm glass + 125mm gap + 6.38mm glass

Acoustic upgrade 2:

- Pitched roof with ceramic tiles + easiboard + 100 R2.5 + 10mm plasterboard ceiling (Rw56)
- 230 extruded double brick 100mm cavity with 13 mm render inside (Rw 60)
- Double glazed window - 10.7mm glass + 200 air gap + 10.7mm glass (Rw55)

Where the ANR is greater than 30 (i.e. for a bedroom an external level greater than $50 + 30 = 80$ dB(A)) the Standard recommends use of spectral (frequency) data.

Different modes of aircraft flight produce different spectrums, i.e. overflights have less low frequency sound than take off or landing.

External noise spectra for Hornet from file from NoiseMap. JSF spectra from DoD recently publicly released.

NoiseMap data @ 1000ft

	dB(A)	31.5Hz	63	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz
Hornet F18A/C										
Landing	106	85	87	100	102	104	101	98	85	80
Take off	107	85	88	102	105	105	102	99	95	92
AB	114	100	101	114	113	112	108	106	104	102
JSF results										
JSF										
Landing	97	86	86	100	98	95	93	87	76	71
Take off MIL	115	90	94	110	111	110	108	107	109	104
75%	107	92	94	108	107	104	102	100	98	96
AB	120	98	107	116	114	112	113	116	111	108
cruise 35%	94	80	81	96	93	92	91	85	72	67

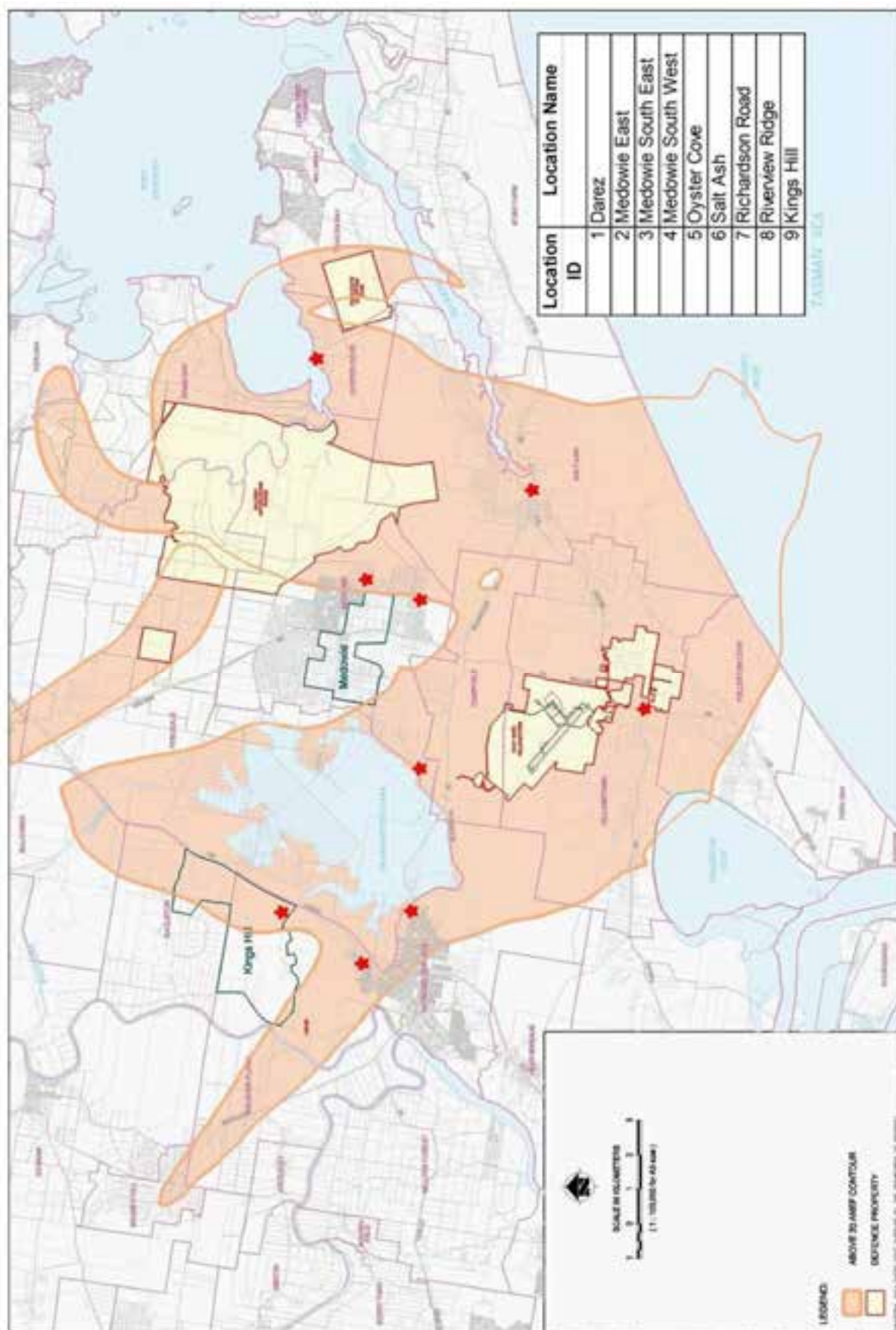
Noise spectra in all cases were normalised to INM derived external noise level for each residential location.

Normalised to 85 dB(A)

	dB(A)	31.5Hz	63	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz
Hornet F18A/C										
Landing	85	64	66	79	81	83	80	77	65	59
Take off	85	63	66	80	83	83	80	77	73	70
AB	85	71	72	85	84	83	79	77	75	73
JSF results										
JSF										
Landing	85	74	74	88	86	83	81	75	64	59
Take off MIL	85	60	64	80	81	80	78	77	79	74
75%	85	70	72	86	85	82	80	78	76	74
AB	85	63	72	81	79	77	78	81	76	73
cruise 35%	85	71	72	87	84	83	82	76	63	58

MINUTES FOR ORDINARY MEETING – 24 AUGUST 2010

Location	Movement	Hornet				JSF			
		External Level	Building Typical	Construction upgrade		External Level	Building Typical	Construction upgrade	
				1	2			1	2
1	Landing	88	64	56	47	94	74	68	61
2	Strafing (take off)	79	54	47	38	87	72	65	58
3	Strafing (take off)	75	51	43	35	83	68	61	53
4	Take off	77	53	45	36	84	58	51	43
5	overflight	83	59	51	42	89	58	52	44
6	Strafing (landing)	89	55	57	50	91	71	65	57
7	Landing ILS	95	71	63	51	101	81	75	68
8	Landing ILS	92	68	61	54	96	76	70	62
9	Departure 30	81	57	49	42	79 (MIL 100%)	64	57	50



ATTACHMENT 6
DEPARTMENT OF DEFENCE ADVICE 30TH SEPTEMBER 2009



Australian Government
Department of Defence
Defence Support Group

2005/1112532/6
LPSI/OUT/2009/193

The General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Dear Sir/Madam

Re: Draft Amendment to Port Stephens LEP 2000 – Part Lot 3 DP 1098770 and Part Lot 11 DP 37430, Kings Hill, North Raymond Terrace.

Thank you for your letter dated 12 August 2009 inviting comment from the Department of Defence (Defence) concerning a proposed rezoning to permit residential development of land adjoining the current Kings Hill draft LEP.

As you would be well aware, Defence has strong reservations over the use of the Kings Hill site for residential purposes. The Kings Hill area, including the new site to the south, is presently affected by aircraft noise, and the levels of aircraft noise are anticipated to increase with the introduction of the New Air Combat Capability at RAAF Base Williamtown.

Defence's position in relation to this proposal is the same as it is for Kings Hill. The issues for this proposal are the same, and Defence expects that this proposal undergo consistent assessment, and that it will ultimately result in a consistent outcome.

In the event that the NSW Government and Council pursue the draft amendments for Kings Hill and this proposal, it is important that some mechanisms be established to ensure future residents are not exposed to the upper most levels of aircraft noise occurring at the site, that future residents are aware of the noise impacts prior to purchase, and that additional design provisions are required during construction to minimise these noise impacts in the future. To address these concerns, Defence strongly requests the following:

1. That no area of the site be rezoned for residential uses where subsequent development would be unable to achieve those indoor noise levels shown at Table 3.3 of AS2021-2000 regardless of its location relative to any ANEF contour. Further, that issues such as lifestyle and affordability be given appropriate consideration in this regard.
2. That all prospective purchasers at Kings Hill are advised of the issue of military aircraft noise occurring at the site, and that this noise is likely to increase over time, and that particular design requirements are necessary during construction to mitigate this noise.

Defending Australia and its National Interests

I trust this clarifies Defence's position for you. Should you require additional information or wish to discuss the matter further, please contact Jim Ponton on (02) 6266 8186, or by email at jim.ponton@defence.gov.au.

Yours sincerely



John Kerwan
Director Land Planning & Spatial Information
Department of Defence
BP3-1-A052
Brindabella Park
Canberra ACT 2600

30 September 2009

Cc: RD DSO NNSW

Defending Australia and its National Interests

ATTACHMENT 7

DRAFT NORTH RAYMOND TERRACE INDEPENDENT REVIEW OF AIRCRAFT NOISE IMPACTS, (RENZO TONIN 2008)

6.4 RESIDENTIAL DESIGN REQUIREMENTS

This section looks at the expected maximum aircraft noise levels on site and identifies the aircraft noise reduction and subsequent (in-principle) acoustic design requirements to satisfy the indoor design sound levels set out in AS2021-2000. The assessment has been carried out following the guidelines set out in AS2021-2000.

6.4.1 Noise Criteria

From Table 3.3 of AS2021-2000, the indoor design sound levels for determination of Aircraft Noise Reduction for residential premises are summarised in Table 12 below. The indoor design sound level is the maximum dB(A) level from an aircraft flyover which, when heard inside a building by the average listener, will be judged as not intrusive or annoying by that listener while carrying out the specified activity (AS2021-2000 p19).

Table 12 - Indoor Design Sound Levels – Residential Buildings, dB(A)

Occupancy	Max Noise Level, L_{max} dB(A)
Sleeping areas, dedicated lounges	50
Other Habitable spaces	55
Bathrooms, toilets, laundries	60

6.4.2 Mechanical Ventilation

Where external aircraft noise levels exceed 60dB(A), windows and doors of the development are to be kept closed to achieve and comply with the indoor sound levels outlined in the table above. This may affect the ventilation requirements for different areas of occupancy within the development.

Supplementary professional advice from a mechanical consultant should be sought to ensure residences comply with the requirements of AS1668 and the Building Code of Australia.

6.4.3 Aircraft Noise Levels and Required Minimum Acoustic Constructions

The in-principle design information provided below is based on standard room sizes and layouts of a 2-3 bedroom, 2 storey home, typical of what may be constructed at NRT. The dimensions and location of each room used in the assessment are presented in the table below.

Table 13 - Dimensions and Location of Rooms Used in Aircraft Noise Assessment

Room Type	Location	Room volume m^3	Window area m^2	Wall area m^2	Roof area m^2
Master bedroom	1 st floor	4x4x2.4m = 38.4 m^3	5.5 m^2	12 m^2	16 m^2
Other bedroom	1 st floor	3x4x2.4m = 28.8 m^3	3.5 m^2	10 m^2	12 m^2
Open plan Kitchen/ Dining/ Living area	Ground floor	6x7x2.4m = 100.8 m^3	13 m^2	32 m^2	N/A
Study	Ground floor	3x3x2.4m = 21.6 m^3	3 m^2	9 m^2	N/A
Bathrooms/ Laundries	1 st floor	1.5x2.5x2.2m = 8.25 m^3	0.25 m^2	5 m^2	3.75 m^2

REPORT: TONIN-2008-01 (REV 3) REPORT.DOC

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Environmental Acoustics Team

The following table outlines the external design aircraft noise level and the corresponding in-principle minimum acoustic construction treatment for bedrooms, open plan living/ kitchen areas, studies and wet areas. It is noted that the final internal noise levels will depend on many site-specific factors and building design variables, and so whilst the minimum acoustic constructions presented in Table 14 below aim to achieve the indoor design sound levels set out in Table 3.3 of AS2021-2000, the final internal noise levels cannot be guaranteed.

Table 14 - Aircraft Noise Levels and Required Minimum Acoustic Constructions

Design External Noise L_{max}	Floor	Room Type	Minimum Acoustic Constructions		
			Windows/ glazed elements	Roof	External Walls
Up to 70dB(A)	First Floor	Master Bedroom	6mm float glass	Metal deck roof with a ceiling consisting of one layer of 10mm plasterboard with 50mm thick insulation laid over the ceiling	Stud wall with 6mm fibre cement on the external face and 10mm plasterboard on the internal face. 50mm thick insulation in the wall cavity.
		Other Bedrooms	6mm float glass		
		Bathrooms/ Laundries	Standard 4mm float glass		
	Ground Floor	Open plan Kitchen/ Dining/ Living area	Standard 4mm float glass		One leaf of 110mm brickwork with render on the external face. A separate stud spaced 50mm from the brickwork with 1 layer of 13mm plasterboard fixed to the studwork.
		Study	Standard 4mm float glass		
70 – 75dB(A)	First Floor	Master Bedroom	6 38mm laminated glass	Metal deck roof with a ceiling consisting of one layer of 13mm plasterboard with 75mm thick insulation laid over the ceiling	One leaf of 110mm brickwork with render on the external face. A separate stud spaced 50mm from the brickwork with 1 layer of 13mm plasterboard fixed to the studwork and 100mm insulation installed in the cavity.
		Other Bedrooms	6 38mm laminated glass		
		Bathrooms/ Laundries	Standard 4mm float glass		
	Ground Floor	Open plan Kitchen/ Dining/ Living area	Standard 6mm float glass		One leaf of 110mm brickwork with render on the external face. A separate stud spaced 50mm from the brickwork with 1 layer of 13mm plasterboard fixed to the studwork.
		Study	Standard 6mm float glass		
75 – 80dB(A)	First Floor	Master Bedroom	10 38mm laminated glass	Metal deck roof with 100mm thick insulation with heavy duty reflective foil underneath. A resiliently suspended ceiling consisting of 2 layers of 13mm plasterboard. 75mm insulation laid over the entire ceiling space.	One leaf of 110mm brickwork with render on the external face. A separate stud spaced 50mm from the brickwork with 1 layer of 13mm plasterboard fixed to the studwork and 100mm insulation installed in the cavity.
		Other Bedrooms	10 38mm laminated glass		
		Bathrooms/ Laundries	Standard 6mm float glass		

REPORT: TECHNICAL DESIGN/ARCHITECTURE

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Environmental Acoustic Report

Table 14 - Aircraft Noise Levels and Required Minimum Acoustic Constructions

Design External Noise L_{max}	Floor	Room Type	Minimum Acoustic Constructions		
			Windows/ glazed elements	Roof	External Walls
80 – 85dB(A)	Ground Floor	Open plan Kitchen/ Dining/ Living area	6 38mm laminated glass	-	One leaf of 110mm brickwork with render on the external face. A separate stud spaced 50mm from the brickwork with 1 layer of 13mm plasterboard fixed to the studwork.
		Study	6 38mm laminated glass		
	First Floor	Master Bedroom	Double glazing – 6 38mm and 10 38mm laminated glass, separated by a 100mm air cavity	Metal deck roof with 100mm thick insulation with heavy duty reflective foil underneath. A minimum 900mm air cavity and a resiliently suspended ceiling consisting of 2 layers of 13mm plasterboard 75mm insulation laid over the entire ceiling space	One leaf of 110mm brickwork with render on the external face. A separate stud space 50mm from the brickwork with 2 layers of 13mm fire-rated plasterboard fixed to the studwork and 100mm insulation installed in the cavity.
		Other Bedrooms	Double glazing – 6 38mm and 10 38mm laminated glass, separated by a 100mm air cavity		
		Bathrooms/ Laundries	Standard 6mm float glass		
	Ground Floor	Open plan Kitchen/ Dining/ Living area	10 38mm laminated glass		One leaf of 110mm brickwork with render on the external face. A separate stud spaced 50mm from the brickwork with 1 layer of 13mm plasterboard fixed to stud and 100mm insulation installed in cavity
		Study	10 38mm laminated glass		
85 – 90dB(A)	First Floor	Master Bedroom	Double glazing – 2 layers of 10 38mm laminated glass, separated by a 100mm air cavity	Metal deck roof with 100mm thick insulation with heavy duty reflective foil underneath. A minimum 900mm air cavity and a resiliently suspended ceiling consisting of 2 layers of 13mm fire-rated plasterboard 75mm insulation laid over the entire ceiling space	2 leaves of 110mm brick work with a minimum 50mm air cavity and insulation between the two leaves. Furring channels and impact clips with 1 layer of 13mm fire-rated plasterboard fixed to the studwork. Insulation between the stud and the brickwork.
		Other Bedrooms	Double glazing – 2 layers of 10 38mm laminated glass, separated by a 100mm air cavity		
		Bathrooms/ Laundries	6 38mm laminated glass		
	Ground Floor	Open plan Kitchen/ Dining/ Living area	Double glazing – 6 38mm and 10 38mm laminated glass	-	2 leaves of 110mm brick work with a minimum 50mm air cavity and insulation between the

Table 14 - Aircraft Noise Levels and Required Minimum Acoustic Constructions

Design External Noise L_{max}	Floor	Room Type	Minimum Acoustic Constructions		
			Windows/ glazed elements	Roof	External Walls
			separated by a 100mm air cavity		two leaves. Furring channels and impact clips with 13mm fire-rated plasterboard fixed to the stud. Insulation between the furring channels and the brickwork
		Study	Double glazing – 6 38mm and 10 38mm laminated glass separated by a 100mm air cavity		
90 – 95dB(A)	First Floor	Master Bedroom	Double glazing – 10 76mm and 7 6mm laminated glass, separated by a 200mm air cavity	Metal deck roof with 100mm thick insulation with heavy duty reflective foil underneath. A minimum 900mm air cavity and a resiliently suspended ceiling consisting of 3 layers of 13mm fire-rated plasterboard, 75mm insulation laid over the entire ceiling space	2 leaves of 110mm brick work with a minimum 50mm air cavity and insulation between the two leaves. A separate stud spaced 20mm from the brickwork with one layer of 13mm fire-rated plasterboard fixed to the stud. Insulation between the stud and the brickwork.
		Other Bedrooms	Double glazing – 10 76mm and 7 6mm laminated glass, separated by a 200mm air cavity		
		Bathrooms/ Laundries	10 38mm laminated glass		
	Ground Floor	Open plan Kitchen/ Dining/ Living area	Double glazing – 2 layers of 10 38mm laminated glass, separated by a 100mm air cavity		2 leaves of 110mm brick work with a minimum 50mm air cavity and insulation between the two leaves. A separate stud spaced 20mm from the brickwork with one layer of 13mm fire-rated plasterboard fixed to the stud. Insulation between the stud and the brickwork.
		Study	Double glazing – 2 layers of 10 38mm laminated glass, separated by a 100mm air cavity		
Greater than 95dB(A)			The design limits have been reached and the required R_w ratings cannot be met without implementing extreme design measures.		

Note: All glazing requires full perimeter acoustic seals similar to Echagor Q-Lon seals

6.4.4 Cost Estimate for Upgraded Acoustic Design

An estimate of costs as a result of upgraded acoustic design is provided in Table 15 below (materials costs only). The cost estimates are based on price per square metre, as proposed building layouts and design are as yet unknown.

The prices given in Table 15 are estimated costs and do not take into account bulk discounts. The minimum glass thickness quoted is for 6mm thick float glass. 4mm float glass has not been priced.

REPORT: T2007-010-01 (REV 4) REPORT.DWG

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Environmental Acoustics Team

Table 15 – Cost Estimate for Upgraded Acoustic Design

Design Level	Glass cost (m ²)		Ceiling and Insulation cost (m ²)	Brickwork, plasterboard, stud and insulation cost (m ²)	
	Lower floor	Upper floor		Lower floor	Upper floor
Up to 70dB(A)	\$25	\$25	\$8.50	\$51	\$41
70 – 75dB(A)	\$25	\$40	\$9	\$51	\$57
75 – 80dB(A)	\$40	\$62	\$39.50	\$51	\$57
80 – 85dB(A)	\$62	\$102 plus double frame costs	\$39.50	\$57	\$66
85 – 90dB(A)	\$102 plus double frame costs	\$124 plus double frame costs	\$43	\$68	\$88
90 – 95dB(A)	\$124 plus double frame costs	\$220 plus double frame costs	\$50	\$97	\$97

From Table 15, costs start to increase where the design level (or external L_{Amax} noise level) is 75 dB(A) or above. At design levels greater than 75 dB(A), heavier glazing and more significant ceiling construction is required. At design levels greater than 85 dB(A), double glazing is required at both ground and first floor level and wall construction costs significantly increase.

The current worst-case scenario (not including the JSF) for the site, based on the L_{Amax} contour plot overlay in Figure 2 of this report, indicates that the entire site is potentially exposed to L_{Amax} noise levels in excess of 80 dB(A). From Figure 2, about 25% of the site is potentially exposed to L_{Amax} noise levels in excess of 90 dB(A). Acoustic design to reduce indoor noise levels to satisfy AS2021-2000 would add significant costs to a standard building construction. The increase in costs is dependent on the building layout and size.

ATTACHMENT 8
REVERB ACOUSTICS REPORT 28TH JULY 2010



OUR REF: 205031-L001055
YOUR REF: PSC2006-6662

3rd August 2010

General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Attention: Mathew Borsato

Dear Matthew,

**RE: COMMENTS ON THE ADDITIONAL DEPARTMENT OF DEFENCE Lmax
CONTOURS AT NORTH RAYMOND TERRACE DRAFT LEP FOR PART LOT
3 DP 1098770 AND LOT 11 DP 37430**

Further to your letter of the 26th July 2010, please find attached a review of the Department of Defence Lmax contours by our noise consultant, Reverb Acoustics.

Please note that the attached letter from Reverb Acoustics has illustrated that even though the new Lmax plan indicates that about a 96dB(A) affects part of our proposed rezoning area, the work required to amend a dwelling to comply with the AS2021-2000 Standard is the same as required for 95dB(A).

Effectively we can meet all proposed Lmax impacts on our land and given the explanation and conservative example provided by Reverb Acoustics, all of our proposed land can/should proceed with the current rezoning request.

If you have any queries please do not hesitate to contact our office.

Kind regards
TATTERSALL LANDER PTY LTD

A handwritten signature in blue ink, appearing to read 'Bob Lander', is written over a light blue horizontal line.

Bob Lander
Director

DEVELOPMENT CONSULTANTS IN ENGINEERING, SURVEYING, PLANNING & ENVIRONMENTAL



Tattersall Lander Pty Limited ABN 47 002 008 210
2 Bourke Street, RAYMOND TERRACE 2324 All mail to: PO Box 580
Telephone: (02) 4987 1000 Fax: (02) 4987 1723 Email: admin@talland.com.au
www.talland.com.au

REVERB ACOUSTICS

Noise and Vibration Consultants

Our Ref: 07-1104-L5

28 July 2010

Newline Resources
C/- Tattersall Lander Pty Ltd
PO Box 54
RAYMOND TERRACE NSW 2324

Ph. (02) 4987 1500
Fax. (02) 4987 1733

Attention: Mr Bob Lander

email: bob@tatl.com.au
mob: 0408 497 657

AIRCRAFT NOISE IMPLICATIONS KINGS HILL NORTH RAYMOND TERRACE COMPOSITE 2012-2025 ANEF PLAN

This letter was requested by Tattersall Lander Pty Ltd on behalf of Newline Resources to provide additional information with regard to the acoustic performance requirements and associated costs for construction of residences within the Kings Hill North Raymond Terrace residential development area. Referenced documents relied on during preparation of this letter include:

AS 2021-2000 "Acoustics – Aircraft noise intrusion – building siting and construction".

Port Stephens Council's Policy (2007) "Aircraft Noise Exposure in Port Stephens", Port Stephens Council DCP 2007 Section B2.13

Port Stephens Council's Policy (May 2010) "DRAFT Aircraft Noise Exposure in Port Stephens", Port Stephens Council DCP 2007 Section B15

Port Stephens Council. (13-07-10). *Kings Hill North Raymond Terrace - Composite 2012-2025 ANEF*.

AS 1276.1-1999 "Acoustics – Rating of sound insulation in buildings and of building elements. Part 1: Airborne sound insulation".

International Civil Aviation Organisation. (1993). *Environmental Protection, Volume I, Aircraft Noise*.

The attached Port Stephens Council (PSC) plan "Kings Hill North Raymond Terrace - Composite 2012-2025 ANEF" has been used to determine the L_{max} noise levels produced by JSF, Hornet and Hawk aircraft over the subject land. The plan also shows that parts of the Kings Hill development are within the ANEF 20-25 zone, implying a "conditionally acceptable" classification, in accordance with PSC Policies and Table 2.1 of AS 2021-2000. Therefore, residential development must satisfy the noise reduction requirements of Clause 3.2 of the Standard.

Building Acoustics – Council/DECCW Submissions - Modelling - Compliance - Certification

REVERB ACOUSTICS PTY LTD
ABN 90 045 630 639 ACN 142 127 768
PO Box 181 ADAMSTOWN NSW 2289
Telephone: (02) 4950 9222 Facsimile: (02) 4950 9232
email: reverbacoustics@tdl.com.au

Table 1 shows the design internal sound levels, applicable to houses, hotels, flats and caravan parks, taken from Table 3.3, AS 2021-2000, which must be used for assessment purposes.

Table 1 - Extract from Table 3.3 AS 2021-2000.

Building Type and Activity	Indoor Design Sound Level, dB(A), L _{max}
Houses, home units, flats, caravan parks	
Sleeping areas, dedicated lounges	50
Other habitable spaces	55
Bathrooms, toilets, laundries	60

In our experience, an L_{max} noise level of 95dB(A) is the upper limit where a residence can be economically designed to reduce internal aircraft noise levels to comply with the limits shown in Table 1 above. However, as the following calculations and discussion demonstrate, the difference between 95dB(A) and 96dB(A) is both inconsequential and insignificant.

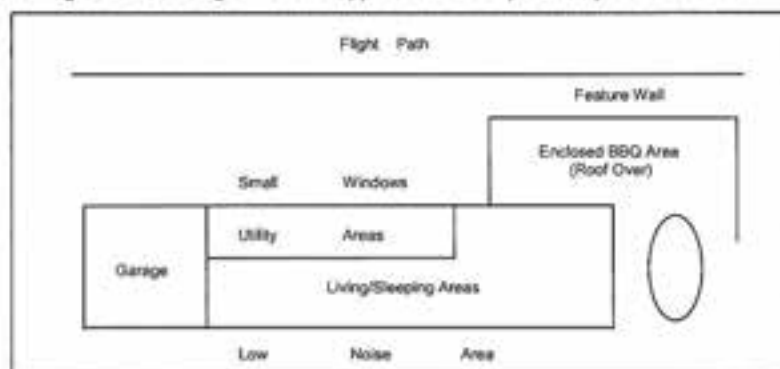
PSC's composite map indicates the area 9A in the south west corner of the Kings Hill development area may experience external aircraft noise levels as high as 95-96dB(A). Given that area 9A is only 1dB(A) above the upper limit, we consider residential development to be still viable, based on our conservative method of partition/glazing selection. Our procedure provides a safeguard by selecting laboratory Rw ratings 2-3dB higher than required on site, implying compliance for residences experiencing 96dB(A) L_{max} as well. In saying this, the following important factors must be considered during the design of any residence.

1. Careful planning is recommended during the design stage of any new dwelling. Where possible, dwellings should be constructed so that the majority of sensitive windows face away from the flight path and are shielded from direct noise by the remainder of the building. In this way, noise levels at a bedroom window for instance may be reduced by 5-10dB.

2. Enclosed barbeque areas, garages, utility rooms, etc., could be placed so as to shield other parts of the dwelling from aircraft noise. A strategically placed enclosed outdoor entertainment area could substantially reduce the remaining field of view at sensitive windows and lower noise levels by 10dB, or more. Such windows may then be glazed with thinner glass.

A desirable scenario is large open plan rooms with smaller windows, as the ratio between the floor area and each building element is a critical parameter in the analysis/specification process.

The following schematic diagram shows application of our previously discussed ideas.



REVERB ACOUSTICS

Once the Aircraft Noise Reduction (ANR) is determined for a residential Lot, i.e. the extent of aircraft noise reduction in dB(A) to be incorporated in the building envelope, the required Rw of each building component is calculated in accordance with the mathematical procedure given in Appendix F of AS 2021-2000. The procedure is based on the required internal noise level(s) as shown in Table 1. Preliminary calculations indicate that the Aircraft Noise Reduction (ANR) at worst locations is 46, therefore, spectral analysis is preferred. However, Note 1 on Page 63 of the Standard allows application of the Appendix F method when reliable aircraft noise spectral data is unavailable. (Ref: AS2021-2000, Appendix F)

Sample Calculation

The following sample calculation shows the procedure to calculate the required Rw rating for a typical window in a bedroom in the worst-affected 96dB(A)_{Lmax} area, assuming the glazing has an unobstructed view of the flight path.

The Aircraft Noise Attenuation, ANAc, required of the glazing is calculated according to the equation given in Section F2.7, Appendix F of the Standard as follows:

$$ANAc = ANR + 10 \log_{10} [(Sc/Sf) \times 3/h \times 8TN] - K \quad \text{equation 1}$$

where

- ANR = Aircraft Noise Reduction = 96-50 = 46
- Sc = Surface area of glazing = say 3m²
- Sf = Surface area of floor = say 18m²
- h = Ceiling height, assumed to be 2.4m
- T₆₀ = Reverberation time, T = 0.5
- N = No. of components = 3 (window, wall, roof)
- K = Orientation effect of building component = variable

Assuming that the room is acoustically average (neither too 'live' nor too 'dead') equation 9.26 in Noise and Vibration Control, L.L. Beranek, 1971, gives a reverberation time of 0.46s. Consequently, the value of 0.5s was used in equation 1.

Using the values listed above gives
ANAc = 44 for the glazing

Substituting this value into the equation given in Section F3.1 of AS2021-2000 gives
Rw = ANAc + 5 = 49

Shielding/angle of incidence correction
Rw = 49 - 0.0 = 49

Therefore, the window must have a tested Rw49 rating. NATA laboratory tests performed for Pilkington and our predictive program suggest that to achieve this, the window must be a double-glazed system consisting of at least laminated glass x 75-100mm airspace x laminated glass. As previously stated, sensible design such as facing sensitive windows away from the flightpath, or placing a physical barrier between the room and the noise source, i.e. feature wall, awning, etc, may reduce the requirement Rw rating by 5 points or more.

The above sample calculation demonstrates that, while extensive acoustic modifications will be necessary for any residence experiencing an external noise level of 96dB(A), the same window specification would be required for a residence experiencing, say 92-95dB(A).

REVERB ACOUSTICS

Newline Resources (Tattersall Lander Pty Ltd)
Acoustic Requirements
Kings Hill North Raymond Terrace – Composite 2012-2025 ANEF Plan

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In summary, a residence can be built in the entire 9A area of Kings Hill, subject to submission of an acoustic report in support of the Application.

This letter should provide some guidance in regard to the acoustic design of a residence experiencing aircraft noise as high as 96dB(A)_{Lmax}. Reference to Table 1 will also give an indication of the required Rw rating for other types of occupancies. Simply reduce the required Rw rating by the difference between sleeping rooms and other occupancy types. Another important factor that should be considered is to provide sufficient information for future prospective buyers within aircraft affected zones so that they may make an informed decision during purchase.

We assume this concludes our involvement in the project thus far. However, should you require further assistance, please contact the undersigned.

REVERB ACOUSTICS


Steve Brady A.A.S. M.A.S.A.
Principal Consultant

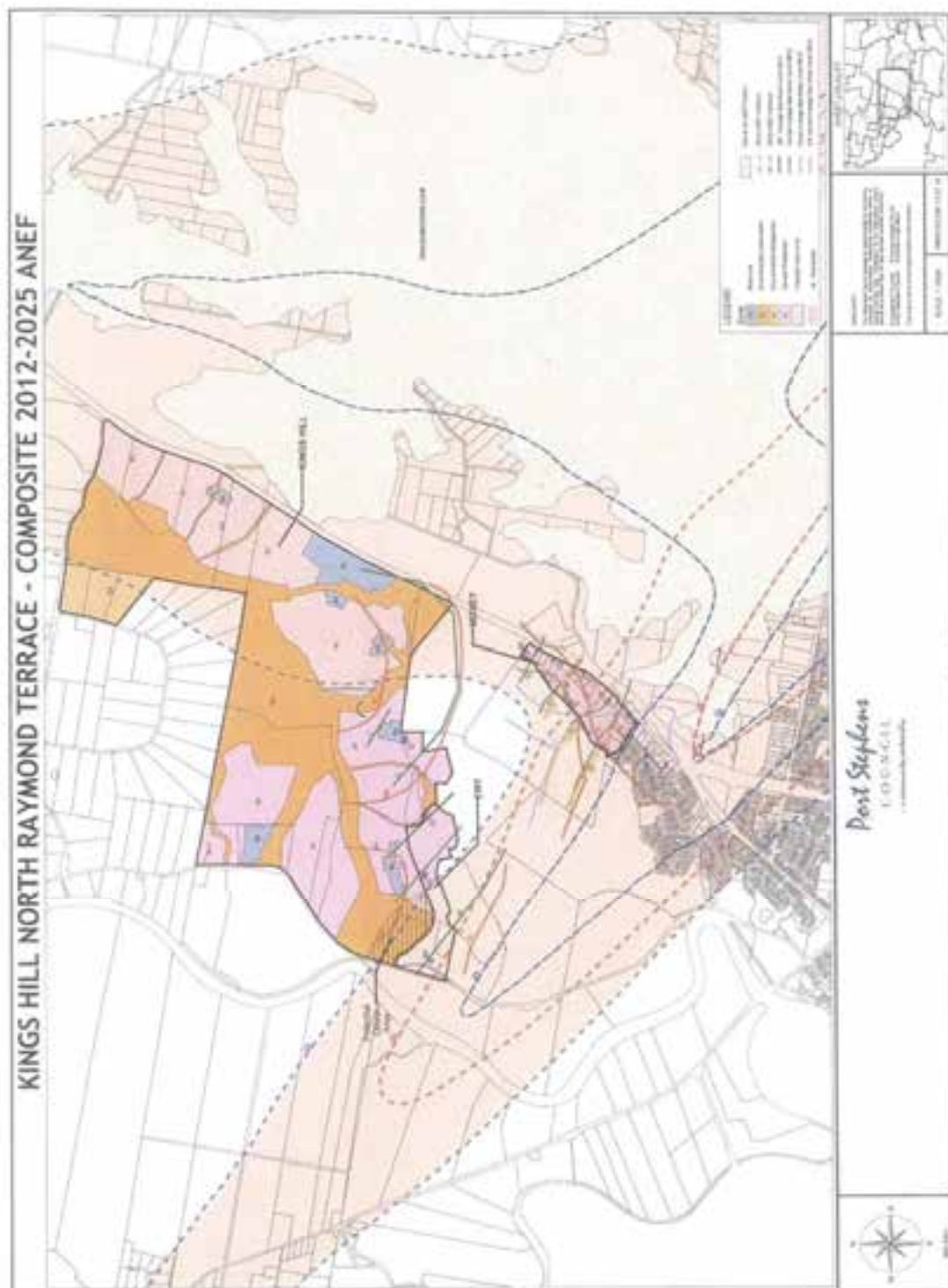
REVERB ACOUSTICS

July 2010
Document Ref: 07-1104-L5

Commercial in Confidence

Newline Resources (Tattersall Lander Pty Ltd)
Acoustic Requirements
Kings Hill North Raymond Terrace – Composite 2012-2025 ANEF Plan

Page 5 of 5



July 2010
Document Ref: 07-1104-L5

Commercial in Confidence

REVERB ACOUSTICS

ITEM NO. 6**FILE NO: A2004-0242****QUARTERLY BUDGET REVIEW AS AT 30 JUNE 2010**

REPORT OF: DAMIEN JENKINS – MANAGER, FINANCIAL SERVICES
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 \$631,980, a positive effect on revenue) as detailed under separate cover as TABLE 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 \$387,774 a positive effect on revenue) as detailed under separate cover as TABLE 2 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 (\$1,683,061).
- 8) Notes the Quarterly Budget Review comparing Budgets to Actuals as tabled under a separate cover as DOCUMENT 2 to this report.

COUNCIL COMMITTEE MEETING – 24 AUGUST 2010
RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Caroline De Lyall	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 24 AUGUST 2010

260	Councillor Ken Jordan Councillor Shirley O'Brien	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 of Document 1 and are summarised as follows:

- Decreased legal costs expenditure of \$128,000 (item 3).
- Increased income of \$347,000 due to an insurance payment for the Raymond Terrace Community Care Centre (item 10).
- Increased income of \$350,000 due to an RTA Grant owing from last financial year (item 14).
- Decreased income of \$420,000 due to less interest received on cash investments (item 17).
- Increased income and expenditure of \$132,220 for the secondment of the Development and Building Section Manager to the Hunter Development Corporation (item 23).
- Increased income and expenditure of \$260,000 for rezoning applications (item 25).
- Increased income of \$110,000 due to an envirofund grant (item 39).
- Decreased expenditure of \$267,000 due to savings in on-costs (item 44).
- Increased income of \$547,417 and increased expenditure of \$525,503 due to RTA and minor contract works (item 45).
- Increased income of \$207,000 and increased expenditure of \$207,000 due to Civil Maintenance West contract works (item 48).
- Decreased income and expenditure of \$280,964 for waste transfer stations (item 50).
- Increased expenditure of \$200,000 on Drainage maintenance (item 55).
- Increased expenditure of \$100,000 on Transport maintenance (item 57).
- Increased expenditure of \$120,000 at Tomaree Aquatic Centre (item 73).
- Increased income and expenditure of \$144,332 for construction of fire lines (item 79).
- Increased income of \$1,246,849 due Federal Assistance Grant for 2010-2011 being paid in advance (items 83 and 85).
- Decreased income of \$3,000,000 due to settlement of investment property put back to 2010-2011 financial year (item 84).

The major transfers to the Recurrent Budget in this forecast, detailed in Table 1 of Document 1 are:

- Decreased transfer of \$160,000 to the RVA Restricted Fund (item 81).
- Decreased transfer of \$116,500 from the RVA Restricted Fund (item 82).

The major changes to the Capital Budget in this Review are detailed in Table 2 of Document 1 and are summarised as follows:

- Decreased expenditure of \$990,000 due to delays in Property Development projects (item 4).
- Decreased expenditure of \$369,006 due to property development costs put back to next financial year (item 5).
- Decreased expenditure of \$1,000,000 due to Administration Building rehabilitation costs put back to next financial year (item 6).
- Decreased expenditure of \$507,000 due to road works at Port Stephens Street Anna Bay and Old Pacific Highway being put back to next financial year (item 7).
- Decreased expenditure of \$210,000 due to Lavis Lane construction costs decreased (item 8).
- Decreased expenditure of \$100,000 at High Street Hinton (item 13).
- Increased RTA income of \$216,760 (item 16).
- Increased expenditure of \$277,246 due to 40kph treatment works (item 16).
- Increased income of \$188,422 and increased expenditure of \$221,855 due to miscellaneous road works (item 19).
- Decreased expenditure of \$176,000 on Waste Depots Capital works (items 21 and 22).
- Increased expenditure of \$129,283 due to final payment for the RT Senior Citizens Centre (item 23).
- Increased grant income of \$200,000 for aquatic centres (item 33).
- Increased expenditure of \$200,000 at aquatic centres (items 33 and 35).
- Decreased expenditure of \$134,000 at Tomaree Aquatic Centre and savings transferred to recurrent budget (item 34).
- Increased expenditure of \$253,338 for Nelson Bay Foreshore due to increased scope of works (item 40).
- Decreased expenditure of \$230,000 on Parklands due to works to be completed next financial year (item 53).

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

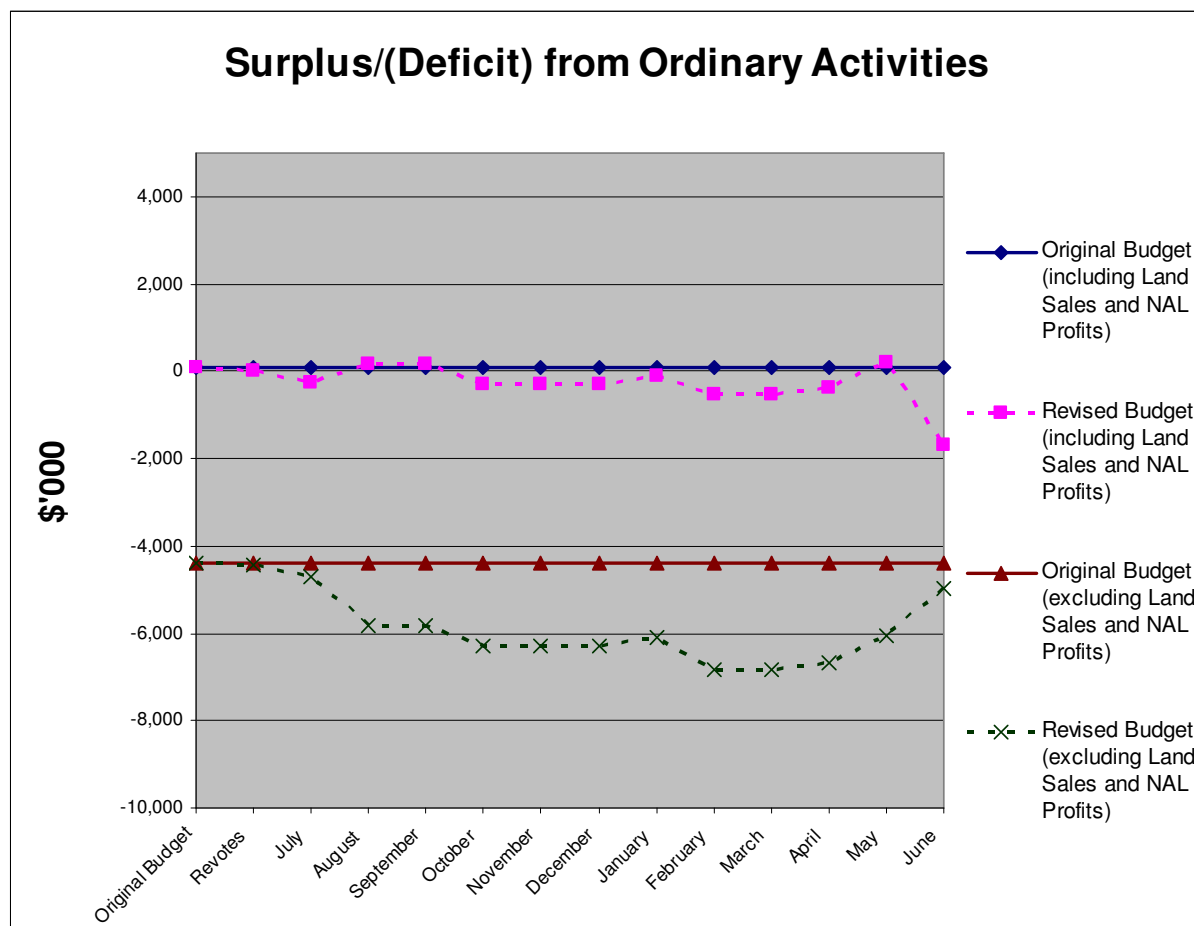
FINANCIAL/RESOURCE IMPLICATIONS

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 \$430,942 (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	\$631,980	\$0	\$631,980	
Document 1 Table 2	\$0	\$387,774	\$387,774	
Previous Quarterly Budget Reviews	(\$55,449)	(\$40,250)	(\$95,699)	
Original Budget after transfers and before Revenue Loans and Depreciation	(66,704)	(\$3,783,059)	(\$3,849,763)	
Repayment of Capital Lease, Loans and Debtors		(123,846)	(\$123,846)	
Loan Funds to Revenue	\$1,433,027	\$1,433,600	\$2,866,627	
Net Available Surplus/(Deficit) Funds	\$1,942,854	(\$2,125,781)	(\$182,927)	
Revotes and Carry Forwards from previous year	(\$53,890)	(\$194,125)	(\$248,015)	
Revised 2009/2010 Cash Surplus (after transfers and before Depreciation)	\$1,888,964	(\$2,319,906)	(\$430,942)	N

PROJECTED FINANCIAL RESULT FOR 2009/2010

	Ref	After June Review	Original Budget
Total Operating Revenue	A	\$87,448,812	\$83,600,490
Less Total Operating Expenditure	B	(\$75,131,873)	(\$69,515,247)
Less Total Depreciation and Provisions Transferred	C	(\$14,000,000)	(\$14,000,000)
	D=B+C	(\$89,131,873)	(\$83,515,247)
Surplus/(Deficit) From Ordinary Activities Before Capital Amounts	E=A+D	(1,683,061)	\$85,243
Net Operating movement for June Review		(\$1,153,860)	
Total Budgeted Land Sales Profits	F	\$0	(\$3,000,000)
Total Budgeted Newcastle Airport (NAL) Profits	G	(\$3,288,774)	(\$1,476,242)
Surplus/(Deficit) From Ordinary Activities without Land Sale Profits, NAL Profits and Before Capital amounts	H=E-F-G	(\$4,971,835)	(\$4,390,999)



LEGAL, POLICY AND RISK 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 June 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.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Document 1 of 2009-2010 Quarterly Budget Review for June 2010.

Table 1 - Discretionary Changes to the adopted Recurrent Budget.
Table 2 - Discretionary Changes to the adopted Capital Budget.
Table 3 - Identified issues, which may have a future budgetary impact.
- 2) Document 2 of 2009-2010 Quarterly Budget Review for June 2010, comparing Budgets to Actuals.

MINUTES FOR ORDINARY MEETING – 24 AUGUST 2010

ATTACHMENT 1

ESTIMATED STATEMENT OF RESTRICTED FUNDS MOVEMENTS TO 30/06/2010 2010 June Quarterly Budget Review			
	Ref	2010 June Quarterly Budget Review	2010 Original Budget Forecast
Total Operating Revenue	A	\$87,448,812	\$83,600,490
Less Total Operating Expenditure	B	(\$75,131,873)	(\$69,515,247)
Less Total Depreciation and Provisions Transferred	C	(\$14,000,000)	(\$14,000,000)
	D=B+C	(\$89,131,873)	(\$83,515,247)
Surplus/(Deficit) From Ordinary Activities Before Capital Amounts	E=A+D	(\$1,683,061)	\$85,243
Add Back: Depreciation and Provisions Transferred	C	\$14,000,000	\$14,000,000
Less Councils Share of Newcastle Airport Profit	W	(\$3,288,774)	(\$1,476,242)
Cash Surplus From Operations	F=A+B+W	\$9,028,165	\$12,609,001
Transferred to Restricted Funds	G	\$7,139,201	\$12,675,705
Cash Surplus / (Deficit) From Operations After Transfers	H=F-G	\$1,888,964	(\$66,704)
Total Capital Income	I	\$13,699,534	\$11,084,740
Total Capital Expenditure	J	(\$42,074,880)	(\$31,482,956)
Surplus/(Deficit) From Capital Works	K=I+J	(\$28,375,346)	(\$20,398,216)
Transferred from Restricted Funds	L	(\$26,179,286)	(\$16,615,157)
Cash Surplus / (Deficit) From Capital Works After Transfers	M=K-L	(\$2,196,060)	(\$3,783,059)
Total Cash Surplus / (Deficit) After Transfers	N=H+M+X	(\$430,942)	(\$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	\$17,048,138	\$26,019,972
Increase/(Decrease) in Cash Balance	Q=P-O	(\$11,794,862)	(\$6,100,269)
Represented By:			
Estimated Opening Restricted Funds Balance	R	\$38,648,212	\$34,923,774
Closing Restricted Funds Balance	S	\$27,284,292	\$38,648,212
Increase/(Decrease) in Restricted Funds Balance	T=S-R	(\$11,363,920)	(\$4,542,463)
Balance sheet movements for Revenue	X	(\$123,846)	\$2,291,957
Total Cash Surplus/ (Deficit) from Operations & Capital	N=Q-T	(\$430,942)	(\$1,557,806)
Principal of Loan Funds Repaid From Reserves	U	(\$3,259,943)	(\$2,912,234)
Increase/(Decrease) in Cash Balance	Q=T+N	(\$11,794,862)	(\$6,100,269)

MINUTES FOR ORDINARY MEETING – 24 AUGUST 2010

ATTACHMENT 2

ESTIMATED STATEMENT OF RESTRICTED FUNDS MOVEMENTS TO 30/06/2010 2010 June Quarterly Budget Review					
RESTRICTED FUNDS	Balance as at 30/06/2009	Recurrent Budget	Capital Budget	Balance Sheet Movements	Estimated as at 30/06/2010
SECTION 94	\$14,540,114	\$144,854	(\$4,736,155)		\$9,948,813
DOMESTIC WASTE MANAGEMENT	\$2,023,955	\$1,131,856	(\$1,555,000)	(\$432,480)	\$1,168,331
Sub Total. Externally Restricted	\$16,564,069	\$1,276,710	(\$6,291,155)	(\$432,480)	\$11,117,144
BUSINESS DEVELOPMENT RESTRICTED FUND	(\$605,937)	(\$44,108)	(\$6,886,462)	\$5,132,727	(\$2,403,780)
INVESTMENT PROPERTIES DEPRECIATION FUND (INVESTMENT PROPERTIES SINKING FUND)	\$1,589,855	\$1,052,265	(\$17,150)		\$2,624,970
ASSET REHABILITATION RESERVE	\$247,779	\$500,000	(\$654,490)		\$93,289
FLEET MANAGEMENT (PLANT)	\$3,852,363	\$2,047,002	(\$2,824,541)	\$369,481	\$3,444,305
OTHER WASTE SERVICES	\$3,304,180	\$0	\$0		\$3,304,180
QUARRY DEVELOPMENT	\$741,576	\$12,533	\$0		\$754,109
BUSINESS OPERATIONS RESTRICTED FUND	(\$2,521,719)	\$1,643,039	(\$3,992,180)	(\$163,956)	(\$5,034,816)
EMPLOYEE LEAVE ENTITLEMENTS	\$6,246,556	\$0	\$0		\$6,246,556
BEACH VEHICLE PERMITS	(\$53,569)	\$0	\$0		(\$53,569)
DRAINAGE	\$495,415	\$821,000	(\$660,000)	(\$96,234)	\$560,181
INTERNAL LOAN	(\$394,533)	\$250,000	\$0		(\$144,533)
TRANSPORT LEVY	\$40,460	\$387,500	(\$447,000)		(\$19,040)
ENVIRONMENTAL LEVY	\$376,929	(\$7,500)	(\$60,000)		\$309,429
ADMINISTRATION BUILDING SINKING FUND	\$815,325	\$266,608	(\$245,238)		\$836,695
DEPOT SINKING FUND	\$1,066,838	\$335,899	(\$439,285)		\$963,452
RTA BYPASS ROADS M'TOE RESTRICTED FUND	\$1,857,359	\$17,643	(\$120,000)		\$1,755,002
RESTRICTED CASH ESTIMATED BALANCE	\$3,738,267	(\$1,659,143)	(\$2,470,489)	\$2,866,627	\$2,475,262
COUNCILLOR WARD FUNDS	\$177,516	\$0	(\$195,340)		(\$17,824)
INFORMATION TECHNOLOGY STRATEGY	\$351,117	(\$60,000)	(\$95,132)		\$195,985
PROVISION FOR LOCAL GOVT ELECTION	\$0	\$100,000	\$0		\$100,000
PARKING METER RESERVE	\$758,366	\$199,753	(\$780,824)		\$177,295
Sub Total. Internally Restricted	\$22,084,143	\$5,862,491	(\$19,888,131)	\$8,108,645	\$16,167,148
RESTRICTED FUNDS TOTAL	\$38,648,212	\$7,139,201	(\$26,179,286)	\$7,676,165	\$27,284,292
* 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. 7**FILE NO: PSC2005-1876****NSW COASTLINE CYCLEWAY GRANT- SANDY POINT RD**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Accepts the grant of \$147,500 offered under the NSW Coastline Cycleway Grants Program for Sandy Point Cycleway, Corlette.
- 2) Match the grant by allocating funds from the Transport budget in the 2011/12 Capital Works Program.

COUNCIL COMMITTEE MEETING – 24 AUGUST 2010
RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor John Nell	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 24 AUGUST 2010

261	Councillor Peter Kafer Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to inform Council of the NSW Coastline Cycleway Grant project, to seek its formal acceptance of the NSW Government Grant and commit to allocate Councils' matching contribution in the 2011/12 Works Program.

The NSW Government's Coastline Cycleway program provides support funding for a continuous 1,400km cycle route from the Queensland border to the Victorian border, linking coastal communities and avoiding main roads where possible.

The route of the Coastline Cycleway within Port Stephens Council's area starts at Fern Bay and ends at D'Albora Marina at Nelson Bay. The route generally follows Nelson Bay Road, Fullerton Cove Rd, Marsh Rd, Port Stephens Drive, Salamander Way, Town Centre Circuit, Purser Street, Worimi Drive, Sandy Point Road, Bagnall

Beach Reserve and Burbong Street, where it connects to the existing concrete cycleway along Dutchies Beach.

In 2009 Council submitted a grant application to the Department of Planning for the 2.4m wide shared pathway along Sandy Point Rd from Worimi Drive to Foreshore Drive. In May 2010 the Minister for Planning, The Hon Tony Kelly MLC, announced a \$147,500 grant to Port Stephens Council for the proposed Sandy Point Cycleway under the NSW Coastline Cycleway Grants Program.

A locality map of the project is attached for reference.

FINANCIAL/RESOURCE IMPLICATIONS

The grant is provided on the basis that Council makes a dollar-for-dollar (50%) contribution towards the project, and no other State Government grants can be used for this purpose. No matching funds are currently available in the 2010/11 budget, however the grant will not expire until the end of the December 2011 so it is proposed to accept the grant now and commit funds for the 2011/12 budget program. Council's contribution to this work will most likely be from its general revenue with approximately \$29,100 coming from contributions by adjoining landowners. The works are to be programmed for late in the 2011 calendar year.

LEGAL, POLICY AND RISK IMPLICATIONS

In accepting the grant Council will be required to construct the path to the agreed standard width of 2.4m and the path should to be built in concrete. The pathway will be shared by pedestrians and cyclists.

The Department of Planning does not accept any legal obligation for the project and as such Council will be responsible for all legal obligations and liabilities during construction and the ongoing maintenance of this facility.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Linking sections of the existing coastline cycleway will benefit the community, providing safer pedestrian and cycleway access.

Extending the cycleway network which exists throughout Port Stephens will continue to help attract visitors and tourists to the area.

The proposal is to utilise the existing nature strip which is essentially cleared. However a number of overhanging branches will require inspecting and potential pruning. More information will be known once detailed design work has been finalised.

The proposal will be subject to a formal Review of Environmental Factors (REF) to be assessed and determined internally by Council.

CONSULTATION

The proposed cycleway is part of Council's overall footpath and cycleway strategy for the Tomaree Peninsula. At this stage formal public consultation for this project has not taken place, but will be undertaken during 2011.

OPTIONS

- 1) Accept the grant and associated financial implications.
- 2) Decline the offer of the grant.

ATTACHMENTS

- 1) Locality Plan

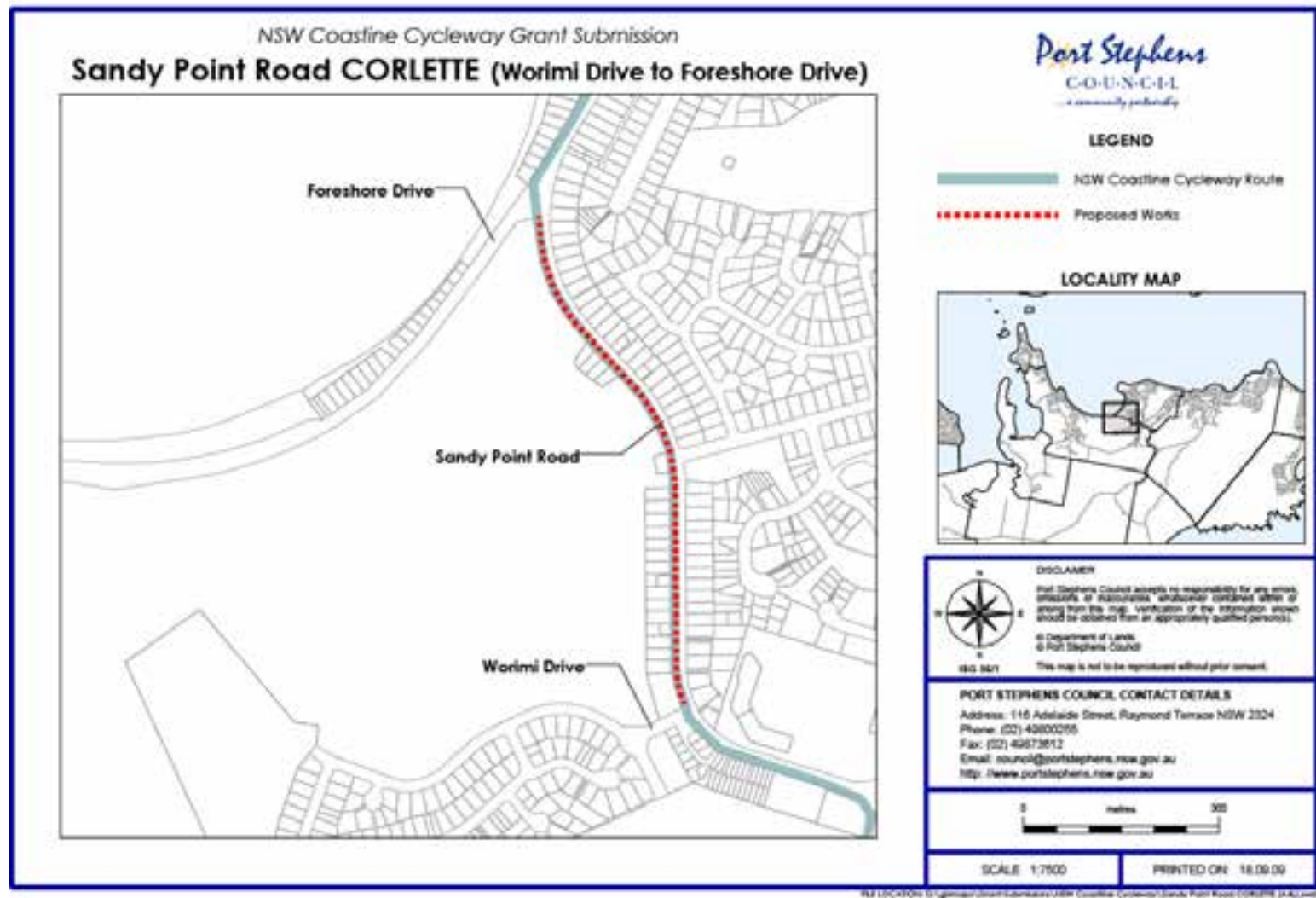
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



ITEM NO. 8**FILE NO: PSC2005-2892****LOCAL GOVERNMENT ASSOCIATION OF NSW CONFERENCE**

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Nominate four (4) delegates for the Local Government Association of NSW Conference.
- 2) Consider lodging Motion for consideration by the conference delegates in line with the criteria in **ATTACHMENT 1**.

COUNCIL COMMITTEE MEETING – 24 AUGUST 2010
RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor John Nell	That Councillors Bruce MacKenzie, Peter Kafer, Bob Westbury and Frank Ward be nominated as the voting delegates and that Councillor John Nell be an alternate delegate.
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ORDINARY COUNCIL MEETING – 24 AUGUST 2010

262	Councillor John Nell Councillor Peter Kafer	It was resolved that Councillors Bruce MacKenzie, Peter Kafer, Bob Westbury and Frank Ward be nominated as the voting delegates and that Councillor John Nell be an alternate delegate.
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BACKGROUND

Council at its Ordinary Meeting of 10 August 2010, resolved to defer this item until 24 August 2010 to allow for all Councillors to be present. The item is now before Council for consideration.

The purpose of this report is to inform Council of the 2010 Local Government Association Annual Conference which will be held in Albury from 24 to 27 October 2010.

This year the themes for this conference are:

1. Modernising the Financing of Local Government
2. Modern approaches to Community Wellbeing, and
3. Modern approaches to the Natural & Built Environment.

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

Councillors are requested to consider any matter/s that Council may wish to submit as Motions to the conference. All Motions must be within the criteria as shown at **ATTACHMENT 1**.

Councils may submit any motion, however, to be considered a Category 1 motion, and placed before the Conference for consideration, a motion:

- MUST relate to one of the identified conference issues/themes, and,
- MUST NOT attempt to enforce one council's position on other councils, and
- MUST NOT cause detriment to one council over another, and
- MUST deal with the issues/themes at a regional/state or national level (i.e.: the motion must not be a single council issue)
- MUST address the conference theme of "Modernising Local Government"

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

FINANCIAL/RESOURCE IMPLICATIONS

Councillors' attendance at this conference is provided for in the 2010-11 budget.

LEGAL, POLICY AND RISK IMPLICATIONS

Nil.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council's involvement in this conference allows Port Stephens Council to have a voice in policy matters for the Local Government industry. Based on this years themes there maybe implications for Council and attendance by Councillors allows Port Stephens to be represented.

CONSULTATION

General Manager

OPTIONS

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

ATTACHMENTS

- 1) Criteria for Motions for the Conference.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

1. Modernising the Financing of Local Government

Motions should deal with the proper and adequate financing of local government into the future. Motions must aim to extend, enhance or replace current policy positions.

Note: motions should not deal the removal of rate pegging, a fairer share of national taxation revenue or banning cost shifting as these are already established LGA policy positions).

Topics could include:

- New revenue raising mechanisms (fees, charges, taxes);
- Rating reform (other than removing rate pegging);
- More effective mobilisation of local revenues;
- Land valuation methodology options;
- Alternative financing models;
- More cost effective ways of delivering infrastructure and services;
- Removal of fiscal impediments (other than rate pegging);
- Reform of intergovernmental fiscal relationships;
- Improvements to long term financial planning and asset management;
- Identifying future financial requirements;
- Funding structures to support a modernized local government sector.

2. Modern Approaches to Community Wellbeing

Motions under this theme should cover innovations to NSW Local Government's legislative, administrative or program settings that support local communities. They should relate to significant changes to:

- Social planning and cultural planning (integrating social justice with community strategic plans, social impact assessment);
- Community development and community cultural development (developing vibrant involved communities; sustaining a sense of neighbourhood in living suburbs);
- Community services (welfare or development services for various age or target groups like community halls and neighbourhood centres, ageing and disability services, women's services, youth services and children's care and education services; access for Aboriginal and Torres Strait Islander Peoples);

- Cultural services (contemporary public libraries, art galleries, performing arts centres, museums, public art, community arts, celebrations, new media and digital arts);
- Health protection and promotion (regulatory activities reducing public health risks; promoting healthy lifestyles; immunisation, early childhood health centres or rural medical services);
- Recreation facilities and services (open space; gardens, playgrounds, sports facilities);
- Safe and secure environments (crime prevention activities, crime prevention through environmental design in council plan making);
- Community economic development; and
- Social policies and programs of other spheres of government that impact Local Government.

3. **Modern Approaches to the Natural & Built Environment:**

Motions under this theme should cover environmental, natural resource management and land-use planning issues which come within the charter of Local Government. They include:

- Minimising the negative impacts of consumption and waste generation, and bringing about a more equitable allocation of responsibility for these impacts to organizations in the production chain;
- Pursuing more responsible, sustainable management of natural resources;
- Furthering the efforts of local councils to enhance the ecological, social and economic sustainability of their communities, and natural and built environments;
- Resourcing councils adequately to enable them to fulfill their charter under the Local Government Act (section 8.1) "to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which (they are) responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development";
- Preparing and equipping councils to deal with the challenges posed by climate change;
- Improve the planning system so that it is better informed, transparent and more reflective of local and regional aspirations;
- Improve the planning system to achieve superior social, economic and environmental outcomes (i.e. including social justice; equitable access to housing, employment);

MINUTES FOR ORDINARY MEETING - 24 AUGUST 2010
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- Reform the relationships between Australian, NSW and Local Government in relation to local and regional planning (applying the principle of subsidiarity); and
- Better integrate land use and infrastructure planning.

ITEM NO. 9**FILE NO: PSC2008-0049****COMPREHENSIVE LOCAL ENVIRONMENTAL PLAN – POSSIBLE EXEMPTIONS****REPORT OF: PETER GESLING – GENERAL MANAGER**
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Determine the matter of making an application for exemption under Section 458 of the Local Government Act 1993.
-

COUNCIL COMMITTEE MEETING – 24 AUGUST 2010
RECOMMENDATION:

	Councillor John Nell Councillor Caroline De Lyall	That Council make application for an exemption under Section 458 of the Local Government Act 1993 to the Minister for Local Government.
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ORDINARY COUNCIL MEETING – 24 AUGUST 2010

263	Councillor Steve Tucker Councillor Bob Westbury	It was resolved that Council make application for an exemption under Section 458 of the Local Government Act 1993 to the Minister for Local Government.
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BACKGROUND

The purpose of this report is to inform Councillors of their obligations when considering the Comprehensive Local Environmental Plan (LEP).

Council is in receipt of advice from the Department of Planning and the Division of Local Government shown at **ATTACHMENT 1**, advising Council to consider whether an application is required, seeking pecuniary interest exemption under Section 458 of the *Local Government Act 1993*.

As Councillors are aware the process of standardising the LEP has commenced and Council will be required to adopt the draft LEP in the future. Councillors need to consider the matter of pecuniary interests in dealing with the LEP and whether Council is of the view that an application under Section 458 is required.

Extract – Section 458 Local Government Act 1993.

458 POWERS OF MINISTER IN RELATION TO MEETINGS

"The Minister may, conditionally or unconditionally, allow a councillor or a member of a council committee who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

- (a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or*
- (b) that it is in the interests of the electors for the area to do so."*

ATTACHMENT 2 provides Council with the process to be followed in making an application under Section 458, if required. **ATTACHMENT 2** refers to Section 448(g) of the Local Government Act 1993.

Extract – Section 448 (g) Local Government Act 1993.

448 WHAT INTERESTS DO NOT HAVE TO BE DISCLOSED?

"The following interests do not have to be disclosed for the purposes of this Chapter:

- (g) an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument other than an instrument that effects a change of the permissible uses of."*

FINANCIAL/RESOURCE IMPLICATIONS

All financial and resource implications are covered under the 2010/11 budget.

LEGAL, POLICY AND RISK IMPLICATIONS

Councillors are required to consider the matter of pecuniary interests with respect to the making, altering or repealing of an LEP. Should a Councillor have a pecuniary interest in dealing with an LEP and not declare the interest, then the matter would be referred to the Pecuniary Interest Tribunal for investigation.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

Nil.

OPTIONS

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

ATTACHMENTS

- 1) Letter from the NSW Government (Dept of Planning and Division of Local Government).
- 2) DLG Circular No 06-62.

COUNCILLORS ROOM

Nil.

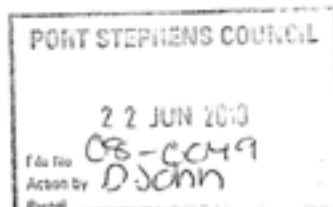
TABLED DOCUMENTS

Nil.

ATTACHMENT 1



Mr Peter Gesling
General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324



10/06860

Dear Mr Gesling,

RE: CONSIDERATION OF COMPREHENSIVE LOCAL ENVIRONMENTAL PLANS

On 12 August 2009, the then Minister for Planning, the Hon Kristina Keneally MP, and the Minister for Local Government, the Hon Barbara Perry MP, wrote to councils identifying 67 councils which would receive increased support to fast track the completion of their comprehensive Local Environmental Plans (LEPs). The target is for comprehensive Plans for these councils to be completed by June 2011. Local Environmental Plans for all other councils are to be completed as soon as possible.

This is a major planning initiative being undertaken in partnership between the State Government and every council in NSW. It is also a key step in creating a contemporary and consistent planning framework across NSW.

With the introduction of standardised LEPs there may be an increase in the number of councillors wishing to make applications to the Minister for Local Government for pecuniary interest exemptions under section 458 of the Local Government Act 1993.

If Council forms the view that section 458 applications are required, then Council should follow the process outlined in the (then) Department of Local Government's Circular to Councils 06-62 Applying for pecuniary interest exemptions under section 458 of the Local Government Act 1993 to ensure that the issuing of exemptions occurs early. To ensure the timely delivery of the comprehensive LEPs and address any pecuniary interests, it is imperative that section 458 applications are submitted to the Division of Local Government as soon as possible.

It is important to understand that the Minister for Local Government does not exercise her discretion lightly in regard to granting applications for pecuniary interest exemptions.

It is considered that the accountability of local government is paramount and the pecuniary interest provisions of the Act are there to ensure that councillors exercise their decision-making functions in a proper and transparent manner.

However, section 458 of the Act acknowledges that there are occasions and circumstances where the business of a council is impeded and pecuniary interest exemptions are necessary.

Enquiries on the Standard Instrument LEP should be directed to the relevant Regional Director of the Department of Planning.

Enquiries with regard to applications for pecuniary interest exemptions should be directed to the Legal Services Branch of the Division of Local Government on telephone 4428 4100.

We look forward to working with councils in continuing the implementation of these important improvements to the NSW planning system.

Yours sincerely,

Sam Haddad
Director General
Department of Planning

Ross Woodward
Chief Executive, Local Government
A Division of the Department of Premier and Cabinet

ATTACHMENT 2



Circular No. 06-62
Date 4 October 2006
Doc ID. A71412

Contact Mehmet Stanfield
02 4428 4217
mehmet.stanfield@dlg.nsw.gov.au

**APPLYING FOR PECUNIARY INTEREST EXEMPTIONS UNDER SECTION
458 OF THE LOCAL GOVERNMENT ACT 1993**

The purpose of this Circular is to inform councillors of the process for applying for a pecuniary interest exemption under section 458 of the *Local Government Act 1993*.

Circumstances in which an exemption may be sought include where a councillor has a proprietary interest in a proposal relating to the making, altering or repealing of an environmental planning instrument — see section 448(g) of the Act.

With the introduction of standardised Local Environmental Plans (LEPs), there may be an increase in the number of councillors wishing to make applications to the Minister for Local Government under section 458 of the Act.

Applications should be coordinated by the general manager of the council on behalf of affected councillors and must include:

- A covering letter indicating the background to the application demonstrating:
 - council cannot form a quorum without the participation of the councillors that would otherwise be excluded from considering or voting on a LEP because of pecuniary interest obligations
 - it is in the interests of the electors for the Minister to grant the exemption.
- A signed application by each councillor applying for an exemption. The application must include:
 - full name and address of the applicant councillor
 - address(es), lot(s) and deposited plan number(s) of all of the councillor's property likely to be affected by the council's considerations
 - details (including property identification where known) of any associated person(s) affected by the councillor's participation in a meeting considering or voting on the LEP (see section 443 of the Act)
 - details of the type of pecuniary interest that the councillor may have and

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

- copy of the councillor's current return of interests as required² by section 449.

All councillors should note that exemptions under section 458 of the Act are only granted at the Minister's discretion and that this discretion is not exercised lightly.



Garry Payne
Director General

ITEM NO. 10

INFORMATION PAPERS

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

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 24 August 2010.

No:	Report Title	Page:
1	LOCAL GOVERNMENT & SHIRES ASSOCIATION OF NSW MODERNISING LOCAL GOVERNMENT	
2	ANZAC CENTENARY	

COUNCIL COMMITTEE MEETING – 24 AUGUST 2010 **RECOMMENDATION:**

	Councillor Steve Tucker Councillor Sally Dover	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 24 AUGUST 2010

264	Councillor Shirley O'Brien Councillor Steve Tucker	It was resolved that the recommendation be adopted.
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COUNCIL COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

**LOCAL GOVERNMENT & SHIRES ASSOCIATION OF NSW
MODERNISING LOCAL GOVERNMENT**

REPORT OF: PETER GESLING – GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE
FILE: A2004-0383

BACKGROUND

The purpose of this report is to advise Councillors that the LGSA have recently released a Discussion Paper, titled "Modernising Local Government". The paper includes an introduction and commentary that addresses eight questions as follows:

1. What reforms would assist NSW Local Government remain democratic?
2. What reforms would assist NSW Local Government maintain long-term environmental sustainability, social justice and economic viability?
3. What reforms would assist NSW Local Government become financially viable.
4. What reforms would assist NSW Local Government work with mutually agreed functions?
5. Functions that are potential candidates to negotiate about
6. What reforms would assist NSW Local Government become part of mature post-colonial institutions?
7. What reforms would assist NSW Local Government remain or become functioning cohesive geographic units?
8. How does NSW Local Government become and remain employer of choice to support the reforms in the next 20 years?

A number of sub-questions are posed to facilitate feedback by 30 September. Four appendices of supplementary information are provided as follows:

- Summary Outcomes of 1970's/1980s NSW Amalgamations.
- Private Sector Views.
- National Objective and Criteria for Future Strategic Planning of Capital Cities.
- Review of New England Local Government Services.

MINUTES FOR ORDINARY MEETING - 24 AUGUST 2010
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The Discussion Paper can be accessed through the Local Government & Shires Association of NSW website using the following link:

<http://www.lgsa.org.au/www/default.asp?intSiteID=1&guiValue=0A817B2E-8931-47CA-ABE0-E2523FF50810>

INFORMATION ITEM NO. 2

ANZAC CENTENARY

REPORT OF: PETER GESLING – GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE
FILE: PSC2008-2626

BACKGROUND

The purpose of this report is advise Councillors that Council has received advice from the Australian Government Department of Veterans' Affairs that they are requesting submissions for ideas and suggestions for the Anzac Centenary celebrations during the period 2014-2018.

The planning is around six principle themes:

Century of service
Community engagement
Infrastructure and capital works
Education, public awareness and community access
Commemorative services
International relations and cooperation.

Submissions should identify the principle theme or themes that the idea addresses.

For more information about the themes, the Anzac Centenary and how to become involved, visit www.anzaccentenary.gov.au or contact the Department of Veterans' Affairs on 133 254 or 1800 555 254.

This information has been forwarded to the RSL sub-branches.

TABLED DOCUMENTS

Anzac Centenary brochure "How should Australia commemorate the Anzac Centenary?"

GENERAL MANAGER'S REPORT

PETER GESLING
GENERAL MANAGER

Cr Bruce MacKenzie declared a pecuniary interest in this item and left the meeting at 7.41pm. Deputy Mayor, Cr Bob Westbury chaired the meeting.

ITEM NO. 1

FILE NO: PSC2010-00372

ALTERATIONS TO BOUNDARIES OF PUBLIC ROAD KNOWN AS STOCKTON BIGHT TRACK AT WILIAMTOWN

REPORT OF: CARMEL FOSTER – MANAGER, COMMERICAL PROPERTY
GROUP: COMMERICAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Accepts the précis shown on **ATTACHMENT 1** as a record of actions relative to the matter.
- 2) Accepts the report and recommendations previously presented to Council meeting held on 23 March 2010 as shown on **ATTACHMENT 2**.

ORDINARY COUNCIL MEETING – 24 AUGUST 2010

265	Councillor John Nell Councillor Frank Ward	<p>It was resolved that Council:</p> <ol style="list-style-type: none">1. Ensure that approximately 1.9 km of the public road know as Stockton Bight Track running north-easterly from Lavis Lane at Williamtown is available for public use.2. Negotiate for consent of the owners of the obstructing structures to permit deviations of the public road, where necessary for safe traffic flow and to avoid the structures, so as not to interfere with the operations of them.3. If negotiations do not produce a satisfactory outcome Council will direct the owners of unauthorised structures causing obstructions within the road reserve to remove them within 90 days from the date of the issuing of such direction and;4. Council staff will propose suitable road deviations.5. A meeting of Council to approve negotiated or imposed road deviations.
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MINUTES FOR ORDINARY MEETING - 24 AUGUST 2010

		6. All cost of road deviation and road construction to be met by the MacKenzie Family Trust.
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BACKGROUND

The purpose of this report is to respond to Council's Notice of Motion, Minute NO 248 dated 10 August 2010 in regard to actions taken in this matter and again put forward the original recommendations to Council on 23 March 2010.

Council resolved on 23 March 2010 to defer the matter to allow further consideration and if negotiations are not successful to refer the matter to the Local Land Board. Six months have almost past since that meeting during which negotiations have continued between Council and the various solicitors representing the adjoining property owners who own the subject structures. There appears to be little chance of agreement even though some points of compromise are possible. No agreement can be reached over the entire length of the subject road in the recommendations. The adjoining owners are not prepared to compromise in regard to the alterations of boundaries of the sections of the road to bring the constructed road within the road reserve boundaries or to allow for a safe alignment with Lot 13 DP 753192.

There have been no discussions or negotiations held between Council and the company referred to as Macka Sands in point 2 of the Notice of Motion. The reason for this is the original recommendations related only to the possible alterations of the road boundaries to provide safe and legal access to individual parcels of land because structures constructed on the existing public road prevent such access.

As required by point 2 of Council Committee adopted in Council minute no. 085 dated 23 March 2010, an application has been made to the Land and Property Management Authority for a Local Land Board (LLB) hearing. Council should be aware that the Chairperson of the LLB decides on the day of the hearing whether to hear the matter or not. The Chairperson can also decide to forward the matter directly to the Land and Environment Court. NO direction is issued from the hearing on such matters with the only result being a recommendation with no obligation on either party. The outcome from the hearing may not provide a solution to the matter as any recommendation made will fall back on Council as the Roads Authority. The result being Council will be responsible for a final decision from a Council resolution, no matter what the outcome of the LLB hearing.

FINANCIAL/RESOURCE IMPLICATIONS

These are of minor nature as other aspects of the proposal fall within normal staff duties.

LEGAL, POLICY AND RISK IMPLICATIONS

All actions relative to road activities by Council must fall under the Roads Act 1993. Section 107 under that Act provides for Councils ability to make a direction on the adjoining owners to remove unauthorised or authorised structures from a road, to make it accessible for public use. Section 177 provides for acquisition of land for road purposes with section 178 providing ability for this to be done under the compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991. Section 41 Roads Act provides that a road acquired by compulsory acquisition ceases to be a public road. It will then remain in Councils name as Operational Land and can be disposed of.

Council acts as the Board of Directors of the Roads Authority and the decision under the Roads Act 1993.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

In a practical sense nothing will change with the road continuing to be used by sand haulage trucks and the new owners of the 3 properties lots 1 & 2 DP916061 and lot 122 DP753192.

The recommendation will have little economic impact on Council as it is already the Roads Authority for the road.

The proposed acquisition areas for road are over sections of the affected lots that have been previously mined for bulk sand or otherwise disturbed and therefore it seems there will be minor environmental impacts. The new project will increase the number of vehicles using the road each day. The recommendations will preserve the existing business on the adjoining land.

CONSULTATION

The affected property owners, consultant for the approved project as well as a director, Councils Acting General Manager, Group Manager Facilities as well as the Acting Group Manager for a time, Group Manager Commercial Services, Civil Assets Engineer and Principal Property Advisor.

OPTIONS

- 1) Accept recommendation
- 2) Modify recommendations

ATTACHMENTS

- 1) Chronology of events
- 2) Council report and minute from 23 March 2010
- 3) Notice of Motion of 10 August 2010

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

Precis – Stockton Bight Track (SBT)

27/10/2009	PSC received request for MacKenzie Family Trust (MFT) re status of SBT
26/11/2009	PSC received enquiry (Towers) re status of SBT
27/11/2009	PSC received application to construct and use SBT
30/11/2009	PSC gave consent to MFT for use and construction of SBT
4/12/2009	MFT consultant advised PSC of structures on SBT and negotiation with structure/land owners (owners)
7/12/2009	Site meeting PSC, adjoining owners (some), MFT & consultants – possible deviation to protect structures and realign road
4/1/2010	PSC received phone call from Patricia Ann (PA) – she was not informed by family
5/1/10	PSC Group Manager met PA – discussed possible solutions
27/1/10	Meeting PSC & MFT re permission to use SBT and negotiations with Towers
8/2/10	PSC advised Julie Towers (JT) & PA future correspondence will go separately to each owner
19/2/10	Owners advised of possible PSC actions re structures and road
22/2/10	PA advised PSC she is going to solicitor re Councils possible actions
23/2/10	PSC advised MFT consultant, Paul LeMottee of recommendations to Council
3/3/10	Owners advised to consider options to protect structures
4/3/10	PA request to PSC to confirm date road was opened
17/3/10	PSC – GM advised of situation and status
29/3/10	PSC requested site meeting with owners, advised of Land Board hearing
31/3/10	JT advised 7 owners met on site with solicitor – agreed on possible solution solicitor Peter Owens (PO) will advise PSC – no further advice received
1/4/10	PSC received LPMA information on Land Board hearing (LBH)
16/4/10	PSC meeting with David Towers discussing possible deviations
28/4/10	PSC meeting some owners & Worimi Sites Officer re alterations to survey
3/5/10	PSC, GM advised of partial agreement and possible LBH
5/5/10	Confirmation to owners of site meeting from PSC also solicitors
11/6/10	LPMA advice and application costs for LBH
15/6/10	JT advised PSC of family meeting to be held 16/6/2010 and she will contact PSC immediately afterwards – no later contact made
17/6/10	PA advised PSC whole family will meet Mallick Rees Solicitor (MRS) 25/6/10 at 2.30pm
21/6/10	PSC forwarded Section 12 (L.G.Act) documents & advice to MRS
22/6/10	MRS requesting process and powers to go to LBH
25/6/10	MRS requesting clarification on application for LBH
29/6/10	PSC to BM – advising PA going to MRS
1/7/10	Final papers complete for application for LBH

MINUTES FOR ORDINARY MEETING - 24 AUGUST 2010

5/7/10	PSC advised MRS, BM and PO of making application to LBH
7/7/10	MRS advised PSC they now present all Towers family owners
9/7/10	MRS advised PSC they are not available for meeting until after 25/8/10
14/7/10	PSC advice to MRS re meeting and matter
16/7/10	PSC met LPMA re process and actions of LBH
22/7/10	LPMA requested PSC to advise contact details of adjoining owners
29/7/10	Cunningham & Adam Solicitors advised on behalf of MFT that matter must be finalized ASAP
13/8/10	LPMA advised of adjoining owners contact details

Council file Ref: PSC2010-00372

PSC2010-03710 & PSC2010-00372 –

Council Officer: Tony Wickham

2.6.10 Application under section 12 of the Local Government Act, from Malik Rees Lawyers (MR) (on behalf of Patricia Ann) seeking documents relevant to the matter.

This involved consultation with two staff.

21.6.10 Council's response to MR of the section 12 determination.

22.6.10 Letter from MR seeking advice with respect to what legislation an application would be made.

This involved further consultation with staff.

25.6.10 Council's response to MR concerning letter of 22.6.10.

25.6.10 Letter from MR seeking further clarification on the section of the Roads Act that are applicable.

This involved further consultation with staff.

5.7.10 Council's response to letter of 25.6.10.

7.7.10 Letter from MR disputing section 260 of the Roads Act is relevant and wishing to include others parties in the matter.

14.7.10 Council's response to letter of 7.7.10.

ATTACHMENT 2

ITEM NO. 5

FILE NO: PSC2010-00372

ALTERATIONS TO BOUNDARIES OF PUBLIC ROAD KNOWN AS STOCKTON BIGHT TRACK AT WILLIAMTOWN.

REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER
GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL AS THE ROADS AUTHORITY:

- 1) Ensures that approximately 1.9km of the public road known as Stockton Bight Track running north-easterly from Lavis Lane at Williamtown is available for public use.
- 2) Under section 107 Roads Act 1993, directs the owners of unauthorised structures causing obstructions within the road reserve to remove them within 60 days from the date of the issues of such direction, and
- 3) Negotiates for consent of the owners of the obstructing structures to permit deviations of the public road, where necessary for safe traffic flow and to avoid the structures, so as to not interfere with the operations of them. See **attachment 1** for the location of the structures.
- 4) If the obstructing structures are not removed or the adjoining owners do not consent to road deviations, prior to the date the structures are directed to be removed, then under section 177 Roads Act 1993 make application to the Minister for Local Government and the Governor, for urgent consent and approval to compulsorily acquire parts:-
 - a) of lots 73, 76 and 101 DP753192 to allow deviations of Stockton Bight Track shown as lots 1, 2 & 3 on **attachment 2** and also
 - b) the sections of Stockton Bight Track shown as lots 4, 5 & 6 on **attachment 2**.
- 5) The application for compulsory acquisition, under the Land Acquisition (Just Terms Compensation) Act 1991 to include all mines and deposits of minerals not previously excluded from the land titles.
- 6) Lots 4, 5 & 6 on attachment 2 will become closed road classified as Operational Land and can be offered to the adjoining owners (obstructing structure owners) as compensation for their land to be acquired.
- 7) Following consent for acquisition, places the acquisition notification in the Government Gazette under section 178 Roads Act 1993, following by notification under section 10 of the Act declaring Lots 1, 2 & 3 acquired, as public road.
- 8) Grants authority to affix Councils Seal and signatures to the Transfer of the closed road parcels 4, 5 & 6 to the adjoining owners on settlement.

MINUTES FOR ORDINARY MEETING - 24 AUGUST 2010**COUNCIL COMMITTEE MEETING – 23 MARCH 2010****RECOMMENDATION:**

	Councillor John Nell Councillor Sally Dover	That Council: 1) The matter be deferred to allow further consideration with both parties. 1) 2) Should negotiation not be successful the matter be referred to the Local Land Board.
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ORDINARY COUNCIL MEETING – 23 MARCH 2010

085	Councillor John Nell Councillor Geoff Dingle	It was resolved that the council committee recommendation be adopted.
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Cr Glenys Francis called for a division.

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

Those against the Motion: Nil

BACKGROUND

The purpose of this report is to allow Council to comply with the Roads Act 1993 requirements, as the Roads Authority and to allow safe public access along Stockton Bight Track while permitting the continued use of obstructing structures, by consenting to road deviations as described.

The road boundaries were marked by a registered surveyor and it was found from Lavis Lane 353 metres of the existing haul road falls outside the public road reserve. It was then confirmed that substantial structures were constructed within the existing road reserve causing obstructions to any road user. A site inspection in early December 2009 confirmed these findings and suggestions were put forward as to how the obstructing structures could be protected so their existing use could be maintained. One of these suggestions was possible deviations of the existing public road to cater for safety while maintaining the structures.

The registered surveyor provided a plan of possible deviations along the lines discussed at a site inspection. As the Roads Authority, Council could see some benefits, which would preserve the existing structures so their current use in

association with the adjoining property could remain. The proposed deviations are over previously sand extracted and disturbed areas so it appears there would be minor environmental implications. Any future construction will require planning assessment.

Stockton Bight Track provides the only legal access to lots 1 & 2 DP916061 and lot 122 DP753192 which have recently been sold and the new owners have been advised that this road is their only legal access. It is therefore important Council carries out actions so the objectives of section 3(a) of the Roads Act can be maintained, that is the rights of members of the public to pass along public roads.

Council's duties and powers to issue a direction for the structures to be removed should be enacted under the Roads Act, to provide a catalyst to arrive at a satisfactory outcome for all. The adjoining owners have been requested to give some consideration as to how to achieve an outcome. The time allowed for the structures to be removed will be used as a negotiation period to arrive at a solution. The adjoining property is owned by seven owners under Tenants in Common title and each owner may want to achieve different outcomes. This is why a recommendation is in place to go to the compulsory acquisition process, if that is necessary to finalise the matter. All involved are in support of the existing structures not being destroyed and seek an alternative solution.

Compulsory acquisition cannot commence without the consent of the Minister for Local Government and the approval of the Governor. Requests for such consent and approval do take considerable time to be processed and because of the need for the access to be regularised it is recommended an application be made for urgent processing by the authorities. It will take about 90 days for the application to be processed by Division of Local Government (DLG).

If the application is approved the notification to be published in the Government Gazette is prepared by DLG for Council to publish under the General Managers name. On publication the acquired lands come under Council ownership as Operational Land and are able to be transferred as compensation to the adjoining owners for their land acquired by the same Government Gazette notification. The area of their land being acquired for road deviation contains a total area of approximately 10,000sq metres and the total area of the road to be closed is approximately 14,300sq metres. These areas are subject to survey. The closed road area is proposed to be offered to the adjoining owners as compensation for the land acquired from them.

The Valuer General is required to provide a valuation for compensation of the acquired land if agreement is not reached between Council and the owners. All details of the proposed lots acquired and the closed road areas proposed to be included in compensation must be presented to the Valuer General for his/her consideration. If the owners do not accept the compensation determined by the Valuer General the dispossessed owners may appeal to the Land and Environment Court for a decision. Such action will have no impact on the acquisitions as gazetted or the date of the notice. Once compensation is arrived at the closed road areas can be transferred to the adjoining owners. Council's Seal and

Signatures are required to execute the Transfer of the lands for registration at the office of Land and Property Information.

FINANCIAL/RESOURCE IMPLICATIONS

These are of minor nature as other aspects of the proposal fall within normal staff duties.

LEGAL, POLICY AND RISK IMPLICATIONS

All actions relative to road activities by Council must fall under the Roads Act 1993. Section 107 under that Act provides for Councils ability to make a direction on the adjoining owners to remove unauthorised or authorised structures from a road, to make it accessible for public use. Section 177 provides for acquisition of land for road purposes with section 178 providing ability for this to be done under the compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991. Section 41 Roads Act provides that a road acquired by compulsory acquisition ceases to be a public road. It will then remain in Councils name as Operational Land and can be disposed of.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

In a practical sense nothing will change with the road continuing to be used by sand haulage trucks and the new owners of the 3 properties lots 1 & 2 DP916061 and lot 122 DP753192.

The recommendation will have little economic impact on Council as it is already the Roads Authority for the road.

The proposed acquisition areas for road are over sections of the affected lots that have been previously mined for bulk sand or otherwise disturbed and therefore it seems there will be minor environmental impacts. The new project will increase the number of vehicles using the road each day. The recommendations will preserve the existing business on the adjoining land.

CONSULTATION

The affected property owners, consultant for the approved project as well as a director, Councils Acting General Manager, Group Manager Facilities as well as the Acting Group Manager for a time, Group Manager Commercial Services, Civil Assets Engineer and Principal Property Advisor.

OPTIONS

- 1) Accept recommendation
- 2) Modify recommendations

ATTACHMENTS

- 1) Locations of structures on road
- 2) Areas proposed to be acquired

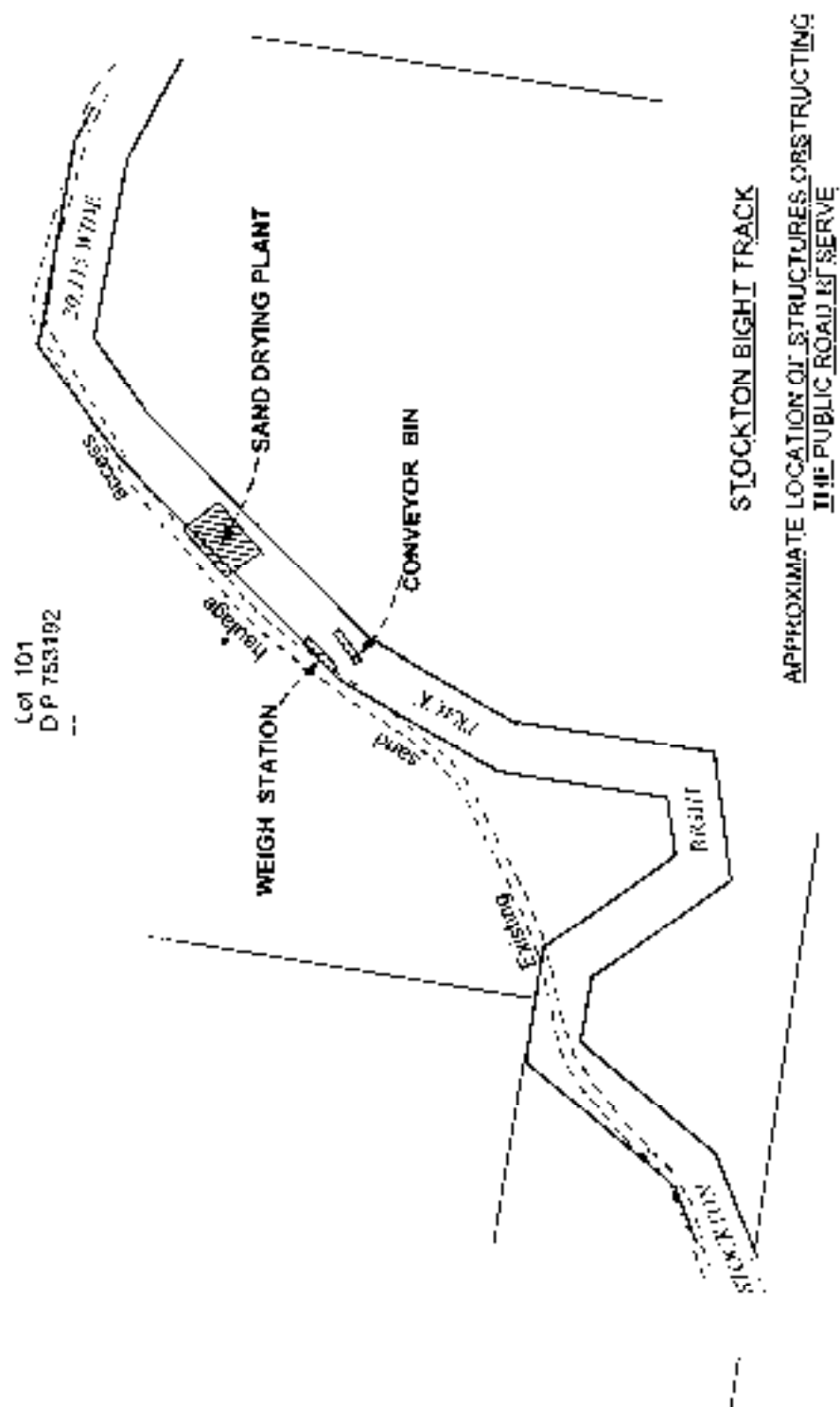
COUNCILLORS ROOM

Nil.

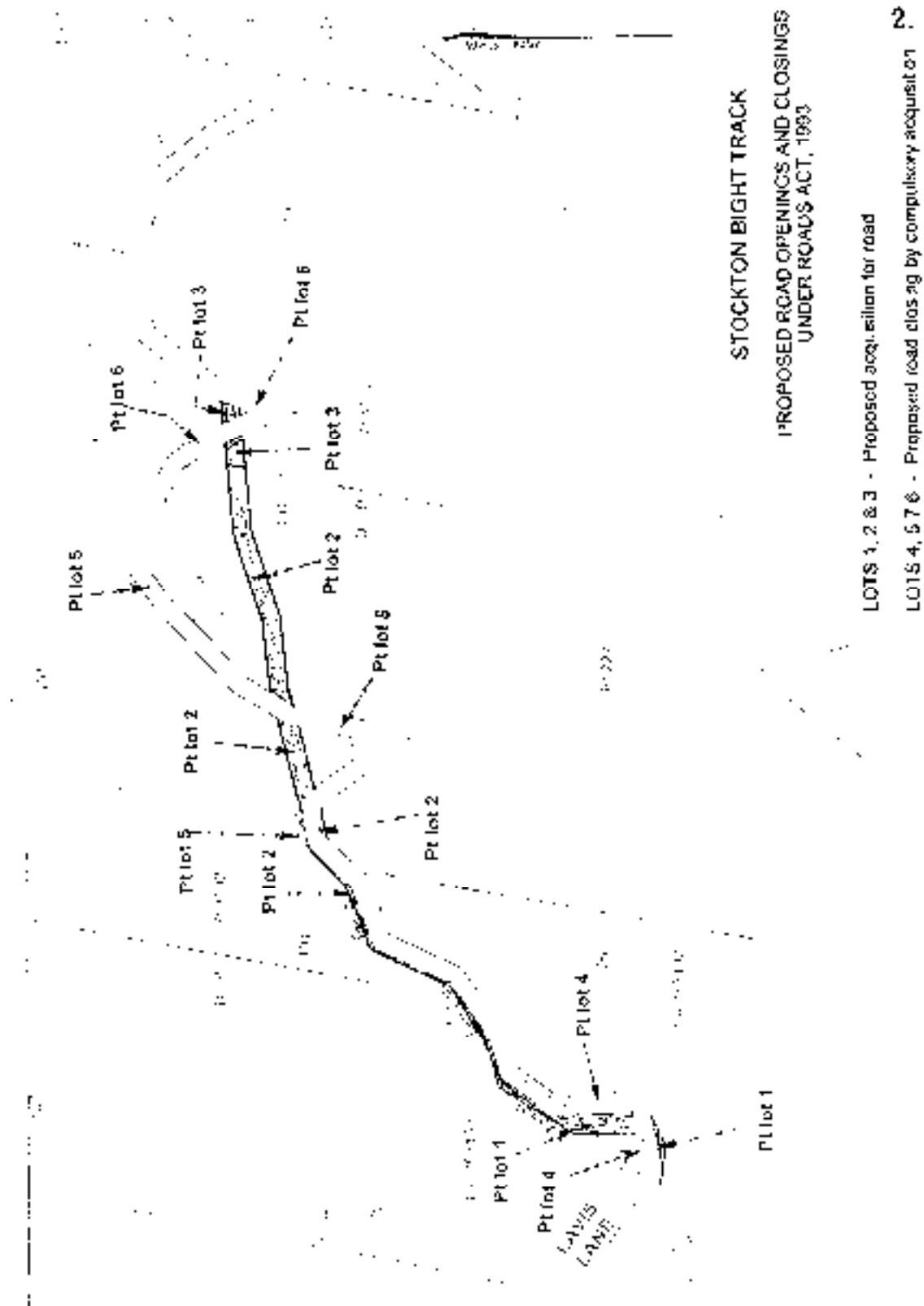
TABLED DOCUMENTS

Nil.

ATTACHMENT 1



ATTACHMENT 2



ATTACHMENT 3

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217

PROPOSED DEVELOPMENT OF THE EXTENSION OF LAVIS LANE

COUNCILLORS: WARD, DINGLE, KAER

THAT COUNCIL:

- 1) In order that Councillors' may be able to consider the public disquiet on the matter the General Manager is requested to prepare a report to Council as soon as possible on the proposed development of the extension of Lavis Lane as required by the developers of the sand mining by Macka Sands.
 - 2) The report should give complete details of all actions by Council staff in the matter including copies of all correspondence between any council staff and the parties involved and notes of all conversations between any Council staff and any member of the Tower family and representatives of Macka Sands and their solicitors and surveyors.
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ORDINARY COUNCIL MEETING – 10 AUGUST 2010

248	Councillor Frank Ward Councillor Geoff Dingle	<p>It was resolved that Council:</p> <ol style="list-style-type: none">1. In order that Councillors' may be able to consider the public disquiet on the matter the General Manager is requested to prepare a report to Council as soon as possible on the proposed development of the extension of Lavis Lane as required by the developers of the sand mining by Macka Sands.2. The report should give complete details of all actions by Council staff in the matter including copies of all correspondence between any council staff and the parties involved and notes of all conversations between any Council staff and any member of the Tower family and representatives of Macka Sands and their solicitors and surveyors.3. That the report be made available within
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MINUTES FOR ORDINARY MEETING - 24 AUGUST 2010
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		4 weeks.
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Cr Ken Jordan left the meeting at 7.31pm prior to voting on the item.

In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Caroline De Lyall, Geoff Dingle, Frank Ward, Glenys Francis and John Nell.

Those against the Motion: Crs Steve Tucker, Shirley O'Brien and Sally Dover.

Cr Bruce MacKenzie returned to the meeting at 8.00pm and resumed the Chair.

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217

INFRASTRUCTURE PROJECT FUNDING

COUNCILLORS: MACKENZIE, DOVER, JORDAN, WESTBURY, TUCKER, O'BRIEN

THAT COUNCIL:

- 1) Allocate the outstanding balance of repealed Section 94 funds (estimated at \$700,000, subject to completion of financial statements audit), evenly amongst the three (Central, East, West) wards.
- 2) Allocate \$30,000 of the proposed Central ward allocation of repealed Section 94 funds to fund a concept plan for the Medowie Sports Club.
- 3) Write to Land and Property Management Authority seeking their agreement to allocate accumulated Crown Holiday Park surpluses as follows:-
 - (a) \$1.5 Million for Shoal Bay Waterfront project (Reserve No. R81389).
 - (b) \$500,000 for Anna Bay Recreation Facilities (Reserve No. R80621).
 - (c) \$80,000 for Public Amenities at Barry Park (Reserve No. R79059).

ORDINARY COUNCIL MEETING – 24 AUGUST 2010

266	Councillor Bruce MacKenzie Councillor Sally Dover	<p>It was resolved that Council:-</p> <ol style="list-style-type: none">1) Allocate the outstanding balance of repealed Section 94 funds (estimated at \$700,000, subject to completion of financial statements audit), evenly amongst the three (Central, East, West) wards.2) Allocate \$30,000 of the proposed Central ward allocation of repealed Section 94 funds to fund a concept plan for the Medowie Sports Club.3) Write to Land and Property Management Authority seeking their agreement to allocate accumulated Crown Holiday Park surpluses as follows:-<ol style="list-style-type: none">(a) \$1.5 Million for Shoal Bay Waterfront project (Reserve No.
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MINUTES ORDINARY COUNCIL – 24 AUGUST 2010

		R81389). (b) \$500,000 for Anna Bay Recreation Facilities (Reserve No. R80621). (c) \$80,000 for Public Amenities at Barry Park (Reserve No. R79059).
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Cr Glenys Francis left the meeting at 8.11pm

Cr Glenys Francis returned to the meeting at 8.13pm.

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217

COMMUNITY BROCHURES

COUNCILLOR: FRANCIS

THAT COUNCIL:

- 1) Investigate the development of a series of brochures /booklets to be available the community at the Administration building, Tourism, Website and Libraries.
 - 2) A Source of funding to be found.
 - 3) The brochures to focus on galleries, museums, walks and drives, cycle ways, maps, heritage, local focus on towns and technical issues.
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ORDINARY COUNCIL MEETING – 24 AUGUST 2010

267	Councillor Glenys Francis	There being no objection the Notice of Motion was adopted.
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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.

268	Councillor Peter Kafer Councillor John Nell	It was resolved that Council move into Confidential Session.
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CONFIDENTIAL

ITEM NO. 1

FILE NO: PSC T09- 2010

T09-2010; TENDER; BUSH REGENERATION SERVICES

REPORT OF: BRUCE PETERSEN – MANAGER, ENVIRONMENTAL SERVICES
GROUP: SUSTAINABLE PLANNING

ORDINARY COUNCIL MEETING – 24 AUGUST 2010

269	Councillor John Nell Councillor Peter Kafer	It was resolved that Council: 1) Revoke its decision on the 10 th August, Minute No. 250. 2) Accept both BARRC & TIN Services as the preferred tenderers based on the value selection process.
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There being no further business the meeting closed at 8.39pm.

I certify that pages 1 to 134 of the Open Ordinary Minutes of Council 24 August 2010 and the pages 135 to 138 of the Confidential Ordinary Minutes of Council 24 August 2010 were confirmed by Council at its meeting held on 14 September 2010.

.....
Cr Bruce MacKenzie
MAYOR