

Minutes 19 OCTOBER 2010



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 19 October 2010, commencing at 7.12pm.

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

330	Councillor Peter Kafer Councillor John Nell	It was resolved that apologies from Cr Frank Ward and Cr Caroline De Lyall be received and noted.
331	Councillor Ken Jordan Councillor Peter Kafer	It was resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 12 October 2010 be confirmed.
		<p>Cr Bruce MacKenzie declared a pecuniary Interest in Item No. 1 of the Confidential Report. The nature of the interest a family trust owns affected land.</p> <p>Cr Ken Jordan declared a non pecuniary interest in Item 2 of the Committee Recommendations. The nature of the interest was a friend.</p>

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MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: PSC2010-00372

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: LISA MARSHALL – ACTING EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION:

- 1) That pursuant to section 10A(2)(d)(i) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the agenda namely **Alterations to Boundaries of Public Road Known as Stockton Bight Track at Williamtown.**
- 2) That the reasons for closing the meeting to the public to consider this item be that the report and discussion will include:
 - a) details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.
- 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 it may prejudice the commercial position of the parties with whom Council is in negotiations.
- 4) That the minutes of the closed part of the meeting are to be made public as soon as possible after the meeting and the report is to remain confidential.

ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

332	Councillor Peter Kafer Councillor John Nell	It was resolved that the recommendation be adopted.
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COUNCIL COMMITTEE RECOMMENDATIONS

ITEM NO. 1

FILE NO: 16-2009-981-1

DEVELOPMENT APPLICATION FOR A BOUNDARY REALIGNMENT AT NO.7 & NO.9 CROMARTY LANE BOBS FARM

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

RECOMMENDATION IS THAT COUNCIL:

Refuse DA 16-2009-981-1 for the following reasons:

- 1) Insufficient information submitted to enable a comprehensive assessment under Section 79C of the Environmental Planning and Assessment Act, 1979.
- 2) The development is inconsistent with the 1(a) Rural Agriculture Zone objectives of Port Stephens Local Environmental Plan 2000.
- 3) The development potentially poses a significant impact on threatened species, populations, ecological communities, or their habitats.
- 4) The development is contrary to the public interests and expectations, of an orderly and predictable built environment.

COUNCIL COMMITTEE MEETING –19 OCTOBER 2010
RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Sally Dover	It was resolved that Council support the Development Application in principal and request that the Sustainable Planning Group Manager prepare a report with conditions being prepared and presented at the next Council Meeting.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the motion : Crs Bruce MacKenzie, Ken Jordan, John Nell, Steve Tucker, Bob Westbury, Glenys Francis, Peter Kafer, Geoff Dingle, Sally Dover, Shirley O'Brien.

Those against the motion : Nil.

The motion on being put was carried.

MINUTES FOR ORDINARY MEETING – 19 OCTOBER 2010

ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

333	Councillor Ken Jordan Councillor Bruce MacKenzie	It was resolved that the council committee recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

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

Those against the motion : Nil.

The motion on being put was carried.

At the Ordinary Council Meeting of 28 September 2010, it was resolved:

That Council defer the matter to allow for further information to be provided to the next Council Committee meeting.

BACKGROUND

The purpose of this report is to present a development application to Council for determination at the request of Cr Bruce Mackenzie.

The applicant lodged the development application for proposed boundary realignment with Council on 23 December 2009. An assessment was undertaken and this revealed the need to request additional information regarding the purpose for which the boundary realignment was proposed and an assessment of vegetation on-site and the impacts of the proposal on this existing vegetation given the site constraints.

Council's mapping system identified the site as comprising Ecologically Endangered Communities (EEC) - Swamp Sclerophyll Forest/Swamp Mahogany Paperbark Forest and Coastal Salt Marsh. In addition, the mapping system identified the site as containing potential 'preferred koala habitat' under Council's Comprehensive Koala Plan of Management (CKPoM).

The land was also identified as bushfire prone land and the application triggered the integrated development provisions, requiring a Bushfire Safety Authority pursuant to Section 100B of the NSW Rural Fires Act be issued by the NSW Rural Fire Service (RFS). A Bushfire Safety Authority was granted from RFS and their 'general terms of approval' include the provision of an inner protection area (IPA) to be managed for both proposed lots. An (IPA) be managed around the existing dwelling on proposed Lot 1487, of north 35 metres, east and south 20 metres, and west 55 metres. An (IPA) be managed around the existing dwellings on proposed Lot 1488 of 20 metres.

As requested, additional information was submitted by the applicant advising of the intended purpose or use of the proposed lots and need for vegetation removal for future use and fencing. The applicant advised that the owner of the smaller lot is seeking to increase their lot area to provide an increase in land for two ponies to graze and exercise. Furthermore, that the new boundaries would be fenced, with approximately 3.0 metres of clearing to be undertaken either side of the proposed boundary/fence line to allow for construction and its future maintenance. The applicant did not provide any additional information at this stage that assessed the vegetation and potential impacts of the proposal on existing vegetation.

In the absence of the submission of a Flora and Fauna Assessment of vegetation on site and the impacts of the proposal on this existing vegetation being submitted by the applicant, Council's Environmental Projects Officer inspected the property on 21 April 2010 to determine whether Council's mapping system was accurate in identifying the existence of an EEC, and has advised that:-

"the site inspection revealed vegetation on site that is likely to comprise of an EEC. As the boundary adjustment will result in loss of vegetation in this area, a Flora and Fauna Assessment is needed to confirm or deny the existence of the EEC, and if it exists on site will require an assessment of significance (7 Part test) as per the Threatened Species Conservation Act 1995 to determine the impact on the endangered vegetation. The applicant is encouraged to re-align boundaries so as not to result in any vegetation removal."

Further, whilst on-site it was established that Council's Mapping System (which identifies the site as containing 'preferred koala habitat' under the provisions of Council's CKPoM) was not accurate in this instance. Therefore, there was no further information or assessment needed in relation to the provisions of Council's CKPoM and State Environmental Planning Policy 44 (SEPP 44) in this instance.

In response to the outstanding information request relating to the existence of EEC, the applicant submitted a Flora and Fauna Assessment Report that had previously been submitted for the assessment of Development Application 16-2000-572-1 (proposed three (3) lot boundary adjustment that created Lots 1479 and 1486). This report is only relevant to one (1) lot (Lot 1479) the subject of this development application and was prepared back in August 2000.

Whilst it was considered questionable as to the relevance and appropriateness of relying on this report for the subject development application, this additional information was referred for further assessment and Council's Consultant Ecologist advised that:-

"a site inspection on 1 June 2010 found that the site contains Swamp Oak Floodplain EEC. Since an EEC occurs on the site an Impact Assessment on the Swamp Oak Floodplain EEC is required. The Flora and Fauna Assessment Report for the previous boundary realignment that was provided is insufficient as it did not include the current site and is ten years old."

This advice was provided to the applicant on 16 June 2010, and reiterated on 7 July 2010 with notification that should the outstanding Flora and Fauna assessment not be

received by 21 July 2010, the application would be determined based on the information submitted with the application, with a likely outcome of refusal. To date no further information has been received, addressing the above, in support of the proposal.

A Councillor inspection was scheduled and undertaken on 3 July 2010 at the request of Cr Bruce Mackenzie.

The requirement for lodgment of a Flora and Fauna Assessment Report is triggered due to the existence of Endangered Ecological Communities on-site, proposed vegetation removal and potential long-term degradation through land use activities (as proposed) and fragmentation of vegetation resulting from the boundary re-alignment in accordance with the requirements of the Environmental Planning and Assessment Act 1979 (EP & A Act) and Threatened Species Conservation Act 2005 (TSC Act). A Flora and Fauna Assessment Report determines whether or not an EEC exists and if exists, then undertakes an assessment of significance (7 Part Test) to determine the impact on the EEC in accordance with the TSC Act and EP and A Act. Note, in instances where an assessment determines that a proposal will likely have significant impact as a result of the development, then a Species Impact Study (SIS) is required under the same legislation.

Council as consent authority in determining a development application has a responsibility to adequately consider the environmental impacts resulting from development proposals in accordance with the provisions of the EP and A Act and TSC Act. Under the provisions of Section 5A of the EP and A Act Council must take into account in deciding whether there is likely to be a significant effect on an EEC, each of the factors listed in Part 5A(2), (which is known as the 7 part test) and the Threatened Species Assessment Guidelines.

With insufficient information submitted, the Section 79C assessment undertaken for this development application has not been able to give appropriate consideration to potential environmental impacts resulting from this proposal in accordance with the requirements of the EP and A Act. As a result the application must be recommended for refusal as outlined in the Recommendations of this report.

FINANCIAL/RESOURCE IMPLICATIONS

Nil.

LEGAL, POLICY AND RISK IMPLICATIONS

The application seeks to remove vegetation that likely contains an EEC. Council assessment staff requested the submission of a current up-to-date Flora and Fauna Assessment Report over the site the subject of the application, addressing the removal of the vegetation indicated to be EEC and assessing the impact of this vegetation removal.

Failure to submit the necessary documentation would serve as a strong basis of defence of the recommendation for refusal if it were supported by Council and then challenged by the applicant in any Court proceedings.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed boundary realignment is considered to have no identifiable social or economic implications.

However significant adverse natural environmental implications are a relevant consideration of the proposal. The degree of potential environmental impact has previously been detailed and it is considered that approval of the boundary realignment, subsequent clearing and intended land use activities have the potential to adversely impact upon an EEC. It has been concluded that approval of the boundary realignment would not be in the public interest, and should only be considered after a Flora and Fauna assessment has been undertaken, that demonstrates that the development is satisfactory in terms of environmental considerations, and is considered unlikely to result in any environmental degradation or long term impacts on the EEC.

CONSULTATION

This development application was not exhibited given the proposed boundary realignment is not a form of development that requires public exhibition in accordance with Council policy.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan.
- 2) Assessment.

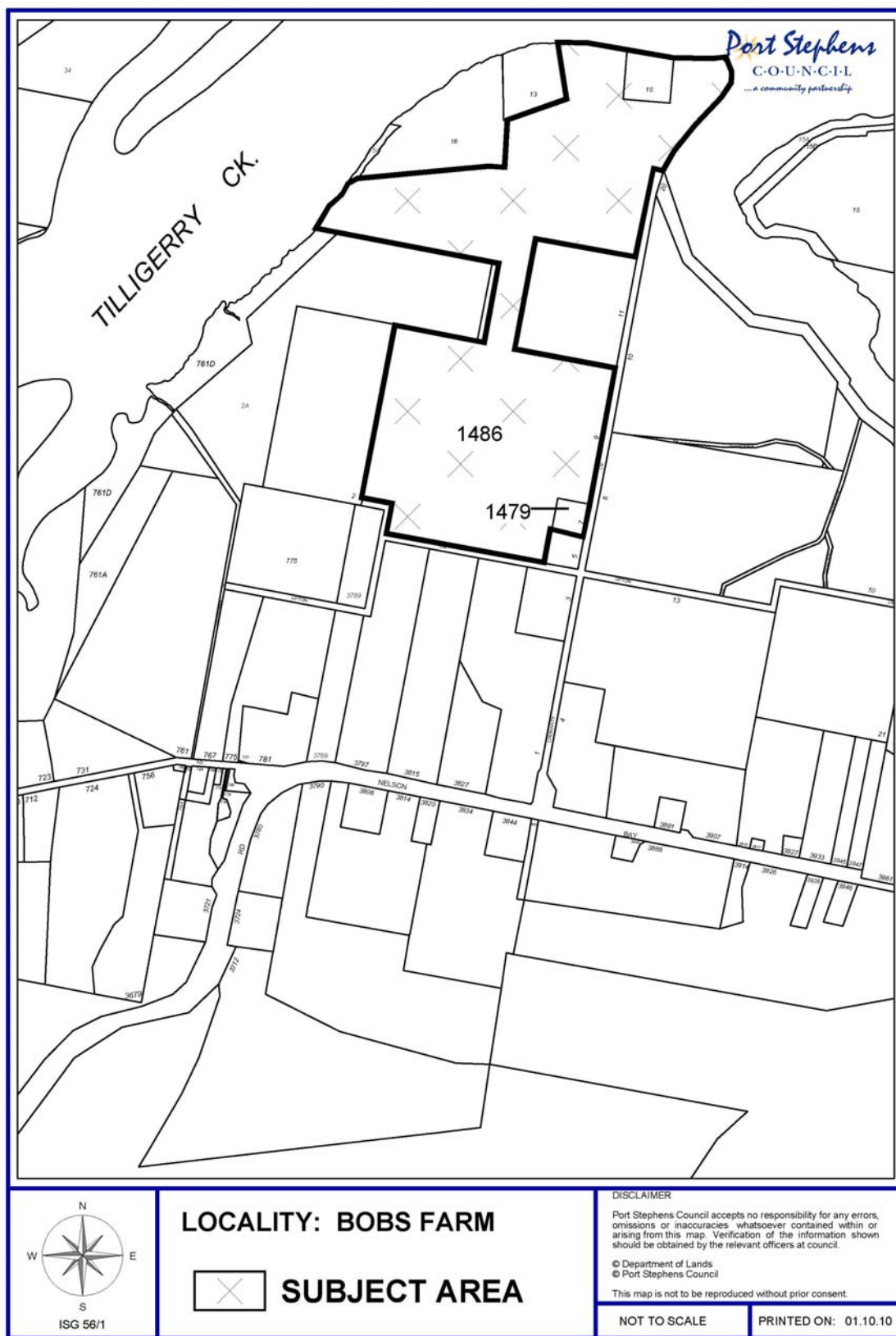
COUNCILLORS ROOM

- 1) A3 copy of site plan.

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 proposal relates to the realignment of the northern and eastern boundaries of Lot 1479 DP 1106462. The northern boundary is to be moved approximately 230 metres to the north and the eastern boundary is to be moved approximately 90 metres further east, thereby increasing the total area of this allotment to 2.4 hectares.

The purpose of the boundary realignment is to increase the lot size of the smaller parcel (Lot 1479) to provide for an increase in land area to support two (2) ponies to graze and exercise. The realigned boundaries are proposed to be fenced, with 3.0 metres of clearing (either side of the boundary) to be undertaken to enable fence construction and future maintenance.

As a result Lot 1479 will increase in size from 1.0 hectare to 2.4 hectares and Lot 1486 will decrease in size from 76.4 hectares to 74.0 hectares.

THE APPLICATION

Owner	Mr B Cromarty, MR D Howes & Ms S Miller
Applicant	Mr B Cromarty
Detail submitted	Correspondence from Duggan Mather Surveyors (for applicant), Flora and Fauna assessment for 2000 subdivision of historical lots 1479 & 1480.

THE LAND

Property Description	Lot 1479 DP 1035435 & Lot 1486 DP 1106462
Address	7-9 Cromarty Lane Bobs Farm
Total Area	81.4ha (Lot 1479 – 1 ha and Lot 1486 – 76.4ha)
Characteristics	Lot 1479 – small rectangular shaped lot with a 100m frontage to Cromarty Lane. Lot 1486 – large irregular shaped lot with a 590m frontage to Cromarty Lane. The land overall is flat and has areas of vegetation, with frontage to both Cromarty and Upton Lanes, and access from Cromarty Lane.

THE ASSESSMENT

1. Planning Provisions

EP&A Act 1979

Relevant Clauses

Section 79C

Section 5A

Threatened Species Conservation Act 2005

State Environmental Planning Policies

SEPP 71 – Coastal Protection

LEP 2000 – Zoning

Relevant Clauses

1(a) Rural Agriculture

Clause 11 Rural Zonings

Clause 12 Subdivision within rural zones generally

Clause 44 Appearance of land and buildings

Development Control Plan

Section B1 Subdivision and Streets

Section B2 Construction and Environment Management

Discussion

Environmental Planning and Assessment Act 1979

Section 5A, Clause 2 requires factors be taken into account in making a determination under this Section. For this application and based on the information submitted, the following factors are considered not to have been addressed:-

(2)(c) in the case of an endangered ecological community or critically endangered ecological community, whether the action proposed:

(i) is likely to have an adverse effect on the extent of the ecological community such that, its local occurrence is likely to be placed at risk of extinction; or

ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction.

As part of the assessment, relevant site constraints were checked via Council's mapping system which identified the site as comprising Ecological Endangered

Communities (EEC) – Swamp Sclerophyll Forest / Swamp Mahogany Paperbark Forest and Coastal Salt Marsh.

Site inspections were undertaken that confirmed the existence of an EEC.

The requirement for lodgment of a current Flora and Fauna Assessment over the relevant allotments the subject of the application is triggered due to the existence of EEC on-site, proposed vegetation removal, potential long-term degradation through land use activities (as proposed) and the requirements of the Threatened Species Conservation Act and Environmental Planning and Assessment Act 1979.

Council as consent authority in undertaking an assessment of a development application has a responsibility to adequately consider the environmental impacts resulting from the subject proposal in accordance with provisions of Section 5A and Part 79C of the EP & A Act 1979.

Insufficient information has been submitted with the development application to adequately consider the provisions of the Act and therefore, it is recommended to refuse the application as outlined in the Recommendations of this report.

State Environmental Planning Policy 71 – Coastal Protection

The aims of SEPP 71 include both the protection and management of the natural, cultural, recreational and economic attributes of the New South Wales coast, and to protect and preserve native coastal vegetation. Specifically, the matters for consideration outlined in Clause 8 include measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats. The proposal is considered to be inconsistent with aims of the SEPP, and based on the information submitted to date, Council is unable to consider the necessary matters outlined in the SEPP.

Port Stephens Local Environmental Plan 2000

Clause 11 – Rural Zonings

The land is zoned 1(a) Rural Agriculture "A" Zone and the proposal for boundary re-alignment is a permissible form of subdivision as permitted by Clause 12 of LEP 2000. However, based on the information submitted, the proposal is considered to be inconsistent with the following zone objectives:-

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

- (d) *protecting or conserving (or both protecting and conserving) - trees and other vegetation in environmentally sensitive localities where the conservation of the vegetation is likely to reduce land degradation or biodiversity.*

Clause 12 – Subdivision Within Rural Zones Generally

Subdivision is permissible in the 1(a) Rural Agriculture zone, to change a common boundary with an adjoining allotment, but not so as to create additional allotments. The proposal is therefore permissible pursuant to Clause 12 of LEP 2000.

The purpose of the boundary realignment is to increase the size of the smaller parcel to accommodate both grazing and exercising of two ponies. Whilst this use is consistent and compatible as an agricultural activity within the zone, the need to clear for boundary fencing (3.0 metres either side of boundary) and ongoing maintenance and the likely potential for long term degradation of existing vegetation due to the intended grazing and exercising of ponies is considered likely to pose a threat to existing vegetation and is considered inconsistent environmentally with the zone objectives as outlined above.

Clause 44 – Appearance of land and buildings

Based on the information submitted, it is difficult to consider in the assessment of the application the provisions of Clause 44 (3)(f) – *the likely extent and effect of carrying out the development on vegetation on the land concerned* and therefore, the proposal is considered inconsistent with the provisions of Clause 44 of LEP 2000.

Development Control Plan 2007

B1 Subdivision and Street and B2 Environment and Construction Management

Note, for the most part this Section B1 Subdivision and Streets is not of direct relevance to rural boundary re-alignments. That said, the proposed boundary re-alignment is considered generally consistent with the key principles around creating regular shaped lot boundaries and provision of access and services (both of which are, existing for both properties).

However, the proposal is inconsistent with the principle of creating allotments that maintain the significant natural site features, as the boundary realignment will result in vegetation removal for fencing of new boundaries, introduction of horse grazing and exercise within an area that contains an EEC and fragmentation of an EEC onto multiple land parcels, rather than retaining where possible a consolidated area of vegetation on one land holding.

Furthermore, Section B2 - vegetation management and tree management principles and controls are of relevance and based on the proposal and the information submitted in support of the application without inclusion of a Flora and Fauna Assessment, the proposal is considered inconsistent with Section B2 of DCP 2007.

2. Likely Impact of Development

As outlined, the proposal relates to a boundary realignment, resulting in clearing of an area 3.0 metres either side of boundary for fencing purposes and the ongoing use of the land for the purposes of grazing and exercising ponies. Initial clearing for the purposes of fencing and the on-going potential for degradation of existing vegetation due to the land use activity is likely to result in an unacceptable impact on vegetation identified as an Endangered Ecological Community.

3. Suitability of the Site

The subject site is zoned 1(a) – Rural Agriculture, and the proposed boundary realignment is permissible pursuant to Clause 12 of Local Environmental Plan 2000.

The land was also identified as bushfire prone land and the application triggered the integrated development provisions requiring a Bushfire Safety Authority (BSA) in accordance with Section 100B of the NSW Rural Fires Act. A BSA was granted by NSW Rural Fire Service and their 'general terms of approval' require the provision of an Inner Protection Area (IPA) to be managed for both proposed lots, an (IPA) to be managed around the existing dwelling on proposed Lot 1487, of North 35.0 metres, East and South 20.0 metres, and West 55.0 metres, and an (IPA) to be managed around the existing dwellings on Proposed Lot 1488 of 20.0 metres.

These requirements can be achieved on-site without further impact.

However, given that the subject site is identified as containing an EEC, and the proposal involves clearing of this vegetation, it is considered that the site is unsuitable for this development without an adequate assessment being undertaken of both existing vegetation onsite and likely impacts resulting from vegetation removal and long-term land use activities associated with the development proposal.

4. Submissions

The proposed boundary realignment was not required to be publicly exhibited in accordance with Council's Notification Policy.

5. Public Interest

The proposal is inconsistent with legislative requirements and as such it would not be in the public interest to support the application to realign the boundaries, resulting in removal of potential EEC without having made an adequate assessment of environmental impacts associated with the proposal.

Cr Ken Jordan declared a pecuniary interest in this item and left the meeting at 7.12pm.

ITEM NO. 2

FILE NO: 16-2010-291-1

DEVELOPMENT APPLICATION FOR SUPERMARKET (WOOLWORTHS) AT NO. 39, 41, 43, 45 AND 47 FERODALE ROAD, MEDOWIE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Note that the status of the development application 16-2010-291-1 in relation to the merit assessment matters pertaining to 79C of the *Environmental Planning and Assessment Act 1979*, particularly noting the outstanding issues involved and how these relate to the concept plan supported in principle by Council in May 2009;
- 2) Endorse the exhibition of the draft amendment to Port Stephens Development Control Plan 2007 as contained in Attachment 8 (to be issued under separate cover) for purposes of testing that concept and seeking to achieve a policy framework for the determination of the subject development application.

COUNCIL COMMITTEE MEETING –19 OCTOBER 2010

RECOMMENDATION:

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

Those for the motion : Crs Bruce MacKenzie, Steve Tucker, Bob Westbury, Shirley O'Brien, Sally Dover, Glenys Francis and Peter Kafer.

Those against the motion : Crs John Nell and Geoff Dingle.

The motion on being put was carried.

ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

334	Councillor Bruce MacKenzie Councillor Steve Tucker	It was resolved that the council committee recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the motion: Crs Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Glenys Francis, Sally Dover and Bob Westbury.

Those against the motion: Crs Peter Kafer, Geoff Dingle and John Nell.

The motion on being put was carried.

Cr Ken Jordan returned to the meeting at 7.14pm.

BACKGROUND

The subject application was discussed with Councillors on Tuesday 21 September during a Two-Way Conversation. During this Conversation, Council was informed of the background and history of the subject Development Application. Council was informed that the proposed development in its current form is unsatisfactory when assessed against Development Control Plan 2007.

The purpose of this report is to seek a Council Resolution in relation to the exhibition of a draft amendment to Port Stephens Development Control Plan 2007 (DCP 2007), as it relates to the subject site. The amendment to Council's Development Control Plan has been prepared in accordance with Councils resolutions of 27 May 2008 and 5 May 2009, along with the concept plan "Meadowie Town Centre Concept Master Plan 01, Job No.6723 09 dated March 2009", submitted by the applicant to Council for the meeting of 5 May 2009 (and held at attachment 1). In this regard Council should note that the draft amendment to Development Control Plan 2007, which has been provided under separate cover, is contrary to the general aims and objectives of the Medowie Strategy which has been recently adopted by Council. Should Council seek to endorse the draft amendment as put forward a public exhibition of the document for a period of 28 days shall be undertaken.

Any such Resolution made by Council in regard to amendments to Development Control Plan 2007, will then form the basis for progressing the assessment of the current Development Application for a Woolworths Supermarket lodged over the subject site. The need for this report to be put forward to Council was highlighted during the recent Two-Way Conversation discussions.

The following discussion has been provided to present Council with a brief summation of the history of the matters pertaining to the subject site, and the outstanding issues surrounding the current development application.

The subject land is currently zoned 2(a) Residential and is located at the corner of Ferodale and Peppertree Roads, Medowie (refer to attachment 2 – locality plan). It is noted that a planning proposal is currently being considered by the Department of Planning (DOP), which seeks to rezone the subject land to 3(a) – Business General. A Voluntary Planning Agreement (VPA) was entered into between the applicant and Council on 26 July 2010. As such, the proposed development application can be considered in accordance with Section 72J of the *Environmental Planning and Assessment Act 1979*, which states:

"Nothing in this Act prevents:

- (a) the making of a development application to a consent authority for consent to carry out development that may only be carried out if an environmental planning instrument applying to the land on which the development is proposed to be carried out is appropriately amended, or*
- (b) the consideration by a consent authority of such a development application"*

The proposed development comprises a supermarket of 3865m² and 176 car parking spaces, all with access from Peppertree Road (egress possible to Ferodale Road), with loading dock and truck deliveries also from Peppertree Road.

It is noted that a concept proposal for the supermarket was put before Council on 27 May 2008 and again on 5 May 2009 to determine whether Council would support the proposed supermarket in its concept form. On 5 May 2009 Council resolved that (resolution No.3):

"the concept proposal for a supermarket on the corner of Ferodale and Peppertree Roads and the rationale submitted by the proponent be approved in principle subject to the appropriate conditions."

** Note: refer to Attachment No. 3 of this report for a copy of resolutions and associated attachments.*

It is noted that Council's May 2009 resolution is not a determination under the Environmental Planning and Assessment Act in that a development application for the site had not been lodged, not appropriately notified and not assessed by Council or Council staff. As such, Council's resolution does not imply nor give direction for, consent to any development application for a supermarket located upon the subject site.

The following resolutions are also pertinent to the subject application, and were made during the Extra-Ordinary meeting of 5 May 2009:

- 1. Council confirm its resolution dated 27th May 2008) to prepare a Development Control Plan over land on the corner of Ferodale and Peppertree Roads for a*

supermarket and the surrounding town centre in the form of a site specific chapter of the Port Stephens Development Control Plan 2007 (DCP)

2. *Note that Council funds have been allocated to prepare a DCP and that a consultant will be appointed in the near future to undertake the required work and that this will occur parallel to the processing of the draft LEP.*

** Note: refer to Attachment No. 3 for copy of resolutions and associated attachments.*

In this regard Council is advised that the attached amendment to Development Control Plan 2007 has been prepared to address the resolutions as listed above (resolution 1 and 2 of Extra-Ordinary meeting 5 May 2009). However, it is noted that a report on a draft DCP for Medowie Town Centre and a draft site specific DCP amendment had not been prepared at the date of the lodgment of the subject development application. Nevertheless, and in the interim, Council staff have assessed the current application on its merits against Local Environmental Plan 2000 (LEP 2000) and the current Development Control Plan 2007 (DCP 2007).

It is proposed that the determination of the subject application will be able to be finalised once the planning proposal, currently put before the Department of Planning, and amendment to Port Stephens Local Environmental Plan 2000 are gazetted. However, at this stage in the assessment there are fundamental issues around the significant variations to Council's adopted Development Control Plan 2007 (DCP 2007), along with the inconsistencies of the proposed development in relation to the Council's Medowie Strategy. These matters can be categorised into the following key areas of concern:

- Street Character and Front Setback:
 - a. The proposed development does not adequately address either the primary or secondary street frontages (Peppertree Road and Ferodale Road).
 - b. The development has not been appropriately sited or designed in relation to the surrounding residential properties, nor the existing commercial precinct.
 - c. The dominance of the car parking area in relation to street eliminates any potential for the proposal to provide an 'active interface' between the shopping centre and the street.
 - d. The applicant proposes a stand alone supermarket only; no consideration has been given to the inclusion of smaller shops within the development which could potentially activate the street frontage.
 - e. The elevation fronting Peppertree Road is dominated by blank walls and the proposed loading bays.
- Building Height:
 - a. The proposed development fails to comply with the maximum allowable height provided within DCP 2007, (8 metres), being approximately 8.6 – 9.3 metres in height.
- Side and Rear Setback:

- a. The proposed development is not built to the street. The development is setback approximately 36.0 metres from Ferodale Road, and approximately 35.0 metres from Peppertree Road.
 - b. The development fails to provide a rear setback of 5.0 metres (5.5 metres with consideration given to height), to the eastern residential property boundary.
- Building Design Elements:
 - a. There is negligible articulation provided within the design.
 - b. Approximately 47.0 metres of blank unarticulated wall addresses Peppertree Road.
- Landscaping and Public Domain Improvements:
 - a. The applicant is required to submit a plan which clearly indicates the extent of landscaping provision to the site (i.e. shaded plans with calculations for landscaped and built upon areas, drawn to a useable scale).
 - b. An amended landscaping plan providing additional landscaping is to be provided along the front building setback, side and rear setbacks, perimeter of storage areas and car park. In this regard, native species including evergreen trees which shall provide shade to 50% of open-air parking spaces in 5 years should be utilised. Please note that the landscaping plan is to be drawn to scale, and proposed landscaping illustrated on the landscape plan must be drawn to reflect their actual scale/dimensions.
 - c. The applicant is to provide public domain improvements along its frontage such as street furniture. The development must also incorporate a public artwork located in a visually prominent area, of a culturally significant place within the public domain.
- Access, Parking and Servicing:
 - a. The proposed development does not maximise the retail frontage to Peppertree Road.
 - b. On-site car parking dominates the streetscape, and is not appropriately located or screened by landscaping.
 - c. The proposed storage and loading areas to service the supermarket are visible to Peppertree Road.
- Inconsistency with Medowie Strategy:
 - a. Peppertree Road is identified within the Medowie Strategy as the focal point of the shopping precinct. The Medowie Strategy requires that 'Peppertree Road will fulfil the main street function, acting as an 'off-line' main street, drawing traffic movements away from Ferodale Road'. Council recommends that the proposed development be appropriately redesigned so as to address the Peppertree Road frontage.
 - b. The Medowie Strategy identifies that the creation of the main street will require development to build to the street boundary and use rear lanes running parallel with Peppertree Road to access unsightly loading docks and vehicle parking areas which would otherwise detract from

the amenity and character of a vibrant town centre. As such, it is suggested that the applicant relocate the proposed loading dock, to another location not visible from Peppertree Road.

- c. It is noted that the four driveways proposed to front Peppertree Road, act to dislocate connectivity for pedestrians. The applicant is requested to consider an amended design which minimises access from Peppertree Road.
- d. The applicant is advised that the frontage to both streets should have a shared path (2.0m pathway) constructed with the landscaping taking a secondary function. The landscaping plan should be amended accordingly.

- Loading Hours:

- a. It is noted that the application proposes loading hours of 6am to midnight (12am), 7 days per week. Given the sites proximity to residential areas this is considered to be excessive.

- Accessibility:

- a. Low cash register points are to be provided to enable the employment and service of people with disabilities. The applicant is requested to provide amended plans accordingly

- Traffic Matters:

- a. Public Transport - A drop-off and pick-up area is required to be provided close to the building entrance to cater for taxis and community transport to the development. The applicant is requested to provide amended plans accordingly.
- b. Heavy vehicles - The applicant is advised that swept paths are to be provided to demonstrate the sites accessibility for heavy vehicles.
- c. Footpaths/cycleways –
 - i. A 2.0 metre wide shared footpath is required along the property frontage on Peppertree Road. The applicant is requested to provide amended plans accordingly.
 - ii. Pedestrian sight triangles are to be considered in accordance with AS2890.1. The landscaping on the corner of the site shall be designed to provide adequate sight distance. In this regard, the applicant is requested to provide additional details.
 - iii. Parking for bicycles shall be provided adjacent to the main building entry, at a location that provides passive surveillance and good security, to assist and promote sustainable transport options. Bike racks sufficient for twelve (12) bike spaces shall be provided. The applicant is requested to provide amended plans accordingly.
- d. Regulatory signs - The applicant is advised of the following matters with regards to regulatory signage:
 - i. Parking restrictions will be required in Peppertree Road along the frontage of the property to minimise disruptions to traffic flow.
 - ii. A 'Stop' sign and hold line is required within the car park prior to the footpath crossing onto Ferodale Road.

- iii. The applicant is required to provide detailed plans indicating all required regulatory signage and line marking to enable approval by the Port Stephens Local Traffic Committee. All regulatory signs and line markings required as a result of this proposed development are to be supplied and installed at no cost to Council.

- Infrastructure Matters:

- a. The need to provide stormwater detention on-site to restrict flows to 80% of the natural site – at DA stage (outlined within correspondence dated 3 September 2009),
- b. The applicant was required to address water quality for runoff eventually entering into Grahamstown Dam (outlined within correspondence dated 3 September 2009).
- c. It is noted that the 80% reduction was negotiated by Buildev in lieu of providing a stormwater study for the whole of the catchment to quantify the existing capacity of the network. It appears that the 80% reduction has not been adhered to. The applicant is therefore required to either comply with the 80% reduction, OR provide the additional study. The applicant is requested to provide written advice as to their intentions in this regard.

- Inadequate/Insufficient Information:

- a. Statement of Environmental Effects - Any variations to Development Control Plan 2007 (DCP 2007) to be justified and clearly articulated within the SEE.
- b. External Colours and Finishes – Details of the colour, finish and substance of all external materials for the proposed development to be submitted.
- c. Benching and Levelling Plan – The applicant was requested to provide a benching and levelling plan to show the extent of cut and fill resulting from the proposed development.
- d. Reduced Levels (RLs) – RL information to be provided on submitted plans.

A comprehensive list of the areas of non-compliance and issues surrounding the application can be found within the correspondence to the applicant from Council staff dated 12 July 2010 (Attachment No. 3). This correspondence was also provided to Councillors via email on 23 September 2010 due to requests to view this documentation being made by Councillors during the two-way conversation held on 21 September 2010. Council's correspondence dated 12 July 2010 serves to demonstrate the significant variations sought by the applicant. It is noted that correspondence from the applicant in response to Council's correspondence dated 12 July 2010 is held at Attachments 5 and 6.

Council should also note that the application was considered by Regional Development Committee Meeting (RDC) convened by the Roads and Traffic Authority (RTA) on 23 September 2010. The Regional Development Committee raised several objections to the proposed development within their Draft Minutes of Meeting, including:

1. The Traffic generation rates considered within the Traffic Report submitted by the applicant are not in accordance with the RTA's Guide to Traffic Generating Developments. If the RTA rates are applied it is expected that there would be a significant increase in the traffic generated than that predicted within the report prepared by the applicant (about 100 vehicles per hour).
2. Within the Traffic Report submitted by the applicant trip generation is discounted by 30% due to competing retail amenity and the undeveloped catchment area. The RDC note that this should be 20% in accordance with RTA's Guide to Traffic Generating Developments.
3. While the SIDRA modelling analysis within the applicants Traffic Report shows that the intersection of Ferodale Road / Peppertree Road will operate with no significant impact, issues of road safety have not been addressed. In relation to road safety the RDC recommends that the intersection of Ferodale Road/Peppertree Road the existing intersection should be upgraded to a roundabout.
4. The Committee noted that intersection traffic surveys were conducted on Tuesdays and Wednesdays only. For a development such as this, the surveys should have been conducted on Thursday and Saturday, the peak traffic periods.
5. The Committee has concerns with the potential conflict and interaction between the service vehicles exiting the loading dock and accesses on the opposite side of Peppertree Road. This should be addressed to Council requirements.
6. The Committee has concerns with the location of the pedestrian refuge on Ferodale Road within the existing painted chevron area of the back to back right turn bays - potential conflict with vehicles entering the right turn bay and pedestrians crossing. The crossing should be either be incorporated into the revised Ferodale Road / Peppertree Road intersection arrangements or located mid-block, taking into account pedestrian desire lines.
7. Safe pedestrian crossing facilities should be provided on Peppertree Road connecting development on both sides of the road.
8. Street lighting should be provided at intersection, access and pedestrian crossing in accordance with Australian Standard AS 1158.
9. 176 onsite car parking spaces are proposed. 192 spaces are required under Council's requirements. Car parking must be to Council requirements.
10. The off street car and truck parking associated with the subject development including aisle widths, parking bay dimensions, and loading / unloading bays are to be in accordance with AS 2890.1-2004 and AS 2890.2-2002.

11. Unobtrusive lighting should be provided on-site.
12. All the above should be to Council requirements.

As a result of these significant non-compliances with Council's DCP 2007 and the issues raised by the Regional Development Committee (RDC) as outlined above (and held at attachment 7), the general suitability and appropriateness of the location and layout of the Woolworths Supermarket proposed by the applicant is questionable. It is therefore suggested that Council should enforce the policy provisions identified within DCP 2007, so as to encourage a development which is appropriate for the setting and which has been based upon good design principles so as to achieve quality outcomes for the community of Medowie. The development proposed over a site of such significance (in terms of the Medowie Strategy), should be appropriately designed and located so as to positively guide the future growth of the Medowie Town Centre.

This is balanced against the abovementioned resolutions of Council on 5 May 2009 that a:

*"supermarket...be approved in principle subject to conditions" and,
"to prepare a Development Control Plan over land on the corner of Ferodale and Peppertree Roads for a supermarket and the surrounding town centre in the form of a site specific chapter of the Port Stephens Development Control Plan 2007 (DCP)."*

These resolutions appear to have strongly influenced the design as proposed by the applicant and encouraged them to disregard the Council's established policies. As discussed an amendment to Development Control Plan 2007 has also been prepared to this effect (refer to documentation provided under separate cover). This amendment to Development Control Plan 2007 shall need to undergo the statutory process of community consultation via an exhibition process which shall have a duration of 28 days should Council resolve to endorse the document.

FINANCIAL/RESOURCE IMPLICATIONS

Enforcing the provisions of Council's adopted policy, Development Control Plan 2007, is unlikely to have any direct financial or resource implications for Council.

However, it should be noted that proceeding with the exhibition of the draft site specific DCP amendment (refer to documentation under separate cover), will have costs associated with staff time relating to the assessment of the amendment to Development Control Plan 2007, as well as costs associated with the exhibition of the documentation.

LEGAL, POLICY AND RISK IMPLICATIONS

In endorsing the adoption of a site specific Development Control Plan in relation to this development application, Council must give due consideration to the potential precedent that will be created.

It is further noted that Council's Development Control Plan 2007 has been put through due procedural requirements, including extensive public consultation, and is a fundamental element in the decision making processes of Council as a governing body. Any decision by Council to vary the Development Control Plan, without sufficient justification, reduces the legal weight of the policy document, and presents difficulties to Council and development assessment staff in trying to implement the provisions of the Council policy in the future.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The applicant stipulates (within correspondence dated 19 August 2010 and held at Attachment No. 4), that the proposed Woolworths development will generate up to 60 jobs during construction, and 120 jobs in an ongoing basis. These employment opportunities are not considered likely to be altered should Council choose to enforce the provisions of DCP 2007 and require appropriate amendment to the proposed layout and location.

Furthermore, should Council support the proposed amendment to Development Control Plan 2007 as provided under separate cover, rather than enforce compliance with the existing provisions of DCP 2007 and general objectives of the Medowie Strategy, the development may be considered to be contrary to the public interest and expectations of an orderly and predictably built environment.

It is good planning practice for Council to actively discourage developments which have been designed with minimal regard to Councils established controls and policy documents. The creating of site specific development control plans in response to direct lobbying by developers is contrary to the objectives of the *Environmental Planning and Assessment Act 1979*, and is not a transparent collaborative public process.

CONSULTATION

The application was notified to adjoining land owners in accordance with Council's notification policy on 18 May 2010, in response seven (7) submissions were received, along with one (1) petition (comprising numerous letters) in support of the application which was received outside the exhibition period.

The application was then re-notified with the closing date for submissions being 8 September 2010, following site inspection and review of file which resulted in the need to undertake re-notification. One additional submission was received at this time.

OPTIONS

Consider the information outlined within the report and resolve to support one of the following options noted:

- 1) Note that the status of the development application in relation to the matters pertaining to 79C of the *Environmental Planning and Assessment Act 1979*, as discussed below, particularly noting the outstanding issues involved and how these relate to the concept plan supported in principle by Council in May 2009, and/or,
- 2) Endorse the exhibition of the draft amendment to Port Stephens Development Control Plan 2007 as contained under separate cover, for purposes of testing that concept and seeking to achieve a policy framework for the determination of the subject development application.

Or

- 3) Enforce the policy provisions of Council's existing Development Control Plan (DCP 2007), and reject the proposed amendment to Development Control Plan 2007 as held under a separate attachment. The application could then be determined under Council's existing DCP provisions.

ATTACHMENTS

- 1) Medowie Town Centre Concept Master Plan 01, Job No.6723 09 dated March 2009
- 2) Locality Plan
- 3) Council Resolutions 5 May 2009 and 28 May 2008
- 4) Letter to Applicant regarding Planning Assessment of subject Development Application (dated 12 July 2010)
- 5) Applicants response to Councils Letter (dated 19 August 2010)
- 6) Letter from Builddev (dated 30 August)
- 7) Minutes of Meeting Regional Development Committee (dated 23 September 2010)
- 8) Draft Amendment to Port Stephens Development Control Plan 2007 (under separate cover)

COUNCILLORS ROOM

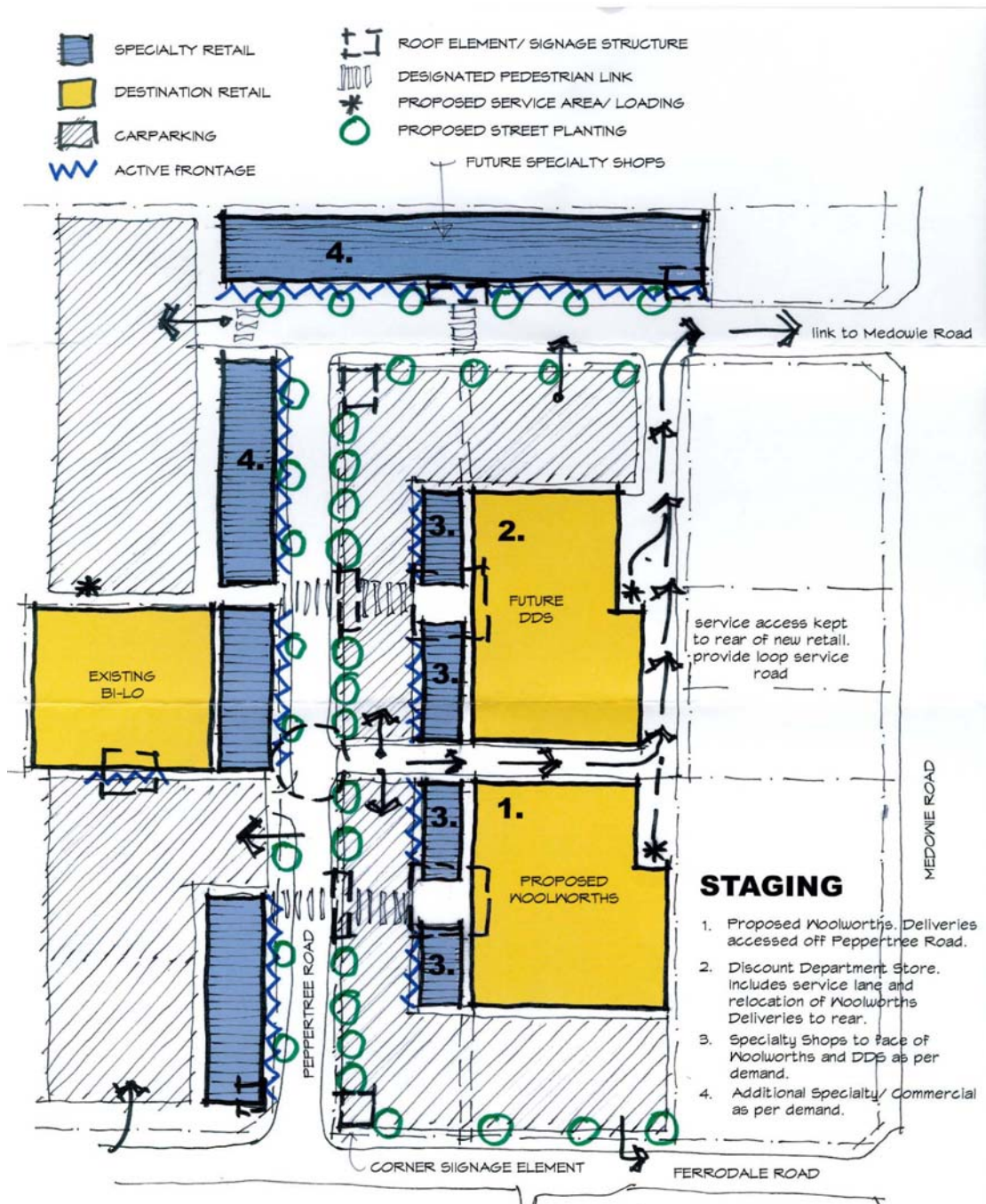
- a. Full copy of submitted development application documentation, including Statement of Environmental Effects, site plan, elevations, etc.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

MEDOWIE TOWN CENTRE CONCEPT MASTER PLAN



MEDOWIE TOWN CENTRE

CONCEPT MASTERPLAN 01

JOB NO. 6723 09 MARCH 2009

EVE architecture

ATTACHMENT 2

LOCALITY PLAN



ATTACHMENT 3

COUNCIL RESOLUTION 5 MAY 2009 and 28 May 2008

EXTRA-ORDINARY MEETING – 5 MAY 2009

RECISSION MOTION

ITEM NO. 1

FILE NO: PSC2008-2238

DEVELOPMENT CONTROL PLAN, DRAFT LOCAL ENVIRONMENTAL PLAN AND MEDOWIE STRATEGY ISSUES FOR MEDOWIE TOWN CENTRE.

COUNCILLORS: JOHN NELL, GEOFF DINGLE & FRANK WARD

That Council rescind its decision of 28 April 2009 on Item 3 of the General Manager's Report, namely Development Control Plan, Draft Local Environmental Plan and Medowie Strategy Issues for Medowie Town Centre.

EXTRA-ORDINARY COUNCIL – 05TH MAY 2009

	Councillor John Nell Councillor Geoff Dingle	That Council rescind its decision of 28 April 2009 on Item 3 of the General Manager's Report, namely Development Control Plan, Draft Local Environmental Plan and Medowie Strategy Issues for Medowie Town Centre.
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137		The Rescission Motion on being put was lost.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Peter Kafer Glenys Francis Geoff Dingle John Nell Frank Ward

Those against the Motion: Daniel Maher Steve Tucker Shirley O'Brien Bob Westbury Shirley O'Brien Bruce MacKenzie

EXTRA-ORDINARY MEETING – 5 MAY 2009

ITEM NO. 3

FILE NO: PSC2008-2238

DEVELOPMENT CONTROL PLAN, DRAFT LOCAL ENVIRONMENTAL PLAN AND MEDOWIE STRATEGY ISSUES FOR MEDOWIE TOWN CENTRE.

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Confirm its resolution dated 27th May 2008 (**Attachment 1**) to prepare a Development Control Plan over land on the corner of Ferodale and Peppertree Roads for a supermarket and the surrounding town centre in the form of a site specific chapter of the Port Stephens Development Control Plan 2007 (DCP);
- 2) Note that Council funds have been allocated to prepare a DCP and that a consultant will be appointed in the near future to undertake the required work and that this will occur parallel to the processing of the draft LEP;
- 3) Resolve that the concept proposal for a supermarket on the corner of Ferodale and Peppertree Roads (**Attachment 2**) and the rationale submitted by the proponent (**Attachment 3**) is not consistent with the principles and intended outcomes of the Medowie Strategy and does not provide a compelling argument to depart from this and other relevant planning policies;
- 4) Pursuant to Section 54 of the Environmental Planning and Assessment Act (1979) resolve to prepare a draft LEP to rezone council owned land Lot 4 DP 813A, Lot 5 DP 809A; Lot 240 DP 1027965; and privately owned land Lot 2 DP 632334; Lot 32 DP 1045148; Lot 31 DP 1045148; Lot 1 DP 553784; Lot A DP 404939; Lot 1 DP 260883; Lot 2 DP 260883; Lot: 3 DP 260883; and Lot 195 DP 17437 in the Medowie town centre (**Attachment 4**) to facilitate development of this land, provide flexibility to resolving pedestrian and vehicular access design issues raised by the super market site and devise a traffic solution to the town centre as required by the Department of Planning prior to finalising the supermarket site draft LEP; and
- 5) Consult with land owners affected by Recommendation 4 prior to the draft LEP being forwarded to the LEP Review Panel.
- 6) Through Council's Integrated Planning Section, engage an independent consultant to peer review the assessment of the proposed rezoning of land under Recommendation 4 that is in council ownership.

ORDINARY COUNCIL – 24 APRIL 2009

	Councillor Dingle Councillor Francis	That the recommendation be adopted.
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EXTRA-ORDINARY MEETING – 5 MAY 2009

AMENDMENT:		
124	Councillor Steve Tucker Councillor Shirley O'Brien	<p>It was resolved that Council:-</p> <ol style="list-style-type: none"> 1. Confirm its resolution dated 27th May 2008 (Attachment 1) to prepare a Development Control Plan over land on the corner of Ferodale and Peppertree Roads for a supermarket and the surrounding town centre in the form of a site specific chapter of the Port Stephens Development Control Plan 2007 (DCP); 2. Note that Council funds have been allocated to prepare a DCP and that a consultant will be appointed in the near future to undertake the required work and that this will occur parallel to the processing of the draft LEP; 3. Resolve that the concept proposal for a supermarket on the corner of Ferodale and Peppertree Roads (Attachment 2) and the rationale submitted by the proponent (Attachment 3) be approved in principle subject to appropriate conditions. <ol style="list-style-type: none"> 4. Pursuant to Section 54 of the Environmental Planning and Assessment Act (1979) resolve to prepare a draft LEP to rezone council owned land Lot 4 DP 813A, Lot 5 DP 809A; Lot 240 DP 1027965; and privately owned land Lot 2 DP 632334; Lot 32 DP 1045148; Lot 31 DP 1045148; Lot 1 DP 553784; Lot A DP 404939; Lot 1 DP 260883; Lot 2 DP 260883; Lot: 3 DP 260883; and Lot 195 DP 17437 in the Medowie town centre (Attachment 4) to facilitate development of this land, provide flexibility to resolving pedestrian and vehicular access design issues raised by the super market site and devise a traffic solution to the town centre as required by the Department of Planning prior to finalising the supermarket site draft LEP; and

EXTRA-ORDINARY MEETING – 5 MAY 2009

		<p>5. Consult with land owners affected by Recommendation 4 prior to the draft LEP being forwarded to the LEP Review Panel.</p> <p>6. Through Council's Integrated Planning Section, engage an independent consultant to peer review the assessment of the proposed rezoning of land under Recommendation 4 that is in council ownership.</p>
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In accordance with the Local Government Act 1993, a division is required.

Those for the motion: Councillors Daniel Maher, Steve Tucker, Shirley O'Brien, Sally Dover, Bob Westbury and Bruce MacKenzie.

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

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

PURPOSE OF THE REPORT

Buildex and Woolworths have asserted to the Mayor and Council staff that the project for a second supermarket in the town centre may be discontinued unless Council gives a favourable and prompt answer to planning and design issues raised by the proposed supermarket. This has led to the submission of this report with the purpose of seeking resolution of the following:

1. Council to consider if a Development Control Plan is still required in conjunction with the proposed rezoning of land for a supermarket on the corner of Ferodale and Peppertree Roads.
2. Council to consider if the concept proposal for a supermarket in the town centre is acceptable given the inconsistency with the recently adopted Medowie Strategy.
3. Council to resolve to prepare a draft Local Environmental Plan for other town centre lands, including council owned land, to facilitate the development of the town centre as the social and economic centre for the Medowie community and to assist in resolving the constraints of the proposed supermarket site on the corner of Peppertree and Medowie Roads and achieve better public outcomes.

BACKGROUND

MINUTES FOR ORDINARY MEETING – 27 MAY 2008

ITEM NO. 1

FILE NO: PSC2008-2238

**PROPOSED AMENDMENT TO LOCAL ENVIRONMENTAL PLAN 2000
TO REZONE LAND TO FACILITATE ADDITIONAL COMMERCIAL
LAND IN THE MEDOWIE TOWN CENTRE**

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Pursuant to Section 54 of the Environmental Planning and Assessment Act, Council resolve to prepare a Draft Local Environmental Plan to amend the zoning of Lot 7 DP 19101, Lot 8 DP 19101, Lot 9 DP 19101, Lot 10 DP 19101, Lot 11 DP 19101 Ferodale Road, Medowie to 3(a) General Business (**Attachment 1**);
- 2) Resolve to prepare a development control plan over the subject land and the surrounding town centre in the form of a site specific chapter of the Port Stephens Development Control Plan 2007 (DCP)

STRATEGIC COMMITTEE MEETING – 06 May 2008

RECOMMENDATION: That the recommendation be adopted.

MATTER ARISING:

RECOMMENDATION: That Council request the Group Manager Sustainable Planning bring forward a report to the Ordinary Council Meeting on the potential rezoning of the existing hardware business in Medowie from Rural 1(a) to 3a business.

ORDINARY MEETING – 27 May 2008

RESOLUTION:

114	Councillor Dingle Councillor Tucker	It was resolved that the Strategic Committee recommendation be adopted.
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Note: Matter Arising completed and included in report dated 27/5/08.

ATTACHMENT 4
LETTER TO APPLICANT

Telephone Inquiries:

MS A K STONE

File No:

16-2010-291-1

Parcel No: 1358, 1356, 1355, 1353, 1351

12 July, 2010

BUILDEV DEVELOPMENT (NSW) PTY LTD
CARE INSITE PLANNING
PO BOX 93
CESSNOCK NSW 2325

Dear Sir/Madam

Re: Proposal: Commercial Premises (Woolworths Supermarket)
Property: LOT: 7 DP: 19101, LOT: 8 DP: 19101, LOT: 9 DP: 19101, LOT: 10 DP: 19101,
LOT: 11 DP: 19101, 47 Ferodale Road MEDOWIE, 45 Ferodale Road MEDOWIE, 43
Ferodale Road MEDOWIE, 41 Ferodale Road MEDOWIE, 39 Ferodale Road MEDOWIE

Reference is made to the abovementioned development application lodged with Council. Please be advised that a planning assessment of your application has been undertaken.

It is noted that the assessment of the submitted application has been undertaken in accordance with Clause 72J of the *Environmental Planning and Assessment Act 1970* (EP&A Act). Clause 72J of the Act permits a development application (DA) and Local Environmental Plan (LEP) to be processed concurrently.

A planning proposal seeking to rezone the subject site to "Zone No 3 (a) (Business General "A" Zone)", is currently before the Department of Planning for consideration and it is on this basis that the application has been assessed.

As a result of the planning assessment the application was found to be unsatisfactory. When tested against Council's Development Control Plan 2007 the development design is fundamentally flawed such that it is unlikely to be supported (refer to Schedule 1 – Planning Review Comments).

You are therefore given the opportunity to significantly redesign the proposal so as to ensure compliance with Council's policy and so as to improve the urban design outcome for the subject site and locality. To assist you in the redesign of the proposal, please refer to the attached Schedule - Planning Review Comments, which has been provided based upon the application submitted to date. When considering the redesign of your proposal Council also recommends that you make reference to Development Control Plan 2007, section B4, which is available for download at Council's website (www.portstephens.nsw.gov.au). Please note any amended plans submitted to Council must be stamped by Hunter Water.

1 of 8

Alternatively, should you wish to withdraw the current application, please be advised that you may request a proportion of the application fee to be returned to you. Please advise Council in writing within **14 days** of the date of this correspondence as to your intentions for the application. If you elect not to withdraw the application, or if Council does not receive correspondence from you outlining your intention, within the specified timeframe, Council will proceed to determine the application based upon the information provided to date.

Please note that the assessment and processing of this application cannot proceed until the requested information has been submitted to Council. This means the clock has stopped counting the statutory assessment days and will restart from the point where it stopped on receipt of all required information and amended plans.

Should you have any further inquiries or wish to discuss the above application please do not hesitate to contact Amy Stone between the hours of 9.00 am – 12.00pm.

Yours faithfully

Amy Stone
SENIOR DEVELOPMENT PLANNER

Phone: 49800369 (9.00am – 12.00 noon)
amy.stone@portstephens.nsw.gov.au

DATA TRACKER

Development & Building has been listening to your suggestions for improvement. Council has now launched its On-line Application Tracking System and a revised Website so you can access key information, forms and application updates anytime, 24 hours, 7 days a week. Council welcomes your feedback on these new initiatives. Email council@portstephens.nsw.gov.au or write to The Manager Development & Building, Port Stephens Council, PO Box 42, Raymond Terrace NSW 2324

Schedule 1 – Planning Review Comments

1. Street Character and Front Setback -

Section B4.4 of Council's Development Control Plan 2007 (DCP 2007), stipulates that development that is built to a consistent front alignment is effective in defining the street space and establishing street character.

The proposed development fails to comply with both the principles and development controls within Section B4.4 of DCP 2007 in that;

- (a) The proposed development does not adequately address either the primary or secondary street frontages (Peppertree Road and Ferodale Road).
- (b) The development has not been appropriately sited or designed in relation to the surrounding residential properties, nor the existing commercial precinct.
- (c) The dominance of the car parking area in relation to street eliminates any potential for the proposal to provide an 'active interface' between the shopping centre and the street.
- (d) The applicant proposes a stand alone supermarket only; no consideration has been given to the inclusion of smaller shops within the development which could potentially activate the street frontage.
- (e) The elevation fronting Peppertree Road is dominated by blank walls and the proposed loading bays.

Thus, the applicant is invited to provide an amended design which complies with the Development Controls outlined within DCP 2007.

2. Building Height

Section B4.6 of Council's Development Control Plan 2007 (DCP 2007), stipulates that development should achieve a scale and height in keeping with the existing and desired future character of the street.

The proposed development fails to comply with the maximum allowable height provided within DCP 2007, (8 metres), being approximately 8.6 – 9.3 metres in height.

The applicant is invited to provide an amended design which achieves compliance with the maximum allowable height of 8.0 metres.

3. Side and Rear Setback

Section B4.7 of DCP 2007 identifies the desired side and rear setbacks for all commercial/retail developments within the Port Stephens Local Government Area (LGA). The proposed development fails to comply with these provisions in that:

- The proposed development is not built to the street. The development is setback approximately 36.0 metres from Ferodale Road, and approximately 35.0 metres from Peppertree Road.

- The development fails to provide a rear setback of 5.0 metres (5.5metres with consideration given to height), to the eastern property boundary

The applicant is invited to provide an amended design which achieves compliance with Section B4.7 of DCP 2007.

4. Building Design Elements

Section B4.8 of Council's Development Control Plan 2007 (DCP 2007), stipulates that development should provide building design which includes façade articulation, window and door openings, shading elements, rooflines and materials and colours. The proposed development fails to comply with these provisions in that:

- There is negligible articulation provided within the design.
- Approximately 47.0 metres of blank unarticulated wall addresses Peppertree Road.

The applicant is requested to provide an amended design which ensures compliance with Section B4.8 of DCP 2007.

5. Landscaping and Public Domain Improvements

Section B4.11 and B4.12 of Council's Development Control Plan 2007 specify the requirements for the provision of landscaping and public domain improvements to commercial/retail developments.

It is considered that insufficient landscaping and public domain improvements have been provided to the site.

In this regards Council requests the following:

- (a) The applicant is required to submit a plan which clearly indicates the extent of landscaping provision to the site (i.e. shaded plans with calculations for landscaped and built upon areas, drawn to a useable scale).
- (b) An amended landscaping plan providing additional landscaping is to be provided along the front building setback, side and rear setbacks, perimeter of storage areas and car park. In this regard, native species including evergreen trees which shall provide shade to 50% of open-air parking spaces in 5 years should be utilised. Please note that the landscaping plan is to be drawn to scale, and proposed landscaping illustrated on the landscape plan must be drawn to reflect their actual scale/dimensions.
- (c) The applicant is to provide public domain improvements along its frontage such as street furniture. The development must also incorporate a public artwork located in a visually prominent area, of a culturally significant place within the public domain.

6. Access, Parking and Servicing

Section B4.13 of DCP 2007 identifies that development should provide adequate on-site parking, loading and servicing areas for its occupants, users, visitors and employees as well as delivery and waste removal services. DCP 2007 also stipulates that development should provide essential car parking and access while encouraging the use of public transport as well as walking and cycling.

The proposed development fails to satisfy the principles and controls within Section B4.13 in that:

- The proposed development does not maximise the retail frontage to Peppertree Road.
- On-site car parking dominates the streetscape, and is not appropriately located or screened by landscaping.
- The proposed storage and loading areas to service the supermarket are visible to Peppertree Road.

The applicant is invited to provide an amended car parking design which satisfies the provisions of Section B4.13 of DCP 2007.

7. Meadowie Strategy

Council's Infrastructure Planning Team has considered the development against Council's Meadowie Strategy, and in response the following advice is provided:

- (a) Peppertree Road is identified within the Meadowie Strategy as the focal point of the shopping precinct. The Meadowie Strategy requires that 'Peppertree Road will fulfil the main street function, acting as an 'off-line' main street, drawing traffic movements away from Ferodale Road'. Council recommends that the proposed development be appropriately redesigned so as to address the Peppertree Road frontage.
- (b) The Meadowie Strategy identifies that the creation of the main street will require development to build to the street boundary and use rear lanes running parallel with Peppertree Road to access unsightly loading docks and vehicle parking areas which would otherwise detract from the amenity and character of a vibrant town centre. As such, it is suggested that the applicant relocate the proposed loading dock, to another location not visible from Peppertree Road.
- (c) It is noted that the four driveways proposed to front Peppertree Road, act to dislocate connectivity for pedestrians. The applicant is requested to consider an amended design which minimises access from Peppertree Road.
- (d) The applicant is advised that the frontage to both streets should have a shared path (2.0m pathway) constructed with the landscaping taking a secondary function. The landscaping plan should be amended accordingly.

8. Loading Hours

It is noted that the application proposes loading hours of 6am to midnight (12pm), 7 days per week. Given the sites proximity to residential areas this is considered to be excessive. Council suggests the following loading hours to be acceptable - Mon-Fri 7am-10pm, Sat 7am-9pm, Sun and Public holidays 8am-8pm, and advises that the applicant's documentation should be amended accordingly. Alternatively, this matter can be addressed via a condition of consent.

9. Accessibility

Council's Community Planner (Ageing and Disability) has assessed the proposed development and provides the following advice:

- (a) Low cash register points are to be provided to enable the employment and service of people with disabilities. The applicant is requested to provide amended plans accordingly

10. Traffic Matters:

Council's Traffic Engineer has assessed the proposed development and raises the following matters and requirements for consideration:

- (a) Public Transport - A drop-off and pick-up area is required to be provided close to the building entrance to cater for taxis and community transport to the development. The applicant is requested to provide amended plans accordingly.
- (b) Heavy vehicles - The applicant is advised that swept paths are to be provided to demonstrate the sites accessibility for heavy vehicles.
- (c) Footpaths/cycleways -
 - i. A 2.0 metre wide shared footpath is required along the property frontage on Peppertree Road. The applicant is requested to provide amended plans accordingly.
 - ii. Pedestrian sight triangles are to be considered in accordance with AS2890.1. The landscaping on the corner of the site shall be designed to provide adequate sight distance. In this regard, the applicant is requested to provide additional details.
 - iii. Parking for bicycles shall be provided adjacent to the main building entry, at a location that provides passive surveillance and good security, to assist and promote sustainable transport options. Bike racks sufficient for twelve (12) bike spaces shall be provided. The applicant is requested to provide amended plans accordingly.
- (d) Regulatory signs - The applicant is advised of the following matters with regards to regulatory signage:

- Parking restrictions will be required in Peppertree Road along the frontage of the property to minimise disruptions to traffic flow.
- A 'Stop' sign and hold line is required within the car park prior to the footpath crossing onto Ferodale Road.

The applicant is required to provide detailed plans indicating all required regulatory signage and line marking to enable approval by the Port Stephens Local Traffic Committee. All regulatory signs and line markings required as a result of this proposed development are to be supplied and installed at no cost to Council.

11. Infrastructure Matters:

It is noted that the Infrastructure Planning Team have provided advice to Buldev through the rezoning process of the subject site. Throughout this process Buldev have been advised of likely requirements of Council at the DA stage including:

- (a) The need to provide stormwater detention on-site to restrict flows to 80% of the natural site – at DA stage (outlined within correspondence dated 3 September 2009),
- (b) The applicant is required to address water quality for runoff eventually entering into Grahamstown Dam (outlined within correspondence dated 3 September 2009).

It is noted that the 80% reduction was negotiated by Buldev in lieu of providing a stormwater study for the whole of the catchment to quantify the existing capacity of the network. It appears that the 80% reduction has not been adhered to. The applicant is therefore required to either comply with the 80% reduction, OR provide the additional study. The applicant is requested to provide written advice as to their intentions in this regard.

12. Inadequate/Insufficient Information:

In addition to the amended plans and documentation as requested elsewhere within this correspondence, the following information is also required to facilitate the assessment of the proposed development:

1. Statement of Environmental Effects – Should the applicant wish to amend the proposed design, a revised Statement of Environmental Effects (SEE) should be submitted to Council. Should the applicant seek any variations to Development Control Plan 2007 (DCP 2007), justification for these variations should be clearly articulated within the SEE.
2. External Colours and Finishes – Details of the colour, finish and substance of all external materials for the proposed development are to be submitted, which includes a schedule/brochure of the proposed colours. Please note that Council requires that external building colours and materials must be sympathetic to the

natural environment and the existing street context. Reflective surfaces and fluorescent colours are not acceptable for buildings or signage.

3. Benching and Levelling Plan – The applicant is requested to provide a benching and levelling plan to show the extent of cut and fill resulting from the proposed development. The plan should detail RL levels across the site, both existing and proposed. Due to the extent of cut that appears to be proposed, Council also requests further information as to the treatment of these areas (i.e. landscaping and/or finishing).
4. Reduced Levels (RLs) - Please submit amended plans and advertising copies showing the RLs of the site, (ie. existing/natural ground) finished ground, each floor level and roof ridgeline of the proposed building. RL information is to be clearly indicated on the architectural plans for all built elements (including architectural features).

Please note that this is not a comprehensive list of issues. It should be noted that during the assessment process, further information may be required and additional matters may be raised.

ATTACHMENT 5
RESPONSE OF APPLICANT

Our Ref.: 09181

19 August 2010

GENERAL MANAGER
PORT STEPHENS COUNCIL
PO Box 42
RAYMOND TERRACE NSW 2324

Attention: Ms Amy Stone

Dear Amy,

RE: 16/2010/291/1 – Proposed Supermarket Cnr Ferodale Road and Peppertree Drive, Medowie

Reference is made to your letter dated 12 July 2010, our meeting last Monday 9 August, recent phone conversations between your Mr Broyd and Mr Daniels from my client's office and the e-mail from Mr Broyd received Monday evening 16 August regarding the above matter. The purpose of this letter is to formally respond to design and DCP non compliance issues (items 1 – 9) raised in your correspondence as well as canvass the other items your planning assessment has raised.

Summary of Current Situation

The situation in respect to this project as we currently understand is as follows:

- We received your 8 page letter dated 12 July setting out numerous issues arising from the planning assessment of the above development application. The letter sets out six (6) areas of non compliance in respect to the Port Stephens DCP 2007. The letter also identifies issues in respect to the Medowie Strategy, loading hours, accessibility, traffic, infrastructure and insufficient information.

- From our meeting on Monday 9 August 2010 to discuss your initial assessment, I understood that based on the concept plan adopted by Council in April 2009 (EJE Concept plan), Council officers wished to see the loading dock moved from the Peppertree Road frontage to the north eastern corner of the subject land, and the Peppertree Road facade redesigned so that it better addressed the street frontage; this would effectively require the turning of the proposed building 45° degrees on its centre so that the frontage currently facing Ferrodale Road fronted Peppertree Road and the loading dock was repositioned into the north eastern corner.
- Since our 9 August meeting it has come to light that none of us present at the meeting realise that the EJE concept plan allowed for the staged development of the development. Specifically it allows for *"Proposed Woolworths Deliveries accessed off Peppertree Road"*. This was brought to our attention by Mr Daniels.
- Going back in history, on 28 **May 2008** Council resolved to prepare a DCP over land on the corner of Ferrodale and Peppertree Roads (the subject land).
- On 28 **April 2009** Council reaffirmed the 28 May 2008 resolution to prepare a DCP over the subject land.
- On 28 April 2009 Council further resolved to support in principle a concept proposal for the development of the subject land which was put forward by the proponent and prepared by EJE. It would therefore seem logical that this concept plan would form the basis and framework for the DCP that was to be prepared in respect to the subject land.
- Since the 28th of May 2008, some 2 years 2 months ago, Council officers have not taken any action, as far as we are aware, to action either of these resolutions and consequently no DCP has been prepared as required by the Council resolution.
- Given no DCP has been prepared for the subject land, there is a conflict in planning policy for the site. While Council has made it clear that they accept that the EJE concept plan on a policy basis, at this point in the process it has not been incorporated into the DCP. Therefore Council assessment officers have to deal with the current DCP 2007 as well as the Council resolution to support the EJE concept plan.

- It has been suggested by Mr Broyd that in order to address this planning framework conflict and move the matter forward, that the current proposal be presented to Council on a “policy basis”. The purpose of this report would be to determine if Council accepts that the proposed development layout as submitted in the DA is consistent with the Concept Masterplan it adopted for the subject land in April 2009 and that it is an acceptable planning/design outcome notwithstanding the provisions of the DCP 2007 provisions.

It is also noted that Council and the developer entered into a VPA on the 26th of July 2010. In respect to that VPA it is noted that it required the developer to lodge a development application by May 10 2010 which was achieved. It is also noted that the VPA made no allowance for access to a loading dock in the north eastern corner of the site via an access arrangement over Council land which would have been the appropriate vehicle to achieve such an outcome.

There would also appear to be strong community support for the establishment of a Woolworths supermarket by local residents. It is also noted that the development will generate up to 60 jobs during construction and 120 jobs on an ongoing basis. These are all very strong social, economic and public interest considerations that need to be weighed up by Council against the design issues and it is my view that these significant benefits outweigh the design issues.

Councils Planning Assessment (12 July 2010 PSC correspondence)

Since Council adopted the EJE concept plan for the subject land, our client has prepared detailed DA drawings and lodged a development application with Council to assess and determine. These DA drawings are, of course, detailed in comparison to the EJE concept plan as adopted by Council. Consequently there is a need to accept any other perceived inconsistencies between the proposal and the PSC DCP 2007 and these, as identified by Council, are detailed as follows:

1. Street Character and Front Setback

The design and layout of the proposed development is consistent with the EJE concept plan adopted by Council. Consequently we request that Council resolve that the development application as submitted (Council ref.: 16/2010-291-1):

- Adequately addresses the primary (Peppertree Road) and secondary (Ferodale Road) road frontages.
- Is appropriately sited and designed in respect to surrounding residential properties and the existing commercial precinct.

- Is satisfactory in terms of carparking design.
- Is satisfactory as a supermarket only.
- That the Peppertree Road elevation is satisfactory.

In respect to these design related points we note that the tenant for the site, Woolworths, operates on a commercial basis where they have standard floor plans that allow for the efficient operation of the business unit. It should also be noted that the design, including external treatments, is their latest and most modern design. It allows for a variety of architectural treatments to address the respective road frontages including both horizontal and vertical articulation, a variety of materials including glazing and a variety of complimentary colours.

In short while my client and Woolworths will work with Council to fine tune design elements to achieve a better outcome, the fundamental principles of the design, which are underpinned by the EJE concept plan, are very much not negotiable; in this regard the development is what it is, a standalone supermarket in Medowie, which is a secondary commercial centre supporting a satellite residential community. The Council adopted EJE concept plan for the site has been followed and therefore we seek Council endorsement of the Development Application design in terms of the “street character and front setback” issues raised in Councils July 12 correspondence.

2. Building Height

The PSC DCP 2007 has a height limit of 8m while the proposal has a height of 8.6m – 9.3m. An 8m height limit is not a realistic height limit for a modern supermarket where ceiling height is essential to create a comfortable environment for shoppers with area on top to house services. It is also not realistic if vertical articulation is to be achieved in the external design. This is precisely what has been done with the proposed development to improve the treatment of facade of the development to the streetscape. Consequently Council is requested to:

- Endorse a height limit of up to **9.3m** on the subject site.

3. Side and Rear Setbacks

This issue is largely covered by point 1 above. The development is consistent with the Council adopted EJE concept plan for the site in terms of setbacks from the adjoining streets as well as side and rear boundaries.

In terms of side and rear setbacks we note that the development will be cut into the eastern boundary and therefore the impact of the overall height of the development on adjoining properties will be significantly reduced. Further, a 5m setback is not necessary when one considers the significant depth of the adjoining residential properties along the western boundary. Consequently, in policy terms, we request that Council:

- Endorse the proposed setbacks as detailed in the DA drawing prepared by EJE Architecture for the proposed Woolworths development on the subject land.

4. Building Design Elements

Council's letter of July 12 contends that the development does not comply with the PSC DCP 2007 in respect to this element (Section B4.8) and specifically that the development has 'negligible articulation' and has 'approximately 47m of blank unarticulated wall'. The first statement I strongly disagree with and the second statement is factually incorrect. The building at both the Peppertree Road and Ferodale Road elevations provides a variety of architectural treatments that provide an attractive, modern stand alone supermarket building, which is what the proposal represents. Specifically the Peppertree Road elevation has variety in terms of height, materials, colour and horizontal articulation.

- Consequently we seek Council endorsement of the design elements as put forward in the development drawings prepared by EJE Architecture.

5. Landscaping and Public Domain Improvements

It is noted that the application already seeks a slight variation in terms of carparking numbers on the site and that the building footprint is a non negotiable element in terms of the tenant. Indeed as Council is aware, a reduced number of parking spaces was accepted by Council in lieu of the developer providing road widening along Peppertree Road as part of the VPA and

rezoning. Consequently if there is to be additional landscaping there will have to be a further reduction in the carparking on site. If that is acceptable to Council the developer is prepared to provide additional landscaping on site.

This point also highlights a weakness in the Council's overall strategy for the site that needs to be resolved at a strategic level. If it is essential that there be a sleeve of shops along the front of the supermarket fronting Peppertree Road, then carparking is going to have to be provided elsewhere in the Medowie town centre as such additions to the development would reduce carparking numbers and there will be no additional areas on site to provide carparking.

6. Access, Parking and Servicing

The design of the development is consistent with the EJE concept plan adopted by Council for the site. Consequently it is requested that Council resolve to endorse the design in terms of the issues raised under this point in respect to maximising retail frontage to Peppertree Road, the location and design of carparking on site and the location and design of the loading and service area.

7. Other issues

In respect to the other issues raised in Councils correspondence the following response/advice is provided:

- Council has previously adopted the EJE concept plan for the site and therefore the issues raised in respect to the Medowie Strategy are largely irrelevant. It is also noted that 'strategy' documents, especially where there is conflict with other more specific Council resolution (as is the case in respect to this site), should hold limited weight in the assessment. Notwithstanding my client is considering issues related to pedestrian access to and within the site but requires clarification on how it wishes to proceed in terms of the landscaping v carparking issue in the first instance.

- Loading hours are not considered excessive given that:
 - the loading area is located on the opposite side of the proposed building from the adjoining residences on the eastern side of the development;
 - the loading dock is on the western side of the development behind an 8m+ high building so noise will be projected west over the adjacent commercial area not east towards the residential area; and
 - the nearest house is located approximately 100m from the loading dock.
- Low cash register points is an internal detail design issue which can be conditioned as part of any consent.
- Traffic and infrastructure matters are currently under consideration and will be responded too separately.
- The issue of insufficient information will be further addressed following Councils consideration and determination of the policy related issues in respect to this development.

Conclusion

The assessment process for this development application is unfortunate as policy issues should preclude DA assessment; instead we are now debating policy issues in the middle of the DA process; and it is not like there has not been ample opportunity for Council to prepare the necessary policy (DCP). As part of the VPA process the developer was required to lodge a development application by May 10 2010. Before this date Council resolved in **May 2008** to prepare a DCP (over two years ago) for the site and surrounding area and in April 2009 endorsed/adopted a concept for the development of the subject land. However to date nothing appears to have been done to prepare the DCP and clarify development issues related to the site. Consequently Councils assessment officers have been placed in the situation of complete policy confusion.

The only definitive policy direction from Council to the developer is the adopted EJE concept plan. The developer had to use that as the basis of the Development Application design.

I would also urge Council not to forget the significant social and economic benefits of the proposal in terms of jobs in an area which has higher than average unemployment rates, especially amongst the young. Furthermore, the public also appear to be largely in support of the proposal so there is significant public interest benefit in the proposal as well. These issues need to be weighed up against any perceived design flaws when Council assesses the DA.

It is understood that a report will be put to Councils September 14 meeting clarifying the relevant policy issues. To that extent this submission has sought to specifically address the items raised by Council in its letter dated July 12 seeking specific support in respect to those elements of the design where there is an actual or perceived inconsistency between the proposal currently before Council and the PSC DCP 2007.

We request that the report to Council on September 14 resolve Council's position on the DA design so as to ensure there is no further confusion prior to final determination for the DA once the rezoning of the site is gazetted.

Should you wish to discuss this issue further please do not hesitate to contact me.

Regards,

Stephen Leathley
PLANNING DIRECTOR

ATTACHMENT 6
LETTER FROM BUILDEV DATED 30 AUGUST 2010



30th August 2010

General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Attention: Mr David Broyd

Dear David,

RE: DA 16/2010/219/1 – Proposed supermarket at Ferodale and Peppertree Road, Medowie

I wish to make some observations and comments for the purpose of clarity with regards to our proposed supermarket and the Council's planning assessment process leading up to determination of the Development Application (DA).

I would also like to ask that Councillors be fully informed of this letter, the history of the site and the supermarket design when they consider the DA plans.

As you are aware, the subject land has been through an exhaustive rezoning process over the past 2 years, and the Draft LEP is currently with the NSW Department of Planning for finalisation.

There has been a chronological list of decisions and directions from Council with respect to the proposed supermarket that has led Builddev to the current DA proposal.

1. On 28th May 2008 Council resolved to prepare a DCP over the land in the Ferodale Road and Peppertree Road locality.
2. And on 28th April 2009, Council reaffirmed that previous resolution when supporting the rezoning.
3. On 28th April 2009, whilst considering the rezoning of the subject land, Council resolved to support in principle the EJE concept plan (submitted by Builddev) as the basis for the DCP.
4. As such that EJE concept plan has formed the fundamental platform for Builddev and Woolworths when designing the proposed supermarket
5. To date, Council have not yet prepared a DCP
6. As part of supporting the rezoning, Council suggested a Voluntary Planning Agreement (VPA) as a legally binding mechanism to ensure the developer contributes to infrastructure needs for the area.

Builddev Development
(NSW) Pty Ltd
ABN 31 115 089 122

BUILDEV HEAD OFFICE

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7. The VPA was signed by Council and Buildev on 26th July 2010 and Buildev paid Council a total of \$56,960 in infrastructure contributions, being \$20,000 towards a strategic traffic study and another \$36,960 towards a drainage study for the area.
8. In accordance with the requirements of Council's engineers and the VPA, Buildev have also legally agreed to providing land to Council for road widening along Peppertree Road, at no cost to Council. This will be dedicated to Council following DA approval as part of the construction of the supermarket.
9. Of significant note with the history and path to date, the VPA required that the developer lodge a Development Application for the supermarket on, or before 14th May 2010. Indeed, Buildev lodged the DA with Council on 4th May 2010.

In light of the above history with the proposed supermarket, it is clear that our supermarket plans submitted with the DA 16/2010/19/1 are consistent with Council's resolutions, directions and the VPA. Buildev had no other site specific Medowie DCP or guideline to go by when preparing our DA plans.

In particular detail, as Council officer's and Buildev acknowledge, the proposed loading dock location on the DA plans is consistent with the EJE concept plan that Council supported by way of resolution on 28th April 2009.

The loading dock location and the overall design outcome was accentuated when Council also required land for road widening along Peppertree Road, which effectively reduced the usable land area.

During this whole planning process we have been very fortunate to have a client in Woolworths who was patient and understanding of the approvals process and Council's requirements. This patience is appreciated, especially when it is put into the context that the supermarket will create up to 60 jobs during construction, and approximately 120 jobs for the supermarket on an ongoing basis. A significant number of those jobs will be filled by young people living in the Medowie and Port Stephens area.

In conclusion, Buildev wish to request that Council consider the above matters when assessing the Development Application and the design of the proposed supermarket. We have worked with Council along this planning journey, and look forward to receiving Council approvals in the near future.

I thank you for considering the above, and feel free to contact me whenever convenient to yourself to discuss.

Yours sincerely

ATTACHMENT 7
DRAFT MINUTES OF MEETING REGIONAL DEVELOPMENT COMMITTEE

HUNTER REGIONAL DEVELOPMENT COMMITTEE
DRAFT MINUTES OF MEETING 23 SEPTEMBER 2010
HELD AT RTA OFFICE
59 DARBY STREET, NEWCASTLE

Meeting commenced at: 10.00am

Present:

Mr David Young	Chairperson
Mr Ben Konetschnik	Roads and Traffic Authority – Items 1 and 3
Mr Ashish Tamhane	Roads and Traffic Authority – Item 2
Miss Sally Honeysett	Roads and Traffic Authority – All Items
Mr Geoff Warnick	Roads and Traffic Authority – Item 1
Mr Dean Simmonds	Roads and Traffic Authority – Items 2 and 3
Mr Marc Desmond	Council Representative – Items 1 and 2
Mr Joe Gleeson	Council Representative – All Items
Ms Amy Stone	Council Representative – Item 2
Mr Scott Henderson	Council Representative – Item 3
Ms Cindy Dickson	Council Representative – Item 3
Senior Constable Ian Davies	NSW Police Representative

Apologies:

Senior Constable Len Rees	NSW Police Representative
Senior Constable John Simmons	NSW Police Representative

Issues Considered by the Committee:

- Traffic Analysis
- Road Network
- Traffic Management
- Vehicular Access
- Car Parking
- Pedestrians/Cyclists
- Public Transport
- Road Design

Item 2:

The Committee considered a Traffic Report prepared by TPK and Associates Pty Ltd dated April 2010 for the proposed Woolworths supermarket development at Medowie.

The Committee objects to the proposed development and requests that the following matters be addressed to the satisfaction of the RTA / Council and referred back to the HRDC for further consideration:

1. Traffic generation rates considered in the Traffic Report should be in accordance with the RTA's Guide to Traffic Generating Developments. If these rates are applied it is expected that there would be a significant increase in the traffic generated than that predicted in the report (about 100 vehicles per hour).
2. Trip generation is discounted by 30 % due to competing retail amenity and the undeveloped catchment area. This should be 20% in accordance with RTA's guide to Traffic generating Developments.
3. While the SIDRA modelling analysis shows that the intersection of Ferodale Road / Peppertree Road will operate with no significant impact, issues of road safety have not been addressed in the report. From a road safety point of view the intersection of Ferodale Road / Peppertree Road the existing intersection should be upgraded to a roundabout.
4. The Committee noted that intersection traffic surveys were conducted on Tuesdays and Wednesdays only. For a development such as this, the surveys should have been conducted on Thursday and Saturday, the peak traffic periods.
5. The Committee has concerns with the potential conflict and interaction between the service vehicles exiting the loading dock and accesses on the opposite side of Peppertree Road. This should be addressed to Council requirements.
6. The Committee has concerns with the location of the pedestrian refuge on Ferodale Road within the existing painted chevron area of the back to back right turn bays - potential conflict with vehicles entering the right turn bay and pedestrians crossing. The crossing should be either be incorporated into the revised Ferodale Road / Peppertree Road intersection arrangements or located mid-block, taking into account pedestrian desire lines.
7. Safe pedestrian crossing facilities should be provided on Peppertree Road connecting development on both sides of the road.
8. Street lighting should be provided at intersection, access and pedestrian crossing in accordance with Australian Standard AS 1158.
9. 176 on-site car parking spaces are proposed. 192 spaces are required under Council's requirements. Car parking must be to Council requirements.
10. The off street car and truck parking associated with the subject development including aisle widths, parking bay dimensions, and loading / unloading bays are to be in accordance with AS 2890.1-2004 and AS 2890.2-2002.
11. Unobtrusive lighting should be provided on-site.

12. All the above should be to Council requirements.

Meeting closed at 11:45am

Dave Young
Chairperson
Hunter Regional Development Committee

5 October 2010

DRAFT

ATTACHMENT 8

DRAFT AMENDMENT TO PORT STEPHENS DEVELOPMENT CONTROL PLAN 2007

PROVIDED UNDER SEPARATE COVER

ITEM NO. 3

FILE NO: PSC2010-04912

COMMUNITY LEASING POLICY

REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY, MANAGER

GROUP: COMMERCIAL SERVICES GROUP

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the Community Leasing Policy on Public Exhibition for 28 days.
 - 2) Report to Council on any submissions received, and in absence of any submissions approve the Community Leasing Policy without further reference to Council.
-

COUNCIL COMMITTEE MEETING –19 OCTOBER 2010**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Bob Westbury	That Council : 1) Place the Community Leasing Policy on Public Exhibition for 28 days. 2) A further report be provided to council.
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ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

335	Councillor John Nell Councillor Steve Tucker	It was resolved that the council committee recommendation be adopted.
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BACKGROUND

The purpose of this report is to recommend to Council the implementation of the Community Leasing Policy (**ATTACHMENT 1**) which has been written in order to formalise a transparent framework for classification of community groups in accordance with the Council Community Plan and other factors to provide appropriately mutually equitable rents to community groups.

The Community Leasing Implementation Guidelines provide a rating framework under which community group leases can be calculated according to factors such as the degree to which the group(s) provide front line service to the community which Council either provides or would otherwise provide and further takes into account the ability of the groups to pay rent and the relative management structure of the community group.

The proposed policy and rating structure also allows for the quantification of the value of discounts provided to community groups by Council and also requires the reporting of those values by both Council and the Community groups, thereby providing recognition of Council's contributions.

FINANCIAL/RESOURCE IMPLICATIONS

The policy if adopted will provide for formalised quantification of the value of discounts provided by way of rental discounts to community groups and the reporting of those values as detailed above.

LEGAL, POLICY AND RISK IMPLICATIONS

Nil.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

This policy will ensure that Council can more accurately quantify contributions by way of rental discounts to Community groups based upon direct contributions to the objectives of the Council Community Plan and other relevant factors.

CONSULTATION

Two way conversation with Councillors – Committee Rooms 24 August 2010

Discussion and review with relevant Sections within Council for which the Commercial Property Section manages community leases during July and August 2010.

OPTIONS

- 1) Adopt the Policy.
- 2) Reject the policy.

ATTACHMENTS

- 1) Community Leasing Policy

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



POLICY

Adopted:
Minute No:
Amended:
Minute No:

FILE NO: PSC2010-04912

TITLE: COMMUNITY LEASING POLICY

REPORT OF CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER

BACKGROUND

Council's Commercial Property section maintains a significant portfolio of leases and licenses to various community groups generally on behalf of other sections of Council being the asset owners. Historically there has not been a formalised process for the assessment of the contribution of the community groups relative to Council's Community Plan. Accordingly there has also not been a formalised system to readily quantify Council's contribution to such groups by way of provision of discounted rents.

OBJECTIVE

The objective of this policy is to provide Council with a structured, transparent framework, for dealing with Leases and Licences to Community Groups over Council owned property. The policy seeks to take into account all aspects of the transactions including classification of Community Groups in order to establish and maintain a mutually equitable schedule of rents to be applied to such properties.

PRINCIPLES

- 1) Port Stephens Council is committed to the following principles regarding the leasing and licensing of Council owned properties (or properties for which Council is the trustee in accordance with various legislative provisions) to community groups;
 - Classification of community groups in order to assess the relative discounts to be provided in respect to leases and licenses in accordance with the benefits provided to the community
 - Transparent dealings in all assessment
 - Having regard to market rents thereby quantifying Council's contribution to rental assistance in all dealings

- Ensuring that assessment of rents and licence fees in accordance with this policy have fundamental regard in all cases to relevant contributions to the objectives of Council's Community Plan
- The requirement of both Council and individual community groups to report the value of contributions made in accordance with this policy

POLICY STATEMENT

Port Stephens Council is party to a large portfolio of lease and/or licence transactions with various community groups in respect of Council owned land or land for which Council is (by virtue of legislative provisions) the trustee.

This policy seeks to ensure that all such transactions are transparent, mutually equitable and provide for recognition by publication of Council's contribution to community groups in the form of discounted rents (primarily) in return for contribution to community outcomes in accordance with Council's Community Plan.

RELATED POLICIES/DOCUMENTS

This policy is designed to support and complement the following existing Policies;

- Financial Assistance under Section 356 of The Local Government Act 1993
- Community Group Loans Policy

DEFINITIONS

Assessment Criteria	Assessment criteria forming part of this Policy included herein under separate heading
Community Groups	means organisations or groups that provide a Community Service as defined by this Policy.
Community Land	means land that is classified as community land under Division 1 of Part 2 of Chapter 6 of the Local Government Act 1993.
Community Service	means;
(a)	A service rendered under the Community Welfare legislation;
(b)	Any other service deemed by the Responsible Officer (in consultation and as assessed) to be of relevant benefit to the local community.
Council Community Plan	Port Stephens Council – Social and Community Plan (current version 2006-2010)
Council Owned Property	All real property, the title of which vests in Port Stephens Council and all other real property managed under Trust arrangements or other arrangements on behalf of the Crown or other parties by Port Stephens Council.
Operational Land	means land that is classified as operational land under Division 1 of Part 2 of Chapter 6 the Local Government Act 1993.

Responsible Officer means the Port Stephens Property Investment Co-ordinator

LEASE DOCUMENT FORMAT – (EFFECTIVE 1 JUNE 2010)

Leases Less than 3 years - all leases for Community Groups which are less than 3 (three) years in duration inclusive of the term of any option and therefore not requiring registration, are to be in the form of the Real Estate Institute of New South Wales Commercial Lease (FM00900).

Leases Exceeding 3 Years - all leases for Community Groups which are in excess of 3 (three) years in duration will be drafted by Harris Wheeler Lawyers under instruction via the standard Legal template process.

LICENCE FORMAT – (EFFECTIVE 1 JUNE 2010)

All Licenses implemented in accordance with this Policy are to be in the standard Licence format adopted by Council's Commercial Property section.

ASSESSMENT CRITERIA

For the purposes of determining an equitable schedule of rents, Community Groups are to be assessed in accordance with the following Property/Lease and Organisational specific Assessment Criteria;

ASSESSMENT SCALE

Property / Lease Specific Assessment				
Criteria	Assessment Scale (Points)			
	1	2	3	4
Land Classification and status of Lease (Net or Gross)	Operational / Gross	Operational / Net	Community / Gross	Community / Net
Lease Security	0 - 1 Months Bond	2 Months Bond	3 Months Bond	3 Months Bank Guarantee
Total Council Contribution to Fitout	>= \$5,000	\$3000 - \$4,999	< \$2,999	Nil required
Organisational Specific Assessment				
Criteria	Assessment Scale			
	1	2	3	4
Community Benefit / Link to Council Community Plan	Little or no direct or integrated link or targets within the Council Community Plan.	Services provided do not integrate into the current Council Commercial Plan but do provide significant benefits to the community.	Services provided do not integrate into the current Council Commercial Plan but do provide significant benefits to the community which are considered to reduce the burden on Council budgets.	Integrates directly into the Council Community Plan.
Organisational Structure	The organisation is a locally based service, outlet or project that forms part of a larger not for profit organisation. There is limited or no local area representation on the advisory committee or management structure..	The organisation is a locally based service, outlet or project that forms part of a larger not for profit organisation. It has a voluntary management committee, comprised partly of local area representatives.	The organisation is locally based; has a regional focus; is stand alone and not for profit. It has a voluntary management committee, comprised partly of local area representatives.	The organisation is locally based; stand alone and not for profit. It has a voluntary management committee, comprised mainly of local area representatives.
Number of Providers	Meets Social or Recreational needs only	One of a number of providers meeting needs outside of those identified in Council Community Plan	One of a number of providers providing Community Services	Unique service provided of great benefit and linked to Council identified Community Plan targets
Competition	Provide in entirety direct Competition to Commercial operators	Partly competing with Commercial Operators	Direct Competition but also with added or differentiated benefits to service users	Main activities do not compete with Commercial providers
Ability to raise income	Commercial (profit) operation	Has ability to charge fees and raise revenue	Some ability to raise revenue and charge fees which are varied in line with respective client's abilities to pay	Little or no opportunity for raising income
Access to Grant or similar funding	Access to State or Federal funding generally being Long term arrangements or which guarantee > 40% funding.	Access to State or Local funding generally being Long term arrangements or which guarantee > 40% funding.	Some (but generally) limited access to funding	No access to other funding sources

POINTS SCORES FROM ASSESSMENT SCALE

In order to determine the appropriate rental to be applied to a qualifying Community Group, the total assessment points are to arrived at by using the Assessment Scale above and then by reference to the Points Score data below, an appropriate discount from a market rental can be determined

Point score Range	Discount from Market Rental to be Applied
< 9 pts	Nil
9 to 14 pts	5%
15 to 24 pts	40%
25 to 36 pts	60%

ARRIVING AT MARKET RENTS FOR THE PURPOSE OF THIS POLICY

Market rents can be determined by utilising registered Valuers from within Council's Commercial Property Section. In the case of contentious rents or where other external factors may dictate, external Valuers may be engaged to appropriately determine a market rent with the associated fees for such valuations to be borne by the prospective tenant(s). In such situations, Council reserves its right to contest external valuations and seek/rely upon their own opinion.

This Policy assumes that any valuations obtained for the purpose of arriving at lease terms, are to be undertaken by appropriately qualified members of the Australian Property Institute with Certified Practising Valuer status.

APPORTIONING APPROPRIATE LICENCE FEES FOR THE PURPOSE OF THIS POLICY

Having regard for the fact that a Licence differs from a Lease in that it does not provide an exclusive use and generally only provides a limited use for a specific time and purpose, Licence fees will generally (but not always) be set at a lower level than a rent.

Licences may be issued for a wide range of uses including temporary access or occupation, communications towers and/or antennae and temporary right of way.

Licences over Community Classified Land - In respect to Licence fees applied under this Policy, the fees will generally reflect an apportionment of projected costs in terms of maintaining the Licence terms in addition to a standard administration fee charged at commencement.

Licences over Operational Land - For Licences to Community Groups over Operational land; the Licence fees will reflect an appropriate return to the asset manager/owner and will be set by the Responsible Officer in Consultation with the asset manager/owner.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

This policy will ensure that Council can more accurately quantify contributions by way of rental discounts to Community Groups based upon direct contributions to the objectives of the Council Community Plan and other relevant factors.

RELEVANT LEGISLATIVE PROVISIONS

Nil.

IMPLEMENTATION RESPONSIBILITY

Property Investment Coordinator

REVIEW DATE

1 October 2012

ITEM NO. 4**FILE NO: A2004-0242****QUARTERLY BUDGET REVIEW AS AT 30 SEPTEMBER 2010****REPORT OF: DAMIEN JENKINS – FINANCIAL SERVICES, MANAGER****GROUP: COMMERCIAL SERVICES**

RECOMMENDATION IS THAT COUNCIL:

- 1) Notes the estimated Statement of Cash Position to 30/09/2010 as detailed in ATTACHMENT 1 to this report.
- 2) Notes the estimated Statement of Restricted Funds Movements to 30/09/2010 as detailed in ATTACHMENT 2 to this report.
- 4) Approve the discretionary changes to the adopted recurrent budget, (totalling \$224,275 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 \$0 a nil 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 \$1,420,654.
- 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 – 19 OCTOBER 2010**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

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

The purpose of this report is to amend the Budget by bringing to Council's attention the proposals and issues that have an impact on the 2010/2011 Budget.

Council adopted its Integrated Strategic Plan 2010/2014 (Council Minute 164) on the 8th June, 2010 this included budget estimates for the 2010/2011 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:

- Increased income of \$2,000,000 and increased expenditure of \$1,828,000 for additional contract work (item 12).

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 \$250,000 due to Landscaping, Guest Facilities and Boundary Fence work at Halifax Holiday Park being deferred (item 1).
- Decreased expenditure of \$180,000 due to Boundary Fence work at Shoal Bay Holiday Park being deferred (item 3).
- Decreased expenditure of \$987,000 due to Reception & Café, Cabin Refurbishment, Spa Suite Upgrade and Shade Structures work at Samurai Beach Holiday Park being deferred (item 4).
- Decreased expenditure of \$1,560,000 due to Cabin Installation and Amenities Reconstruction work at Fingal Bay Holiday Park being deferred (item 5).
- Increased expenditure of \$120,000 upgrading Boomerang Park Detention Basin (item 6).
- Decreased Grant income of \$165,000 due to the income being received in 2008-2009 (item 16).
- Decreased income of \$200,000 and decreased expenditure of \$200,000 for Aquatic Centres due to work completed last financial year (item 19).

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

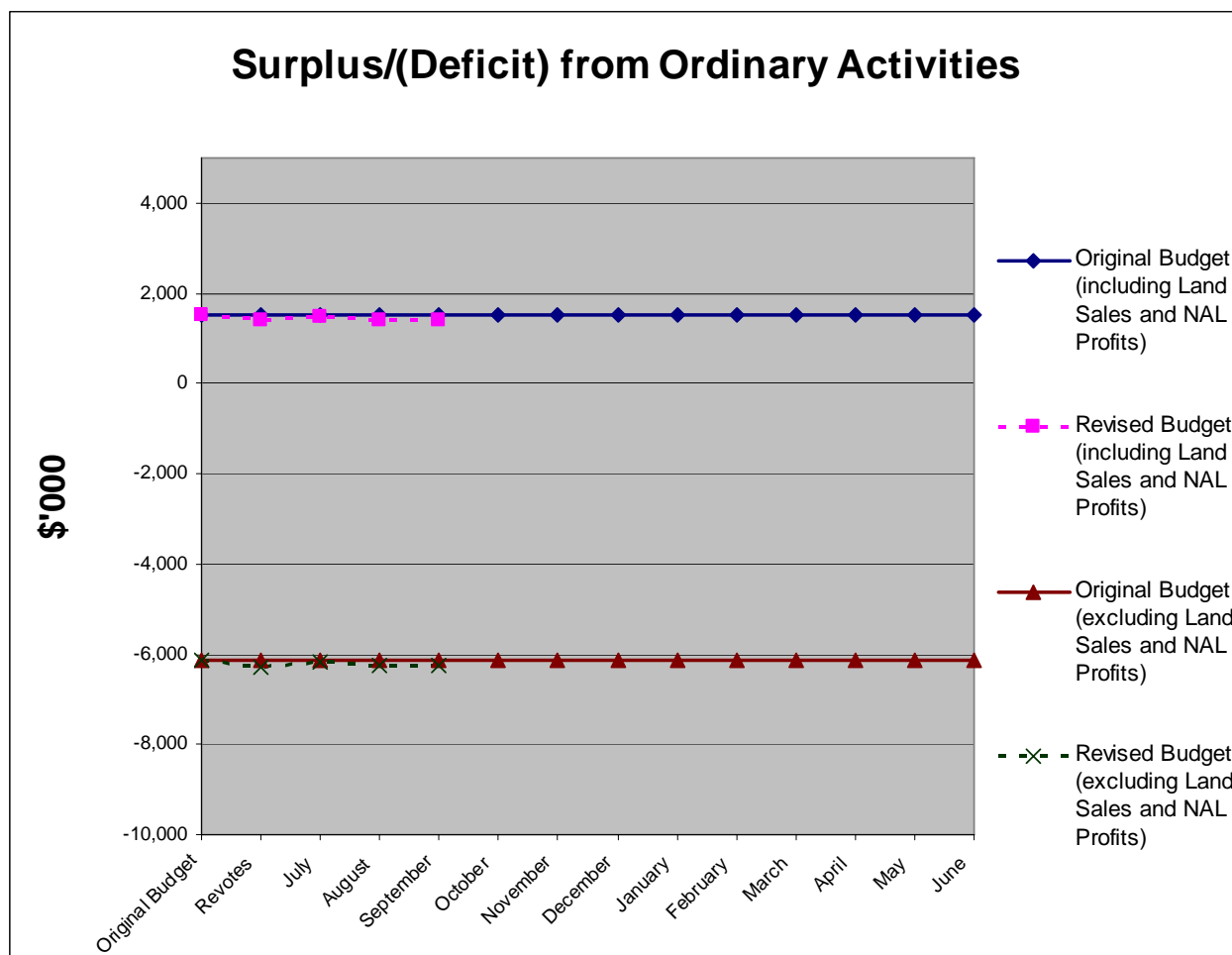
FINANCIAL/RESOURCE IMPLICATIONS

Council's Original 2010/2011 Budget estimate is a \$1,146,765 cash deficit after internal transfers, repayment of Capital lease and before depreciation of \$16.0 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 \$1,272,420 (Ref N of Attachment 1), after 2011 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	\$224,275	\$0	\$224,275	
Document 1 Table 2	\$0	\$0	\$0	
Previous Quarterly Budget Reviews	\$0	\$0	\$0	
Original Budget after transfers and before Revenue Loans and Depreciation	(\$60,108)	(\$263,700)	(\$323,808)	
Repayment of Capital Lease, Loans and Debtors		(\$822,957)	(\$822,957)	
Loan Funds to Revenue				
Net Available Surplus/(Deficit) Funds	\$164,167	(\$1,086,657)	(\$922,490)	
Revotes and Carry Forwards from previous year	(\$71,021)	(\$278,909)	(\$349,930)	
Revised 2010/2011 Cash Surplus (after transfers and before Depreciation)	\$93,146	(\$1,365,566)	(\$1,272,420)	N

PROJECTED FINANCIAL RESULT FOR 2010/2011

	Ref	After September Review	Original Budget
Total Operating Revenue	A	\$91,242,349	\$89,224,886
Less Total Operating Expenditure	B	(\$73,821,695)	(\$71,711,869)
Less Total Depreciation and Provisions Transferred	C	(\$16,000,000)	(\$16,000,000)
	D=B+C	(\$89,821,695)	(\$87,711,869)
Surplus/(Deficit) From Ordinary Activities Before Capital Amounts	E=A+D	\$1,420,654	\$1,513,017
Net Operating movement for September Review		(\$32,045)	
Total Budgeted Land Sales Profits	F	(\$4,000,000)	(\$4,000,000)
Total Budgeted Newcastle Airport (NAL) Profits	G	(\$3,663,000)	(\$3,663,000)
Surplus/(Deficit) From Ordinary Activities without Land Sale Profits, NAL Profits and Before Capital amounts	H=E-F-G	(\$6,242,346)	(\$6,149,983)



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 September Quarterly Budget Review Statement indicates that Council's financial position (excluding land sale profits) hasn't 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 30/09/2010.
- 2) Attachment 2 Estimated Statement of Restricted Funds Movements to 30/09/2010.

COUNCILLORS ROOM

- 1) Document 2 of 2010-2011 Quarterly Budget Review for September 2010, comparing Budgets to Actuals.

TABLED DOCUMENTS

- 1) Document 1 of 2010-2011 Quarterly Budget Review for September 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.

ATTACHMENT 1

ESTIMATED STATEMENT OF RESTRICTED FUNDS MOVEMENTS TO 30/06/2011 September 2010 Quarterly Budget Review			
	Ref	September 2010 Quarterly Budget Review	2011 Original Budget Forecast
Total Operating Revenue	A	\$91,242,349	\$89,224,886
Less Total Operating Expenditure	B	(\$73,821,695)	(\$71,711,869)
Less Total Depreciation and Provisions Transferred	C	(\$16,000,000)	(\$16,000,000)
	D=B+C	(\$89,821,695)	(\$87,711,869)
Surplus/(Deficit) From Ordinary Activities Before Capital Amounts			
	E=A+D	\$1,420,654	\$1,513,017
Add Back: Depreciation and Provisions Transferred	C	\$16,000,000	\$16,000,000
Less Councils Share of Newcastle Airport Profit	W	(\$3,663,000)	(\$3,663,000)
Cash Surplus From Operations	F=A+B+W	\$13,757,654	\$13,850,017
Transferred to Restricted Funds	G	\$13,664,508	\$13,910,125
Cash Surplus / (Deficit) From Operations After Transfers	H=F-G	\$93,146	(\$60,108)
Total Capital Income	I	\$9,952,869	\$9,984,500
Total Capital Expenditure	J	(\$30,784,140)	(\$29,678,903)
Surplus/(Deficit) From Capital Works	K=I+J	(\$20,831,271)	(\$19,694,403)
Transferred from Restricted Funds	L	(\$20,288,662)	(\$19,430,703)
Cash Surplus / (Deficit) From Capital Works After Transfers	M=K-L	(\$542,609)	(\$263,700)
Total Cash Surplus / (Deficit) After Transfers	N=H+M+X	(\$1,272,420)	(\$1,146,765)
RECONCILIATION OF CASH POSITION			
Estimated Cash Position as at 01/07/2010	O	\$16,702,326	\$16,702,326
Estimated Cash Position as at 30/06/2011	P	\$13,156,216	\$14,385,447
Increase/(Decrease) in Cash Balance	Q=P-O	(\$3,546,110)	(\$2,316,879)
Represented By:			
Estimated Opening Restricted Funds Balance	R	\$27,284,292	\$27,284,292
Closing Restricted Funds Balance	S	\$25,010,602	\$26,114,178
Increase/(Decrease) in Restricted Funds Balance	T=S-R	(\$2,273,690)	(\$1,170,114)
Balance sheet movements for Revenue	X	(\$822,957)	(\$822,957)
Total Cash Surplus/ (Deficit) from Operations & Capital	N=Q-T	(\$1,272,420)	(\$1,146,765)
Principal of Loan Funds Repaid From Reserves	U	(\$3,165,409)	(\$3,165,409)
Increase/(Decrease) in Cash Balance	Q=T+N	(\$3,546,110)	(\$2,316,879)

ATTACHMENT 2

ESTIMATED STATEMENT OF RESTRICTED FUNDS MOVEMENTS TO 30/06/2011 September 2010 Quarterly Budget Review					
RESTRICTED FUNDS	Estimated balance as at 30/06/2010 after June Review	Recurrent Budget	Capital Budget	Balance Sheet Movements	Estimated balance as at 30/06/2011
SECTION 94	\$9,948,813	\$395,690	\$664,514		\$11,009,017
DOMESTIC WASTE MANAGEMENT	\$1,168,331	\$1,409,999	(\$1,850,000)	(\$460,635)	\$267,695
Sub Total. Externally Restricted	\$11,117,144	\$1,805,689	(\$1,185,486)	(\$460,635)	\$11,276,712
BUSINESS DEVELOPMENT RESTRICTED FUND	(\$2,403,780)	\$2,546,881	(\$8,240,986)	\$6,224,551	(\$1,873,334)
INVESTMENT PROPERTIES DEPRECIATION FUND (INVESTMENT PROPERTIES SINKING FUND)	\$2,624,970	\$1,205,327	(\$17,150)		\$3,813,147
ASSET REHABILITATION RESERVE	\$93,289	\$500,000	(\$527,900)		\$65,389
FLEET MANAGEMENT (PLANT)	\$3,444,305	\$2,333,421	(\$3,241,003)	\$515,873	\$3,052,596
OTHER WASTE SERVICES	\$3,304,180	\$0	\$0		\$3,304,180
QUARRY DEVELOPMENT	\$754,109	\$12,799	\$0		\$766,908
BUSINESS OPERATIONS RESTRICTED FUND	(\$5,034,816)	\$2,173,603	(\$3,132,199)	(\$1,785,992)	(\$7,779,404)
EMPLOYEE LEAVE ENTITLEMENTS	\$6,246,556	\$0	\$0		\$6,246,556
BEACH VEHICLE PERMITS	(\$53,569)	\$3,711	\$0		(\$49,858)
DRAINAGE	\$560,181	\$886,280	(\$1,130,000)	(\$143,333)	\$173,128
INTERNAL LOAN	(\$144,533)	\$150,203	\$0		\$5,670
TRANSPORT LEVY	(\$19,040)	\$350,000	(\$490,000)		(\$159,040)
ENVIRONMENTAL LEVY	\$309,429	(\$338,166)	\$0		(\$28,737)
ADMINISTRATION BUILDING SINKING FUND	\$836,695	\$413,079	(\$1,234,864)		\$14,910
DEPOT SINKING FUND	\$963,452	\$354,420	\$0		\$1,317,872
RTA BYPASS ROADS MTCE RESTRICTED FUND	\$1,755,002	\$0	(\$250,000)		\$1,505,002
RESTRICTED CASH ESTIMATED BALANCE	\$2,475,262	(\$263,806)	(\$839,074)	\$0	\$1,372,382
COUNCILLOR WARD FUNDS	(\$17,824)	\$1,200,000	\$0		\$1,182,176
INFORMATION TECHNOLOGY STRATEGY	\$195,985	(\$9,000)	\$0		\$186,985
PROVISION FOR LOCAL GOVT ELECTION	\$100,000	\$100,000	\$0		\$200,000
PARKING METER RESERVE	\$177,295	\$240,067	\$0		\$417,362
Sub Total. Internally Restricted	\$16,167,148	\$11,858,819	(\$19,103,176)	\$4,811,099	\$13,733,890
RESTRICTED FUNDS TOTAL	\$27,284,292	\$13,664,508	(\$20,288,662)	\$4,350,464	\$25,010,602

ITEM NO. 5

FILE NO: PSC2009-02637

AMENDMENT TO AUDIT COMMITTEE MEMBERSHIP

REPORT OF: WAYNE WALLIS –CORPORATE SERVICES, GROUP MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the recommendation outlined in the DLG Internal Audit Guidelines – September 2010 to exclude the Mayor from Audit Committee membership.
- 2) Adopt amendment to item 3, Composition and Tenure of the Audit Committee Charter to exclude the Mayor from Audit Committee membership.

COUNCIL COMMITTEE MEETING –19 OCTOBER 2010 RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor John Nell	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

337	Councillor John Nell Councillor Sally Dover	It was resolved that the recommendation be adopted
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BACKGROUND

The purpose of this report is to recommend amendment to *item 3, Composition and Tenure* of the Audit Committee Charter to exclude the Mayor from Audit Committee membership as outlined within item *4.3 Structure and Membership* of the new Division of Local Government Internal Audit Guidelines – September 2010.

Council at its meeting on 9 February 2010 resolved to adopt the Audit Committee Charter and appoint two external independent members and two elected members (one being the Mayor) as Council representatives on the Audit Committee.

On 14 September 2010 the Department of Premier and Cabinet (Local Government) released Circular to Councils 10/22 – Revised Internal Audit Guidelines. The revised guidelines reinforce the need for independence at both an Audit Committee and

internal audit level. A number of important points arising from the revised guidelines include:

Moves from the previous position of strongly recommending to stating that Councils should have an internal audit function;

The composition of the Audit Committee should have a majority of independents;

Councillors can still be on the Audit Committee but the Mayor is now excluded from the Committee;

Councillor and external members of the committee need to be independent – they must be free from any management, business or other relationships that could be perceived to interfere with their ability to act in the best interests of the Council – members of the committee need to be both independent and be seen to be independent;

The General Manager is strongly encouraged to enable the Audit Committee to conduct its activities without undue influence from the General Manager. The General Manager should allow the committee to meet separately with each of the internal auditor and the external auditor without the presence of management on a least one occasion each year;

The chief audit executive must confirm to the Audit Committee at least annually the organisational independence of the internal audit activity;

Requires the General Manager to ensure that an internal audit function is properly established within Council in accordance with the guidelines. This requires a clear and properly defined reporting relationship ensuring that the internal auditor is empowered to perform their role working with management. The direct reporting line to the Audit Committee also acts as an adequate safeguard in the event of a serious breakdown in internal controls or internal control culture at senior levels in the organisation;

The Audit Committee should recommend to Council who should be the internal audit provider and/or has input into the selection of the Chief Audit Executive;

Council may request the Chairperson of the Audit Committee to address the Council; to answer any enquiries about the operation of the Audit Committee;

The Audit Committee chair should set the timing and agenda of the meetings.

Other important changes include:

Suggesting that internal audit should play a vital role in ensuring that the strategies adopted by Council are implemented through the integrated planning and reporting framework;

Suggesting that internal audit is an on-going mechanism to ensure that the recommendations of the Promoting Better Practice reviews have been fully implemented;

Emphasises the potential for sharing resources with other Councils to undertake the internal audit function;

Requires internal audit to have an external quality assessment every 5 years;

The internal audit staff should have knowledge of key information systems technology risks and controls and available technology-based audit techniques;

A rolling three year audit plan should be prepared and reviewed at least annually to ensure that it still aligns with Council's risk profile;

Councillors should have access to the minutes of the Audit Committee;

As the minutes may contain confidential information, broader public access should be controlled. However the Council should be mindful of its obligations under the Government Information (Public Access) Act 2009 to provide greater transparency and accountability.

The guidelines recommend the structure and membership of an Audit Committee in the NSW local government environment depends on the specific needs of the Council. Membership should have a balance of independent external members and Councillors – excluding the Mayor. It is good practice in governance for Council staff not to be members of the committee and the chair to be an independent external member.

This report seeks to amend item 3 and item 3.1 of the Audit Committee Charter (endorsed by Council on 9 February 2010 Minute No. 016) as amended in accordance with DLG guidelines as follows:

"3. COMPOSITION AND TENURE

The Committee will consist of four voting members – two elected members of Council (excluding the Mayor) and two external independent members.

The members of the Committee, taken collectively, will have a broad range of skills and experience relevant to Council's operations.

Elected Member of Council

The elected members of Council appointed to the Committee will have relevant and appropriate experience in business, risk, law and financial management.

Appointment of the elected members to the Committee will be determined by Council as resolved from time to time.

Council may resolve to appoint an elected member for consecutive terms."

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial implications arising from amendment to Audit Committee membership.

LEGAL, POLICY AND RISK IMPLICATIONS

The Audit Committee and Internal Audit Charters remain consistent with all relevant legislative requirements and DLG guidelines.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

It is considered that the internal audit function and Audit Committee will add significant rigour to Council's governance framework, risk control, compliance and financial reporting and will enhance Council's reputation, operations and financial sustainability.

CONSULTATION

The establishment of the Audit Committee and the Audit Committee Charter were endorsed by Council on 9 February 2010 Minute No. 016.

The revised DLG Audit Guidelines have been distributed to the independent audit committee members and relevant staff.

OPTIONS

- 1) Accept the recommendations
- 2) Amend the recommendations
- 3) Reject the recommendations

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Revised Internal Audit Guidelines

TABLED DOCUMENTS

Nil.

ITEM NO. 6

FILE NO: PSC2007-02386

FINANCIAL ASSISTANCE POLICY - REVIEW

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Revoke the Financial Assistance Policy adopted on 19 May 2009 (Minute No. 151).
- 2) Adopt the Financial Assistance Policy shown at **ATTACHMENT 1**.

COUNCIL COMMITTEE MEETING –19 OCTOBER 2010**RECOMMENDATION:**

	Councillor Steve Tucker Councillor Shirley O'Brien	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

338	Councillor Glenys Francis Councillor Steve Tucker	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to provide Council with the outcome following public exhibition of the Financial Assistance Policy.

Council at its meeting of 10 August 2010, resolved to increase the "Rapid Response" fund amount from \$200 to \$500 with the annual limit of \$2,000 per Councillor to remain in place.

The draft policy was placed on public exhibition from 26 August 2010 to 23 September 2010 with no submissions received.

FINANCIAL/RESOURCE IMPLICATIONS

The financial implications are covered in the existing budget.

LEGAL, POLICY AND RISK IMPLICATIONS

Section 356 of the Local Government Act 1993, allows Council to provide funds to the community to conduct functions of Council.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The current policy provides significant opportunity for Council to support building the capacity of its community and improving its amenity. It provides equitable access to financial assistance for all across the Port Stephens LGA.

CONSULTATION

The Port Stephens Community through public exhibition.

OPTIONS

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

ATTACHMENTS

- 1) Financial Assistance policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



POLICY

Adopted: 19/05/2009

Minute No: 151

Amended:

Minute No:

FILE NO: PSC2007-2386

TITLE: FINANCIAL ASSISTANCE UNDER SECTION 356 OF THE LOCAL GOVERNMENT ACT 1993

REPORT OF: EXECUTIVE OFFICER

BACKGROUND

Since the Department of Local Government's *Better Practice* Review of Port Stephens Council in 2005 and its Circular 06-32, Council has been aware that its existing policy (adopted in 1997 and amended in 2004 – titled Request for Financial Assistance) has been inadequate to meet the needs of Council to support its community and build capacity.

This policy replaces the previous policy *Request for Financial Assistance*. The terms 'Minor Works' and Profit from Land Sales (formerly "Ward Funds") are also rescinded for the purposes of this policy and the term Financial Assistance Program describes the methods of distribution of Council funds prescribed by this policy.

OBJECTIVE

- To provide an equitable, transparent, accountable and coordinated approach for providing financial assistance to community groups in accordance with the terms of Section 356 of the Local Government Act 1993.
- To provide equitable financial assistance to people and organisations, bearing in mind that the Council is trustee and custodian of public assets and is bound by its charter to effectively account for and manage those assets.
- To promote a sense of community, community harmony and social cohesion.
- To assist communities under stress.
- To ensure fair distribution of activities and services throughout Port Stephens.

PRINCIPLES

- 1) Funds provided for financial assistance to any part of the community are available through the whole community's contribution via rates, taxes and the sale of its assets.
- 2) Equity of opportunity to apply for financial assistance by all groups within the community.
- 3) Accountability to the community for equitable, transparent processes to dispense financial assistance is the responsibility of Council.
- 4) Accountability of the recipients of financial assistance to use those funds in accordance with the conditions of the assistance, and to be prepared to acquit them if necessary.
- 5) Projects for which financial assistance is provided by Council should benefit and/or build the capacity of the Port Stephens LGA community and/or its constituent communities.

POLICY STATEMENT

Port Stephens Council provides grants to non-profit community groups through a Financial Assistance Program. Council's goal in offering this program is to support local activities and projects which improve its community's capacity and meet the needs of its residents.

The Mayoral funds are provided annually to allow the Mayor to respond to contingent requirements that may arise from time to time. The funds may only be used at the discretion of the Mayor.

(a) Financial Assistance Program Components

The four components of the Financial Assistance Program are:

1. Community Financial Assistance Grants: a bi-annual process of competitive applications for financial assistance from a fund totalling \$36,000. See Appendix 1 of this Policy for detailed process and documentation. Maximum grants of \$2000; to be spent within Port Stephens LGA; successful applicants determined through a sub-committee of Council. General Business Rules for this grant apply – see Requirements section below for full details.

Examples of this type of grant could include Heritage : repair of heritage assets, acquire heritage item, publication of local history; Sports & Community Service: team uniforms, upgrade amenities, purchase of equipment; Anniversaries: local group – significant celebrations eg 80th anniversary; General: purchase of equipment for halls, parks, playgrounds.

2. Rapid Response Financial Assistance – an annual allowance of \$2000 for each Councillor, with a discretionary limit of \$500, which can be dispensed at the request of the Councillor and requiring only the signature of the Mayor and the General Manager. Rapid Response Financial Assistance must subsequently be endorsed by Council. See Appendix 2 of this Policy for process and documentation. General Requirements apply – see below.

*Examples could include: **Specific** occasion refund of hall fees (not ongoing; Donation to charity (one off; Inscription on a commemorative plaque; Purchase of cutlery for Council or Community facility; Other one-off small items not requiring acquittal.*

3. Community Capacity Building Grants – special projects (excluding events) that provide specific benefits to the community of Port Stephens. Grants are not competitive, maximum \$10,000 and are determined by Council after completion of an application. See appendix 3 of this Policy for process and documentation. General Requirements apply, and in addition detailed project plans, outlines of community benefit to be gained, and acquittal are required.

Examples could include: Upgrades to community facilities; Security lighting at sporting grounds, parks; Fencing a facility or repairs to a heritage asset; Provision of sun protection at schools.

4. Special Purpose Resolution of Council for financial relief. This could be a policy, such as the Financial Assistance for Disposal of Waste in Port Stephens Policy adopted in 2005; or by way of a specific resolution of Council related to a class of persons.

The following requirements apply to all components, however some may be waived in the case of the Special Purpose Resolution of Council component.

Requirements – Financial Assistance Program

- 1) Funding must be spent within the LGA of Port Stephens, with reasonable provision for equity between Wards, although all requests should be treated on their merits.
- 2) Funding for a group or individual or project will be made once only in any three year period. Grants to individuals are subject to 28 days' public notice prior to a decision of Council and the legislation precludes funding being made and later ratified.
- 3) Funding for events are excluded from the Financial Assistance Program, and are the responsibility of the Council's Economic Development Unit.
- 4) Funding must be made to an incorporated association or other formally constituted body. Funding to individuals is allowed under Section 356 subject to there being no objections after a 28-day public exhibition process. Funding for an individual or individuals may not be available under the second component – Rapid Response Financial Assistance – as the exhibition

requirement would make it impractical to achieve the quick turnaround that this component is designed to meet.

- 5) Funding must be expended in accordance with the functions of Council.
- 6) Assistance would not be available to groups from more than one Councillor. Attempts to seek multiple small amounts from different Councillors under any component of the Financial Assistance Program would automatically disqualify a group from any financial assistance.
- 7) Council funding may be used in conjunction with funding from other sources (outside Council) provided that such funding is disclosed at the time of application for financial assistance to Council.
- 8) In all components, funding must be used for the purpose for which it is granted.
- 9) Applications for financial assistance for sums greater than \$500 should be accompanied by details of the project, any additional funding to be obtained from sources other than Council, and details of proposed expenditure.
- 10) Funding amounts over \$500 must be acquitted using Council's Financial Assistance Acquittal form, and provide a report on the outcome of the project to Council. Council may waive the requirement for a report, however the funds must still be accounted in the acquittal process.
- 11) Where the project to be funded is of a capital nature and is not on a Council-owned or operated facility or land, a statement from the proposed asset owner that Council will not be held responsible for on-going maintenance should accompany a request for financial assistance.
- 12) Generally, projects that ordinarily would fall within the Council's capital works program at a low priority will only be funded through the Financial Assistance Program if there is no impact on higher priority projects and associated resources, and if such funding is not to the detriment of other projects of merit. It is the responsibility of the Group Manager Facilities & Services to determine potential impacts and make a recommendation to the General Manager and Council accordingly.
- 13) 'Matching funds' from existing budgeted items cannot be appropriated away from the purpose for which they were approved to support low priority capital works.

Community Financial Assistance Component – Adjudication

Where competitive grants are advertised and applications received, these will be considered by a sub-committee of Council, comprising the Mayor, the General Manager and one Councillor from each Ward. The Executive Officer would convene the sub-committee once grant applications are closed.

The sub-committee would adjudicate the applications on the basis of the criteria and business rules, and make recommendation to Council on those to be funded. Where applications are not funded, the sub-committee should provide reasons that can be conveyed to applicants to assist in future grant proposals.

The General Manager is responsible for reporting to Council annually and certifying that expenditure under the Financial Assistance Program meets the necessary probity and transparency required by the Act. The Financial

Assistance Program expenditure is reported in the Annual Report (Statutory Statements) as part of the requirements for s356.

(b) Mayoral Fund

The Mayoral Fund is provided annually to allow the Mayor to respond to contingent requirements that may arise from time to time. The Fund may only be used at the discretion of the Mayor.

Mayoral funds must be used to provide benefits that reflect the whole of Port Stephens LGA, but are not geographically confined to the LGA. Examples include donations on behalf of the Port Stephens community to other communities suffering hardship through natural disasters etc.

Mayor Fund expenses are related to non-personal matters associated with the Mayor's office such as small mayoral donations, ceremonies, wreaths, overseas visitors, luncheons related to Council business, civic ceremony expenses, promoting community relations (eg Sister Cities).

Provision of memorabilia is the responsibility of the Communications & Customer Relations Section of Council. That Section will ensure that there is a stock of suitable merchandise for ceremonial and associated purposes.

The General Manager is responsible for reporting to Council annually and certifying that the Mayoral Fund expenses meet the necessary probity and transparency required by the Act. Mayor Fund expenditure is reported in the Annual Report (Statutory Statements) as part of the requirements for s356.

RELATED POLICIES

Port Stephens Council Code of Conduct
Financial Assistance for Disposal of Waste
Community Groups Loans Policy
Corporate Sponsorship Policy
Debt Recovery & Hardship Policy
Rate Donation for Community Groups Policy
Council Charter

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

This policy contributes to the capacity building of the Port Stephens Community.

ECONOMIC IMPLICATIONS

This policy contributes to the economic capacity of the Port Stephens Community.

ENVIRONMENTAL IMPLICATIONS

This policy enables Council to contribute to projects that actively protect or revitalise the environment of Port Stephens.

RELEVANT LEGISLATIVE PROVISIONS

Section 356, Section 8, Local Government Act 1993
Department of Local Government Circular 06-32
The Independent Commission against Corruption Act 1988

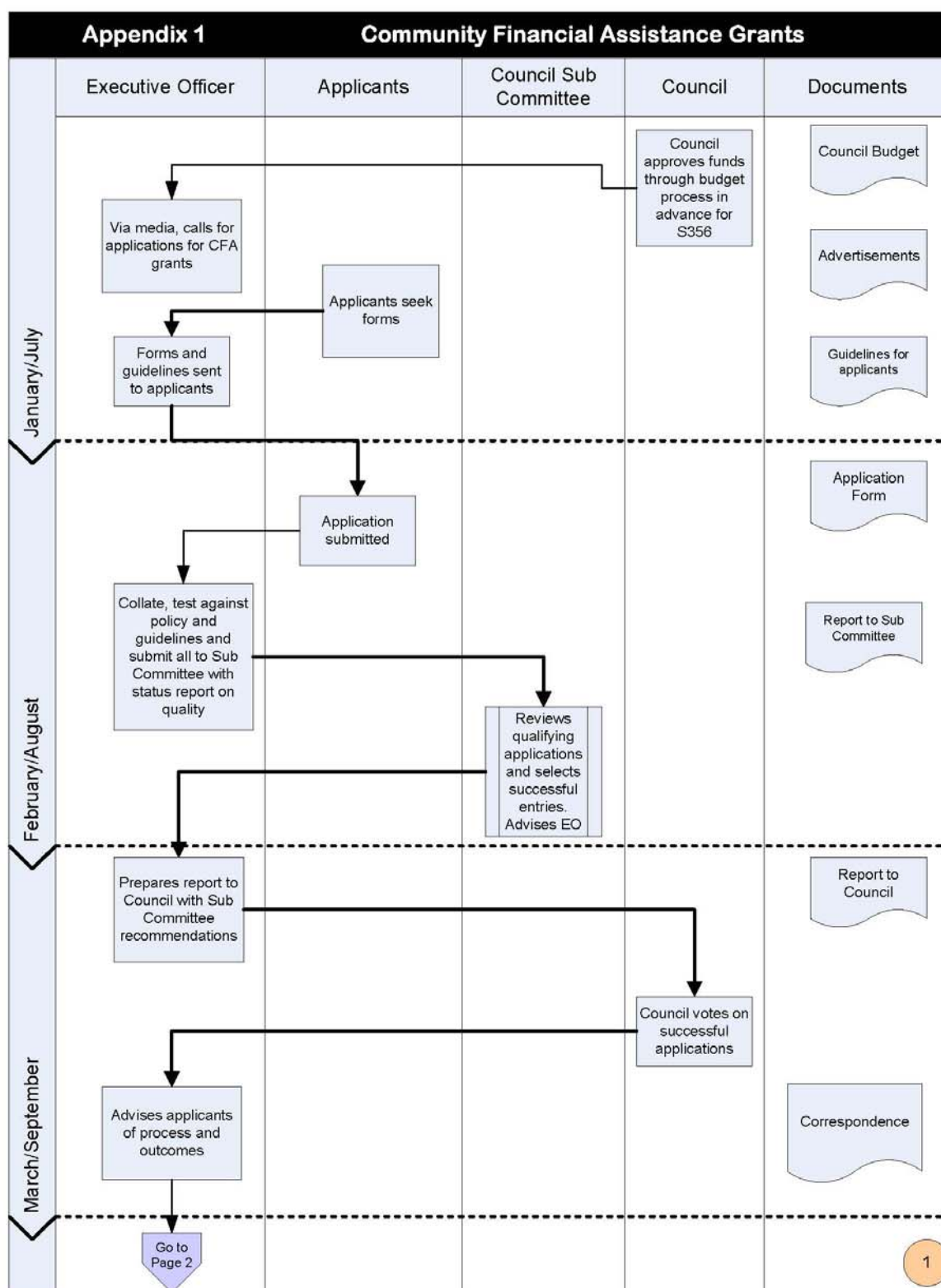
IMPLEMENTATION RESPONSIBILITY

Executive Officer

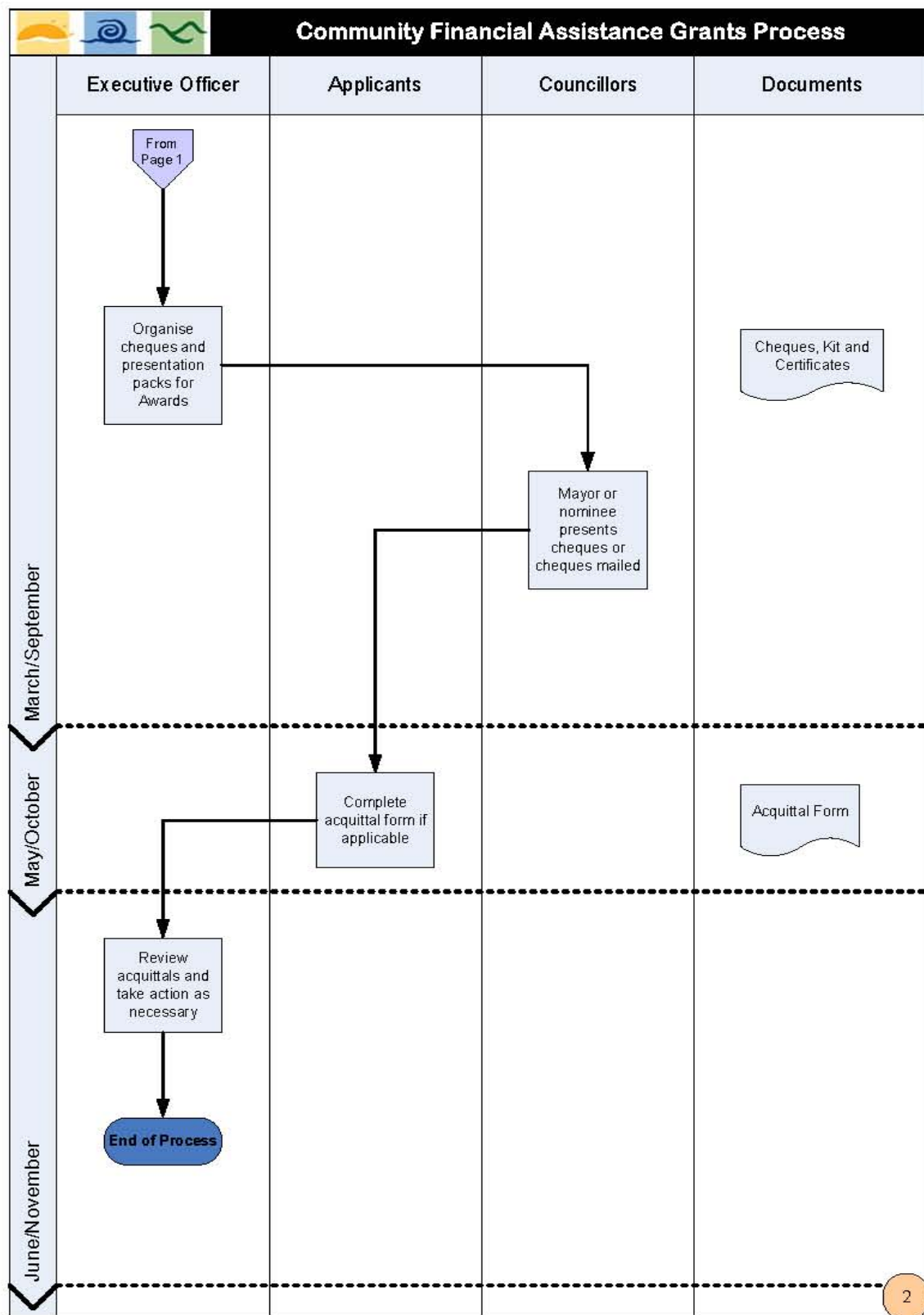
REVIEW DATE

One year from the date of adoption of the policy.

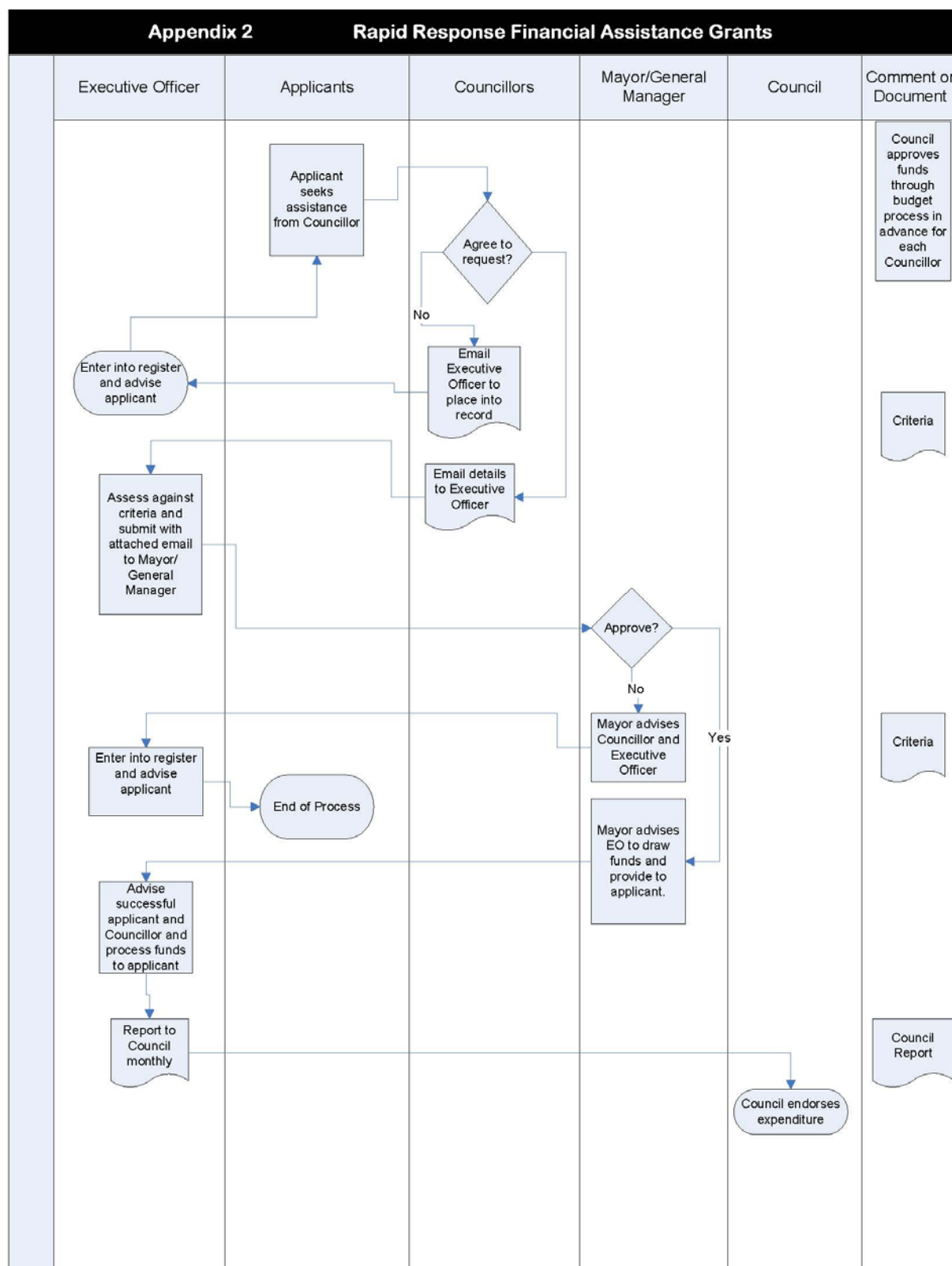
APPENDIX 1



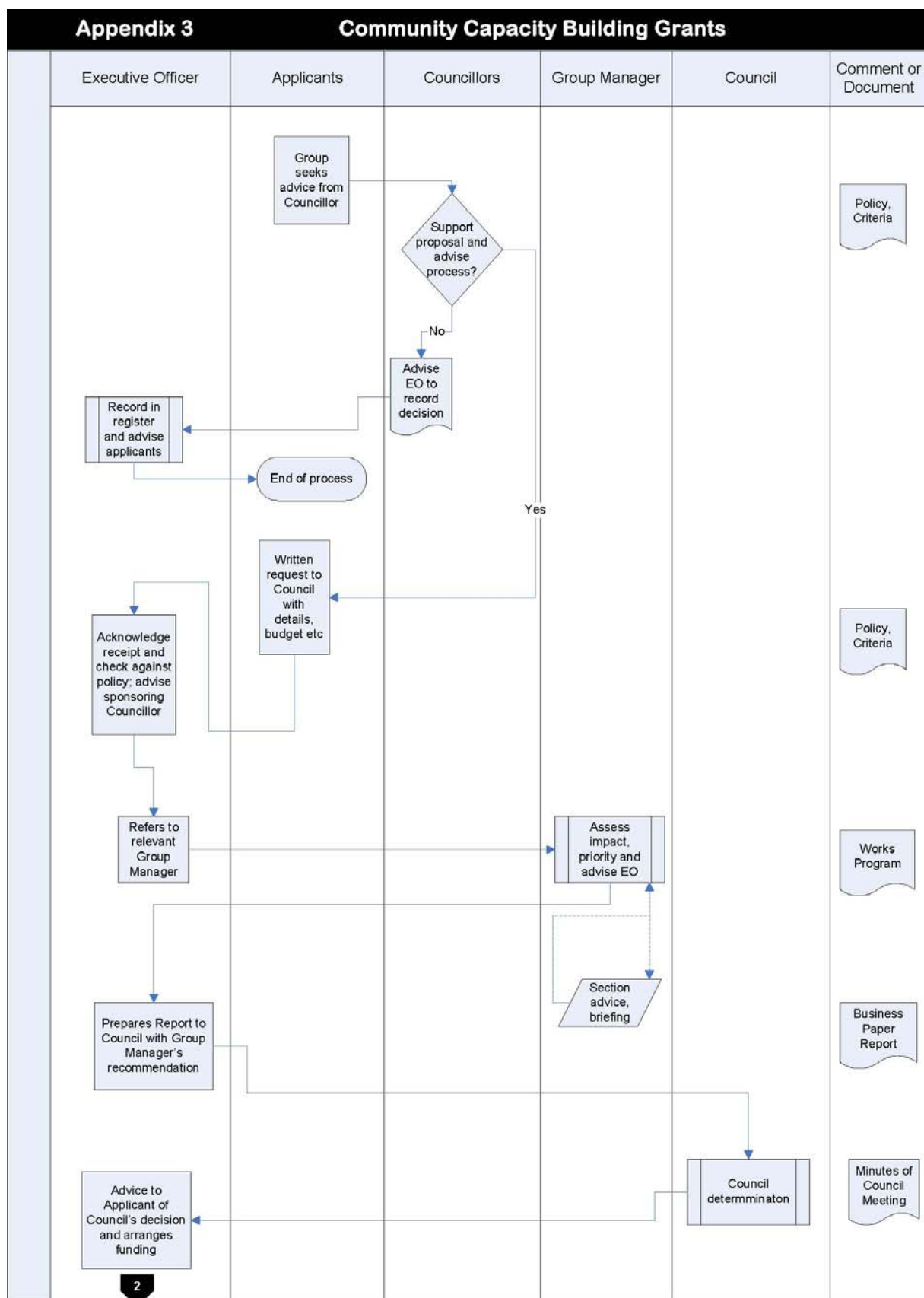
APPENDIX 1 (cont)



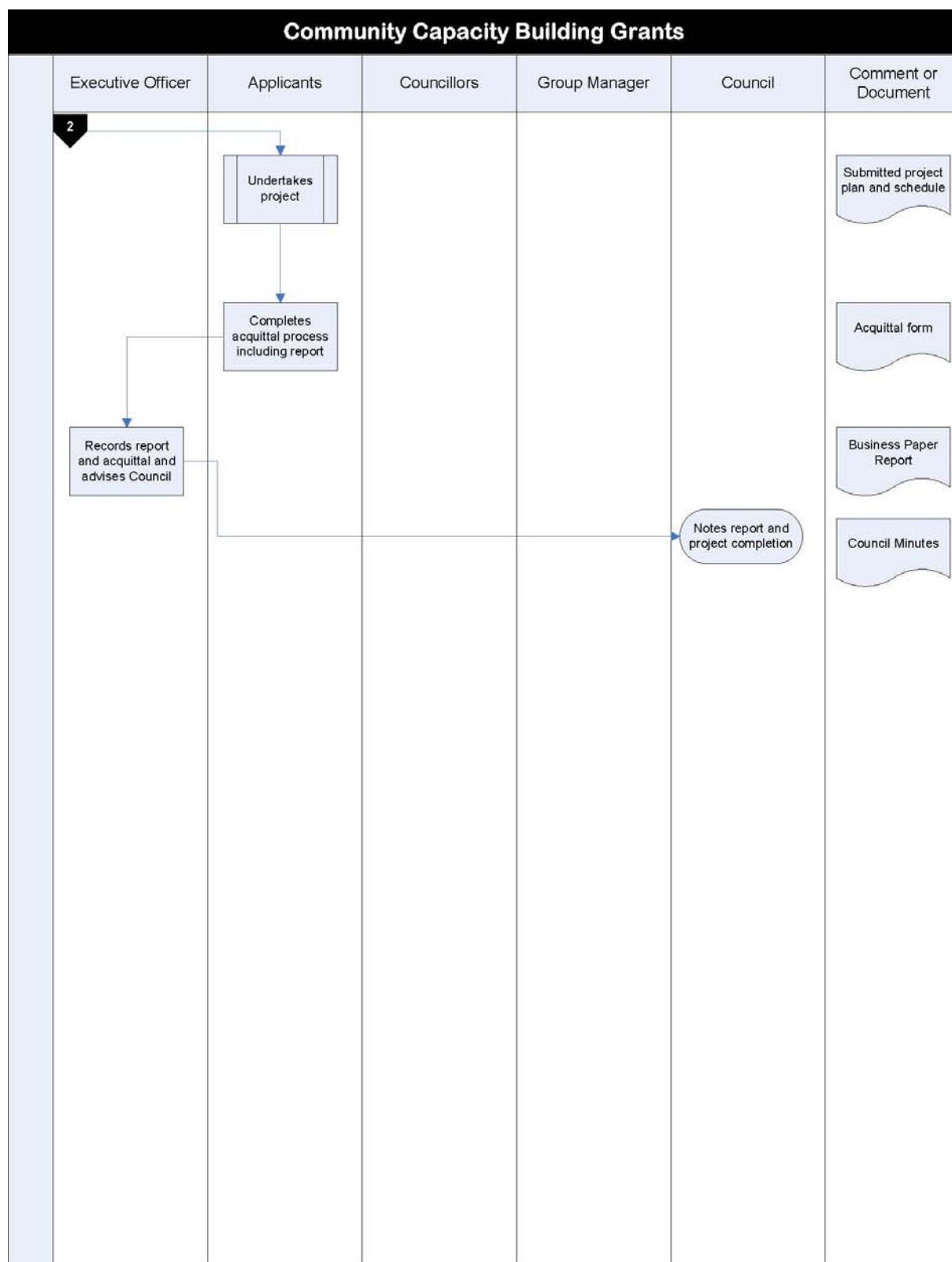
APPENDIX 2



APPENDIX 3



APPENDIX 3 (cont)



ITEM NO. 7

FILE NO: PSC2010-05244

FINANCIAL ASSISTANCE – SCHOOL CANTEENS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Not waive or reimburse the food inspection fees for school canteens.
-

COUNCIL COMMITTEE MEETING –19 OCTOBER 2010**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That Council reimburse the food inspection fees for school canteens from Ward Funds.
--	--	--

ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

339	Councillor Ken Jordan Councillor Peter Kafer	It was resolved that the council committee recommendation be adopted.
------------	---	---

BACKGROUND

The purpose of this report is to provide Council with further information requested at the Ordinary Council meeting of 10 August 2010, with respect to financial assistance for school canteen food inspections.

Council at its meeting on 10 August 2010, resolved:

"That the matter of reimbursement to school canteens for food inspections fees be deferred to allow for further information to be provided to Council."

As Council is aware all food businesses in NSW, including school canteens must comply with the Food Act 2003, Food Regulations 2004 and the Food Standards Code. Council conducts inspection of school canteens to ensure the appropriate standards are being met.

School canteens are categorised as P3 under Councils surveillance regime, meaning that they are lower risk and warrant only one inspection per year. This category is not charged an annual administration fee (\$250) that is applicable to other high risk premises such as takeaway food shops and restaurants, but is still levied with a fee

when an inspection is carried out (\$94) to cover Councils surveillance costs. The fee is considered to be a valid business cost of any food related business.

Earlier in 2010 a memorandum was circulated to school principals advising them that schools should remind Councils that they should not be charged an annual administration fee for inspections, as most canteens are not for profit by P&C Associations. This memorandum was distributed by "In Principal". The information provided by the memorandum is not based on any legislative right or guideline.

Council's fees and charges are set at \$94 per inspection currently, which covers the costs of staff to conduct the inspection and provide the necessary approval in accordance with the Standards. Council currently inspects 24 schools. Some of these schools are state government facilities.

FINANCIAL/RESOURCE IMPLICATIONS

The budgeted income for 2010/11 to conduct the inspection is \$2256.00. If Council is of the view that the fees should be waived an alternative means of funding will be required to cover the costs. An alternative means may be Ward funds.

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required under the Food Act 2003, to conduct the inspection of school canteens and is able to recover the costs within the Food Authority's recommended fee range. Council's fees are well within this range.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

Council officers

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 8

FILE NO: PSC2010-03596

FINANCIAL ASSISTANCE – LIFE EDUCATION AUSTRALIA

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGERS OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Consider the request for financial assistance to fund the transportation costs of the Life Education van within Port Stephens Local Government area.

COUNCIL COMMITTEE MEETING –19 OCTOBER 2010**RECOMMENDATION:**

	Councillor John Nell Councillor Glenys Francis	That Council support the request for financial assistance to fund the transportation costs of the Life Education van within Port Stephens Local Government area from Ward Funds.
--	---	--

ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

340	Councillor John Nell Councillor Sally Dover	It was resolved that the council committee recommendation be adopted.
-----	--	---

BACKGROUND

The purpose of this report is to provide Council with the opportunity to consider providing financial assistance to Life Education, Australia.

On Tuesday, 5 October 2010, Councillors were provided with a two way conversation from a representative of Life Education. At the presentation Councillors were given an insight into the functions and services provided by Life Education in NSW and in particular within the Port Stephens local government area.

Council is in receipt of a request from Life Education to provide funds to the amount of \$4200 to offset the transportation costs associated with moving the Life Education around Port Stephens from school to school. Council has previously provided funds for this activity.

FINANCIAL/RESOURCE IMPLICATIONS

Should Council wish to provide assistance the \$4,200 would be funded from Ward funds. There is no provision for this in the 2010-11 operational budget.

LEGAL, POLICY AND RISK IMPLICATIONS

Section 356 of the Local Government Act 1993, allows Council to provide funds to the community for such services.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social implications through such a service within the schools of Port Stephens was highlighted at the representation. Life Education provides education to students ranging from matters such as stranger danger, drug and alcohol matters, sex education and other modules to raise the awareness of students which will better equip them for the life ahead.

CONSULTATION

Councillors
Life Education Australia

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 9

INFORMATION PAPERS

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

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 19 October, 2010.

No:	Report Title	Page:
1	CASH AND INVESTMENTS HELD AT 30 SEPTEMBER 2010	
2	PETITION OBJECTING TO THE PROPOSED CYCLEWAY CONSTRUCTION ALONG SANDY POINT ROAD, CORLETTE	

COUNCIL COMMITTEE MEETING –19 OCTOBER 2010 RECOMMENDATION:

	Councillor Steve Tucker Councillor Shirley O'Brien	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

341	Councillor Steve Tucker Councillor Sally Dover	It was resolved that the recommendation be adopted.
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MATTER ARISING

342	Councillor Glenys Francis Councillor John Nell	Item 2 It was resolved that Council investigate conducting an education programme for people using mobility scooters.
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COUNCIL COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

CASH AND INVESTMENTS HELD AT 30 SEPTEMBER 2010

REPORT OF: DAMIEN JENKINS – FINANCIAL SERVICES, MANAGER
GROUP: COMMERCIAL SERVICES

FILE: PSC2006-6531

BACKGROUND

The purpose of this report is to present Council's schedule of cash and investments held at 30 September 2010.

ATTACHMENTS

- 1) Cash and investments held at 30 September 2010
- 2) Monthly cash and investments balance September 2009 – September 2010
- 3) Monthly Australian term deposit index September 2009 – September 2010

MINUTES FOR ORDINARY MEETING – 19 OCTOBER 2010

ATTACHMENT 1

CASH & INVESTMENTS HELD - AS AT 30 SEPTEMBER 2010										
INVESTED WITH	INV. TYPE	CURRENT RATING	MATURITY DATE	AMOUNT INVESTED	% of Total Portfolio	Current Int Rate	Market Value July	Market Value August	Market Value September	Current Mark to Market Exposure
GRANGE SECURITIES										
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	NR	20-Mar-12	1,000,000.00	4.60%	6.24%	\$841,978.08	\$840,400.00	\$835,000.00	-\$165,000.00
NEXUS BONDS LTD "TOPAZ AA"	Floating Rate CDO		23-Jun-15	412,500.00	1.90%	0.00%	\$257,812.50	\$264,825.00	\$264,825.00	-\$147,675.00
HERALD LTD "QUARTZ AA"	Floating Rate CDO	CCC-	20-Dec-10	450,000.00	2.07%	6.24%	\$419,075.14	\$430,785.00	\$436,095.00	-\$13,905.00
START S CAYMAN LTD "BLUE GUM AA"	Floating Rate CDO	NR	22-Jun-13	1,000,000.00	4.60%	3.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
HELIUM CAPITAL LTD "ESPERANCE AA+" *	Floating Rate CDO	NR	20-Mar-13	1,000,000.00	4.60%	0.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
HOME BUILDING SOCIETY	Floating Rate Sub Debt	NR	25-Jul-11	500,000.00	2.30%	5.82%	\$465,409.88	\$463,585.00	\$466,445.00	-\$33,555.00
DEUTSCHE BANK CAPITAL GUARANTEED YIELD CURVE NOTE	Yield Curve Note	NR	18-Oct-11	500,000.00	2.30%	7.05%	\$513,918.08	\$506,650.00	\$506,650.00	\$6,650.00
GRANGE SECURITIES "KAKADU AA"	Floating Rate CDO	CCC	20-Mar-14	1,000,000.00	4.60%	6.14%	\$306,353.42	\$332,500.00	\$288,500.00	-\$711,500.00
GRANGE SECURITIES "COOLANGATTA AA" *	Floating Rate CDO	NR	20-Sep-14	1,000,000.00	4.60%	0.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
TOTAL GRANGE SECURITIES				\$6,862,500.00	31.54%		\$2,804,547.10	\$2,838,745.00	\$2,797,515.00	(\$4,064,985.00)
ABN AMRO MORGANS										
GLOBAL PROTECTED PROPERTY NOTES VII	Property Linked Note	A+	20-Sep-11	\$1,000,000.00	4.60%	0.00%	\$915,100.00	\$924,000.00	\$924,000.00	-\$76,000.00
TOTAL ABN AMRO MORGANS				\$1,000,000.00	4.60%		\$915,100.00	\$924,000.00	\$924,000.00	(\$76,000.00)
ANZ INVESTMENTS										
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	B	30-Dec-11	\$1,000,000.00	4.60%	0.00%	\$770,600.00	\$804,600.00	\$800,600.00	-\$199,400.00
ANZ ZERO COUPON BOND	Zero Coupon Bond	AA	1-Jun-17	\$1,017,876.98	4.68%	0.00%	\$641,364.28	\$646,942.24	\$664,836.52	-\$353,040.46
TOTAL ANZ INVESTMENTS				\$2,017,876.98	9.27%		\$1,411,964.28	\$1,451,542.24	\$1,465,436.52	(\$552,440.46)
RIM SECURITIES										
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO		8-Oct-11	\$2,000,000.00	9.19%	0.00%	\$1,490,000.00	\$1,610,000.00	\$1,601,000.00	-\$399,000.00
ELDERS RURAL BANK (2011)	Floating Rate Sub Debt		5-Apr-11	\$1,000,000.00	4.60%	5.54%	\$956,150.00	\$959,570.00	\$967,040.00	-\$32,960.00
COMMUNITY CPS CREDIT UNION	Term Deposit	N/R	5-Oct-10	\$1,000,000.00	4.60%	5.62%			\$1,000,000.00	\$0.00
TOTAL RIM SECURITIES				\$4,000,000.00	18.38%		\$2,446,150.00	\$2,569,570.00	\$3,568,040.00	(\$431,960.00)
WESTPAC INVESTMENT BANK										
MACKAY PERMANENT BUILDING SOCIETY	Floating Rate Sub Debt		21-Nov-11	\$500,000.00	2.30%	5.82%	\$484,330.00	\$485,345.00	\$487,220.00	-\$12,780.00
TOTAL WESTPAC INV. BANK				\$500,000.00	2.30%		\$484,330.00	\$485,345.00	\$487,220.00	(\$12,780.00)
LONGREACH CAPITAL MARKETS										
LONGREACH SERIES 16 PROPERTY LINKED NOTE	Property Linked Note	A+	7-Mar-12	\$500,000.00	2.30%	0.00%	\$456,035.00	\$461,485.00	\$461,485.00	-\$38,515.00
LONGREACH SERIES 19 GLOBAL PROPERTY LINKED NOTE	Property Linked Note	A+	7-Sep-12	\$500,000.00	2.30%	0.00%	\$435,600.00	\$443,700.00	\$443,700.00	-\$56,300.00
TOTAL LONGREACH CAPITAL				\$1,000,000.00	4.60%		\$891,635.00	\$905,185.00	\$905,185.00	(\$94,815.00)

MINUTES FOR ORDINARY MEETING – 19 OCTOBER 2010

ATTACHMENT 1

COMMONWEALTH BANK										
EQUITY LINKED DEPOSIT	Equity Linked Note	AA	20-Sep-11	\$500,000.00	2.30%	3.00%	\$486,400.00	\$486,150.00	\$487,250.00	-\$12,750.00
EQUITY LINKED DEPOSIT G1100	Equity Linked Note				0.00%	3.00%	\$491,100.00			\$0.00
EQUITY LINKED DEPOSIT ELN SERIES 2	Equity Linked Note	AA	05-Nov-12	\$500,000.00	2.30%	3.00%	\$474,600.00	\$474,350.00	\$479,250.00	-\$20,750.00
BENDIGO BANK SUBORDINATED DEBT	Floating Rate Sub Debt	BBB	09-Nov-12	\$500,000.00	2.30%	5.96%	\$480,795.00	\$483,455.00	\$484,520.00	-\$15,480.00
BANK OF QUEENSLAND BOND	Bond	BBB+	16-Mar-12	\$1,000,000.00	4.60%	5.35%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
TOTAL COMMONWEALTH BANK				\$2,500,000.00	11.49%		\$2,932,895.00	\$2,443,955.00	\$2,451,020.00	(\$48,980.00)
FIG SECURITIES										
TELSTRA LINKED DEPOSIT NOTE	Principal Protected Note		30-Nov-14	\$500,000.00	2.30%	5.75%	\$479,580.00	\$455,240.00	\$461,955.00	-\$38,045.00
TOTAL FIG SECURITIES				\$500,000.00	2.30%		\$479,580.00	\$455,240.00	\$461,955.00	(\$38,045.00)
MAITLAND MUTUAL										
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt	N/R	30-Jun-13	500,000.00	2.30%	6.42%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt	N/R	31-Dec-14	500,000.00	2.30%	6.42%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
MAITLAND MUTUAL	Term Deposit				0.00%	5.59%		\$1,000,000.00		\$0.00
TOTAL M'L AND MUTUAL				\$1,000,000.00	4.60%		\$1,000,000.00	\$2,000,000.00	\$1,000,000.00	\$0.00
FARQUHARSON SECURITIES										
QUEENSLAND POLICE CREDIT UNION	Term Deposit	N/R	15-Nov-10	\$500,000.00	2.30%	5.70%			\$500,000.00	\$0.00
TOTAL FARQUHARSON SECURITIES				\$500,000.00	2.30%		\$484,330.00	\$485,345.00	\$500,000.00	\$0.00
TOTAL INVESTMENTS				\$19,880,376.98	91.36%		\$13,366,201.38	\$14,073,582.24	\$14,560,371.52	(\$5,320,005.46)
AVERAGE RATE OF RETURN ON INVESTMENTS						3.13%				
CASH AT BANK				\$1,879,264.41	8.64%	4.45%	\$284,870.56	\$284,870.56	\$1,879,264.41	\$0.00
AVERAGE RATE OF RETURN ON INVESTMENTS + CASH						3.24%				
TOTAL CASH & INVESTMENTS				\$21,759,641.39	100.00%		\$13,651,071.94	\$14,358,452.80	\$16,439,635.93	(\$5,320,005.46)
BBSW FOR PREVIOUS 3 MONTHS						4.83%				

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

CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER

I, Peter Gesling, being the Responsible Accounting Officer of Council, hereby certify that the Investments have been made in accordance with the Local Government Act 1993, the Regulations and Council's investment policy.

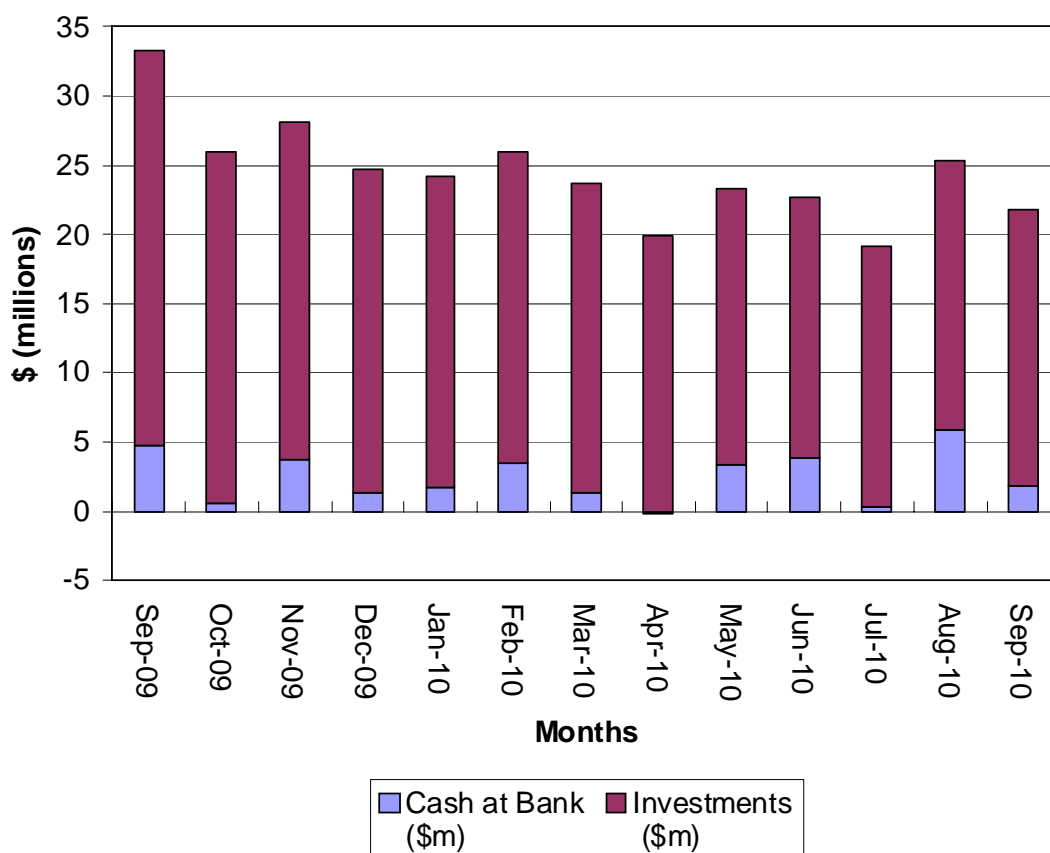
P GESLING

ATTACHMENT 2

Cash and Investments Held

Date	Cash at Bank (\$m)	Investments (\$m)	Total Funds (\$m)
Sep-09	4.801	28.448	33.250
Oct-09	0.579	25.448	26.028
Nov-09	3.691	24.448	28.140
Dec-09	1.277	23.448	24.726
Jan-10	1.670	22.455	24.125
Feb-10	3.489	22.455	25.944
Mar-10	1.311	22.380	23.691
Apr-10	0.206	19.880	19.675
May-10	3.425	19.880	23.305
Jun-10	3.847	18.880	22.728
Jul-10	0.285	18.880	19.165
Aug-10	5.888	19.380	25.268
Sep-10	1.879	19.880	21.759

**Cash and Invested Funds for the Period ended
30/9/2010**

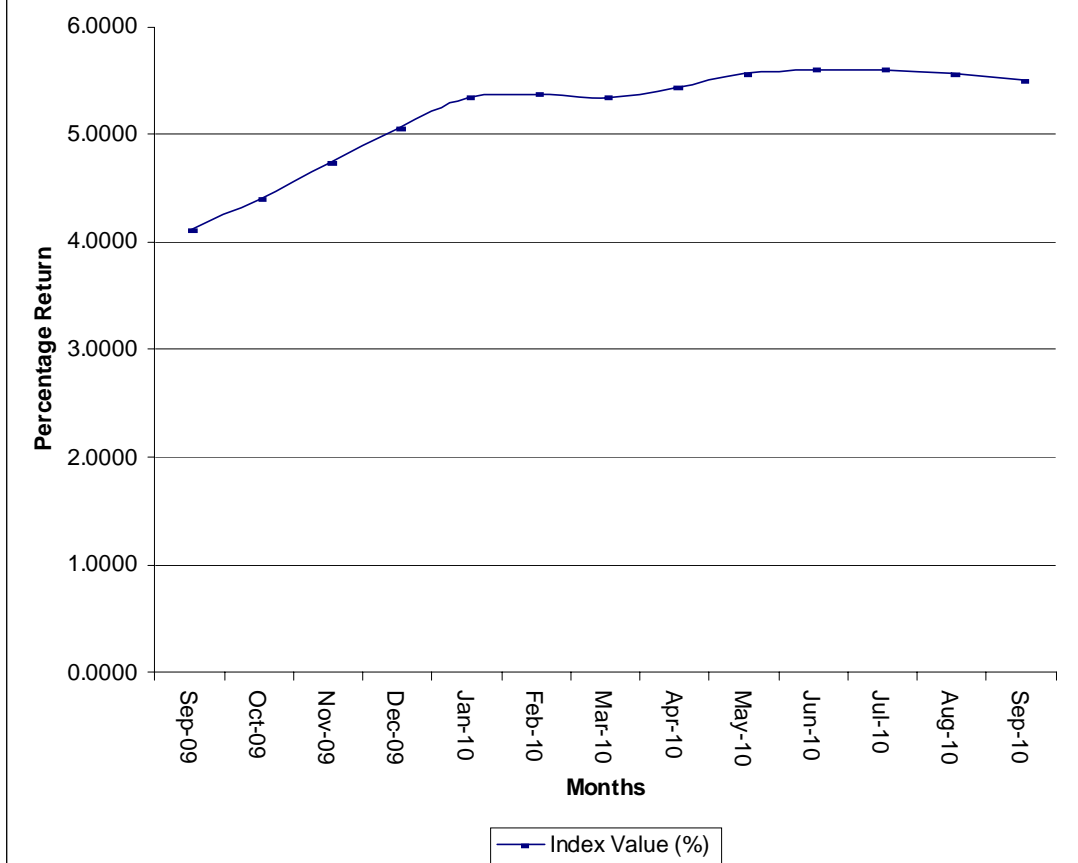


ATTACHMENT 3

Australian Term Deposit Accumulation Index

Date	Index Value (%)
Sep-09	4.1080
Oct-09	4.3946
Nov-09	4.7356
Dec-09	5.0488
Jan-10	5.3373
Feb-10	5.3685
Mar-10	5.3452
Apr-10	5.4259
May-10	5.5615
Jun-10	5.5974
Jul-10	5.5992
Aug-10	5.5587
Sep-10	5.4991

Australian Term Deposit Index as at 30/9/2010



INFORMATION ITEM NO. 2

**PETITION OBJECTING TO THE PROPOSED CYCLEWAY CONSTRUCTION
ALONG SANDY POINT ROAD, CORLETTE**

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

FILE: PSC2008-0599

BACKGROUND

The purpose of this report is to advise Council that a petition has been received with thirty five (35) signatures and reads as follows:

"This petition is an objection to the proposed cycleway construction along Sandy Point Road, Corlette. This cycleway is a safety hazard to cyclists as it crosses numerous driveways including a motel thorough-fair. It will also cause damage to residential lawns and driveways, which these residents have cared for and maintained over years at no expense to the Council (hence at the very least compensation should be offered if Council will not listen to these objections), along with causing the destruction of some much loved well established trees.

A further point would be that Sandy Point Road has had a cycleway along the road for many years, which has been perfectly acceptable for the numerous triathlon events held in Port Stephens as well as for local bike usage. The residents of the affected properties were informed that the 2.4m cycleway was being funded by a government grant, hence the fees the Council is proposing are outrageous.

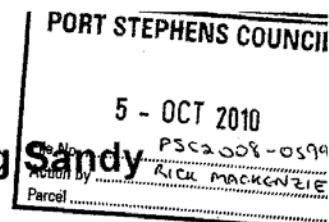
If this current proposal is to be targeted at tourists, we the residents of Sandy Point Road suggest the Council should run the cycleway along the far more scenic foreshore. If this is not the case and Council is hell bent on constructing this cycleway along Sandy Point Road then we believe the Council should compensate the residents of Sandy Point Road for the loss and permanent interruption of their much loved, well cared for frontal residences."

ATTACHMENTS

- 1) Petition.

ATTACHMENT 1

Proposed Cycleway construction along Sandy Point Road Corlette



This petition is an objection to the proposed cycleway construction along Sandy Point Rd Corlette.

This cycleway is a safety hazard to cyclists as it crosses numerous driveways including a motel thorough-fair.

It will also cause damage to residential lawns and driveways, which these residents have cared for and maintained over years at no expense to the council (hence at the very least compensation should be offered if council will not listen to these objections). Along with causing the destruction of some much loved well established trees.

A further point would be that Sandy Point Rd has had a cycleway along the road for many years, which has been perfectly acceptable for the numerous triathlon events held in Port Stephens as well as for local bike usage.

The residents of the effected properties were informed that the 2.4m cycleway was being funded by a government grant, hence the fees the Council is proposing are outrageous.

If this current proposal is to be targeted at tourists, we the residents of Sandy Point Rd suggest the council should run the Cycleway along the far more scenic foreshore. If this is not the case and council is hell bent on constructing this cycleway along Sandy Point Road then we believe the council should compensate the residents of Sandy point road for the loss and permanent interruption of their much loved, well cared for frontal residences.

Name

Address

Signature

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217

SECTION 94 FUNDS

COUNCILLOR: BRUCE MACKENZIE

THAT COUNCIL:

- 1) General Manager submit to council a full report on the section 94 funds, and that the report state the full amount available and it is understood that it is invested and when those funds may become available.
-

ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

343	Councillor Bruce MacKenzie	There being no objection the Notice of Motion was adopted.
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NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217

MINISTERIAL FUNDING FOR BIRUBI SURF CLUB

COUNCILLOR: BRUCE MACKENZIE

THAT COUNCIL:

- 1) Contact Minister Anthony Albanese to request timing when the \$2.1 million dollars promised to Birubi Surf Club at the last federal election shall be forthcoming.
-

ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

344	Councillor Bruce MacKenzie	There being no objection the Notice of Motion was adopted.
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NOTICE OF MOTION

ITEM NO. 3

FILE NO: A2004-0217

CARAVAN PARKS PROFIT

COUNCILLOR: BRUCE MACKENZIE

THAT COUNCIL:

- 1) General Manager submit to council a full report on the available funds from the profit from caravan parks and when those funds may be available.
-

ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

345	Councillor Bruce MacKenzie	There being no objection the Notice of Motion was adopted.
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NOTICE OF MOTION

ITEM NO. 4

FILE NO: A2004-0217

REPRESENTATION TO THE MINISTER – OIL AND GAS EXPLORATION

COUNCILLOR: JOHN NELL

THAT COUNCIL:

- 1) Port Stephens Council call on the NSW Minister for Climate Change and the Environments, Mr Frank Sartor, to ensure that before any oil and gas exploration of the NSW coast is commenced:
 - (a) The potential impact on the marine ecology of the sea floor, the coast and the coastal waters are fully assessed, and
 - (b) It is proven that no harm to the environment is done, and
 - (c) That if exploration is allowed to proceed, it only occurs outside the annual whale migration season from June – November.
-

ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

346	Councillor John Nell Councillor Peter Kafer	There being no objection the Notice of Motion was adopted. It was resolved that Council make representation to both the Federal and State Governments on the above issue.
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RESCISSION MOTIONS

RECISSION MOTION

ITEM NO. 1

FILE NO: 16-2009-257-1

DEVELOPMENT APPLICATION 16-2009-257-1 FOR A 229 SITE CARAVAN PARK, MANAGERS RESIDENCE, COMMUNITY HALL, & RECREATION FACILITIES AT 19 & 20 ROAD 580 OFF PORT STEPHENS DRIVE, ANNA BAY

COUNCILLORS: MACKENZIE, O'BRIEN, DOVER

That Council rescind its decision of 28 September 2010 on Item 2 of the Council Committee Report, namely Development Application 16-2009-257-1 for a 229 Site Caravan Park, Managers Residence, Community Hall & Recreation Facilities at 19 & 20 Road 580 Off Port Stephens Drive, Anna Bay.

ORDINARY COUNCIL MEETING – 19 OCTOBER 2010

	Councillor Glenys Francis Councillor Geoff Dingle	That the Recission Motion in front of us not be put to council.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the motion : Crs Peter Kafer, Glenys Francis, Geoff Dingle and John Nell.

Those against the motion : Crs Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Sally Dover and Bob Westbury.

The motion on being put was lost.

347	Councillor Bruce MacKenzie Councillor Steve Tucker	That Council 1) Rescind its decision of 28 September 2010 on Item 2 of the Council Committee Report, namely Development Application 16-2009-257-1 for a 229 Site Caravan Park, Managers Residence, Community Hall & Recreation Facilities at 19 & 20 Road 580 Off Port Stephens Drive, Anna Bay.
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MINUTES FOR ORDINARY MEETING – 19 OCTOBER 2010

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

Those for the motion: Crs Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Sally Dover and Bob Westbury.

Those against the motion: Crs Peter Kafer, Glenys Francis, Geoff Dingle and John Nell.

The motion being put was carried.

Cr Dingle left the meeting at 8.07pm and returned at 8.16pm.

Cr Francis left the meeting at 8.09pm and returned at 8.17pm.

348	Councillor Glenys Francis Councillor John Nell	That the motion be put.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the motion: Crs Peter Kafer, Glenys Francis, Ken Jordan, Steve Tucker, Geoff Dingle, John Nell and Bob Westbury.

Those against the motion: Crs Bruce MacKenzie, Sally Dover and Shirley O'Brien.

The motion being put was carried.

Cr Dingle left the meeting at 8.25pm prior to voting and did not return.

349	Councillor Bruce MacKenzie Councillor Steve Tucker	That Council has discussions with the applicant about the draft conditions put forward by the Group Manager Sustainable Planning.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the motion: Crs Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Sally Dover, Bob Westbury and John Nell.

Those against the motion: Crs Peter Kafer, Glenys Francis and Geoff Dingle.

The motion on being put was carried.

RECISSION MOTION

ITEM NO. 1

FILE NO: 16-2009-257-1

**DEVELOPMENT APPLICATION 16-2009-257-1 FOR A 229 SITE
CARAVAN PARK, MANAGERS RESIDENCE, COMMUNITY HALL, &
RECREATION FACILITIES AT 19 & 20 ROAD 580 OFF PORT STEPHENS
DRIVE, ANNA BAY**

COUNCILLORS: MACKENZIE, O'BRIEN, DOVER

That Council rescind its decision of 28 September 2010 on Item 2 of the Council Committee Report, namely Development Application 16-2009-257-1 for a 229 Site Caravan Park, Managers Residence, Community Hall & Recreation Facilities at 19 & 20 Road 580 Off Port Stephens Drive, Anna Bay.

ORDINARY COUNCIL MEETING – 12 OCTOBER 2010

329	Councillor Glenys Francis Councillor Peter Kafer	It was resolved that this item be deferred to include the committee and ordinary resolution from the report of 28 September 2010.
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Resolution Of 28 September 2010

ITEM NO. 2

FILE NO: 16-2009-257-1

**DEVELOPMENT APPLICATION 16-2009-257-1 FOR A 229 SITE
CARAVAN PARK, MANAGERS RESIDENCE, COMMUNITY HALL, &
RECREATION FACILITIES AT 19 & 20 ROAD 580 OFF PORT STEPHENS
DRIVE, ANNA BAY**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Consider the draft conditions of consent for DA 16-2009-257-1 are at Attachment 4.
-

**COUNCIL COMMITTEE MEETING – 28 SEPTEMBER 2010
RECOMMENDATION:**

	Councillor John Nell Councillor Frank Ward	That Council approve Development Application 16-2009-257-1 for a 229 Site Caravan Park, Managers Residence, Community Hall & Recreation Facilities at 19 & 20 Road 580 Off Port Stephens Drive, Anna Bay with the conditions shown in Attachment 4.
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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 John Nell, Frank Ward, Caroline De Lyall, Glenys Francis and Geoff Dingle.

Those against the Motion: Crs Bruce MacKenzie, Bob Westbury, Sally Dover and Shirley O'Brien.

ORDINARY COUNCIL MEETING – 28 SEPTEMBER 2010

303	Councillor John Nell Councillor Geoff Dingle	It was resolved that the recommendation be adopted.
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MINUTES FOR ORDINARY MEETING – 19 OCTOBER 2010

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

Those for the Motion: Crs Glenys Francis, Caroline De Lyall, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Bob Westbury.

Those against the Motion: Crs Bruce MacKenzie and Shirley O'Brien.

Resolution Of 13 July 2010

ITEM NO. 1

FILE NO: 16-2009-257-1

DEVELOPMENT APPLICATION 16-2009-257-1 FOR A 229 SITE CARAVAN PARK, MANAGERS RESIDENCE, COMMUNITY HALL, & RECREATION FACILITIES AT 19 & 20 ROAD 580 OFF PORT STEPHENS DRIVE, ANNA BAY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse DA 16-2009-257-1 for a 229 Site Caravan Park, Managers Residence, Community Hall and Recreation Facilities at 19 & 20 Road 580 Off Port Stephens Drive, Anna Bay for the following reason:

The site is not considered suitable for 229 caravan sites providing long term accommodation, because:

- The development is inconsistent with the objectives of the 1(a) Rural Agriculture Zone.
- The site is not considered suitable for the proposed development following assessment of the matters for consideration in Clause 10 of State Environmental Planning Policy 21 Caravan Parks.
- The development is not consistent with the Lower Hunter Regional Strategy.
- The Roads and Traffic Authority (RTA) will not issue concurrence for access to Nelson Bay Road. **(Attachment 4 – RTA letter 23 June 2010)**

COUNCIL COMMITTEE MEETING – 13 JULY 2010
RECOMMENDATION:

MINUTES FOR ORDINARY MEETING – 19 OCTOBER 2010

	Councillor Sally Dover Councillor Shirley O'Brien	That Council: <ol style="list-style-type: none">1. Approve DA 16-2009-257-1 for a 229 Site Caravan Park, Managers Residence, Community Hall and Recreation Facilities at 19 & 20 Road 580 Off Port Stephens Drive, Anna Bay, in principle and;2. That staff provide draft conditions of consent for consideration by Council.
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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 Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Ken Jordan.

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

ORDINARY COUNCIL MEETING - 13 JULY 2010

	Councillor Geoff Dingle Councillor Peter Kafer	That Council:- <ol style="list-style-type: none">1) Refuse DA 16-2009-257-1 for a 229 Site Caravan Park, Managers Residence, Community Hall and Recreation Facilities at 19 & 20 Road 580 Off Port Stephens Drive, Anna Bay for the following reason: The site is not considered suitable for 229 caravan sites providing long term accommodation, because:<ul style="list-style-type: none">▪ The development is inconsistent with the objectives of the 1(a) Rural Agriculture Zone.▪ The site is not considered suitable for the proposed development following assessment of the matters for consideration in Clause 10 of State Environmental Planning Policy 21 Caravan Parks.▪ The development is not consistent with the Lower Hunter Regional Strategy.▪ The Roads and Traffic Authority (RTA) will not issue concurrence
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MINUTES FOR ORDINARY MEETING – 19 OCTOBER 2010

		for access to Nelson Bay Road. (Attachment 4 – RTA letter 23 June 2010).
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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, Glenys Francis, Caroline De Lyall, Geoff Dingle and Frank Ward.

Those against the Motion: Crs Ken Jordan, Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

The Motion on being put was lost.

200	Councillor Bruce MacKenzie Councillor Steve Tucker	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 Ken Jordan, Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

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

The Motion on being put was carried.

BACKGROUND

This report was considered by Council on 13 July 2010 with the following Resolution:

That Council:

1. *Approve DA 16-2009-257-1 for a 229 Site Caravan Park, Managers*

Residence, Community Hall and Recreation Facilities at 19 & 20 Road 580 off Port Stephens Drive, Anna Bay, in principle and;

2. *That staff provide draft conditions of consent for consideration by Council.*

The draft conditions of consent for DA 16-2009-257-1 are at Attachment 4.

Staff have sought legal advice regarding the validity or implications of issuing consent without necessary concurrences and integrated development approvals. Please note that the following conditions (drafted as deferred commencement consent) have taken this advice into consideration.

Councillors should also note that this matter was deferred for inspection at its meeting on 29 June 2010. A Councillor inspection was held on 3 July 2010.

The proposal is for 229 long term caravan sites, construction of a manager's residence, community hall and recreation facilities. Manufactured homes are to be installed on each caravan site.

The development was recommended for refusal because the location is considered unsuitable for 100% long term accommodation after assessing the proposal against the 1(a) zone objectives, SEPP 21 Caravan Parks and the Lower Hunter Regional Strategy. Further, RTA concurrence is required under SEPP infrastructure. The RTA advised Council in its letter of 23 June 2010 that concurrence would not be issued for development if access is from Nelson Bay Road.

Caravan parks are permissible in the 1(a) Rural Agriculture zone under LEP 2000 and SEPP 21 Caravan Parks, but most forms of development that provide long term accommodation are prohibited on the site.

Manufactured homes estates are strictly limited to sites within or adjoining urban zoned land under SEPP 36. Further, seniors living developments (SEPP Housing for Seniors), residential subdivision and urban housing are all prohibited on the site. The principal concern is that future residents will be disadvantaged by limited access to essential services and facilities. The applicant has sought to address this issue by proposing to provide some recreational facilities onsite and a private bus to provide access to local centres.

No information has been provided on the availability or cost to residents for these services. It should also be noted that continued provision of these services cannot be conditioned or guaranteed. Any loss or reduction of services would result in long term residents having unreasonably low levels of access to essential services and facilities. The risk of this would likely be reduced if the development was in closer proximity to existing urban areas.

The original staff recommendation was consistent with the determination of a recent court case (*Wygiren v Kiama Council*, 2008), which refused a caravan park providing 100% long term accommodation on the basis that it was isolated residential development. It was also considered that such developments should be part of the strategic planning process in order to avoid the long term impacts associated with isolated residential development.

Councillors should be aware that any favourable determination of the application is normally deferred until necessary approvals from the RTA, DECCW and NSW Office of Water are obtained. These referrals remain outstanding due to the need for additional information and amended plans.

FINANCIAL/RESOURCE IMPLICATIONS

The development is unlikely to have any immediate financial or resource implications for Council.

LEGAL AND POLICY IMPLICATIONS

The development is inconsistent with Council's Local Environmental Plan 2000, State Environmental Planning Policy 21 Caravan Parks and the Lower Hunter Regional Strategy (2006).

Approval of this application would set an undesirable precedent under current environmental planning legislation.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The development is not consistent with the principles of sustainable urban growth identified in the Lower Hunter Regional Strategy.

CONSULTATION

The application was exhibited in accordance with Council policy and seven (7) submissions were received. These are discussed in the attached assessment.

OPTIONS

- 1) Consider the draft conditions and resolve to approve the development application DA 16-2009-257-4 for a 229 site Caravan Park, Managers Residence, Community Hall & Recreation facilities at 19 & 20 Road 580 off Port Stephens Drive, Anna Bay subject to the recommended conditions.
- 2) Reject the recommendation and defer the application DA 16-2009-257-4 for a 229 site Caravan Park, Managers Residence, Community Hall & Recreation facilities at 19 & 20 Road 580 off Port Stephens Drive, Anna Bay pending submission of required information for completion of the Section 79C assessment, resolution of stormwater and environmental issues and obtaining the necessary approvals from the RTA, DECCW and NSW Office of Water.
- 3) Adopt the original staff recommendation and refuse the development application DA 16-2009-257-4 for a 229 site Caravan Park, Managers Residence, Community Hall & Recreation facilities at 19 & 20 Road 580 off Port Stephens Drive, Anna Bay.

ATTACHMENTS

- 1) Locality Plan
- 2) Assessment
- 3) RTA Letter 23 June
- 4) Conditions of Consent

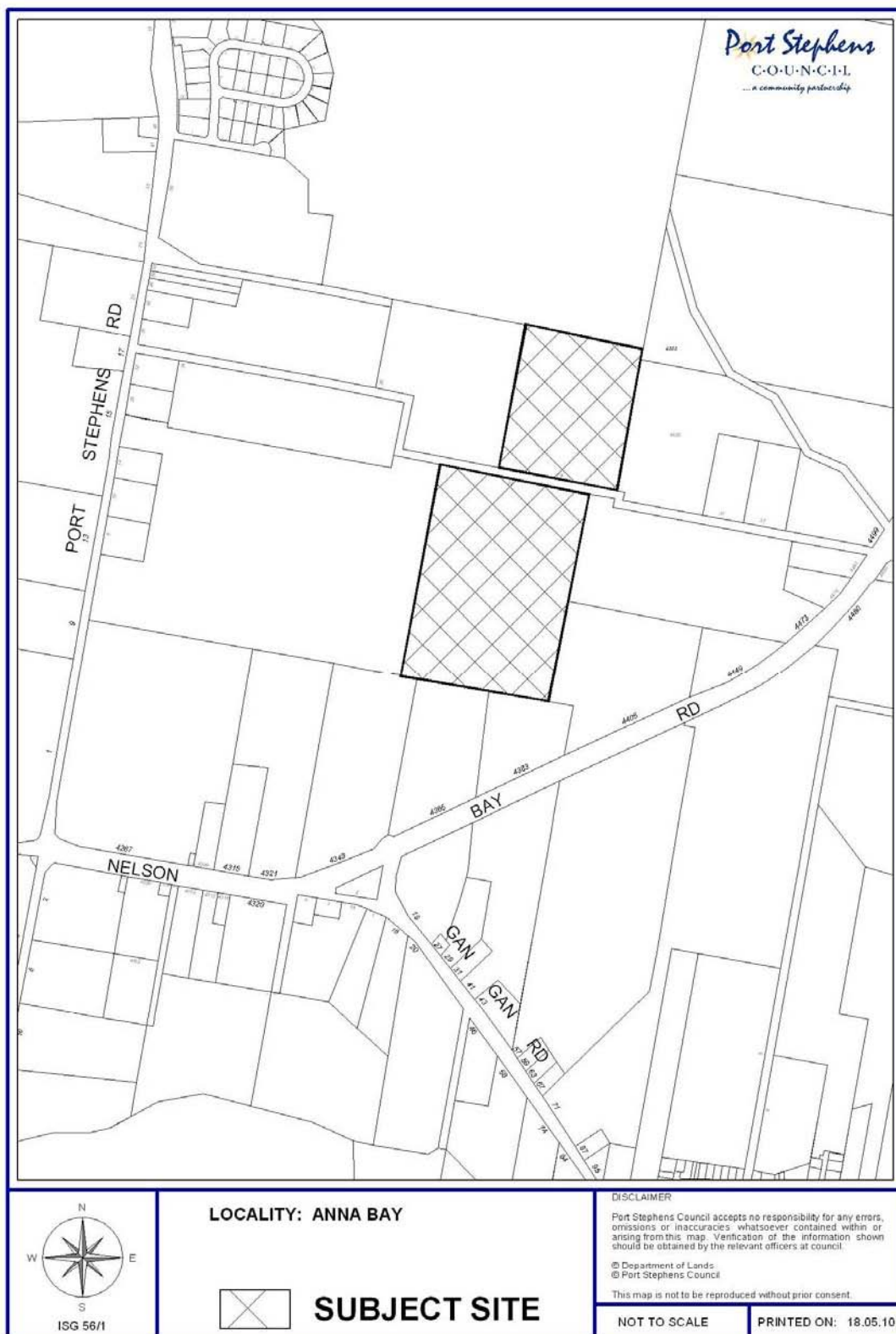
COUNCILLORS ROOM

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 proposal is for 229 long term caravan sites, construction of a manager's residence, community hall and recreation facilities. Manufactured homes are to be installed on each caravan site.

THE APPLICATION

Owner	Bodiam Properties Pty Ltd
Applicant	Mr P Malloch

THE LAND

Property Description	Lots 2 & 4 DP 398888
Address	19 & 20 Road 580 off Port Stephens Drive, Anna Bay
Area	30.3 hectares

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	1(a) Rural Agriculture
Relevant Clauses	Clause 11 Rural Zonings
	Clause 12 Subdivision in rural zones
	Clause 37 Development on flood prone land
	Clause 44 Appearance of land and buildings
	Clause 47 Services
	Clause 51A Development on land identified on Acid Sulphate Soil Maps
Development Control Plan	Section B2 Environment & Construction
	Section B3 Parking & Traffic
State Environmental Planning Policies	SEPP 21 Caravan Parks
	SEPP Infrastructure 2007
Lower Hunter Regional Strategy (2006)	

Port Stephens Local Environmental Plan 2000

Clause 11 Rural Zonings

- Permissibility

The proposal is primarily for the creation of 229 long term caravan sites and erection of manufactured homes on each of the sites. LEP 2000 defines a “camp or caravan site” as:

“ a site used for the purpose of:

(a) placing moveable dwellings within the meaning of the Local Government Act 1993 for permanent accommodation, or for the accommodation of tourists, or

(b) the erection, assembly or placement of cabins for the temporary accommodation of tourists.”

The proposal is consistent with the definition of “camp or caravan sites” in LEP 2000, as Manufactured homes are considered to be “moveable dwellings” under the Local Government Act.

The site is zoned 1(a) Rural Agriculture and camp or caravan sites are permissible with development consent. The proposed manager’s residence, community hall and recreation facilities are considered permissible as they are ancillary to the caravan park.

The erection of manufactured homes on caravan sites does not require consent under the provisions of SEPP 21 and the Local Government Regulations.

- Zone Objectives

The proposed development is not considered to be consistent with the general zone objective or objective (c), and is therefore recommended for refusal.

Consideration of the relevant zone objectives (general, (a), (c), (d) and (e)) are listed below:

The general objective of the 1(a) zone is to:

“maintain the rural character of the area and to promote the efficient and sustainable utilisation of rural land and resources”.

The area surrounding the site contains a variety of rural activities and is considered typical of 1(a) zoned land in the locality. Although the development is unlikely to be visible from Nelson Bay Rd or Port Stephens Dr, the caravan park will introduce a significant suburban element which is contrary to the existing character, particularly when viewed from adjoining properties.

The proposal will also set a precedent for provision of long term accommodation in the 1(a) zone, which is likely to contribute to the loss of rural land in the locality and further erosion of its rural character.

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

The size and density of the caravan park is likely to impact the existing amenity, but should be reasonably compatible with the existing rural activities (predominantly grazing and single dwelling development) on nearby properties. However, it should be noted that there are a wide variety of land uses permissible in the 1(a) zone, the viability of which on any adjoining properties may be reduced as a result of the amenity impact from the development.

- (c) preventing the fragmentation of grazing or prime agricultural lands, protecting the agricultural potential of rural land not identified for alternative land use, and minimising the cost to the community of:*
(i) fragmented and isolated development of rural land, and
(ii) providing, extending and maintaining public amenities and services

The provision of 229 (100%) long term accommodation sites in the area is considered to be a fragmented and isolated development of rural land, as it is not located close to existing centres (Anna Bay, Salamander Bay and Nelson Bay) nor identified as an urban growth area in any strategic planning document.

An additional 480 residents will impose greater demand on existing infrastructure and services such as medical facilities, educational facilities, child care facilities, sporting facilities, libraries etc, in Anna Bay, Salamander Bay and Nelson Bay.

The cost to the community will be from maintenance of infrastructure and services to an isolated development, and a reduction in availability of local services and facilities, as it is unreasonable to expect that the necessary public funding will respond in time to meet the additional demand imposed by the development, particularly since it is not part of any strategic planning process.

- (d) protecting or conserving (or both protecting and conserving):*
(i) soil stability by controlling development in accordance with land capability
(ii) trees and other vegetation in environmentally sensitive localities where the conservation of the vegetation is likely to reduce land degradation or biodiversity
(iii) water resources, water quality and wetland areas, and their catchments and buffer areas
(iv) land affected by acid sulphate soils by controlling development of that land likely to affect drainage or lower the water table or cause soil disturbance
(v) valuable deposits of minerals and extractive materials by restricting development that would compromise the efficient extraction of those

deposits

Potential impacts to the environment have not yet been determined. The applicant will need to submit additional information relating to traffic, stormwater and environmental issues (as indicated in Council's letter on 11 December 2009) prior to determining the extent of impacts from the development.

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

The proposal is consistent with the requirements of Clause 37 Development on Flood Prone Land in LEP 2000. Further, the application was reviewed by Council's Strategic Engineer, who had no objections subject to conditions regarding compensation for loss of flood storage and construction requirements.

Clause 12 Subdivision within rural zones

The proposal includes subdivision of the caravan sites for lease purposes, which is permissible under SEPP 21 and the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

The development, however, proposes subdivision far exceeding what is normally permissible under Clause 12(b) and is not consistent with the intent of LEP 2000.

Clause 37 Development on flood prone land

The site is mapped as being flood prone. The development is consistent with the requirements of Clause 37, and will not unreasonably increase the incidence or severity of flood on site or adjoining properties or the risk to life and property.

Clause 44 Appearance of land and buildings

The proposal is unlikely to be visible from Nelson Bay Rd or any significant waterway or land zoned as public reserve or open space.

Clause 47 Services

The applicant proposes to connect the development to Hunter Water Corporation water and sewer services. A letter from HWC has been submitted with their indicative requirements.

Clause 51A Development on land identified on Acid Sulphate Soils Planning Maps

The site is mapped as Class 3 Acid Sulphate Soils. The applicant has submitted an acid sulphate management plan which provides recommendations for managing potential acid sulphate soils disturbed during works.

State Environmental Planning Policy 21 Caravan Parks

SEPP 21 is applicable to the development for 229 caravan sites and associated facilities.

Clause 6 – Definitions

SEPP 21 defines “caravan parks” as:

“land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.”

The proposal is not consistent with this definition. Although the definition allows for the installation of an undefined percentage of moveable dwellings, there are no caravans proposed to be installed or placed on the site as part of the development.

However, *Wygiren v Kiama* (2008, NSWLEC 56, File No. 11026 of 2007) found that the caravan park definition in SEPP 21 only ensures that references to caravan parks in LEPs include those specified in the SEPP. Nothing prevents a definition in a Local Environmental Plan being more inclusive than the definition in the SEPP.

The remaining clauses in SEPP 21 are still considered applicable to the proposal.

Clause 8 Development consent required for caravan parks

Clause 8(2) requires Council to determine whether any sites are suitable for long term accommodation, as defined in the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

The site is not considered suitable for a caravan park providing 100% long term accommodation due to its location.

The site is 1.2km from Anna Bay (3km by road), 3.5km from Salamander Bay and 7.5km from Nelson Bay. Further, the site is not within any urban growth areas identified in the Lower Hunter Regional Strategy (2006), Community Settlement and Infrastructure Strategy and Anna Bay Strategy.

The development is similar in nature to manufactured home estates and seniors living developments, both of which are prohibited unless within or adjoining existing urban areas.

A recent court case (*Wygiren v Kiama Council* 2008, NSWLEC 1233, File No. 11026 of 2007) noted that SEPP 36 Manufactured Home Estates and SEPP (Housing for Seniors or People with a Disability) 2004 provided a “sensible contemporary approach” and reflect the Department of Planning’s policy to locating developments for long term accommodation.

The application was referred to Council’s Strategic and Community Planning Sections, who both objected to the development based on the location.

Clause 10 Matters to be considered by Councils

(a) Whether the site is particularly suitable for a caravan park providing long term accommodation

The site is not considered to be particularly suitable for long term accommodation.

Residential development or subdivision is not permissible in the 1(a) zone. The site is not within any future urban growth area identified in the Lower Hunter Regional Strategy (2006), Community Settlement and Infrastructure Strategy and Anna Bay Strategy.

Similar style developments are prohibited under both SEPP 36 and SEPP Housing for Seniors, as these types of developments are restricted to land within or adjoining urban zoned areas.

It is considered that long term accommodation should be located in close proximity to existing urban areas, as it minimises costs associated with maintaining infrastructure and reduces the risk of future residents being unreasonably isolated from services and facilities.

The site also has value as rural land, and is identified in the applicant's flora and fauna report as having significant environmental value, despite the site being previously sand mined.

(b) Whether there is adequate provision of tourist accommodation in the locality and whether any tourist accommodation will be displaced by the proposed long term accommodation

The Tomaree Peninsula contains a large quantity and variety of tourist accommodation. The proposed 229 long term caravan sites are unlikely to have any impact on the availability or viability of tourist accommodation on the Tomaree Peninsula.

(c) Whether there is adequate low cost housing in the locality

There is no information available on the amount of low cost housing on the Tomaree Peninsula, but Council's Community Planning Section and State Environmental Planning Policy Affordable Rental Housing acknowledge the need for expansion of existing low cost housing stock.

The proposal will provide a significant increase in the quantity and variety of housing stock in the locality.

However, the applicant has not provided any information regarding the likely cost of sites in the development, so it cannot be determined to what extent the development can be considered low cost housing (in comparison to existing housing available on the Tomaree Peninsula).

(d) Whether necessary community facilities and services are available within the park or locality and whether they are accessible to occupants

A key concern with the development is its isolated location and distance to essential services and facilities provided in Anna Bay, Nelson Bay and Salamander Bay.

The proposal will include a community/recreation hall containing a medical room, hairdresser, small library, computer room, theatre, games and craft room, gymnasium and swimming pool.

Long term residents will require a wide range of services and facilities (medical, educational, sporting, commercial and shopping facilities etc) that will not be available within the development.

To address this issue, the applicant proposes to run a bus service from the development to local centres. No information has been provided on the frequency or cost of the bus service.

It should be acknowledged that Council cannot condition or require the continued provision of the bus service or proposed facilities. Given the sites location, any resident unable to access these services (either as a result of reduced provision, cost, access issues, location) would be unreasonably impacted and would not have equitable access to essential services.

SEPP 36 and SEPP Seniors Housing require similar style development to be located within or adjacent to existing urban areas, primarily so that future long term residents have equitable access to essential services and facilities. This is supported by the Lower Hunter Regional Strategy, Council's strategic planning policies and LEP 2000, which require residential development to be located close to existing urban areas.

(e) Guidelines issued by the Director

The proposal is not known to be contrary to any guidelines.

(f) Provisions of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993

An assessment of the relevant requirements in the Local Government regulations has been undertaken by Council's Environmental Services. The proposal was considered consistent with the requirements of the regulations, subject to recommended conditions.

State Environmental Planning Policy 36 Manufactured Home Estates

The proposed development, which involves erection of 229 manufactured homes, fits the definition of a "manufactured home estate", which means:

"land on which manufactured homes are, or are to be, erected."

Schedule 2 prohibits manufactured homes in Port Stephens unless it is on land that is either zoned residential or identified for urban growth within a Regional Strategy.

Manufactured home estates are prohibited on the site, as it is zoned 1(a) Rural Agriculture and is not within any urban growth area identified in the Lower Hunter Regional Strategy.

The applicant however, contends that the development is a caravan park and thus permissible under LEP 2000 and SEPP 21.

State Environmental Planning Policy (Infrastructure) 2007

The development will have capacity for more than 200 cars and is captured by Schedule 3 Traffic generating development to be referred to the RTA.

Concurrence from the RTA has not been obtained at this stage. Referral to the RTA is pending submission of amended traffic information requested on 1/7/09 and 11 December 2009.

Lower Hunter Regional Strategy

Although the proposal is not for a rezoning, it is appropriate to consider the Strategy in this instance as the development will constitute a significant urban expansion for the locality. The Strategy provides a mechanism, via the Urban Development Program, to properly consider and designate appropriate areas for urban expansion on a regional basis.

The site is mapped as an area known for rural land and environmental assets (p32) and is not within existing or proposed urban areas (p13). Further the Strategy states an intention of limiting further dwelling entitlements in rural areas (p37).

The Strategy states that land use proposals outside the designated growth areas should only be considered where consistent with the Sustainability Criteria in Appendix 1. The proposal is inconsistent with criteria 1, 2, 6 and 8. Consideration of the proposal against the relevant criteria is listed below:

1. Infrastructure Provision

The proposal includes provision of some services and facilities within the caravan park. No detail has been provided on operation of these services. Further, continued operation of these services cannot be guaranteed or conditioned. Any loss or reduction in services will have a significant impact on residents in the caravan park. There is also a wide range of essential services and facilities that will not be provided onsite.

The location of the site increases the potential for residents to be isolated from essential services and facilities, which is less likely to be the case if the development were to be located within or adjacent to existing urban areas (as required by SEPP 36 and SEPP Housing for Seniors).

2. Access

Residents of the development would have a reduced level of access to essential services and facilities provided in local centres, and would be reliant on cars or the proposed private bus service for access.

No information has been provided on frequency or cost of the bus service. Any resident unable to access the private bus service or car for transport would result in unreasonable isolation that would not be the case if the development was within or adjoining existing urban areas.

3. Housing Diversity

It is considered that additional low cost housing stock is required on the Tomaree Peninsula, and that the proposal will increase the housing diversity currently available. However, no information has been provided to determine whether the development will actually provide a low cost housing option in comparison to housing already available in Nelson Bay, Anna Bay and Salamander Bay.

6. Natural Resources

The site is not considered to be high quality agricultural land. Although the proposal will result in the loss of some rural land, it is not likely to significantly reduce the amount available in the locality. However, this proposal will create a precedent in the 1(a) zone, which may result in continued and unsustainable loss of rural land in the area.

7. Environmental Protection

Additional information, particularly with regard to water quality (ground water) and flora and fauna, is required to determine whether the development will unreasonably impact the environment. This information, identified by Council on 11 December 2009, will need to be provided prior to these issues being resolved.

8. Quality and Equity in Services

Residents of the caravan park will not have the same level of access to essential services and facilities available to those residents located in existing urban areas. Residents in existing urban areas are likely to be impacted by the reduction in services and facilities as a result of the additional demand generated by residents of the caravan park. These impacts are likely to be exacerbated due to the caravan park not being part of Council strategic planning strategies.

Development Control Plan 2007

Section B2 Environment & Construction Management

- Section B2.4 Acid Sulphate Soils

The development has addressed the requirements of Clause 51A in LEP 2000. The applicant has submitted an Acid Sulphate management plan.

- Section B2.5 Landfill

The proposal includes some cut and fill, particularly around the southern end of the development, where lower areas are to be filled. The applicant has proposed to use soil excavated on site for earthworks, which would meet the VENM requirements.

- Section B2.9 Mosquito Control

The applicant has submitted a vector management strategy in accordance with DCP 2007.

Section B3 Parking & Traffic

Caravan parks are required to provide 1 space per site and 1 space per 10 sites for visitor parking. The proposal includes parking for each site and 33 additional spaces, which complies with the requirement of Council's DCP.

Section 94 Contributions

It is recommended that Section 94 contributions be required as per Council policy.

The applicant has applied for a reduction in Section 94 contributions, arguing that the services and facilities provided within the caravan park will reduce demand on local services and facilities.

Following discussions with Council's Strategic and Community Planning Sections, it is considered that services and facilities provided on site will be of limited size and variety and will not significantly reduce the demand on services and facilities in Anna Bay, Salamander Bay and Nelson Bay.

The applicant's request to reduce the requirement for Section 94 contributions is not supported.

2. Likely Impact of the Development

Flora & Fauna

The site has been previously disturbed by sand mining, but still contains remnant vegetation in wetland areas, particularly in the southern part of the site. The entire site is mapped as containing Swamp Sclerophyll Forest and Swamp Oak Floodplain

Forest.

It should be noted that the proposed development site has been cleared without approval. Following Council's investigation of this matter, the applicant, in consultation with Council's Environmental Services, is in the process of preparing a Property Vegetation Plan.

The applicant submitted a flora and fauna report which determined that there would be a "moderate" impact on threatened local flora and fauna species. As such, the application needs approval from the Department of Environment, Climate Change and Water under the Threatened Species Act.

Referral of this application to DECCW pending amended plans requested on 11 December 2009, addressing issues of encroachments on wildlife corridors and limiting cleared areas to the minimum amount required for the Asset Protection Zones required by the NSW RFS.

Context, Setting & Public Domain

The development will introduce a significant urban element, due to its size and density, which will not be consistent with the existing rural character of the area. The most likely impact from the development is likely to be increased traffic along road 580 and additional demand for services and facilities in Anna Bay, Salamander Bay and Nelson Bay.

The viability of existing activities on adjoining properties, predominantly rural dwellings and grazing, is unlikely to be reduced due to the proposed setbacks, landscaping and wildlife corridors.

The development will not be visible from public areas and will not impact the public domain.

Water Management

Council's Development Engineer and NSW Office of Water requested additional information regarding stormwater and groundwater management, respectively.

This information is required prior to determining what impact the development will have on water management around the site.

Access, Transport & Traffic

- Traffic

The proposal will require construction of Road 580 from the site to Nelson Bay Rd, and a Type C intersection at the Nelson Bay Rd intersection.

The applicant has submitted a Traffic Impact Statement, which estimates an additional 69 trips during peak hours (8am to 9am and 4pm to 5pm) and states that a Type C intersection is "theoretically unacceptable", but will only impact the

intersection for a relatively short period of time.

Council's Traffic Engineer has requested additional traffic information, in particular design details for the Type C intersection and clarification on internal traffic flow. The application also needs to be referred to the RTA under SEPP Infrastructure following receipt of this information.

- Transport

The site is not within reasonable walking distance (considered to be 400m in SEPP Housing for Seniors) of any public transport stops or stations.

The applicant proposed to run a private bus service for residents of the development. No information has been provided about the cost or frequency of this service. Any reduction or loss of this service would seriously disadvantage residents, due to the sites location.

3. Suitability of the Site

As previously discussed, the development provides 229 sites for long term accommodation, which is not considered suitable for the site given its isolation from existing urban areas.

Environmental Constraints

The site is mapped as being prone to bushfire and flooding, and containing endangered ecological communities (see previous flora and fauna comments).

- Bushfire

The application was referred to the NSW Rural Fire Service, who issued a Bushfire Safety Authority on 11 December 2009, subject to recommended conditions.

- Flooding

The application was referred to Council's Strategic Engineer. No objection was raised subject to conditions regarding provision of additional flood storage and management of earthworks.

4. Submissions

The proposal was advertised and notified in accordance with Council policy. Seven (7) submissions were received. The concerns raised are listed below, along with the relevant assessment comments:

- Nature of development, and whether it should be considered as a “caravan park”
- Need for additional information
- Impact regarding additional traffic and what speed limits will be imposed
- Impact of development on existing drainage system
- Impact on amenity/safety of adjoining properties
- Development unsuitable for the area due to large number of existing caravan parks
- Access to development has not been done with consultation with neighbours


As discussed in this assessment, the proposal is considered permissible on the site as a caravan park under LEP 2000. However, further information is necessary prior to resolving the concerns raised in the public submissions.

5. Public Interest

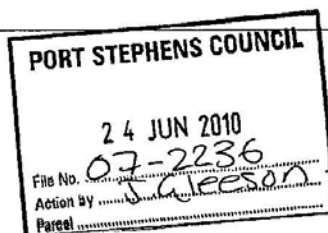
The development is not considered in the public interest. Although the development will provide additional low cost housing on the Tomaree Peninsula and associated social and economic benefits, it is not considered to be sustainable urban growth, due to its isolation.

Isolated residential development has the potential to generate a variety of detrimental impacts, such as disadvantaging future residents as a result of limited access to services and facilities, imposing an unplanned demand on infrastructure, services and facilities and a loss/fragmentation of rural land.

ATTACHMENT 3
RTA LETTER 23 JUNE

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General Manager
Port Stephens Council
DX 21406
RAYMOND TERRACE



Attention: Joe Gleeson

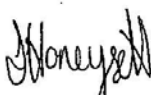
**NELSON BAY ROAD (MR 108) - PROPOSED CARAVAN PARK, LOT 2 AND 4 DP
398888, PORT STEPHENS DRIVE, ANNA BAY**

Dear Mr Gleeson

Attached is a copy of the RTA's letter to Mr Davey dated 23 June 2010, regarding the subject for your information.

Please contact me on 4924 0240 if you have any queries.

Yours sincerely



David Young
Manager, Land Use Development
Hunter Operations and Engineering Services

23 June 2010

Roads and Traffic Authority ABN 64 480 155 255

59 Darby Street Newcastle NSW 2300
Locked Bag 30 Newcastle NSW 2300 DX 7813
www.rta.nsw.gov.au | 13 17 82

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Mr Wayne Davey
PO Box 237
ANNA BAY NSW 2316

NELSON BAY ROAD (MR 108) ACCESS/DRIVEWAY ENTRANCE, 2985 NELSON BAY ROAD, SALT ASH (LOT 195 DP 753192).

Dear Mr Davey

I refer to your email dated 27 May 2010 regarding the subject proposed driveway/access for a proposed residence at the above site, forwarded to the Roads and Traffic Authority (RTA) for consideration.

The following preliminary advice is provided;

- 1 The RTA would support a direct vehicular access to/from Nelson Bay Road (MR108) to the site, generally as proposed in your site plan drawing number 29661, as a left in /left out access only. (It should be noted that this section of Nelson Bay road will ultimately be upgraded to dual carriageway, which will only provide for a left in /left out movements)
- 2 Adequate signage will need to be installed to reinforce the left in/left out restriction.
- 3 The driveway should be constructed with an adequate splay to facilitate the left turn in from Nelson Bay Road.
- 4 The driveway must be sealed from the edge of bitumen on Nelson Bay Road to the property boundary
- 5 The proposed access location off Nelson Bay Road shall have Safe Intersection Sight Distance (SISD) in compliance with the RTA's Road Design Guide for the prevailing speed limit.

Please note that this is preliminary advice only and is subject to a further assessment by the RTA. The RTA requirements may change when the development application is referred for comment. The RTA will provide further comments and respond to the development application when referred by Council.

Roads and Traffic Authority

2nd Fl, 2nd St, Newcastle NSW 2300

Postal Bag 96 Newcastle NSW 2300 Tel: 08 929 78 11

www.rta.nsw.gov.au | 13 17 82

If you require further advice please contact me on (02) 4924 0240.

Yours sincerely



Dave Young
Manager, Land Use Development
Hunter Operations & Engineering Services

23 June 2010

cc Joe Gleeson
Port Stephens Council

**ATTACHMENT 4
DRAFT CONDITIONS OF CONSENT**

Deferred Commencement Condition

1. Under Section 138 of the Roads Act 1993, the development requires concurrence from the NSW Roads & Traffic Authority prior to connecting to a classified road, being Nelson Bay Road. Concurrence from the RTA shall be provided to Council within the specified timeframe.

General Conditions

2. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
3. Works shall not commence until such time as the necessary construction certificates and Roads Act approvals have been issued for the works approved by this application.
4. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
5. An amended site plan shall be submitted to and approved by Council **prior to the issue of any Construction Certificate**. The amended plan must be consistent with the recommendations of the Ecological Report submitted with the application, prepared by Peak Land Management dated February 2009, particularly regarding:
 - A wildlife corridor (minimum of 30m wide) must be provided along the western boundary. The corridor must not include any asset protection zones for bushfire protection, stormwater infrastructure or recreation areas.
 - A minimum 50m buffer area must be provided between the development and identified endangered ecological communities located north and south of the development area.
 - Asset protection zones for bushfire protection are to be reduced to the minimum amount required by the conditions imposed by the NSW Rural Fire Service. All other areas disturbed by clearing are to be rehabilitated.
6. An amended stormwater concept design shall be submitted to and approved by Council **prior to the issue of any Construction Certificate**. The amended concept must indicate the outlet point of the proposed drainage system, include supporting calculations and consideration of how the

proposed works (including cut and fill) will impact on flooding and groundwater on and around the site.

7. The civil engineering design plans are to be in accordance with Council's Design and Construction Specification, policies and standards including road widths, drainage, detention and works within the Crown Road and Nelson Bay Road. These plans shall be submitted to and approved by Council **prior to the issue of a Construction Certificate**. Note: The road will need to be a minimum 6m sealed width and include associated drainage. Pavement will need to be designed by a geotechnical engineer.
8. Comprehensive details regarding connection of water and sewer services shall be submitted to and approved by Council **prior to the issue of a Construction Certificate or Roads Act Approval**.
9. A bus shelter shall be provided on the eastern side of Port Stephens Drive. An all weather access is to be provided between the development and the bus shelter. Details are to be confirmed with Council's Integrated Planning Section **prior to the issue of a Construction Certificate**.
10. The construction of the general store shall comply with the requirements of Australia Standard AS4674. **Prior to the issue of the Construction Certificate**, full construction and fit-out details are to be provided to Council's Environmental Health Officer (Food Inspection) for approval.
11. An Acid Sulphate Soils Management Plan is to be submitted to Council for approval **prior to the issue of a Construction Certificate**.
12. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act, 1979 and Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of the following public facilities:-

	Per Lot	Total
Civic Administration	(\$192)	(\$43,968)
Public Open Space, Parks and Reserves	(\$1,042)	(\$238,504)
Sports and Leisure Facilities	(\$2,454)	(\$561,966)
Cultural and Community Facilities	(\$1,234)	(\$282,586)
Fire & Emergency Services	(\$96)	(\$21,870)
Roadworks	(\$465)	(\$106,485)
Anna Bay/Boat Harbour S94 Drainage Catchment	(\$323)	(\$73,853)
Total	(\$5,805)	(\$1,329,231)

Note:

a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, Raymond Terrace.

b) Contributions are to be paid **prior to issue of construction certificate**.

c) The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of original consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect the attached fee schedule is valid for twelve months from the date of original consent.

13. An approval to operate a caravan park under Section 68 of the Local Government Act shall be obtained from Council prior to occupation of any building and following completion of all construction works.
14. All building work (including the community hall, office buildings, visitor parking, amenities and provision of services) and civil engineering works (including internal and external roads, stormwater infrastructure) are to be completed prior to **prior to the issue of an approval to operate the caravan park and prior to any caravan site being occupied**.
15. The community bus is to be available for use **prior to the issue of an approval to operate the caravan park and prior to any caravan site being occupied**. The bus service shall be available for use whenever any caravan site is occupied.
16. Due to previous sand mining operations on the site and the potential for contamination, appropriate certification incorporating a preliminary investigation shall be submitted to Council demonstrating that the site is suitable for residential use in accordance with SEPP 55 Remediation of Land and Managing Contaminated Land Planning Guidelines **prior to the issue of an approval to operate the caravan park and prior to any caravan site being occupied**.
17. The premises are to be designed, constructed and operated in accordance with the requirements of the Local Government (Caravan Parks, Camping grounds and Moveable Dwellings) Regulation 1995. Confirmation that all works comply with the regulations is to be provided to Council **prior to the issue of an approval to operate the caravan park**.
18. Manufactured homes shall not be constructed on site in accordance with the Local Government (Caravan Parks, Camping grounds and Moveable Dwellings) Regulation 1995.

19. The development shall be serviced by the Hunter Water Corporation with water and sewerage facilities.
20. A Compliance Certificate under Section 50 of the Hunter Water Corporation Act, 1991 shall be submitted to Council **prior to the issue of an Occupation Certificate**. Applications for Section 50 Certificates are to be made direct to the Hunter Water Corporation.
21. A bushfire report certifying compliance with the Bushfire Safety Authority conditions imposed by the Rural Fire Service shall be submitted to Council **prior to the issue of an approval to operate the caravan park and prior to any caravan site being occupied**.
22. Only Virgin Excavated Natural Material (VENM) in accordance with the Environmental Protection Agency NSW statutory definition shall be used for the approved land filling activities. The use of any material other than VENM may require an EPA licence for use as a landfill. The use of any material other than VENM for land filling purposes, without prior approval of council is prohibited. Council will insist on the removal of any prohibited material.
23. Under the Water Management Act 2000, the development will require a controlled activity approval from the NSW Office of Water, and shall be obtained **prior to the issue of any construction certificate**.
24. The pedestrian/emergency access to Port Stephens Drive shall not be used by regular vehicular traffic from the development. Measures (such as gates) are to be implemented to ensure proper use of the secondary access.
25. The development has been granted a conditional approval from the NSW Rural Fire Service dated 11/12/09 under their relevant legislation. The development shall comply with the following conditions imposed by the authority with their general terms of approval.
26. At the commencement of building works and in perpetuity the property around the proposed development shall be managed as follows as outlined within Section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones':
 - North for a distance of 15 metres as an Inner Protection Area (IPA);
 - North-east for a distance of 15 metres as an IPA;
 - East for a distance of 10 metres as an IPA;
 - South East for a distance of 15 metres as an IPA;
 - South for a distance of 15 metres as an IPA;
 - West for a distance of 10 metres as an IPA.
27. Water electricity and gas are to comply with Section 4.1.3 and 4.2.7 of 'Planning for Bushfire Protection 2006'.

MINUTES FOR ORDINARY MEETING – 19 OCTOBER 2010

28. The proposed main access servicing the development from Nelson Bay Rd shall comply with Section 4.1.3(1) of 'Planning for Bushfire Protection 2006'.
29. Internal roads shall comply with Section 4.2.7 of 'Planning for Bushfire Protection 2006'.
30. The proposed emergency access to the west shall comply with the following requirements:
- Road(s) shall be two wheel drive, all weather roads.
 - Traffic management devices are constructed to facilitate unobstructed and unhindered access by emergency services vehicles.
 - The capacity of road surfaces and bridges is sufficient to carry fully loaded fire fighting vehicles (approximately 15 tonnes for areas with reticulated water, 28 tonnes or 9 tonnes per axle for all other areas). Bridges clearly indicate load rating.
31. Arrangements for emergency and evacuation are to comply with Section 4.2.7 of 'Planning for Bushfire Protection 2006'.
32. New construction on the northern, south-eastern and southern elevations between 16 and 23 metres shall comply with Australian Standard AS3959-2009 BAL 29.
- New construction on the northern, south-eastern and southern elevations between 23 and 32 metres shall comply with Australian Standard AS3959-2009 BAL 19.
- New construction on the northern, south-eastern and southern elevations between 32 and 100 metres shall comply with Australian Standard AS3959-2009 BAL 12.5.
33. New construction on the north-eastern elevations between 13 and 19 metres shall comply with Australian Standard AS3959-2009 BAL 29.
- New construction on the north-eastern elevations between 19 and 27 metres shall comply with Australian Standard AS3959-2009 BAL 19.
- New construction on the north-eastern elevations between 27 and 100 metres shall comply with Australian Standard AS3959-2009 BAL 12.5.
34. New construction on the eastern elevations between 10 and 50 metres shall comply with Australian Standard AS3959-2009 BAL 12.5.
35. New construction on the western elevations between 9 and 13 metres shall comply with Australian Standard AS3959-2009 BAL 29.
- New construction on the north-eastern elevations between 13 and 19 metres shall comply with Australian Standard AS3959-2009 BAL 19.

MINUTES FOR ORDINARY MEETING – 19 OCTOBER 2010

New construction on the north-eastern elevations between 19 and 50 metres shall comply with Australian Standard AS3959-2009 BAL 12.5.

Note: Distances from elevations are intended to be taken from the edge of the developed area.

36. Landscaping of the site is to comply with the principles of Appendix 5 of 'Planning for Bushfire Protection 2006'.
37. All works which are located in public roads are subject to approval under section 138 of the Roads Act 1993. Engineering details in accordance with Council's Subdivision and Development Code, of such works shall be submitted with a Roads Act application form and then approved by Council **prior to approval to commence these works and prior to issue of the Construction Certificates.**

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

- a) Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual;
 - b) Payment of fees and bonds (same Principle Certifying Authority fees, inspection fees and maintenance bonds as relevant to subdivisions);
 - c) Contractors public liability insurances to a minimum value of \$10 million dollars.
38. The following fees and/or bonds are to be paid as part of this consent:
- a) Subdivision construction certificate/plan approval fee, prior to approval of construction certificate or plans.
 - b) PCA/inspection fee, prior to approval of construction certificate or plans.
 - c) Long Service Levy, prior to issue of construction certificate (verification of payment is required if paid directly to Long Service Board)
 - d) Maintenance Bond, prior to release of subdivision certificate.

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

39. Works associated with the approved plans and specifications located within the existing Road Reserve shall not commence until:
- i) a Roads Act Approval has been issued, and
 - ii) all conditions of the Roads Act Approval have been complied with to Council's satisfaction.
40. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Subdivision & Development Code, to the satisfaction of Council or the Certifying Authority **prior to issue of an**

approval to operate the caravan park and prior to the occupation of any caravan site.

41. All civil engineering works within the development site are subject to:
 - a. inspection by Council, or the Certifying Authority
 - b. testing by a registered NATA Laboratory and
 - c. approval by Council or the Certifying Authority at each construction stageas determined by Council's Subdivision & Development Code.
42. Works associated with the Roads Act Approval are subject to:
 - a. inspection by Council,
 - b. testing by a registered NATA Laboratory and
 - c. approval by Council at each construction stage as determined by Council.
43. Civil construction of the crown road in accordance with Council's Subdivision & Development Code, including associated drainage shall be completed and dedicated to Port Stephens Council at no cost to Port Stephens Council **prior to issue of an approval to operate the caravan park and prior to the occupation of any caravan site.**
44. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
45. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
46. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-
 - * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * No construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.
47. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The

applicant is to ensure the PCA sign remains in position for the duration of works.

48. Separate approval is required to occupy, close or partially close the road reserve adjacent to the property under the Roads Act. The storage of materials, placement of toilets and rubbish skips within the road reserve is not permitted.
49. No construction or demolition work shall obstruct pedestrian or vehicular traffic in a public place, a hoarding or fence must be erected between the construction site and the public place.
50. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.
51. Retaining Walls, not clearly noted on the approved plans or not identified as "Exempt Development", are to be subject to a separate development consent.

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

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

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

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

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

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

54. The construction site is to be adequately protected and drainage controlled to ensure that erosion and sediment movement is kept on your site. Construction sites without appropriate erosion and sediment control measures have the potential to pollute the waterways and degrade aquatic habitats. Offenders will be issued with an 'on the spot' fine under the Protection of the Environment Operations Act 1997.

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

55. A "KEEP PORT STEPHENS WATERWAYS POLLUTION FREE" sign shall be displayed and be clearly visible from the road frontage for public viewing on the site at the commencement of works and remain in place until completion of the development. Signs are available from Port Stephens Council.
56. Prior to the commencement of work, provide a 3m wide all weather vehicle access from the road to the development site under construction for the delivery of materials & trades to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.
57. All stockpiled materials shall be retained within the property boundaries. Stockpiles of topsoil, sand, aggregate, spoil or other materials shall be stored clear of the all weather vehicle access and drainage lines.
58. The principal certifying authority shall only issue an occupation certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the principal certifying authority issues an occupation certificate. Note: if an accredited certifier approves occupation, the accredited certifier is to immediately notify council in writing.
59. **Prior to occupying the site**, contact Council's Mapping Section on 49800304 to obtain the correct address numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.
60. **Prior to commencement of any works** within the road reserve for the provision of a driveway crossing, the applicant or their nominated contractor shall make application to Council and receive approval for the construction of the access road.

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

61. To protect the occupants of the premises and to ensure that asset protection zones are maintained effectively, the following fire safety measures are considered to be essential fire safety measures and are to be installed throughout the property:

Fire hoses installed in accordance with AS2441- so that any temporary sites are covered by at least one (1) hose reel.

Fire hydrants installed in accordance with AS2419-2005 so that no site is more than 70m from a hydrant standpipe.

Bushfire asset protection zones are to be created and maintained for the life of the development in accordance with NSW Rural Fire Service's document 'Standard for Asset Protection Zones' to protect structures within the development and provide safety for fire fighters and occupants.

That all moveable dwellings satisfy the construction standards under AS3959-2009 and specified in this consent and attached schedule to provide ongoing protect to residents from the threat of bushfire.

That landscaping of the site is to be in accordance the conditions of this consent and Planning for Bushfire Protection 2009, to ensure that the risk of bushfire attack is not increased by inappropriate plantings.

A final fire safety certificate is to be provided to Council **prior to the issue of an approval to operate the caravan park and prior to any caravan site being occupied.**

62. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
- a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.

GENERAL ADVICES

- a) Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- b) This approval relates to Development Consent only and does not infer any approval to commence excavations or building works upon the land. A Construction Certificate should be obtained prior to works commencing.
- c) The subject site is located within the Anna Bay Drainage Union Catchment. Prior to commencement of work, consult the secretary of the Anna Bay Drainage Union, RMB 8aa Frost Road, Anna Bay NSW 2316 as required under the Water Management Act 2000.
- d) The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
- e) Any tree clearance on the site will likely require approval from the local Catchment Management Authority under the Native Vegetation Act 2003. The CMA should be consulted prior to any works being undertaken.

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.

Cr Kafer left the meeting at 8.26pm and did not return.

Cr Francis left the meeting at 8.27pm and did not return.

Cr MacKenzie having a pecuniary interest in Item 1 of the Confidential Report left the meeting at 8.28pm

350	Councillor John Nell. Councillor Ken Jordan	It was resolved that Council move into Confidential Session.
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Councillors present – Cr Westbury, Cr Dover, Cr Nell, Cr O'Brien, Cr Tucker and Cr Jordan.

MINUTES FOR ORDINARY MEETING – 19 OCTOBER 2010

There being no quorum the meeting was adjourned at 8.29pm. This Confidential Item 1 shall be dealt with prior to the next meeting of Council on Tuesday 2 November 2010 at 5.30pm.

I certify that pages 1 to 147 of the Open Ordinary Minutes of Council 19 October 2010 were confirmed by Council at its meeting held on 9 November 2010.

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Cr Bob Westbury
MAYOR