Minutes 23 NOVEMBER 2010

Port Stephens
C·O·U·N·C·I·L
... a community partnership

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 23 November 2010, commencing at 5.30pm.

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

		No apologies were received.

363	**Councillor Glenys Francis** **Councillor Ken Jordan**	It was resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 9 November 2010 be confirmed.

		No declaration of interests were received.

INDEX

SUBJECT PAGE NO

MOTIONS TO CLOSE 4

1. MOTION TO CLOSE MEETING TO THE PUBLIC 5
2. MOTION TO CLOSE MEETING TO THE PUBLIC 6
3. MOTION TO CLOSE MEETING TO THE PUBLIC 7

COUNCIL COMMITTEE RECOMMENDATIONS 8

1. 355 COMMITTEE FOR MEN'S SHED RAYMOND TERRACE 9
2. ANNUAL FINANCIAL REPORTS 2009-2010 11
3. SEPTEMBER 2010 QUARTERLY REPORT AGAINST OPERATIONAL PLAN 2010-2011 18
4. DRAFT ANNUAL REPORT 2009-2010 & DRAFT SUPPLEMENTARY STATE OF ENVIRONMENT REPORT 2009-2010 20
5. LEASE OF LAND AT SALAMANDER BAY WASTE TRANSFER STATION FOR USE AS A TELECOMMUNICATIONS FACILITY 23
6. COUNCILLOR REIMBURSEMENT POLICY REVIEW 28
7. INFORMATION PAPERS 58

COUNCIL COMMITTEE INFORMATION PAPERS 59

1. PORT STEPHENS COUNCIL 2010 SENIORS & DISABILITY FORUM 60
2. PORT STEPHENS INTERAGENCY 61
3. REQUEST FOR INSTALLATION OF CCTV CAMERA IN BOSUNS PLACE, SALAMANDER BAY 66
4. OBJECTION TO CYCLEWAY CONSTRUCTION ALONG SANDY POINT ROAD CORLETTE 69

GENERAL MANAGER'S REPORT 71

1. "AIRCRAFT NOISE REFERENCE PANEL" AND AUSTRALIAN NOISE EXPOSURE CONCEPT MAP 1ST SEPTEMBER 2010 72
2. INFORMATION PAPERS 80

GENERAL MANAGERS INFORMATION PAPERS 81

1. RESPONSE TO PUBLIC ACCESS SUBMISSION – MR W AND MRS J PARKINSON – DEVELOPMENT CONSENT NO. 16-2006-0283, 29A KINGLSEY DRIVE, BOAT HARBOUR 82

NOTICES OF MOTION 106

1. INFORMATION REGARDING LEGAL ACTION 107

2. COMMITTEE FORMATION FOR RE-DEVELOPMENT OF COUNCIL DEPOT.....108
3. REPORT ON DA 542/2010 - JANET PARADE, SALT ASH.....109

RESCISSION MOTIONS.....111

1. PROPERTY INVESTMENT AND DEVEOPMENT POLICY 112

CONFIDENTIAL ITEMS.....121

1. TENDER – DEBT COLLECTION SERVICES.....122
2. PROVISION OF SECURITY SERVICES – PORT STEPHENS BEACHSIDE HOLIDAY PARKS AND SAMURAI BEACH RESORT.....123
3. PROVISION OF SECURITY SERVICES - ADMINISTRATION BUILDING & VARIOUS SITES..... 124

MOTIONS TO CLOSE

ITEM NO. 1 **FILE NO: T13-2010**

MOTION TO CLOSE MEETING TO THE PUBLIC

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

RECOMMENDATION IS THAT COUNCIL:

1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary Council agenda namely **T13-2010; Tender Debt Collection Services.**

2) That the reasons for closing the meeting to the public to consider this item be that:

   i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and

   ii) In particular, the report includes confidential pricing information in respect of the **T13-2010; Tender Debt Collection Services.**

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

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

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

364	**Councillor Ken Jordan** **Councillor Peter Kafer**	It was resolved that the recommendation be adopted.

ITEM NO. 2 **FILE NO: T16-2010 & PSC2008-0476**

MOTION TO CLOSE MEETING TO THE PUBLIC

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

RECOMMENDATION IS THAT COUNCIL:

1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary Council agenda namely **Provision of Security Services – Port Stephens Beachside Holiday Parks and Samurai Beach Resort.**

2) That the reasons for closing the meeting to the public to consider this item be that:

   i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and

   ii) In particular, the report includes confidential pricing information in respect of the **Provision of Security Services – Port Stephens Beachside Holiday Parks and Samurai Beach Resort.**

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

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

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

365	**Councillor Ken Jordan** **Councillor Peter Kafer**	It was resolved that the recommendation be adopted.

ITEM NO. 3 **FILE NO: T15-2010**

MOTION TO CLOSE MEETING TO THE PUBLIC

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

RECOMMENDATION IS THAT COUNCIL:

1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary Council agenda namely **Provision of Security Services – Administration Building and various sites.**

2) That the reasons for closing the meeting to the public to consider this item be that:

   i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and

   ii) In particular, the report includes confidential pricing information in respect of the **Provision of Security Services – Administration Building and various sites.**

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

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

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

366	**Councillor Ken Jordan** **Councillor Peter Kafer**	It was resolved that the recommendation be adopted.

COUNCIL COMMITTEE RECOMMENDATIONS

367	**Councillor Ken Jordan** **Councillor Bruce MacKenzie**	It was resolved that Notice of Motion 2 be brought forward and dealt with prior to the Motions to Close.

NOTICE OF MOTION

ITEM NO. 2 **FILE NO: A2004-0217**

355 COMMITTEE FOR MEN'S SHED RAYMOND TERRACE

COUNCILLOR: GLENYS FRANCIS

THAT COUNCIL:

1) Support the formation of a 355 Committee for the purpose of organising a Men's Shed in the Raymond Terrace Area.

BACKGROUND REPORT OF: PAUL PROCTER – SOCIAL PLANNING CO-ORDINATOR

Cr Peter Kafer objected to the Notice of Motion to allow discussion on the subject.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

368	**Councillor Glenys Francis** **Councillor Peter Kafer**	It was resolved that Council support the formation of a 355 Committee for the purpose of organising a Men's Shed in the Raymond Terrace Area with a review of the committee in 12 months.

BACKGROUND

During the last 20 years the establishment of men's sheds have become increasingly common with over 400 sheds operating across Australia. Men's sheds play a key role in helping to combat social isolation amongst men.

In recent years the importance of the role and value of the Men's Shed concept has increased as evidenced in 2007 with the establishment of the Australian Men's Shed Association. The Association's website provides the following overview of the role and purpose of Men's Sheds: -

"The modern Men's Shed is an updated version of the shed in the backyard that has long been a part of Australian culture. Men's Sheds are springing up all around Australia. If you looked inside one you might see a number of men restoring furniture, perhaps restoring bicycles for a local school, maybe making Mynah bird traps or fixing lawn mowers or making a kids cubby house for Camp Quality to raffle. You might also see a few young men working with the older men learning new skills and maybe also learning something about life from the men they work with. You will see tea-bags, coffee cups and a comfortable area where men can sit and talk. You will probably also see an area where men can learn to cook for themselves or they can learn how to contact their families by computer.

So what is so special about this new type of Men's Shed? Most men have learned from our culture that they don't talk about feelings and emotions. There has been little encouragement for men to take an interest in their own health and well-being. Unlike women, most men are reluctant to talk about their emotions and that means that they usually don't ask for help. Probably because of this many men are less healthy than women, they drink more, take more risks and they suffer more from isolation, loneliness and depression. Relationship breakdown, retrenchment or early retirement from a job, loss of children following divorce, physical or mental illness are just some of the problems that men find it hard to deal with on their own.

Good health is based on many factors including feeling good about yourself, being productive and valuable to your community, connecting to friends and maintaining an active body and an active mind. Becoming a member of a Men's Shed gives a man that safe and busy environment where he can find many of these things in an atmosphere of old-fashioned mateship. And, importantly, there is no pressure. Men can just come and have a yarn and a cuppa if that is all they're looking for.

Members of Men's Sheds come from all walks of life - the bond that unites them is that they are men with time on their hands and they would like something meaningful to do with that time".

Port Stephens currently has men's sheds operating in the Eastern side of the local government area catering for the Tomaree Peninsula and surrounds, but there are currently no sheds operating in Raymond Terrace or the immediate surrounding areas. The establishment of a 355 Committee is the first crucial step in working towards seeing a men's shed established in Raymond Terrace.

ITEM NO. 1 **FILE NO: A2004-0323**

ANNUAL FINANCIAL REPORTS 2009-2010

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

RECOMMENDATION IS THAT COUNCIL:

1) Adopt the 2009/10 General Purpose Financial Reports and accept the Auditor's Report, as submitted by Pricewaterhouse Coopers.
2) The audited Financial Reports for the year ending 30 June 2010, together with the Auditor's Reports, be presented to the public.

COUNCIL COMMITTEE MEETING – 16 NOVEMBER 2010
RECOMMENDATION:

	Councillor John Nell **Councillor Bob Westbury**	That the recommendation be adopted.

Cr Geoff Dingle left the meeting at 6.11pm and returned to the meeting at 6.11pm prior to voting on Item 1.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

369	**Councillor Ken Jordan** **Councillor Caroline De Lyall**	It was resolved that the recommendation be adopted.

BACKGROUND

The purpose of this report is to advise Council that Council officers have prepared the 2009/10 Financial Reports in accordance with Australian Accounting Standards, other authoritative pronouncements of the Australian Accounting Standards Board, the Local Government Act 1993 (as amended) and associated Regulations, and the Local Government Code of Accounting Practice and Financial Reporting.

The reports have been reviewed by Council's auditors (PricewaterhouseCoopers) and this report is to formally present Council's Financial Reports for the year ending 30 June 2010, together with the Auditor's Reports, to the public in accordance with section 419 of the Local Government Act 1993 (as amended).

Public notice of the presentation of the audited Financial Reports has been advertised in *The Examiner* on 11 November 2010 and copies of the Financial Reports have been available at the customer service desk and on Council's website.

The Financial Reports, including the audit reports, have been circulated separately to Councillors for their information and a two way conversation was held on 9 November 2010 with a representative from PricewaterhouseCoopers regarding these reports.

Financial Result (Income Statement)

The Income Statement shows a deficit of $5.26 million before capital amounts (previous year, 2008/09 was $10.887 million deficit) which includes non cash items such as depreciation and movements in provisions for expenses accrued but not yet paid.

Revenue
Revenue increased by $8.24 million from the previous year. Revenue from rates & annual charges totalled 42.22% of Council's revenue. Given the nature of these charges, this revenue stream is considered secure and sustainable in the long term.

Government grants represent a significant portion of Council's income. The majority of these grants are tied to specific works and cannot be used for any other purpose. Total income received in operating grants & contributions in 2009/10 was $9.74 million (previous year, 2008/09 was $10.37 million). This represents a percentage of total income in 2009/10 of 10.2% (previous year, 2008/09 was 11.8%). The decrease in grants can almost entirely be attributable to the decrease in Financial Assistance Grant of $1.02 million from the previous year. Council received an advanced payment in 2008/09 as part of the Commonwealth Government stimulus package.

Interest and investment revenue for the year totalled $2.31 million (previous year, 2008/09 was $1.7 million loss). The average rate of return on Council's investment portfolio for the year was 3.17%. No impairment losses were incurred on any of the credit products held by Council during the year.

Profit on disposal of financial assets (investments) was $181K.

Highlights during the year included:

Income generated from the holiday parks totalled $8.99 million, an increase of $746K (9.04%).
Fees provided to Council from the RTA to maintain state roads was $4.45 million, an increase of $2.26 million on the previous year.
Income earned from Council's investment property portfolio totalled $1.85 million, an increase of $568K (44%).

Expenditure
Total employment costs for the year were $34.37 million (previous year, 2008/09 was $31.31 million). This represents a total percentage of total operating expenditure of 36.74% (previous year, 2008/09 was 34.2%).

Interest paid on loans was $2.65 million.

Depreciation is the allocation of the cost of a non-current asset to expense over several periods to recognise the consumption of the asset's economic value. Total depreciation expense for the year was $18.66 million. The majority of this relates to depreciation on Council's buildings, roads, bridges & footpaths and stormwater drainage assets.

Other significant expenditure items include:

Legal expenses of $932K, a decrease of $46K on the previous year
Waste collection & disposal services expenses of $7.33 million.
Insurance expenses (excluding workers compensation) were $1.67 million
Street lighting costs of $648K, an increase of $104K (19%).

Financial Position (Balance Sheet)

Infrastructure, Property Plant & Equipment

The written down value of Infrastructure, Property, Plant & Equipment (I,PP&E) at the end of the year was $678.72 million, an increase of $165 million. Capitalisations during the year totalled $25.86 million.

Major capital items during the year included:

Renewal of roads, bridges & footpaths totalled $7.4 million
New & renewal of existing buildings totalled $5.4 million
Upgrade & renewal to stormwater drainage assets totalled $1.2 million

As part of Council's transition to measuring all it's I,PP&E at Fair Value, Council this year reviewed and brought to account Fair Values for its Roads, Bridges & Footpaths and Stormwater Drainage assets. As a result of the revaluation these assets increased by $123.84 million.

Cash/Liquidity Position
Council's overall cash & investment position has decreased from $28.84 million at the end of 2008/09 to $21.34 million at the end of 2009/10. All of Council's cash is restricted in its use to specific purposes by external bodies, legislation and Council resolution. Cash is attributable to:

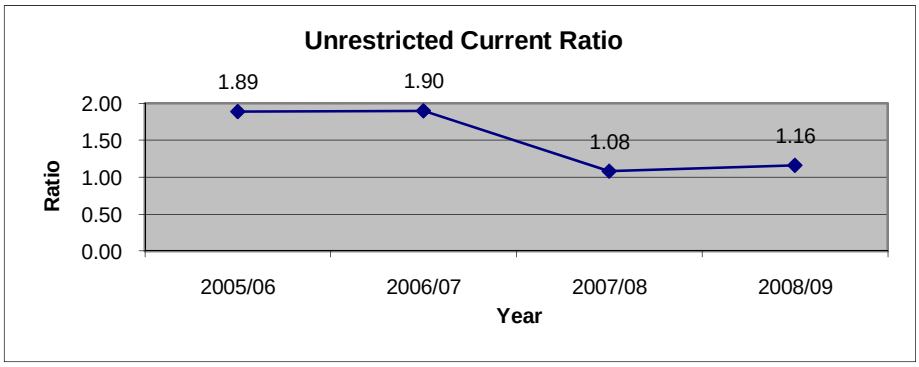
attributable to:	$'000
External restrictions	14,804
Internal restrictions	6,533
Unrestricted	0
Total	21,337

The decrease in cash & investment can be attributable to the commitment to allocate funds to maintain & renew existing assets to a satisfactory standard.

The market values of the credit instruments (i.e., CDO's floating rates notes etc) that Council holds recorded gains of $2.29 million during the year on the back of stronger financial market conditions, recovering losses recorded in previous periods.

The most focus for Council's cash/liquidity position is on the Unrestricted Current Ratio (UCR). The UCR is the ratio of current assets to current liabilities after accounting for external reserves. This ratio demonstrates the ability of Council to satisfy our financial obligations in the short term, excluding the assistance of externally restricted funds.

Council's UCR was 1.16:1 (previous year, 2008/09 was 1:08) which indicates that Council has $1.16 in unrestricted current assets to every $1 of unrestricted current liabilities.



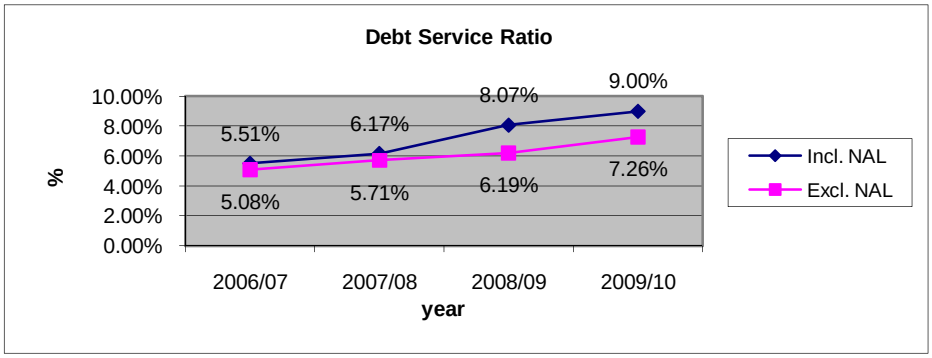
Debt Position

Council's debt position has remained manageable with total debt outstanding of $50.5 million. New loans of $10.57 million were raised during the year. Details of new loans are as follows:

$5.8 million for a new investment property
$2.87 million for infrastructure works
$600K for cabins at Halifax holiday park
$960K for cabins at Fingal Bay holiday park
$340K for recreation room at Fingal Bay holiday park

The Debt Service Ratio (DSR) demonstrates the cost of servicing Council's debt obligations (principal + interest) with available revenue from ordinary activities.

The DSR of 9% has increased over the previous year from 8.07% due to the new loans being raised. The DSR excluding the loans made to the Newcastle Airport was 7.26%. A DSR of <10% is considered an industry accepted measure.



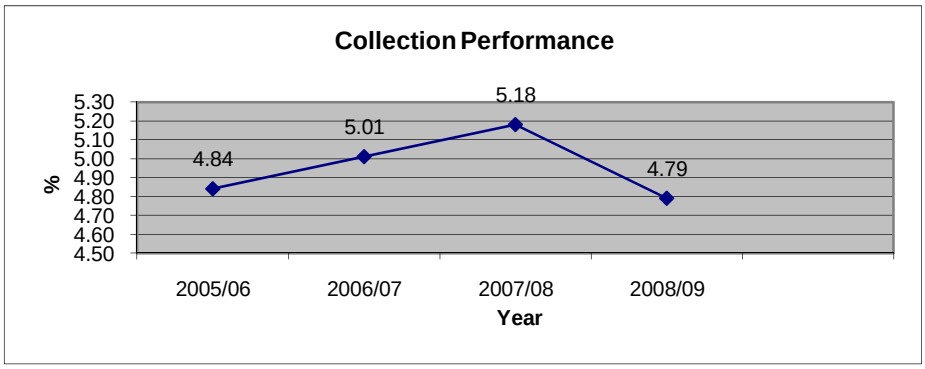
Payables
Payables decreased by $2.18 million due to a combination of factors. Accrued expenses have decreased by $1.82 million due to expenditure slowing down in the last quarter of the financial year to match tighter cash flow position.

Inventories
The value of Council's real estate assets (land) as at 30 June 2010 was $17.33 million.

Receivables
Receivables increased by $628K mainly due to RTA Single Invitation Contract monies being owed to Council as at 30 June 2010.

Council in conducting its business is entitled to the receipt of fees and rates which need to be collected efficiently. A measure of its success in this regard is the amount of legally receivable proceeds that are still outstanding at the end of the financial year, in comparison to the total fees receivable for the year (outstanding rates & annual charges %).

Council's outstanding rates & annual charges percentage was 4.79%. This is the lowest outstanding percentage in at least the last 8 years.



Cash Flows
The Cash Flow Statement provides relevant information about the cash inflows and outflows for the year. It includes payments and receipts for operational activities, investing activities (such as I,PP&E, investments, and real estate), and financing activities (borrowings).

Net cash & cash equivalents at the end of the year was $21.34 million, a decrease of $7.51 million over the previous year. Cash flows from Operating Activities were $14.2 million in 2009/10 (previous year, 2008/09 was $11.36 million).

Payments for purchase of Infrastructure, Property, Plant & Equipment decreased from $25.26 million in 2008/09 to $23.84 million. Council also made payment of $5.8 million to acquire 528 Hunter Street, Newcastle to further enhance Council's investment property portfolio.

FINANCIAL/RESOURCE IMPLICATIONS

A complete set of audited Financial Reports have been circulated under separate cover.

LEGAL, POLICY AND RISK IMPLICATIONS

In accordance with Section 418 of the Local Government Act 1993 (as amended), public notice of the presentation of the Financial Reports was advertised in *The Examiner* on 11 November 2010.

Copies of the audited Financial Reports have been available for inspection by members of the public from 11 November 2010 and any person can make written submissions to Council with respect to the reports until 30 November 2010. Any submissions received will be subsequently reported to Council and forwarded to Council's auditors.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Completion of the annual Financial Reports provides Council with the information needed to facilitate prudent financial management decision-making which will have a positive impact on the community.

CONSULTATION

PricewaterhouseCoopers (external auditor).
Division of Local Government.

OPTIONS

Accept the recommendations.
Reject the recommendations.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

1) 2009/10 Annual Financial Reports.

ITEM NO. 2 **FILE NO: PSC2010-04103**

SEPTEMBER 2010 QUARTERLY REPORT AGAINST OPERATIONAL PLAN 2010-2011

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

RECOMMENDATION IS THAT COUNCIL:

1) Adopt the September 2010 Quarterly Report against the Operational Plan 2010-2011.

COUNCIL COMMITTEE MEETING – 16 NOVEMBER 2010
RECOMMENDATION:

	Councillor Glenys Francis **Councillor Bruce MacKenzie**	That the recommendation be adopted.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

370	**Councillor John Nell** **Councillor Bruce MacKenzie**	It was resolved that the recommendation be adopted.

BACKGROUND

The purpose of this report is to provide to Council a report of progress against the Operational Plan 2010-2011 for the September 2010 Quarter.

FINANCIAL/RESOURCE IMPLICATIONS

This quarterly report was prepared by Corporate Strategy & Planning with data gathered from across Council as reported by those sections/groups designated responsible.

LEGAL, POLICY AND RISK IMPLICATIONS

The September 2010 Quarterly Report was prepared in accordance with the Local Government (Integrated Planning & Reporting) Act 2009. At this time there are no identified policy or risk implications.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Operational Plan 2010-2011 forms part of the integrated plans of Council, which are formulated under the four pillars of sustainability – economic, environmental, social/cultural and governance & civic leadership. In reporting against the Operation Plan 2010-2011 implications across the sustainability implications for Council and its community are indicated.

CONSULTATION

The September 2010 Quarterly Report is a record of facts pertaining to the actions and outcomes of Council in the period and consultation is not required.

OPTIONS

Council can:

1) Adopt the recommendation;
2) Reject the recommendation.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

1) September 2010 Quarterly Report against Operational Plan 2010-2011.

ITEM NO. 3 **FILE NO: PSC2010-04192**

DRAFT ANNUAL REPORT 2009-2010 & DRAFT SUPPLEMENTARY STATE OF ENVIRONMENT REPORT 2009-2010

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

RECOMMENDATION IS THAT COUNCIL:

1) Adopt the draft Annual Report 2009-2010 and the draft Supplementary State of Environment Report 2009-2010.

COUNCIL COMMITTEE MEETING – 16 NOVEMBER 2010
RECOMMENDATION:

	Councillor Sally Dover **Councillor Shirley O'Brien**	That the recommendation be adopted, including the supplementary information provided.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

371	**Councillor John Nell** **Councillor Glenys Francis**	It was resolved that the Council Committee recommendation be adopted.

BACKGROUND

The purpose of this report is to present to Council the draft Annual Report 2009-2010 against the Council Plan 2009-2013.

The draft Annual Report 2009-2010 has a new format, consistent with feedback from the Division of Local Government on best practice examples from other councils, and review of the previous Annual Report 2008-2009 by the judges in the Australasian Reporting Awards.

The draft Annual Report 2009-2010 is in two volumes – Part A and Part B (the financial statements); and a separate draft Supplementary State of Environment Report. The draft Annual Report 2009-2010 is structured to include more information on Councillors, including membership of committees in the appendices; more information on executive staff; the situational analysis of the LGA has been expanded; the key result areas are provided in a summary traffic light page and detailed in the respective areas of the Principal Activities Detailed Report; the key

performance indicators that related to the LGA are set out in a table; the contribution of each section of Council, including its budget/actual performance is set out. Statutory statements that are not included in these headings are provided separately at the end of Part A. For the first time, as a new legislative requirement, code of conduct matters for the year are included.

The draft Annual Report 2009-2010 is more detailed and transparent than previous reports and provides an accurate and balanced account of the Council's performance.

FINANCIAL/RESOURCE IMPLICATIONS

The draft Annual Report 2009-2010 contains the audited financial statements of Council for the period in Part B. Part A contains a summary of revenue and expenditure in the form of easy-to-read graphs.

LEGAL, POLICY AND RISK IMPLICATIONS

Although Council is a 'group one' council for the purposes of the Local Government (Integrated Planning and Reporting) Act 2009, because this reporting period is before the commencement of that legislation, Council was required to provide a Supplementary State of Environment Report, a requirement that has been removed for subsequent years. The draft Supplementary State of Environment Report 2009-2010 meets this requirement and sets out what Council has done or planned in the period since the Comprehensive State of Environment Report in 2008-2009.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Council Plan 2009-2013 sets out the objectives to be achieved and the key performance indicators under sustainability headings – social, cultural, economic, environmental and business excellence. In the interests of coherence and readability by the public, the draft Annual Report 2009-2010 has adopted a new format to report against these criteria. However Council's operations continue to be framed in terms of sustainable outcomes for the community of Port Stephens.

CONSULTATION

The draft Annual Report 2009-2010 was prepared with inputs from across Council, and after consultation with the Division of Local Government and the judging panel of the Australasian Reporting Awards.

Part B – Financial Statements – was prepared by Council staff in Financial Services and in consultation with Council's auditors, PricewaterhouseCoopers Australia.

The draft Supplementary State of Environment Report 2009-2010 was prepared with inputs from relevant staff across Council and Hunter Councils.

OPTIONS

1) Adopt the draft Annual Report 2009-2010 and draft Supplementary State of Environment Report 2009-2010.
2) Reject the draft Annual Report 2009-2010 and draft Supplementary State of Environment Report 2009-2010.
3) Amend the draft Annual Report 2009-2010 and draft Supplementary State of Environment Report 2009-2010.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

1) Draft Annual Report 2009-2010 and draft Supplementary State of Environment Report 2009-2010.

ITEM NO. 4 **FILE NO: PSC2005-2522**

LEASE OF LAND AT SALAMANDER BAY WASTE TRANSFER STATION FOR USE AS A TELECOMMUNICATIONS FACILITY

REPORT OF: JOHN MARETICH – ACTING CIVIC ASSETS MANAGER
GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

1) Approve the lease of a portion of land at Salamander Bay Waste Transfer Station to Telstra Corporation Limited for the installation of a telecommunications facility.
2) Authorise the Mayor and General Manager to affix the seal of Council to the lease documentation and any options exercised under the terms of the lease.
3) Allocate all income from the leasing of land at Salamander Bay Waste Transfer Station to Telstra Corporation Limited to the Asset Rehabilitation Reserve.

COUNCIL COMMITTEE MEETING – 16 NOVEMBER 2010
RECOMMENDATION:

	Councillor Bruce MacKenzie **Councillor John Nell**	That the recommendation be adopted.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

372	**Councillor Bruce MacKenzie** **Councillor Peter Kafer**	It was resolved that the recommendation be adopted.

BACKGROUND

The purpose of this report is to finalise lease arrangements for a portion of land at the Salamander Bay Waste Transfer Station to Telstra Corporation Limited for use as a telecommunication facility.

The site already has a telecommunication tower in place under separate lease to Optus Mobile Pty Ltd. The Telstra facility co-locates its equipment on this tower. The Telstra facility consists of small shed at the rear of the Waste Transfer Station and a fibre optic cable from the facility to the intersection of Soldiers Point Road and Tarrant Road Salamander Bay.

Adoption of the recommendation finalises the lease negotiations and aligns with Council's corporate goal in the Integrated Strategic Plan 1010-2014, Goal 16.2 which states:

> *"Develop strategies and identify opportunities for expanding Council's alternative revenue streams".*

The site in question is operational land and approximately 31.2 square metres in area. The leasing of this land is considered a good use of property that will return a steady income stream to the Asset Rehabilitation Reserve.

A rental of $12,500 indexed to rise by 3% per annum has been negotiated with Telstra Corporation Limited and is in accordance with advice received from Councils Property Section in relation to market value. Telstra Corporation Limited, however, remains responsible for all maintenance and repairs to the premises and separately metered services as in the case of electricity. Council remains responsible for statutory outgoings.

A summary of the key issues is provided in Attachment 2.

FINANCIAL/RESOURCE IMPLICATIONS

The aim in commercial leasing is to create a secure lease for the longest period of time to a viable tenant. When this has been achieved the owner is protected by known income and growth rate over the life of the lease.

By having a valid and enforceable lease Council gains positive rights in respect of the occupancy of the property. Rental returns are protected and the ability to recover costs means that the property returns funds to Council's Asset Rehabilitation Reserve as opposed to contributing as a liability for maintenance.

This lease provides for rental to commence at $12,500 indexed to rise cumulatively by 3% per annum (plus GST) with reviews to be conducted every five years by agreement between the parties. Following the exercise of the lease Council may expect to receive at least $66,000 over the first five-year term of the lease. Telstra Corporation Limited may exercise three further options of five years each at the expiration of the current term that would return at least a further $269,000 over the remaining fifteen years.

The allocation of all revenue from this lease to the Asset Rehabilitation Reserve will improve Council's ability to rehabilitate its assets.

LEGAL, POLICY AND RISK IMPLICATIONS

The leasing of the land is consistent with Council's policy on "Telecommunication Facilities in Port Stephens" in that the location is within an industrial site away from residential areas.

It is a requirement of the Real Property Act that leases in excess of five years duration must be registered upon the title of the land to which they apply. If the lease is to be registered the seal must be affixed upon signing. The seal of a Council must not be affixed to a document unless the document relates to the business of a Council and the Council has resolved (by way of resolution specifically referring to the document) that the seal be affixed.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

By leasing the land for the installation of a telecommunication facility, Council is contributing to better mobile phone services to the Tomaree Peninsula. The end result will be a more connected community.

By directing all revenue from the leasing of this land to the Asset Rehabilitation Reserve Council will increase its financial sustainability.

The leasing of the land for a telecommunication facility poses no significant ecological implications. Issues like aesthetics and visual amenity are not impacted as the facility is located at the rear of the waste transfer station in an industrial area and the antennae are co-located with the existing Optus tower.

CONSULTATION

Facilities and Services Group Manager, Property Investment Coordinator, Waste Management Coordinator, Harris Wheeler.

OPTIONS

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

ATTACHMENTS

1) Plan of the site for the Telstra Corporation Limited telecommunication facility for land at Salamander Bay Waste Transfer Station.
2) Copy of the "Reference Schedule" of the lease between Telstra Corporation Limited and Port Stephens Council.

COUNCILLORS ROOM

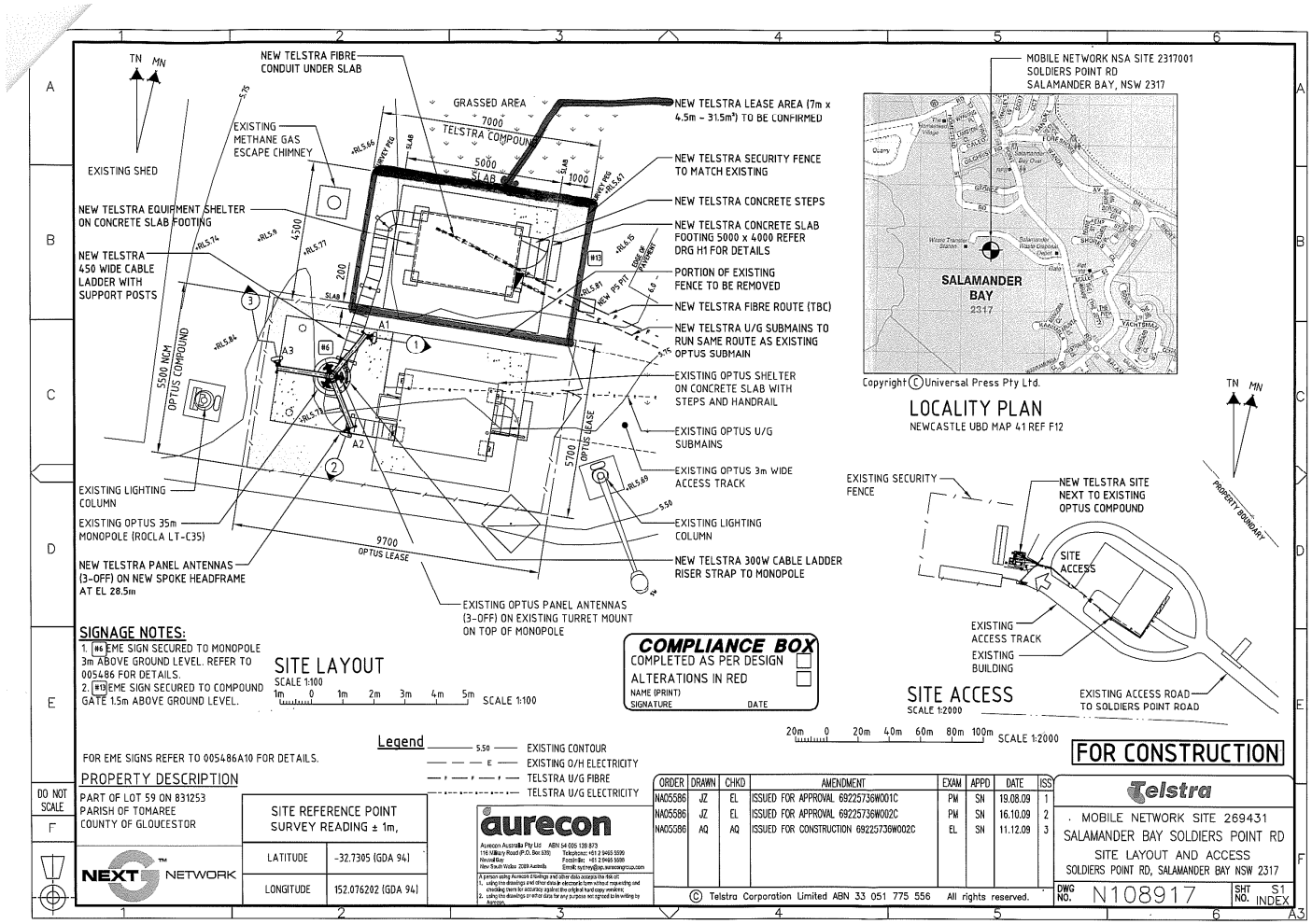
Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

PLAN OF THE SITE FOR THE TELSTRA CORPORATION LIMITED TELECOMMUNICATION FACILITY FOR LAND AT SALAMANDER BAY WASTE TRANSFER STATION



ATTACHMENT 2

COPY OF THE "REFERENCE SCHEDULE" OF THE LEASE BETWEEN TELSTRA CORPORATION LIMITED AND PORT STEPHENS COUNCIL

Item 1	**Lessor**	Name:	**Port Stephens Council** ABN 16 744 377 876
		Address:	116 Adelaide Street (PO Box 42) RAYMOND TERRACE NSW 2324
		Tel:	(02) 4980 0255
		Fax:	(02) 4987 3612
Item 2	**Lessee**	Name:	**Telstra Corporation Limited** ABN 33 051 775 556 Director, Telstra Property
		Address:	c/- Jones Lang LaSalle Level 34 242 Exhibition Street MELBOURNE VIC 3000
		Attention:	Property Management Director
		Tel:	As notified by the Lessee to the Lessor from time to time
		Fax:	(03) 9639 9314
Item 3 (Clause 1.1)	**Premises**:	An area of approximately 32.1 square metres being that part of the Land hatched on the plan annexed and marked "B" and situated at Salamander Bay Waste Centre, Tarrant Road, Salamander Bay NSW.	
Item 4 (Clause 1.1)	**Land**:	Folio Identifier 2/1117732	
Item 5 (Clause 1.1)	**Term**:	Five (5) years	
Item 6 (Clause 1.1)	**Commencement Date**:	24 February 2010	
Item 7 (Clause 1.1)	**Terminating Date:**	23 February 2015	
Item 8 (Clause 3.1)	**Rent**:	$12,500 per annum (plus GST), subject to Item 12. It being acknowledged that the Rent is a gross Rent inclusive of all usual statutory outgoings.	
Item 9 (Clause 3.1)	**Payment of Rent**:	Yearly in advance by way of electronic funds transfer.	
Item 10 (Clause 3.6)	**Permitted Use**:	Installation, inspection, maintenance, construction, excavation, replacement, repair, renewal, alteration, upgrade, cleaning and operation of the Facility on the Premises in accordance with this Lease.	
Item 11	**Intentionally Deleted**		
Item 12 (Clause 3.1)	**Review of Rent**:	The Rent is to be increased on each Review Date by 3% per annum during the Term and any Further Term.	

ITEM NO. 5 **FILE NO: A2004-0284**

COUNCILLOR REIMBURSEMENT POLICY REVIEW

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

RECOMMENDATION IS THAT COUNCIL:

1) Council revoke the Councillor Reimbursement Policy dated 24 November 2009(Min No. 399)
2) Council adopt the Payment of Expenses and Provision of Facilities to Councillors Policy as advertised **(ATTACHMENT 1).**

COUNCIL COMMITTEE MEETING – 16 NOVEMBER 2010
RECOMMENDATION:

	Councillor John Nell **Councillor Steve Tucker**	That the recommendation be adopted.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

373	**Councillor John Nell** **Councillor Ken Jordan**	It was resolved that the recommendation be adopted.

BACKGROUND

The purpose of this report is to provide Council with any response received from the community following public exhibition of the Payment of Expenses and Provision of Facilities to Councillors Policy.

Council at its meeting on 28 September 2010 resolved to place the Payment of Expenses and Provision of Facilities to Councillors Policy on public exhibition for a period of 28 days. Public exhibition was from 7 October 2010 to 21 October 2010. No submissions were received.

Council is now asked to consider the adoption of the Policy as resolved at the meeting of the 28 September 2010.

FINANCIAL/RESOURCE IMPLICATIONS

Council's 2010-11 budget allocation generally provides for the inclusions covered in the Policy.

LEGAL, POLICY AND RISK IMPLICATIONS

Under Section 252 Council must adopt a policy concerning the payment of expenses incurred by Councillors in relation to discharging the functions of civic office. It is a requirement of the Local Government Act that Council adopt the policy after June 30 each year and lodge the adopted policy with the Department prior to November 30 each year.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The policy allows Councillors to effectively carry out their responsibilities as members of the Council and as community representatives without suffering financial hardship.

CONSULTATION

General Manager
Councillors
Port Stephens Community

OPTIONS

1) Adopt the recommendation
2) Amend the draft policy

ATTACHMENTS

1) Payment of Expenses and Provision of Facilities to Councillors Policy.

TABLED DOCUMENTS

1) Current Councillors Reimbursement Policy

ATTACHMENT 1

Port Stephens
C·O·U·N·C·I·L
... a community partnership

Payment of Expenses and Provision of Facilities to Councillors Policy

(Section 252, Local Government Act 1993)

Adopted 28 June 1994
Minute No 342
Amended 13 December 1994
Minute No. 691
Amended 14/11/95
Minute No. 562
Amended 10/9/96
Minute No. 528
Amended 23/12/97
Minute No. 1471
Amended 09/03/04
Minute No. 107
Amended 31/01/06
Minute No.398
Amended 27/11/06
Minute No. 758
Amended 25/03/08
Minute No. 069
Amended 16/12/08
Minute No. 398
Amended 24/11/09
Minute No.399

Part 1 – Introduction

1.1 Title, commencement and definitions of the Policy

1.1.1 The Policy shall be known as the "Councillors Payment of Expenses and Provision of Facilities".

1.1.2 The Policy is effective from ############.

1.1.3 Definitions

In this Policy, unless otherwise stated:

a) **Councillor** means a Councillor elected to Port Stephens Council, including the Mayor.

b) **Official Business of Council** means:

- Meeting of Council;
- Meetings of Committees of the Whole
- Site inspection where resolved by Council;
- Meetings of committees where Council has endorsed the Councillor's membership;
- Civic receptions hosted or sponsored by Council;
- Meetings or functions to which the Councillors attendance has been approved by the General Manager and/or the Mayor.
- Functions or meetings where the invitation to attend arises only as a result of the Councillor's position as a Councillor.

c) **Council Term** means period of elected Council (generally 4 years under the Local Government Act 1993).
d) **Port Stephens Local Government Area** means the local government area of Port Stephens Council.
e) **The Act** means the *Local Government Act 1993*.
f) **The Regulations** means the *Local Government (General) Regulation 2005*.

1.2 Purpose of the Policy

1.2.1 The purpose of the policy is to ensure that Councillors receive adequate and reasonable expenses and facilities to enable them to carry out their civic duties. It ensures that these are provided in an accountable and transparent manner.

1.3 Objectives and scope of the Policy.

1.3.1 The objective of this Policy is to detail those Councillor expenses and facilities the cost of which shall be met by Council.

1.3.2 This Policy also aims to ensure compliance of the Port Stephens Council Code of Conduct.

1.4 Making, adoption and reporting of the Policy

1.4.1 This Policy is made under the *Local Government Act, 1993*, including Sections 248 to 254 and 731 and having regard to the provisions of the Division of Local Government Circular No. 09-36, 7 October 2009.

1.4.2 The Act requires that the Council must adopt a policy concerning the payment of expenses and the provision of facilities to the Mayor and Councillors.

1.4.3 This Policy is to be adopted by Council annually, within five months after the end of the year.

1.4.4 Prior to adoption public notice must be given and public submissions invited for 28 days. Council must then consider all submissions received and make any appropriate changes to the Policy.

1.4.5 Council need not give public notice of a proposed amendment if Council is of the opinion that the proposed amendments are not substantial. The term "not substantial" should be taken to mean minor changes to wording of the policy or changes to monetary provisions or rates that are less than 5% or changes to the standard of equipment and facilities to be provided. Public notice is required prior to each annual adoption of the policy even if there are no proposed changes.

1.4.6 Section 428 of the Act and Clause 271 of the Regulation requires Councils to include detailed information in their annual reports about the payments of expenses and facilities to Councillors.

1.5 Legislative provisions

1.5.1 The relevant legislative provisions are the *Local Government Act 1993* and the *Local Government (General) Regulations 2005.*

Local Government Act 1993
248 FIXING AND PAYMENT OF ANNUAL FEES FOR COUNCILLORS

(1) A council must pay each councillor an annual fee.
(2) A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.
(3) The annual fee so fixed must be the same for each councillor.
(4) A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.

248A ANNUAL FEES OR OTHER REMUNERATION NOT TO BE PAID DURING PERIOD OF SUSPENSION

A council must not at any time pay any fee or other remuneration, to which a councillor would otherwise be entitled as the holder of a civic office, in respect of any period during which:

(a) the councillor is suspended from civic office under this Act, or

(b) the councillor's right to be paid any fee or other remuneration is suspended under this Act, unless another provision of this Act specifically authorises payment to be made, or specifically permits a person to authorise payment to be made, when the suspension is terminated.

249 FIXING AND PAYMENT OF ANNUAL FEES FOR THE MAYOR

(1) A council must pay the mayor an annual fee.

(2) The annual fee must be paid in addition to the fee paid to the mayor as a councillor.

(3) A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.

(4) A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.

(5) A council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.

252 PAYMENT OF EXPENSES AND PROVISION OF FACILITIES

(1) Within 5 months after the end of each year, a council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.

(2) The policy may provide for fees payable under this Division to be reduced by an amount representing the private benefit to the mayor or a councillor of a facility provided by the council to the mayor or councillor.

(3) A council must not pay any expenses incurred or to be incurred by, or provide any facilities to, the mayor, the deputy mayor (if there is one) or a councillor otherwise than in accordance with a policy under this section.

(4) A council may from time to time amend a policy under this section.

(5) A policy under this section must comply with the provisions of this Act, the regulations and any relevant guidelines issued under section 23A.

253 REQUIREMENTS BEFORE POLICY CONCERNING EXPENSES AND FACILITIES CAN BE ADOPTED OR AMENDED

(1) A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.

(2) Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.

(3) Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.

(4) Within 28 days after adopting a policy or making an amendment to a policy for which public notice is required to be given under this section, a council is to forward to the Director-General:

(a) a copy of the policy or amendment together with details of all submissions received in accordance with subsection (1), and

(b) a statement setting out, for each submission, the council's response to the submission and the reasons for the council's response, and

(c) a copy of the notice given under subsection (1).

(5) A council must comply with this section when proposing to adopt a policy each year in accordance with section 252 (1) even if the council proposes to adopt a policy that is the same as its existing policy.

254 DECISION TO BE MADE IN OPEN MEETING

The council or a council committee all the members of which are councillors must not close to the public that part of its meeting at which a policy for the payment of expenses or provision of facilities is adopted or amended, or at which any proposal concerning those matters is discussed or considered.

254A CIRCUMSTANCES IN WHICH ANNUAL FEES MAY BE WITHHELD

(1) Despite this Division, a council may resolve that an annual fee will not be paid to a councillor or that a councillor will be paid a reduced annual fee determined by the council:

(a) for any period of not more than 3 months for which the councillor is absent, with or without leave, from an ordinary meeting or ordinary meetings of the council, or

(b) in any other circumstances prescribed by the regulations.

(2) Despite this Division, if a councillor is absent, with or without leave of the council, from ordinary meetings of the council for any period of more than 3 months, the council must not pay any annual fee, or part of an annual fee, to that councillor that relates to the period of absence that is in excess of 3 months.

428 ANNUAL REPORTS

(1) Within 5 months after the end of each year, a council must prepare a report (its "annual report") for that year reporting as to its achievements in implementing its delivery program and the effectiveness of the principal activities undertaken in achieving the objectives at which those principal activities are directed.

Local Government (General) Regulations 2005

217 ADDITIONAL INFORMATION FOR INCLUSION IN ANNUAL REPORT

(1) For the purposes of section 428 (4) (b) of the Act, an annual report of a council is to include the following information:

(a) details (including the purpose) of overseas visits undertaken during the year by councillors, council staff or other persons while representing the council (including visits sponsored by other organisations),

(a1) details of the total cost during the year of the payment of the expenses of, and the provision of facilities to, councillors in relation to their civic functions (as paid by the council, reimbursed to the councillor or reconciled with the councillor), including separate details on the total cost of each of the following:

(i) the provision during the year of dedicated office equipment allocated to councillors on a personal basis, such as laptop computers, mobile telephones and landline telephones and facsimile machines installed in councillors' homes (including equipment and line rental costs and internet access costs but not including call costs),

(ii) telephone calls made by councillors, including calls made from mobile telephones provided by the council and from landline telephones and facsimile services installed in councillors' homes,

(iii) the attendance of councillors at conferences and seminars,

(iv) the training of councillors and the provision of skill development for councillors,

(v) interstate visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,

(vi) overseas visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,

(vii) the expenses of any spouse, partner (whether of the same or the opposite sex) or other person who accompanied a councillor in the performance of his or her civic functions, being expenses payable in accordance with the Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors for Local Councils in NSW prepared by the Director-General from time to time,

(viii) expenses involved in the provision of care for a child of, or an immediate family member of, a councillor, to allow the councillor to undertake his or her civic functions

403 Payment of expenses and provision of facilities

A policy under section 252 of the Act must not include any provision enabling a council:

(a) to pay any councillor an allowance in the nature of a general expense allowance, or

(b) to make a motor vehicle owned or leased by the council available for the exclusive or primary use or disposition of a particular councillor other than a mayor.

404 CIRCUMSTANCES IN WHICH COUNCILLORS' ANNUAL FEES MAY BE REDUCED OR NOT PAID

For the purposes of section 254A of the Act, a prescribed circumstance for the non-payment or reduction of a councillor's annual fee is the circumstance where both of the following conditions are satisfied:

(a) the payment of the annual fee adversely affects the councillor's entitlement to a pension, benefit or allowance under any legislation of the Commonwealth, a Territory or a State (including New South Wales),

(b) the councillor agrees to the non-payment or reduction.

1.6 Other Government policy provisions

- Division of Local Government Guidelines for the payment of expenses and the provision of facilities to Mayors and Councillors.
- Port Stephens Council Code of Conduct, as amended.
- Division of Local Government Model Code of Conduct – June 2008.
- ICAC Publications.

Part 2 – Payment of Expenses

2.1 General Provisions

2.1.1 Council will determine an annual allowance, to be paid monthly in arrears, in accordance with Section 248 - 251 of the Local Government Act and the determination of the Local Government Remuneration Tribunal.

2.1.2 This Policy is intended to cover most situations where a Councillor reasonably incurs expenses in discharging the functions of civic office. The annual fees paid to each Councillors is generally not intended to offset those costs.

2.1.3 All allowances and reimbursements of expenses made under this Policy shall be in respect to costs directly associated with the functions of civic office.

2.1.4 Councillors are not permitted to claim expenses in connection with political activities, including political fundraising as this is considered a personal interest.

2.2 Reimbursement and reconciliation of expenses processes

2.2.1 All claims for reimbursement must be made within three (3) months of incurring the expense and shall be subject to the General Manager or delegated officer discretion.

2.2.2 All claims shall be submitted to the General Manager or delegated officer on **FORM 1.**

2.2.3 All claims must be supplied with a tax invoice or receipt to support the claim. If a Councillor is not able to provide a tax invoice or receipt then a Statutory Declaration is to be provided.

2.2.4 Claims for travel under this Policy shall be lodged using travel **FORM 2**, include:

- Date
- Place of departure and arrival
- Distance travelled
- Fare and parking fees paid

2.2.5 The kilometre rate payable to Councillors who travel in their own vehicle shall be the rate payable under the Local Government State Award.

2.2.6 Where travel is outside the Hunter Councils Area, Council shall as appropriate meet or reimbursement the lesser amount of the following expenses:-

a) The cost of an economy class air ticket and associated taxi transfers.
b) The cost of a first class rail ticket and associated taxi transfers.
c) Transportation expenses using a Councillor's own vehicle (calculated under clause 2.2.5).

d) Transportation using a Council-owned vehicles, actual costs incurred.

2.2.7 Where possible Council will pay all expenses directly by account or through use of a corporate credit card. In some instance it maybe necessary for Councillors to pay unexpected costs and seek reimbursement.

2.2.8 Once expenses of attending conferences, seminars or training course have been finalised, an invoice shall be forwarded to Councillors for any expenses payable by them.

2.3 Approval and Dispute resolution

2.3.1 The Executive Assistant – Councillor Support shall assess all claims against this Policy and provide the assessed documentation to the General Manager or Executive Officer for approval.

2.3.2 Claims will be paid on a monthly basis, generally the first Friday of the month.

2.3.3 Should the General Manager or Executive Officer determine that a claim should not be paid, the Councillor should be advised in writing. Should the Councillor still believe that the claim should be paid, in part or full, it shall be considered that a dispute exists.

2.3.4 In the event of a dispute at any time regarding payment of a claim or anything else under this Policy, the parties to this dispute shall each provide a written report on the nature of the dispute. The General Manager shall submit such reports to the next open meeting of Council. The dispute shall then be determined by a resolution of Council having regard to the reports, this Policy, Act and any other relevant laws.

2.3.5 The decision of Council pursuant to clause 2.3.4 shall be binding on all parties.

2.4 Payment in advance

2.4.1 Councillors may require advance payment for an anticipated expense associated with attendance at a conference, seminar and training course. The amount is **$200** per Councillor per event.

2.4.2 In the event of a payment being made in advance, Councillors must full reconcile all expenses against the amount of the advance and submit the reconciliation to Council with **30 days** of the event.

2.5 Monetary Limits

2.5.1 Monetary limits set out in this Policy are the maximum amount payable in respect of any facility or expense. Any additional costs above the limit will be incurred by the Councillor. All monetary limits are exclusive of GST.

2.5.2 Monetary limits may only be waived by a resolution of Council in exceptional circumstances. Any waiver of a monetary limit will apply to a particular event or circumstance and will not constitute an amendment to this Policy.

Spouse and Partner Expenses

2.6.1 Accompanying person means a person who has a close relationship with a Councillor and/or provides carer support to the Councillor.

2.6.2 In limited circumstances, Council shall meet certain costs incurred by a Councillor on behalf of their spouse, partner or accompanying person which is properly and directly related to accompanying the Councillor when the Councillor is performing his or her official functions with the Port Stephens Local Government Area, including but not limited to costs associated with attendance at official Council functions that are of a formal or ceremonial nature. Each Councillor is entitled to a maximum of **$500.00** per year of term, not including the NSW Local Government and Shires Association annual conference.

2.6.3 Costs and expense incurred by the Councillor on behalf of their spouse, partner or accompanying person shall be reimbursed if the cost or expense relates specifically to the ticket, meal and/or direct cost of attending the function.

2.6.4 In limited circumstances, Council shall meet certain costs incurred by the Mayor on behalf of their spouse, partner or accompanying person which is properly and directly related to accompanying the Mayor within the State of New South Wales or as resolved by Council when performing his or her official functions, including but not limited to costs associated with attendance at official Council functions that are of a formal or ceremonial nature. Each Councillor is entitled to a maximum of **$1000.00** per year of term, not including the NSW Local Government and Shires Association annual conference.

2.6.5 Council shall meet limited expenses of spouse, partner or accompanying person associated with attendance at the NSW Local Government and Shires Association annual conference. These expenses are limited to the costs of registration and the official conference dinner. Expenses such as travel expenses, any additional accommodation expenses and the cost of any accompanying persons program shall not be met by Council.

2.6.6 Costs associated with spouse, partner or accompanying person associated with attendance conferences other than the NSW Local Government and Shires Association annual conference, or any seminars or training shall not be met by Council.

2.6.7 In no circumstances will the peripheral expenses of spouse, partner or accompanying person, such as grooming, special clothing and transport be considered reimbursable expenses.

Specific Expenses for Councillors

2.7 Attendance at seminars, conferences, training and educational expenses

2.7.1 Council shall meet expenses incurred by Councillors in attending conferences and seminars or undertaking training and educational courses when the attendance is:

a) To the NSW Local Government and Shires Associations' annual conference; or
b) Authorised by resolution of an open meeting of Council.

2.7.2 Councillors should generally have their attendance at a conference, seminar or participation in a training course authorised by Council in accordance with clause 2.7.1 (b).

2.7.3 Where it is impractical to have a Councillor's attendance or participation authorised by Council in accordance with clause 2.7.1 (b), Councillors wishing to claim expenses incurred due to their attendance or participation shall obtain the approval of the Mayor and the General Manager prior to attendance. Where the Mayor is seeking approval to claim his or her attendance or participation expenses under this clause, he or she shall obtain the approval of the Deputy Mayor and the General Manager.

2.7.4 Councillors shall submit their request for attendance in writing with the appropriate notice detailing the costs and benefits to the Councillor, to Council and the community.

2.7.5 In making its decision, the General Manager/Mayor or Council should consider:-

a) The relevance of the seminar, conference, training or educational expenses to Council and the potential benefit that may result from attendance;
b) The special interest of the Councillor/s wishing to attend;
c) The total cost to Council of attendance relative to the Program budget;
d) The fair and equitable division of opportunity for Councillors to attend conferences/seminars.

2.7.6 Councillors shall at the conclusion of their attendance at the seminar, conference, or training provide a written report to Council on the aspects of the seminar, conference or training. This report should be submitted to Council within one month of their attendance. Attendance at the NSW Local Government & Shires Association annual conference will not require a report to Council.

2.7.7 The General Manager's Office will make all arrangements for the attendance of Councillors and accompanying persons, where required at a conference, seminar or training.

2.8 Seminars, Conferences and Training Expenses

2.8.1 Council will meet the costs for attendance at approved conferences and seminars, training and educational courses to a maximum of **$2,000.00** per Councillor per year of term, excluding the costs associated with attendance at the NSW Local Government and Shires Associations' annual conference:

a) **Registration fees** – Council will meet the cost of the registration fee set by the organiser, including costs of related official lunches and dinners, and associated tours where they are relevant to the business and interests of Council.

b) **Accommodation** – where a conference, seminar or training course is not located within the Port Stephens Local Government Area, Councillors shall where required be accommodated in the hotel where the event is being held or the nearest hotel to it that is of a similar standard, or as arranged by the conference organiser. Accommodation shall be provided at the rate of a double room. Any additional nights prior to or following the conference, seminar or training course Council will not be included in the expenses paid by Council. **Note**: Movie hire and Mini Bar Facilities will be paid for by the Councillor.

c) **Transportation** – Councillors attending a conference, seminar or training course shall travel by the most appropriate route, subject to any personal medical requirements. Any costs incurred in undertaking activities not related to attendance at the conference, seminar or training course shall not be included in any expenses paid by Council.

d) **Educational Materials** – where a Councillor is participating in an approved training or educational course and specific reference materials are required (for example, prescribed text books), Council shall purchase such educational materials on the Councillor's behalf. At the completion of the relevant training or educational course, educational materials purchased pursuant to this clause shall be returned to Council and be available for the use of all Councillors in the Councillor's Room

2.8.2 Conferences, seminars and training held outside the Port Stephens Local Government Area, Council shall as appropriate (having regard to availability, time/cost effectiveness of the transport options) meet or reimburse the lesser amount of the following transportation expenses:

a) The cost of an economy class air ticket and associated taxi transfers.
b) The cost of a first-class rail ticket and associated taxi transfers.
c) Transportation expenses by a Councillor with the Councillor's own vehicle (refer to clause 2.2.5).

2.8.3. If a Council-owned vehicle utilised that cost will be determined by way of actual costs incurred.

2.9 Meals

2.9.1 Council shall meet the cost of breakfast, lunch and dinner for Councillors attending a conference, seminar or training course where any such meal is not provided by the organiser. Council shall also meet the reasonable cost of drinks accompanying the meals.

2.9.2 Costs payable by Council under clauses 2.9.1 and 2.9.2 shall be capped at a maximum of **$100.00** per Councillor per day inclusive. Councillors will be paid actual costs if under **$100.00** per day.

2.9.3 Council shall meet the reasonable cost of Councillors' meals where due to their attendance to Official Business of Council the Councillor is reasonably unable to partake of a meal at their residence and so incurs additional expense.

2.9.4 Costs payable by Council under clause 2.9.3 shall be capped at a maximum of **$50.00** per Councillor per day or actual costs, whichever is less.

2.10 Local Travel Arrangements and Associated Expenses

2.10.1 Travelling expenses shall be reimbursed to Councillors for travel by public transport or private vehicle on Official Business of Council in the Hunter Councils area, to a maximum amount of **$6,000.00** per Councillor per year of term.

2.10.2 Councillors may, where available, use Council owned vehicles to attend to Official Business of Council.

2.10.3 Council shall meet the cost of parking fees and road tolls but not the cost of traffic or parking fines, which shall remain the sole responsibility of the Councillor.

2.10.4 Claims for reimbursement under this clause 2.10 shall be made in accordance with clause 2.2.

2.11 Travel outside the HROC Area including Interstate and Overseas Travel

2.11.1 Payment of any travel expenses to a Councillor, incurred on Council related business outside of the Hunter Councils area and not otherwise addressed in clause 2.8 requires approval by resolution of Council in an open meeting.

2.11.2 Approval for payment of travel expenses under clause 2.11.1 may be granted subject to any conditions Council so determines, and Council shall meet only those expenses that Council so determines.

2.12 Communication Device Costs and Expenses

2.12.1 Council shall reimburse Councillors to a maximum of **$3,000.00** per term for the purchase of a personal computer/laptop, multifunction device, peripherals and Microsoft office software.

2.12.2 Council shall not purchase the equipment in item 2.12.1 on a Councillors behalf.

2.12.3 Council shall reimburse Councillors for all maintenance and repairs which are to be arranged by individual Councillors.

2.12.4 Council shall reimburse Councillors for all consumables such as ink cartridges and reasonable supply of paper for official Council business.

2.12.5 Council shall reimburse Councillors for their communication device costs (including mobile phone, landline rental, landline telephone and facsimile) incurred in attending to Council business to a maximum cost of **$200.00** per Councillor per month of term. All communication device costs incurred above this maximum are at the Councillors own expense.

2.12.6 If a Councillor so elects, Council will provide the Councillor with a mobile phone instead of paying a contribution towards the Councillor's expenses on their existing mobile phone, however the maximum amount of mobile phone expenses incurred by Council must not exceed the amount set out in clause 2.12.5. All communication device costs incurred above this maximum must be reimbursed to Council by the Councillor. Councillors are encourage to purchase their own mobile phone and seek reimbursement under clause 2.12.5.

2.12.7 If a Councillor does not have a telephone line or internet connection at their home, Council shall meet the installation costs.

2.12.8 Council shall meet the cost of providing and maintaining an internet connection at the residence of the Councillor to a maximum of **$60.00** per Councillor per month of term. Any internet costs incurred above this maximum are at the Councillors own expense.

2.12.9 Upon a Councillor ceasing to hold office, that Councillor must return to Council any items provided to him or her under this clause. Generally Council does not provide such equipment as Councillors are required to by such equipment under 2.12 and seek reimbursement.

2.13 Care and Other Related Expenses.

2.13.1 In this clause, "relative" shall have the same meaning as set out in the Dictionary in the Act, being at the date of this policy:

"Relative, in relation to a person, means any of the following:

(a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse;

(b the spouse or de facto partner of the person or of a person referred to in paragraph (a)."

2.13.2 Where a Councillor has responsibilities for the care and support of any relative, Council shall reimburse the actual cost incurred by the Councillor to engage professional care for the relative whenever considered necessary by the Councillor (acting reasonably) in order for the Councillor to discharge the functions of civic office.

2.13.3 The total amount paid to a Councillor under this clause 2.13 shall not exceed **$2,000.00** per year of term.

2.13.4 Claims for reimbursement under this clause2.13 shall be made in accordance with clause 2.2.

2.14 Insurance Expenses

Councillors shall receive the benefit of insurance cover for:

2.14.1 Personal Accident - Personal Accident insurance covers personal injury which is caused by violent, accidental external and visible means that solely and independently of any other cause results in a Councillor's death or disablement. The cover applies anywhere in the world during and while travelling to and from Council business. The capital benefit for the death of a Councillor is $500,000. The cover does not include medical expenses.

2.14.2 Professional Indemnity - Professional Indemnity insurance covers Council where Council becomes legally liable to pay compensation for financial loss as a result of any negligent act, error or omission in the conduct of Council's business activities arising from a breach of professional duty. Cover is subject to any limitations or conditions set out in the NSW Local Government (Jardine) Mutual Liability Scheme wording.

2.14.3 Public Liability - Public Liability insurance covers Council's legal liability to pay compensation to third parties arising in connection with the business activities of Council. Matters arising from Councillors' performance of civic duties or exercise of their functions as Councillors are covered subject to any limitations or conditions set out in the NSW Local Government (Jardine) Mutual Liability Scheme policy wording.

2.14.4 Councillors' & Officers' Liability - Councillors' & Officers' Liability insurance protects Councillors and officers from the costs incurred in defending themselves against legal actions that arise from honest mistakes in the management of Council. It covers Councillors for personal liabilities as a result

of wrongful acts subject to any limitations or conditions set out in the policy of insurance.

Full details of the abovementioned insurance policies are available in Council's Insurance Handbook held by the Risk Management Co-ordinator.

2.15 Legal Expenses

2.15.1 Councillors shall receive legal expenses, in the event of:

(a) An enquiry, investigation or hearing by any of:

- The Independent Commission Against Corruption;
- The Office of the Ombudsman;
- Division of Local Government;
- The Police;
- The Director of Public Prosecutions;
- The Local Government Pecuniary Interest Tribunal; or
- Council's Conduct Review Committee/Reviewer.

into the conduct of a Councillor; or

(b) Legal proceedings being taken by or against a Councillor, arising out of or in connection with the Councillor's performance of his or her civic duties or exercise of his or her functions as a Councillor (with the exception of defamation proceedings), Council shall reimburse such a Councillor, after the conclusion of the enquiry, investigation, hearing or proceeding, for all legal expenses properly and reasonably incurred, given the nature of the enquiry, investigation, hearing or proceeding, on a solicitor/client basis, PROVIDED THAT:

The amount of such reimbursement shall be reduced by the amount of any monies that may be or are recouped by the Councillor on any basis.

The Councillor's performance or exercise of the civic duty or function was in the opinion of Council bona fide and/or proper (Section 731 of the Act).

the amount of such reimbursement be limited to the extent that only fees charged at a rate equivalent to the hourly rate then being charged by Council's Hunter based Solicitors will be paid ie. any portion of the expenses representing any hourly charge rate higher than the hourly rate charge rate of Council's Hunter based Solicitors will not be reimbursed.

(c) Defamation proceedings or other proceedings arising from the making of a public statement, where a Councillor is a defendant or anticipated defendant in such proceedings.

Note: Council may not meet the costs of any action in defamation taken by a Councillor as plaintiff in any circumstances (DLG Circular 00/22).

To ensure that indemnity or reimbursement in respect of costs of defending an action in defamation or other action is only available in circumstances where the person to be indemnified or reimbursed was acting properly when making the statement complained of, the threshold criteria for the application of the indemnity or reimbursement will apply.

(d) Council may indemnify or reimburse the reasonable legal expenses of a councillor for proceedings before the Local Government Pecuniary Interest Tribunal or an investigative body PROVIDED the subject of the proceedings arises from the performance in good faith of a function under the Act and the Tribunal or investigative body makes a finding substantially favourable to the Councillor.

(e) Legal expenses incurred in relation to proceedings arising out of the performance by a councillor of his or her functions under the Act should be distinguished from expenses incurred in relation to proceedings arising merely from something which a councillor has done during his or her term of office. An example of the latter is expenses arising from an investigation as to whether a councillor acted corruptly by using knowledge of a proposed rezoning for private gain.

(d) In addition, legal costs will only be provided where the investigative or review body makes a finding that is not substantially unfavourable to the councillor. This may include circumstances in which a matter does not proceed to a finding. In relation to a councillor's conduct, a finding by an investigative or review body that an inadvertent minor technical breach has occurred may not necessarily be considered a substantially unfavourable outcome.

2.15.2 Council shall not meet any Councillor's costs of any enquiry, investigation or hearing initiated at the request of, or to any legal proceedings taken by, Council itself.

POLICY

General

Where proceedings have been foreshadowed or commenced against any of the Mayor and Councillors arising from a public statement or statements made or acts done by any of them and, in the opinion of Council's appointed solicitor the following "Three Criteria" are satisfied through the required procedure set out below namely:

(a) The statement was made or the act was done in relation to discharging the functions of civic office;

(b) The Councillor concerned was acting in good faith; and

(c) The statement or the act in question was reasonable in the circumstances and not made or done maliciously or frivolously and, in the case of a statement, was not made with knowledge of its falsity or with recklessness as to whether it was true or false,

then Council will indemnify or reimburse the Councillor for:

(a) all legal expenses properly and reasonably incurred, given the nature of the legal services provided; and

(b) any other fees, expense, liability or cost incurred (including without limitation any order for the payment of damages, interest and/or costs or any other order for the payment of money made against the Councillor),

In responding to or defending such proceeding **PROVIDED THAT** the amount of such indemnity or reimbursement shall be reduced by the amount of any monies that may be or are recouped by the Councillor on any basis.

Engagement of Legal Representatives – Required Procedure

1. The Councillor must, as soon as practicable after they become aware that a claim may be forthcoming or aware that they may have made a statement or action which may give rise to a claim, notify either the General Manager, Public Officer or Mayor that there is a possibility of a claim against the Councillor. This notification must;

   i. be in written form;
   ii. include all details including any correspondence from the alleged injured party concerning the possible claim; and
   iii. Include the Councillor's comments on whether the Councillor considers that the Three Criteria are satisfied.

2. The Councillor must not respond to any allegations made or accept any liability in respect to any allegations made unless authorised to do so by council or its solicitor or the insurer or its solicitor. The Councillor must at all times without undue delay keep Council fully informed of any oral or written communications made to the Councillor by the alleged injured party or the injured party's agents or legal representative in respect of the claim.

3. The General Manager must immediately upon becoming aware that a claim may be forthcoming or aware that a statement has been made which may give rise to a claim, notify and forward to Council's insurer any information relating to the matter with a view to obtaining the Insurer's acceptance and carriage of the claim should the three criteria be satisfied.

4.

i. If proceedings are threatened (and not commenced), the General Manager must without undue delay inform Council's appointed Solicitor and Council's insurer of the notification. The Council's solicitor at Council's cost must form a view as to whether the Three Criteria are satisfied, and must notify the General Manager who will in turn notify the Councillor concerned in written form of that view.

ii. If the Council's solicitor considers that the Three Criteria are satisfied, the General Manager will either instruct Council's solicitors or if Council's Insurers have accepted the matter as a possible claim then it will represent the Councillor concerned.

5. If Council's solicitor forms the view that the Three Criteria are not satisfied under clause (4); the Councillor may request a review of that advice from an independent legal practitioner as agreed in advance between the Councillor concerned and the General Manager and failing agreement as nominated by the President for the time being of the Law Society of NSW or the President of the NSW Bar Association.

6. If the proceedings are commenced and the Three Criteria are satisfied then the following procedure must be followed:

- In the case that the claim is accepted by Council's insurer it will have carriage of the matter subject to consultation with the General Manager and the Councillor will be required to abide by any reasonable instruction of the insurer or its nominated lawyer.
- If the Insurer does not accept the claim as it is of the opinion that the matter is outside the policy then the General Manager in consultation with Council's solicitor will nominate a legal practitioner that they consider should represent the Councillor. If the Councillor considers that such representation is appropriate then the procedures in clause 7 must be followed. If Council's solicitors are not of the same opinion as the insurers the General Manager in consultation with Council's solicitors will take whatever action is necessary (without unduly holding up the defamation proceedings) to have the question determined.
- If the Councillor considers that the legal practitioner nominated is not appropriate then the Councillor concerned and the General Manager must attempt to reach agreement on an alternative legal practitioner, and failing agreement the legal practitioner must be as nominated by the President for the time being of the Law Society of NSW or the President of the NSW Bar Association.

7. If Council's insurers have not accepted the claim the General Manager must contact the proposed legal practitioner and must require that an agreement be entered into between the legal practitioner and the Council which will include such terms and conditions as the General Manager sees fit including:

i. Terms and conditions as to costs and disbursements including procedures for costs estimates to be given at appropriate times; and

ii. Accounts being considered and approved by the General Manager prior to payment; and

iii. All instructions provided to the legal representatives by the Councillor concerned to be subject to the concurrence of the General Manager.

8. Notwithstanding the provisions of paragraph 5.1 (ii) and 5 above, once proceedings have actually been commenced then the procedures set out in paragraph 5 above must be followed. (Note: The General Manager should regularly review Council's insurance policies with respect to the application of them to the Council's possible liability pursuant to this policy.)

Exclusion from Policy

This policy will not apply to any defamation or other action brought by any Councillor or Council employee against any Councillor, arising from the making of a statement by any of the latter of and concerning any of the former, unless in addition to the Three Criteria set out above:

i. the statement complained of is made to a person or body in circumstances where it is likely to be subject to qualified privilege or absolute privilege (including without limitation statements made in good faith to the Police or Director of Public Prosecutions, the Department of Local Government, statements made ancillary to, and in giving evidence to, a Court or Tribunal or other body conducting any inquiry, investigation or hearing, statements made to the Office of the Ombudsman and statements made to any Parliamentary Committee) (but in such circumstances the policy will only apply to the extent of the publication of the statement in these circumstances, and not to any other publication of the statement); or

ii. The statement:

- is made at a meeting of Council, a briefing of Councillors or a meeting of a Committee of Council in respect of an item on the agenda for that meeting or briefing; and
- is in accordance with the Local Government (General) Regulations 2005 and Council's Code of Meeting Practice current at the time the statement was alleged to have been made; and
- Does not breach any other law.

Part 3 Provision of Facilities

3.1 Provision of Facilities Generally

3.1.1 Unless otherwise stated, where a facility may be provided by Council in accordance with this Policy and a Councillor chooses to accept the facility, it shall be provided by Council with all establishment, routine maintenance, operating, training, replacement and insurance costs being met by Council, subject to any limits specified and adequate funds being allocated and available in Council's adopted Management Plan.

3.1.2 All facilities provided shall be of adequate capacity and functionality to allow the role of Councillor to be fully undertaken.

3.2 Private Use of Equipment and Facilities

3.2.1 Councillors shall not generally obtain private benefit from the provision of equipment and facilities. This includes benefits such as a travel bonus or other benefit arising from a loyalty scheme. However, incidental personal use of Council equipment and facilities may occur from time to time. No entitlement under this Policy shall be treated as being a private benefit that requires a reduction in the Mayoral fee or the Councillors fee.

3.2.2 If a Councillor does obtain a private benefit for the use of a facility provided by Council being more than incidental use, the Councillor shall be invoiced for the amount of the private benefit with repayment to be in accordance with Council's normal terms.

3.2.3 The value of a private benefit to be invoiced under this clause 3.2 shall be determined by the General Manager or, at the request of the Councillor in receipt of the private benefit, the General Manager, or any two Councillors, by resolution of an open meeting of Council.

3.2.4 Equipment, facilities and services provided under this Policy shall not be used to produce election material or for any other political purposes.

3.3 Councillors' Room

3.3.1 Councillors shall be provided with equipment and facilities at the Raymond Terrace Administration Building. Equipment provided under this clause remains the property of Council.

3.3.2 The Councillors' Room furnished for use by all Councillors shall be provided with:

a) A telephone, computer with internet access, multifunction device and computer peripherals for use by all Councillors.
b) A library including Council policies, relevant legislation, reports on Development Applications and other relevant documents.

3.3.3 Light refreshments such as biscuits, health bars and beverages.

3.4 Administration Support, Stationery, Postage & Business Cards

3.4.1 Council shall provide the support services of Councillor Support Executive Assistant with suitable experience and skills to support Councillors.

3.4.2 Council shall post all correspondence for Councillors relative to the discharge of the functions of civic office.

3.4.3 Council shall provide appropriate letterhead stationery, business cards and Christmas cards for use by Councillors.

3.4.4 Correspondence by Councillors relative to the discharge of the functions of civic office is considered official correspondence of Council where the matter is referred to the General Manager for attention. The correspondence shall be attached to the appropriate Council file for registration, attention and reply.

3.4.5 Under no circumstances shall Councillors use the administration services, staff or other facilities provided in association with Local, State or Federal Government Elections.

3.4.6 Under no circumstances shall Councillors use the administration services or other facilities provided for the initiation of circular type letters without prior authority of the Council being obtained.

3.4.7 Council shall provide Councillors with official name badges indicating the wearer holds the office of Councillor, to wear at Civic functions.

3.5 Meals

3.5.1 Councillors will be provided with meals and refreshments following Committee and Council meetings and at other times considered appropriate by the Mayor and General Manager. The standard of the meal will be determined by the Mayor and/or the General Manager.

3.5.2 Light refreshments such as biscuits, health bars and beverages will be provided in the Councillors Room.

3.6 Transport Facilities

3.6.1 Four designated car parking spaces shall be provided for Councillors in the Council car park at the Council administration building, to be shared amongst Councillors.

3.6.2 Councillors will be reimbursed for all transport costs (taxi, use of private vehicle, etc) in accordance with clause 2.2 for their attendance at official Council functions. This includes deputising for the Mayor.

3.7 Corporate Uniform

3.7.1 Councillors may choose from a selection of Corporate Uniform provided by Council's approved supplier. Council will contribute a subsidy to 35% of the initial cost to a maximum of $220 per annum. A sundry debtor account will then be forwarded to the Councillor for payment of the balance. Alternatively, a deduction can be made from the Councillor's monthly allowance.

3.8 Superannuation

3.8.1 Councillors may elect to contribute all or part of their Councillor Allowance into an approved Superannuation Scheme by completing **FORM 3**.

3.9 Health & Wellbeing Initiative

3.9.1 Councillors shall be able to access a Health Initiative program which includes gym membership at local facilities. The program requires a minimum six (6) month membership with a payment to be made in advance for three (3) months – non refundable.

3.9.2 Councillors shall investigate any taxation implications for individual councillors as a result of the membership.

3.9.3 Further details can be obtained through Council's Recreation Services Section at Council.

3.10 Provision of Safety equipment

3.10.1 Councillors shall be provided with the following Protective Apparel:

- hard hat;
- safety vest;
- safety footwear;
- safety glasses and;
- hearing protection

to accord with the NSW Occupational Health & Safety Act, for on-site inspections.

Provision of Additional Expenses, Equipment and Facilities for the Mayor

3.11 Additional Expenses, Equipment and Facilities

3.11.1 The Mayor is paid an additional annual fee. The fee is the amount fixed by Council under Division 5 of Part 2 of Chapter 9 of the Act in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

3.11.2 This Policy is intended to cover most situations where the Mayor reasonably incurs additional expenses in discharging the functions of Mayoral office. The annual fee paid to the Mayor is generally not intended to offset those costs.

3.12 Equipment and Facilities

3.12.1 The Mayor shall be provided with additional equipment and facilities. Equipment provided under this clause remains the property of Council.

3.12.2 The following facilities and equipment shall be provided to the Mayor:

3.12.3 A furnished office with computer, printer, internet access, phone, facsimile and computer peripherals.

3.12.4 Office refreshments.

3.12.5 Mayoral letterhead.

3.12.6 A corporate credit card, to be used only to pay expenses allowed under this policy.

3.12.7 A mobile phone for the use of the Mayor in discharge of their formal duties, the cost of which shall be fully met by Council.

3.12.8 All items provided to the Mayor under this clause 3.12 must be returned to Council when the Mayor ceases to hold office.

3.13 Mayor's Staff

3.13.1 Council shall provide the services of the Councillor Support Executive Assistant with suitable experience and skills to support the Mayor.

3.13.2 The Councillor Support Executive Assistant shall provide support to the Deputy Mayor in the absence of the Mayor.

3.14 Mayoral Motor Vehicle

3.14.1 The Mayor shall be provided with:

3.14.2 A fully maintained motor vehicle, of a standard appropriate to the Office of the Mayor for the use of discharging function of the Mayor.

3.14.3 A fuel card, to be used for official Council business.

3.14.4 A car parking space at the Raymond Terrace Administration Building.

3.14.5 All items provided to the Mayor under this clause 3.14 must be returned to Council when the Mayor ceases to hold office.

Part 4 Other Matters

4.1 Acquisition and Return of Facilities and Equipment by Councillors

4.1.1 Upon ceasing to hold office a Councillor may purchase any Council equipment held by the Councillor at the market value of the equipment at the time of ceasing to hold office as approved by the General Manager.

4.2 Status of the Policy

4.2.1 This Policy replaces the previous version of the Policy adopted by Council on 24 November 2009.

4.2.2 This Policy shall only be amended by resolution of Council.

Port Stephens COUNCIL

COUNCILLORS' EXPENSES CLAIM FORM

116 Adelaide Street, Raymond Terrace NSW 2324
PO Box 42, Raymond Terrace NSW 2324

Form 1

COUNCILLOR.....……..... **MONTH**.....

DATE	PURPOSE	$	*Klms TRAVELLED*	TOTAL CLAIM $ (Office Use Only)
	Phone Call Claim (receipts required)			
	Internet Claim (receipts required)			
	Line Rental (receipts required)			
	Fax Expenses (documentation required)			
	Mobile Claim (receipts required)			
	Travel (log required)			
	Conference/Seminars (receipts required)			
	Partner Expenses (receipts required)			
			TOTAL	

***PAYMENT WILL ONLY BE MADE WHERE RECEIPTS AND VEHICLE LOG IS PROVIDED.**

Signature of Claimant.....…….. **Date** .....

Councillors – Please note that ALL Councillor's reimbursement claims will be paid the **first Friday** of each month. Therefore Councillors are required to lodge their claims with the Executive Assistant Councillor Support at the end of each month at the **Ordinary Council meeting** for payment the following week.

Port Stephens COUNCIL

COUNCILLORS' MOTOR VEHICLE LOG BOOK CLAIM FORM

116 Adelaide Street, Raymond Terrace NSW 2324
PO Box 42, Raymond Terrace NSW 2324

Form 2

COUNCILLOR ……**MONTH**….....**YEAR**…….…..

DATE	PURPOSE	START	FINISH	TOTAL KILOMETRES
			TOTAL	

Signature of Claimant….....……..… **Date**.....

Port Stephens COUNCIL

COUNCILLORS' REMUNERATION SACRIFICE ELECTION FORM – SUPERANNUATION

116 Adelaide Street, Raymond Terrace NSW 2324
PO Box 42, Raymond Terrace NSW 2324

Form 3

Councillor Name: _____

Date to commence arrangement _____

Annual Remuneration _____

Annual Sacrifice Amount _____

Your Superannuation Fund Details:

Fund Name _____

Membership No (if applicable) _____

Account Name _____

Super Fund ABN (if applicable) __ __ __ __ __ __ __ __ __ __ __

Superannuation Product
Identification Number (if applicable)_____

DECLARATION OF COUNCILLOR

I, _____ hereby certify that I have not relied on information or advice gathered through sources or resources from Port Stephens Council to make the decision to enter into a sacrifice arrangement.

I certify that I have obtained independent financial advice or made the decision based on my own investigation in relation to this sacrifice election.

I understand that at all times it remains my responsibility as a Councillor to notify Finance in writing of any change to the benefits sacrificed.

I have attached:

- A letter from the trustee stating that this is a complying fund and (for a self managed superannuation fund) a copy of documentation from the Tax Office confirming the fund is regulated
- Written evidence from the fund that they will accept contributions from Council, and
- Details about how Council can make contributions to this fund

Signed: _____ Councillor **Date:** _____
Signed: _____ Finance Officer **Date:** _____

ITEM NO. 6

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 16 November 2010.

No:	Report Title	Page:
1	PORT STEPHENS COUNCIL 2010 SENIORS & DISABILITY FORUM	
2	PORT STEPHENS INTERAGENCY	
3	REQUEST FOR INSTALLATION OF CCTV CAMERA IN BOSUNS PLACE, SALAMANDER BAY	
4	OBJECTION TO CYCLEWAY CONSTRUCTION ALONG SANDY PORT ROAD, CORLETTE	

COUNCIL COMMITTEE MEETING – 16 NOVEMBER 2010
RECOMMENDATION:

	Councillor Bruce MacKenzie **Councillor Peter Kafer**	That the recommendation be adopted.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

374	**Councillor Peter Kafer** **Councillor Sally Dover**	It was resolved that the recommendation be adopted.

COUNCIL COMMITTEE INFORMATION PAPERS

INFORMATION ITEM NO. 1

PORT STEPHENS COUNCIL 2010 SENIORS & DISABILITY FORUM

REPORT OF: **PAUL PROCTER - INTEGRATED PLANNING, ACTING MANAGER**
GROUP: **SUSTAINABLE PLANNING**

FILE: **PSC2005-5438**

BACKGROUND

The purpose of this report is to inform Council on the outcomes of the inaugural Seniors & Disability Forum held on 5 October 2010.

In October 2009 Council disbanded its 355b Access Committee and endorsed a new Disability Framework which included hosting a forum for seniors and people with disabilities. Consequently Council's Community Planner – Ageing & Disability facilitated Council's inaugural Seniors & Disability Forum on 5 October 2010. The forum provided the opportunity for Council to engage ageing residents, people with disabilities, key government agencies, service providers, clients, carers, volunteers and Councillors. The forum was attended by approximately 40 participants and discussed various aspects of ageing and disability related issues including: -

- Overview of available support services & projects
- Current community issues regarding ageing and people with disabilities
- International day of disabilities event future directions
- Proposed accessible art exhibition
- Mapping of local support services for ageing residents people with disabilities
- Future infrastructure requirements, gaps & needs
- Legislation and adaptable housing
- Council's Seniors Program
- Council's Seniors Week celebrations
- Overview of Hunter ageing & disability group - HSNET and *e*-information in 2011

The forum was a great success resulting in a number of outcomes. The outcomes included the identification of a comprehensive range of issues and challenges impacting upon the current and future population of ageing residents. This information will assist Council's Community Planner – Ageing & Disability in developing Council's new Positive Ageing Strategy. There was also support for the establishment of a peak lobby group convened by Council to advocate on ageing issues in Port Stephens. These outcomes will be considered and advanced further by Council's Social Planning Team in the first quarter of 2011. For further information on the forum contact Council's Community Planner – Ageing & Disability on 4980

ATTACHMENTS

Nil.

INFORMATION ITEM NO. 2

PORT STEPHENS INTERAGENCY

REPORT OF: **PAUL PROCTER - INTEGRATED PLANNING, ACTING MANAGER**
GROUP: **SUSTAINABLE PLANING**

FILE: **PSC2005-3975**

BACKGROUND

The purpose of this report is to provide Council with an overview of the role and functions of the Port Stephens Interagency.

Approximately 20 years ago the Port Stephens Interagency was established to support the planning and delivery of community services in Port Stephens. It continues to play a key role in strengthening the delivery of community services and facilities throughout Port Stephens to ensure the community's existing, emerging and future needs are addressed.

The Interagency is co-ordinated by Council's Social Planning Team under the community development program. The Interagency has a membership of over 250 people comprising representatives from non-government organisations, community service providers and key government agencies. The Interagency meets every two months with an average attendance of 50 representatives making it one of the largest Interagencies operating in the Hunter Region.

Since its inception the Interagency has played a pivotal role in the formulation of partnerships between community service providers contributing to Port Stephens receiving government funding for services and programs aimed at addressing the well-being of our socially disadvantaged residents. The Interagency also provides Council with an ongoing forum for gaining information and data which is used to assist Council's social planning processes.

For further information concerning the interagency contact Council's Community Development Officer on 4980 0288.

ATTACHMENTS

1) Port Stephens Interagency Terms of Reference.

ATTACHMENT 1

Port Stephens Community Services Interagency

Terms of Reference
Oct 2010

Prepared by:
Paul Procter
Social Planning Co-ordinator

Endorsed by Port Stephens Interagency 12 October 2010

1. PURPOSE:
To provide an Interagency for the express purpose of strengthening the delivery of community services and facilities throughout Port Stephens to meet the community's existing, emerging and future community needs.

2. OBJECTIVES:
The objectives of the Port Stephens Community Services Interagency shall be:

- *Identifying and responding to local / emerging and anticipated future social issues, community needs, social and policy trends*
- *Planning and developing new services / programs in response to identified social issues and community needs*
- *Identifying and responding to gaps/overlaps in the delivery of community services, community and health facilities, and support infrastructure with regard to baseline service levels and geographic equity*
- *Strengthening the delivery of community services*
- *Strengthening information and referral processes*
- *Sharing of information and resources*
- *Creating a greater awareness amongst service providers and agencies of what everyone is doing through service updates etc*
- *Where relevant advocate and lobby relevant levels of government on key local social issues and community concerns*
- *Providing professional development and support to service providers through training and service development*
- *Foster networking/collaboration and partnerships*
- *Improving community awareness of available community services*
- *Build community capacity*
- *Ensuring community services are planned and delivered in accordance with social justice principles of access, equity, rights and participation*
- *Promote funding opportunities*
- *Where relevant support local funding applications*
- *Provide Council with a conduit for gaining input from the community service sector into Council's planning, policy, planning and decision making framework*
- *Maintaining the Community Directory and the Interagency network web Pages*

NOTE: *The Interagency is a non political forum.*

3. MEETINGS:
- The Interagency will meet every two months with the predominate meeting location being Port Stephens Council Administration Building located at 116 Adelaide St, Raymond Terrace.

- Meeting dates and times shall be formulated in consultation with Interagency members.
- Once a year the Interagency will hold a planning meeting.
- An agenda will be prepared and provided before the scheduled meeting date
- Meeting procedures will be used in the conduct of all meetings
- Minutes will be taken at these meetings and distributed electronically through the Interagency email list shortly after the meeting.

NOTE: *When required Interagency may choose to appoint working parties to investigate and research specific issues which will report directly to the Interagency.*

4. INFORMATION SHARING / NEWS / SERVICE UPDATES:
Will be conducted primarily electronically via email updates, e-newsletters and via a web based forum.

5. ADMINISTRATIVE ARRANGEMENTS:
All communications outside the Interagency occurs electronically. Council's Community Development Officer maintains an email list to keep members informed of upcoming meetings, local events, professional development opportunities and general information. All email correspondence is directed through this Council Officer to distribute to Interagency.

The contact details of all interagency members shall be used only for the purpose and activities associated with the Port Stephens Interagency.

Interagency meetings, agenda's and minutes are produced and distributed by Council's Community Development Officer.

6. MEMBERSHIP:
Interagency membership is open and inclusive of all target groups comprising representatives from the following key stakeholders:

- Non government organisations
- Community Groups
- Community Service Providers
- Local Aboriginal Land Councils
- Aboriginal Service Providers
- Children's Services
- Youth Services
- Disability Services
- Ageing Services
- Culturally & Linguistically Diverse Services
- Men's Services
- Women's Services
- Representatives from local / regional networks / forums and committees
- Faith based groups (eg churches)
- State & Federal Government agencies (local and regional representatives) including the following agencies:

- Communities NSW
- Housing NSW
- TAFE
- Education & Training
- Dept of Premier & Cabinet
- Dept of Transport & Infrastructure
- Hunter New England Health
- Dept of Planning
- Adult Migrant English Service
- Ageing Disability & Home Care
- Dept of Corrective Services
- Fair Trading
- Juvenile Justice
- Arts NSW
- NSW Sport & Recreation
- NSW Aboriginal Housing Office
- Dept of Defence

- Community members
- Port Stephens Councillors

NOTE: *To be included on the email list contact Council's Community Development Officer.*

The Interagency encourages all members to register their organisation on the Port Stephens Community Directory. This resource is widely accessed by the public and gives members and non-members the opportunity to publicise their organisational details and any upcoming events

7. LINKS WITH OTHER LOCAL & REGIONAL NETWORKS / FORUMS / COMMITTEES:

The Interagency is the peak forum for community service providers and agencies in Port Stephens. Linkages with other relevant local and regional networks / forums and committees shall be maintained predominantly through Council's Community Development Officer (where relevant) attending these various meetings. Secondly representatives from all local and regional networks, forums and Committees are encouraged to attend Interagency meetings and/or join the Interagency email group.

8. MEDIA:

Any contact with the media on behalf of the Interagency shall be via Council's Community Development Officer and/or a nominated delegate.

9. CONFIDENTIALITY:

In general, there should be no restrictions on disclosure of discussions and decisions of the Interagency. However, it is recognised that some sensitive matters may need to be treated as confidential. The measure of this confidentiality will be discussed and decided in consultation with members.

FURTHER INFORMATION: Council's website www.portstephens.nsw.gov.au or contact Council's Community Development Officer on 4980 0288.

INFORMATION ITEM NO. 3

REQUEST FOR INSTALLATION OF CCTV CAMERA IN BOSUNS PLACE, SALAMANDER BAY

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

FILE: **PSC2010-05298**

BACKGROUND

The purpose of this report is to advise Council that a petition has been received with approximately twelve (12) signatures and reads as follows:

On behalf of the residents of Bosuns Place I am writing to you to request the installation of a CCTV camera in the cul de sac of Bosuns Place, Salamander Bay. As you probably know, there is a public walkway from the Mambo Wetlands Reserve and Port Stephens Drive through to Bosuns Place.

For the last two years or so, we, as a community, have been subjected to numerous anti-social acts involving bottle throwing at windows, destruction of letter boxes, thumping on windows and doors late at night, hurling eggs at our houses, etc etc. Whilst these are not serious crimes, they are enough to cause considerable anxiety to the mostly elderly and more vulnerable in our society.

The perpetrators are around 15 years of age – and no doubt live nearby. They are clearly engaged in underage alcohol consumption, possible drug use, wear the standard hoodies and usually attack on Friday, Saturday or any night during school holidays, between the hours of 9pm to 1.00am.

Most of the residents, closest to the walkway from the reserve, have already incurred considerable expense in installing sensor lights, changing stand-alone letter boxes to bricked-in ones, and any other security measures they can afford.

Whilst the police are always concerned and on a few occasions have sent a patrol car around the area after a complaint is made, unfortunately these teenage boys are long gone by the time the police arrive. It is virtually impossible to identify who they are as they invariably attack late at night, have their hoods covering their heads, cause their damage and run off.

It is our understanding that under current legislation, all that can be done is to issue warnings to these kids no matter how many offences are committed, which of course is no deterrent at all. If these acts of vandalism are caught on camera and the culprits identified, perhaps then the police can take some sort of punitive action

– even if that action is merely to make the parents aware of their children's behaviour.

We would sincerely appreciate serious consideration being given to the installation of a CCTV camera, as we feel it would be the most effective means of preventing this anti-social behaviour.

If our request is denied, we would appreciate a visit from a Councillor to meet with us to discuss alternative actions we might take so that we do not have to live in fear of teenagers who have no respect for people or property.

ATTACHMENTS

1) Petition.

ATTACHMENT 1

Re: **Anti-Social Behaviour**

On behalf of the residents of Bosuns Place I am writing to you to request the installation of a CCTV camera in the cul de sac of Bosuns Place, Salamander Bay. As you probably know, there is a public walkway from the Mambo Wetlands Reserve and Port Stephens Drive through to Bosuns Place.

For the last two years or so, we, as a community, have been subjected to numerous anti-social acts involving bottle throwing at windows, destruction of letter boxes, thumping on windows and doors late at night, hurling eggs at our houses, etc etc. Whilst these are not serious crimes, they are enough to cause considerable anxiety to the mostly elderly and more vulnerable in our society.

The perpetrators are around 15 years of age – and no doubt live nearby. They are clearly engaged in underage alcohol consumption, possible drug use, wear the standard hoodies and usually attack on Friday, Saturday or any night during school holidays, between the hours of 9pm to 1.00 am.

Most of the residents, closest to the walkway from the reserve, have already incurred considerable expense in installing sensor lights, changing stand-alone letter boxes to bricked-in ones, and any other security measures they can afford.

Whilst the police are always concerned and on a few occasions have sent a patrol car around the area after a complaint is made, unfortunately these teenage boys are long gone by the time the police arrive. It is virtually impossible to identify who they are as they invariably attack late at night, have their hoods covering their heads, cause their damage and run off.

It is our understanding that under current legislation, all that can be done is to issue warnings to these kids no matter how many offences are committed, which of course is no deterrent at all. If these acts of vandalism are caught on camera and the culprits identified, perhaps then the police can take some sort of punitive action – even if that action is merely to make the parents aware of their children's behaviour.

We would sincerely appreciate serious consideration being given to the installation of a CCTV camera, as we feel it would be the most effective means of preventing this anti-social behaviour.

If our request is denied, we would appreciate a visit from a Councillor to meet with us to discuss alternative actions we might take so that we do not have to live in fear of teenagers who have no respect for people or property.

Yours sincerely

(for and on behalf of residents whose signatures appear below)

INFORMATION ITEM NO. 4

OBJECTION TO 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 approximately 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 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 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

GENERAL MANAGER'S REPORT

PETER GESLING
GENERAL MANAGER

ITEM NO. 1 **FILE NO: PSC2006-0038**

"AIRCRAFT NOISE REFERENCE PANEL" AND AUSTRALIAN NOISE EXPOSURE CONCEPT MAP 1ST SEPTEMBER 2010

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

RECOMMENDATION IS THAT COUNCIL:

1) Note the 2025 Australian Noise Exposure Concept map dated 1st September 2010 as the revised basis for assessing development applications as part of its duty of care under section 79C of the Environmental Planning and Assessment Act 1979.
2) Resolve to form an Aircraft Noise Reference Panel on the basis of:
   a. Inviting 2 members each of SAFE EARS and Medowie East and West groups to review submissions on the draft Aircraft Noise Policy and draft amendment to the Port Stephens Development Control Plan 2007;
   b. Nominating and if appropriate elect 1 Councillor from each ward to be on the Panel;
   c. 2 representatives from the Department of Defence and one representative from the Department of Planning to be on the Panel;
3) Resolve to have the Aircraft Noise Reference Panel report back to Council on the submissions received and any subsequent recommendations.
4) The Aircraft Noise Reference Panel have regard for the Australian Noise Exposure Concept map dated 1st September 2010.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

	Councillor Bruce MacKenzie **Councillor Shirley O'Brien**	That the recommendation be adopted.

AMENDMENT

375	**Councillor Glenys Francis** **Councillor Geoff Dingle**	It was resolved that Council: 1. Note the 2025 Australian Noise Exposure Concept map dated 1st September 2010 as the revised basis for assessing development applications as part of its duty of care under section 79C of the Environmental Planning and Assessment Act 1979.

		2. Resolve to form an Aircraft Noise Reference Panel on the basis of: a. Inviting 2 members each of SAFE EARS and Medowie East and West groups and the Save Our Castle group to review submissions on the draft Aircraft Noise Policy and draft amendment to the Port Stephens Development Control Plan 2007; b. Nominating and if appropriate elect 1 Councillor from each ward and an alternate Councillor to be on the Panel; c. 2 representatives from the Department of Defence and one representative from the Department of Planning to be on the Panel; 3. Resolve to have the Aircraft Noise Reference Panel report back to Council on the submissions received and any subsequent recommendations. 4. The Aircraft Noise Reference Panel have regard for the Australian Noise Exposure Concept map dated 1st September 2010. 5. Councillors Peter Kafer, Steve Tucker and John Nell be the nominated Councillors and that Councillors Caroline De Lyall, Geoff Dingle and Frank Ward be the alternate Ward Councillors.

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, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Sally Dover, Bob Westbury.

Those against the Motion: Crs Bruce MacKenzie.

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

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, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Sally Dover, Bob Westbury.

Those against the Motion: Crs Bruce MacKenzie.

BACKGROUND

The Purposes of this report are to:

1. **Advise Council of the new 2025 ANEC dated 1st September 2010, and**
2. **Recommend a process to Council to consider comments on aircraft noise matters, following the public exhibition of the draft Aircraft Noise Policy, draft Planning Proposal (for information only) and draft amendment to the Port Stephens DCP 2007.**

The Department of Defence has released a 2025 ANEC dated 1st September 2010 to account for re-apportionment of JSF instrument arrivals to minimise noise impacts on Raymond Terrace. This new ANEC has considerably less impact on Raymond Terrace compared to 2025 ANEF.

In October 2009 the Department of Defence promulgated the 2025 ANEF to account for the phased introduction of the Joint Strike Fighter (JSF). Council subsequently resolved to exhibit a draft Aircraft Noise Policy, draft Planning Proposal (for information only) and draft amendment to the Port Stephens Development Control Plan 2007 on 25th May 2010. At the same time the Council endorsed the new aircraft noise planning area as a basis for considering new development applications.
An open forum was held on 26th August 2010 with representatives from SAFE EARS, East and West Medowie groups attending. Following presentations from each group and discussions it was agreed, amongst other things, that a working group should be formed to review submissions, the draft Aircraft Noise Policy and the proposed amendments to DCP 2007.

2025 ANEC dated 1st September 2010

It should be noted that although the new 2025 ANEC is dated 1st September 2010, it was publicly released by the Department of Defence on 12th November 2010.

It should also be noted that an ANEC is a draft version of an ANEF.

The 2025 ANEC (1st September 2010) takes into account the reconfiguring of instrument approach systems and aircraft approaches at RAAF Base Williamtown and also includes the potential future reduction in use of the Salt Ash Air Weapons Range shown in 2025 ANEC (17th May 2010). Broadly, the 2025 ANEC (1st September 2010) means that:

- 517 properties are no longer within the draft Aircraft Noise Planning Area.
- 488 properties contracted from the 25-30 to the 20-25 ANEC contours.

In terms of location, under the 2025 ANEC (1st September 2010):

- Brandy Hill is no longer mapped as affected.
- Parts of Nelsons Plains are no longer mapped as affected or impact is reduced.
- Parts of Raymond Terrace are no longer mapped as affected or impact is reduced.

A copy of the ANEC map (1st September 2010) is at **Attachment 1**.

The Department of Defence has confirmed that it does not object to Council having regard to ANEC (1st September 2010) for planning and building assessment purposes rather than the 2025 ANEF.

Public exhibition of Draft Aircraft Noise Planning Controls

The draft Aircraft Noise Policy, draft Planning Proposal and draft amendment to DCP 2007 were placed on public exhibition from 17th June to 30th July 2010. The exhibition period was extended until the 27th August 2010 to allow additional time for submissions.

Affected landowners were notified on 17th June 2010 and 12th August 2010 regarding the additional time. Question and answer sheets were provided and Council staff available to respond to enquiries.

ANEF Forum

In accordance with Council's resolution of 27th July 2010 an open forum was held on 26th August 2010 with representatives from SAFE EARS, East and West Medowie groups attending. Following presentations from each group and discussions it was agreed, amongst other things, that a working group should be formed to review submissions, the draft Aircraft Noise Policy and the proposed amendment to the

DCP. It is a recommendation of this report to establish an Aircraft Noise Reference Panel.

It is a recommendation of this report to establish an Aircraft Noise Reference Panel comprised of:

- 2 members each of SAFE EARS and Medowie East and West Groups;
- 1 Councillor from each ward; and
- Invite 1 representative each from the Department of Defence and the Department of Planning.

FINANCIAL/RESOURCE IMPLICATIONS

The financial implications of introducing 2025 ANEF and implementing the proposed Policy, LEP and DCP amendments have been reported to Council previously and are not the subject of this report.

LEGAL, POLICY AND RISK IMPLICATIONS

Impact of the proposed Policy and related LEP and DCP amendments

The proposed Policy, LEP and DCP amendments address the risk that Council may be found negligent in the future by ensuring that Australian Standard 2021-2000 and aircraft noise mapping produced by the Department of Defence is the primary policy basis and set of development standards by which aircraft noise impacts are considered, and does so in a manner that is consistent with directions issued pursuant to section 117 of the Environmental Planning and Assessment Act 1979.

The Aircraft Noise Reference Panel

The Aircraft Noise Reference Panel will provide an opportunity for the community to be actively involved in reviewing submissions on the draft Policy and the proposed amendments to the DCP. The Panel will provide comment on the proposed planning controls, which will be considered during any proposed changes to the controls for Council's considerations.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The establishment of the Aircraft Noise Consultative Panel should have positive social implications by formally including members of the community in reviewing submissions on the proposed aircraft noise planning controls.

CONSULTATION

The purpose of this report is to recommend the establishment of an Aircraft Noise Reference Panel. A separate report will be provided in due course that reviews in detail the submissions received, the Aircraft Noise Reference Panel and its review of submissions and the proposed final Policy and DCP 2007 amendments for Council's consideration. In the interim period, the following summary information is provided on the issues raised.

A total of two hundred and nine submissions were received from residents from the following areas: Raymond Terrace (98), Medowie (63), Fullerton Cove (23), Seaham (2), Williamtown (2), Lemon Tree Passage (2), Eagleton (1), Swan Bay (1) and Salt Ash (1).

The range of issues include:

- Policy & DCP 2007 requires clarification
- Status of ANEF Maps and 149 planning certificates
- Kings Hill has implicated the aircraft noise maps
- Economic Impacts
- Consultation – additional consultation and Council support to protect owners
- ANEF contours and effect on land use zones
- Health – concerns about health impacts on affected residents
- Other solutions – including but not limited to runway extension

OPTIONS

Adopt the recommendations of this report.

Amend the recommendations of this report – for example, by also inviting the 'Save Our Castle' group to be represented on the Reference Panel.

Reject the recommendations of this report.

ATTACHMENTS

1) ANEC map (1st September 2010).
2) Draft Aircraft Noise Planning Area Map (1st September 2010) v Draft Aircraft Noise Planning Area Map (25th May 2010).

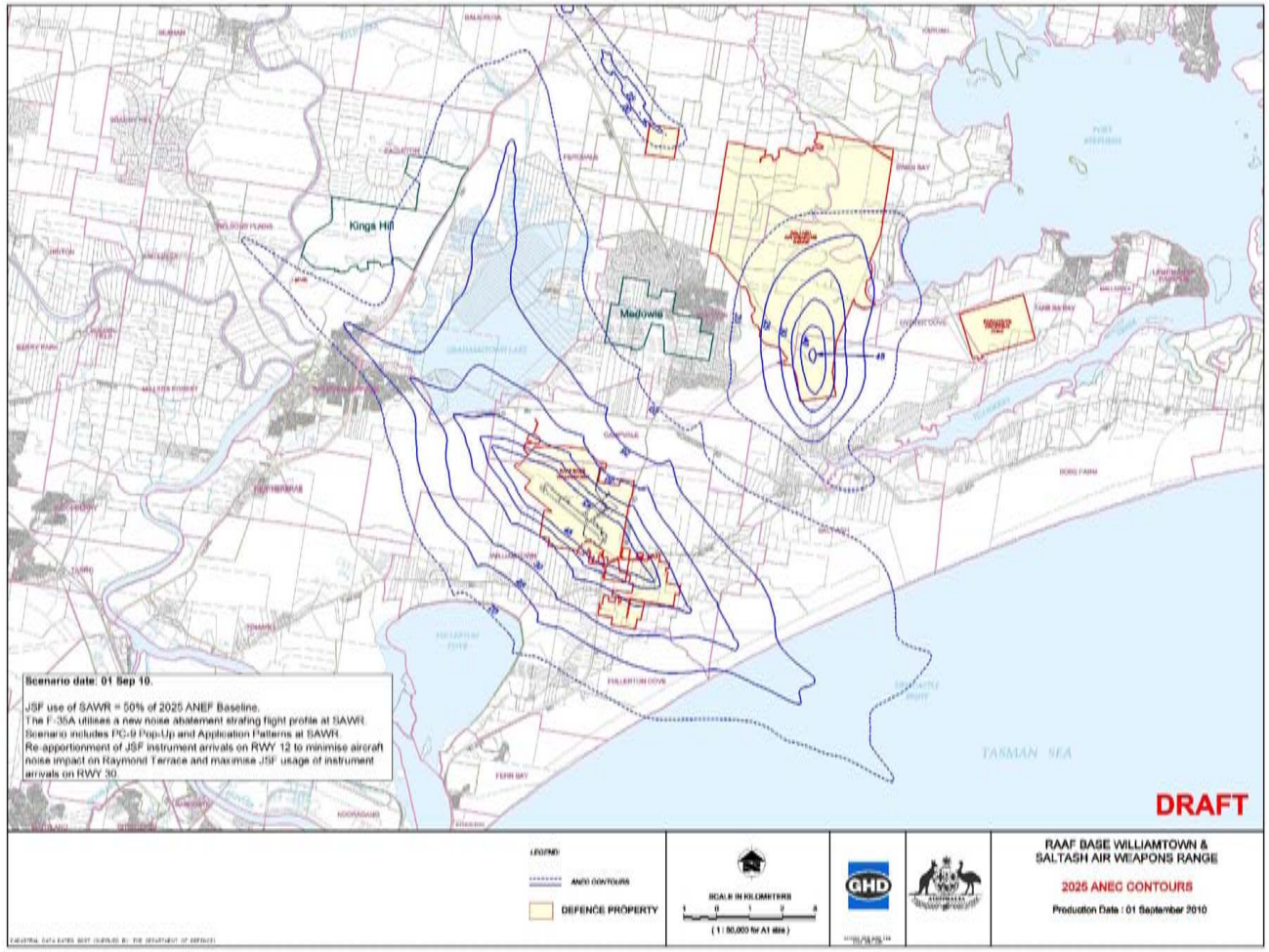
COUNCILLORS ROOM

1) Aircraft Noise Submissions Folder.

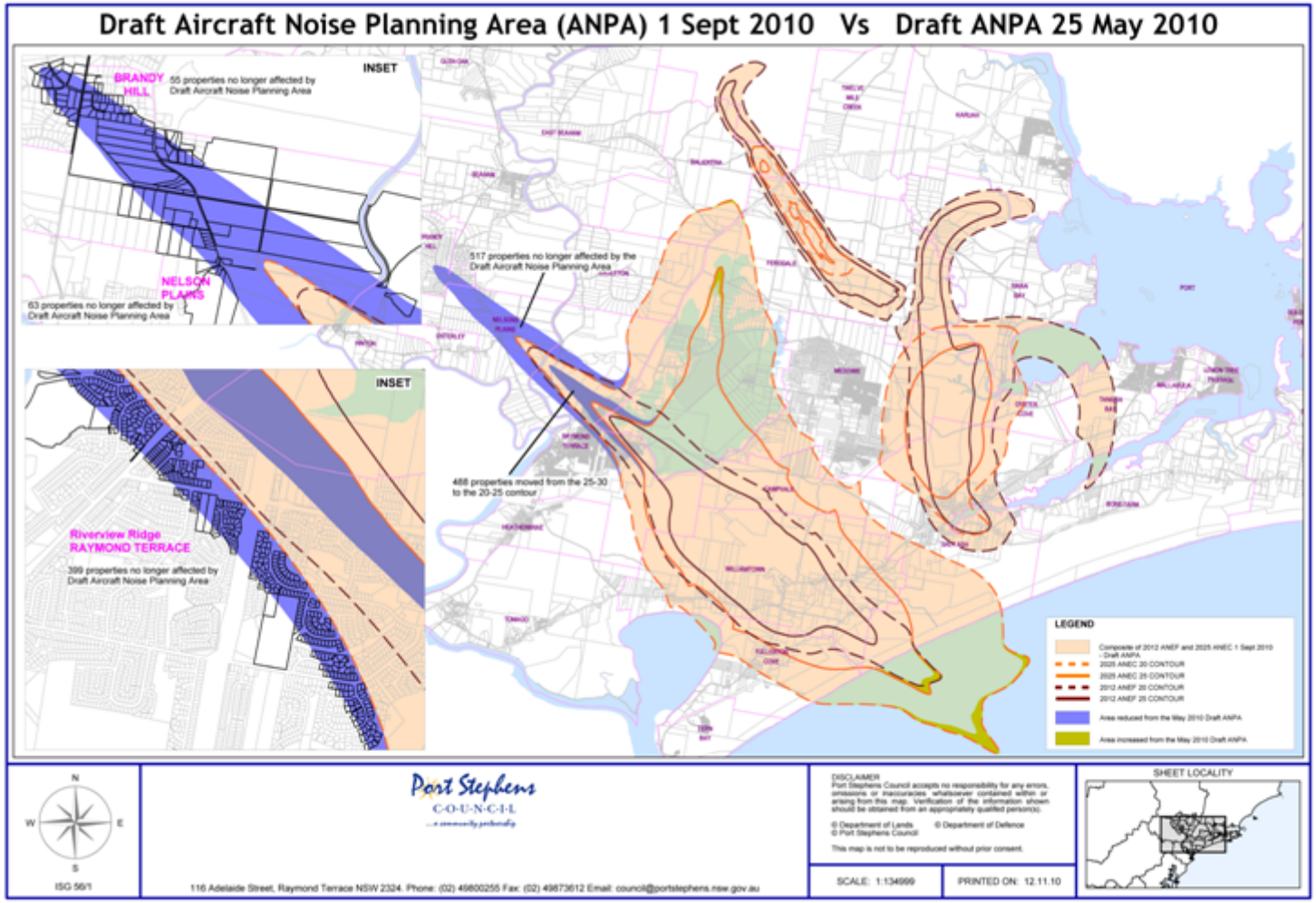
TABLED DOCUMENTS

Nil.

ATTACHMENT 1



ATTACHMENT 2



ITEM NO. 2

INFORMATION PAPERS

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

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the General Managers Information Papers listed below being presented to Council on 23 November 2010.

No:	Report Title	Page:
1	RESPONSE TO PUBLIC ACCESS SUBMISSION – MR W AND MRS J PARKINSON – DEVELOPMENT CONSENT NO 16-2006-0283, 29A KINGSLEY DRIVE, BOAT HARBOUR	28

Cr Caroline De Lyall left the meeting at 6.36pm and returned to the meeting at 6.39pm prior to voting on this Item.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

376	**Councillor Ken Jordan** **Councillor Shirley O'Brien**	It was resolved that the recommendation be adopted.

GENERAL MANAGERS INFORMATION PAPERS

INFORMATION ITEM NO. 1

RESPONSE TO PUBLIC ACCESS SUBMISSION – MR W AND MRS J PARKINSON – DEVELOPMENT CONSENT NO. 16-2006-0283, 29A KINGLSEY DRIVE, BOAT HARBOUR

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

FILE: **PSC2010-05633 & PSC2010-05161**

BACKGROUND

The purpose of this report is respond to Public Access made on 2 November 2010 by Mr and Mrs Parkinson of 29 Kingsley Drive, Boat Harbour in relation to the adjoining property where Development Consent No. 16-2006-0283 for Urban Housing – Ten (10) Dwellings (detached) and Ten (10) Lot Subdivision has been determined by way of approval by Council staff using their delegations on 14 September 2010 for the proposed development at 29A Kingsley Drive, Boat Harbour.

During Public Access Mr and Mrs Parkinson identified several concerns about the processing of the DA and history of the land.

The issues of concern have been formally provided to Council in correspondence received from Mr and Mrs Parkinson dated 1 October 2010 (refer to attachment 1), and from their legal representative Mr Warwick Briggs dated 2 November 2010 (refer to Attachment 2).

Issues
The issues of concern can be summarised as follows:

1. That Mr and Mrs Parkinson refute advice received previously from Council that "the land had never been a park for recreation"
2. That Mr and Mrs Parkinson assert they have been professionally advised that Council has failed procedurally in this matter
3. The applicants were not the registered owners of the land when the DA was lodged
4. That Council failed to recognise the status of the land and failed to rezone the land when it was drawn to Council's attention
5. The assertion that Council should review, amend, or revoke the Development Consent No. 16-2006-0283

Reserve Status
Department of Lands have undertaken to write to Mr and Mrs Parkinson (refer to Attachment 3) to advise of an incorrect land status terminology and date provided

in the former Department of Conservation's letter to Mr and Mrs Parkinson dated 28 May 1992 relative to the status of the subject reserve.

The second paragraph of the 28/5/92 letter (refer to Attachment 7) should have read "The subject area shown on the attached diagram, is part of Reserve Number 82698, an area of Crown land added (1st February 1980 Folio 524) to reserve 82698 for public recreation notified 22 July 1960. Care, control and management of the reserve devolves upon Port Stephens Shire Council under Section 344 of the Local Government Act, 1919".

The reserve was never dedicated for public recreation as stated in the 1992 letter.

Control of this reserve continued to devolve upon Council pursuant to Section 48 of the Local Government Act, 1993 following a repeal of the 1919 Act.

The letter included an apology on behalf of the Authority for the incorrect land status information previously provided.

From Council's enquiries it appears that the land was the residue of a Crown residential subdivision in the 1970's. It was incorporated into Reserve 82698 in 1980 and came under the management [but not ownership] of the Council and was subsequently zoned 2(a) "Residential A" under the Port Stephens LEP 1987. The reserve was never dedicated for public recreation and when the land was granted to the Worimi Aboriginal Land Council in 1998 the reserve status as recognised by the Land and Property Management Authority was automatically revoked by the grant.

Therefore at the time the development application was lodged by Savage Pty Ltd on 31 March 2006, the land was owned by the Worimi Aboriginal Land Council as freehold land and was zoned 2(a) "Residential A" under the Port Stephens LEP 1987.

Council's Management of Lot 576 DP48823

Internal advice has been requested in relation to the process that Council uses to determine the management strategy when reserves are made by the Crown and extended to Council to administer care and control.

When Crown Land is reserved and Port Stephens are made trust managers or if it devolves to us under section 48 of the Local Government Act 1993.

Port Stephens Council's land mangers rely on the following to determine how the land is managed:

1. the reserve status as set by Land and Property Management Authority (The Crown)
2. the zoning as set by Port Stephens Local Environmental Plan
3. any Plan of Management (if one is written); and
4. Council land management policies.

In the future, Council's Open Space Strategy (which is yet to be adopted by Council) will be used to inform land management strategies.

In relation to the subject land, the Public Recreation reserve status as set by Land and Property Management Authority (The Crown) as well as the residential zoning as set by Port Stephens Local Environmental Plan are considered when determining the appropriate land management strategy.

Council have many examples of where community land that is part of the open space system is not zoned 6a for public open space.

If the land were dedicated to Council as open space in the context of a residential subdivision to meet the needs of Council policy requirements such as a Development Control Plan or Section 94 plans, then consideration of rezoning for open space would be a separate consideration made by Council's strategic planning section in those circumstances.

However, in this case the land was never dedicated to Council, and remained Crown Land, and was not identified for open space in any Council plan or policy.

The following facts were provided by Council's land managers responsible for reserves devolved upon Council for management and care in response to Public Access made by Mr and Mrs Parkinson:

The land is privately owned under fee simple title.

Once a DA was received Council would have been obliged to give it due process.

How the land became under private ownership is no concern to Council's development assessment considerations under Section 79C of the Environmental Planning and Assessment Act, regardless if Council previously had an interest in the land.

The history of the site leading to coming under private ownership (the decision of which Council had no part in) is of interest, as it was a part of a crown reserve.

Following a large parcel of land, of which this is part, being no longer required by the Commonwealth, the State created this area as Reserve for Future Public Requirements.

Later the purpose of this reserve was changed to Public Recreation which resulted in the management of it being devolved on Council under Section 344 Local Government Act, 1919.

The site remained vacant and untouched for a number of years with Council leaving it in that state and not involved in any activities on it.

No use was made of the land, especially for recreation purposes with the previous planning zoning (residential zone) remaining in place.

Aboriginal Land Claim (ALC) 5716 was lodged in 1995 over the subject site with the claim based on the land being vacant crown land not being used for the purpose it was reserved for.

The due process was followed with advertising and notification by LPMA (then Lands Dept) taking place.

Some submissions were received and considered resulting in the ALC being granted in 1998.

After the granting a plan was registered defining the parcel as lot 576 DP 48823 and the Certificate of Title was issued to the owners.

Procedural Failure

The matters relevant to the allegations of procedural failure have been addressed in a letter prepared by Council's legal advisers (refer to Attachment 4) to Mr Warwick Brigg's.

The chronology of the application is provided at Attachment 5.

The following comments are provided to the issues raised (underlined below) in the correspondence received from Mr Warwick Briggs (refer to Attachment 2):

<u>Development Application 16-2006-283-1 ("the DA" was "re-submitted")</u>

The DA was not re-submitted but was dealt with by Council as consent authority. The application was assessed after finalisation of a Native Title Determination filed by the owner of the land. This application sought a declaration that no native title existed with respect to the land. Upon that declaration being made and appeal rights exhausted, the DA was assessed and approved.

It is unclear on what basis it is suggested that the DA should have been "re-submitted".

There were apparently minor amendments to the application, however, it would appear that these amendments reduced the height of the development and made alterations to the basement. It would appear that neither of these amendments would have any adverse impact on the objectors or others affected by the development.

<u>Objectors were "denied the opportunity to make detailed submissions or to seek a view or address councillors".</u>

A number of objections were lodged with Council and were considered when the DA was assessed. The objectors, and Mr and Mrs Parkinson in particular, appear to have made numerous approaches to councillors, Members of Parliament and to Council with respect of the DA. It is difficult to see how it is suggested that the objectors have been denied the opportunity to make submissions or address councillors.

A review of Council's files shows that the submissions made by the objectors were considered in the assessment of the DA.

The delegated authority of the planner is fettered by the necessity to give concurrent advice to Council

The authority delegated to the planner by the General Manager is not fettered by requiring advice to be furnished to the Council prior to the delegated authority being acted on. The delegation is: "*authority to evaluate and determine development applications in accordance with the provisions under section 79C and section 80, EP&A Act, unless the development application is called to Council*".

There would appear to be nothing in the delegations requiring that the Councillors be provided with contemporaneous advice with respect to any development application or this DA in particular.

The application granted was significantly different to that lodged in 2006.

As stated above, minor amendments were made to the development application reducing the height of the building and varying the basement. Material available would lead to the conclusion that these were not amendments that would enable a conclusion that the development as approved was significantly different from the original application.

There was a failure to comply with the provisions of SEPP 71.

The assessment report shows that SEPP 71 – Coastal Protection was indeed considered.

The development consent contains the following advice:

> "*Should any Aboriginal site or relic be disturbed or uncovered during the construction of this development, all works shall cease and the National Parks and Wildlife Service shall be consulted. Any person who knowingly disturbs an Aboriginal site or relic is liable for prosecution under the National Parks and Wildlife Act 1974*".

Development Control Plan 2007 was not complied with.

As is detailed above, those impacted were notified and objections were lodged and considered by Council in the assessment of the DA. Clause A1.5 of DCP 2007, however, provides that the prior development control plans, policies and codes continue to apply to development applications that were made prior to, but not determined, on the date of commencement of DCP 2007.

The DA was lodged on 31 March 2006 and DCP 2007 commenced on 31 May 2007.

Revocation of Consent

Section 109(1)(b) & (c) of the *Local Government Act* enables Council to revoke the development consent

Section 109 of the *Local Government Act* relates to the revocation or modification of an "approval". Section 75 of that Act provides that an application for approval may be made under this Part, that is, Chapter 7 Part 1. The approvals under that Part are detailed in section 68 and do not include applications under the *Environmental Planning and Assessment Act* for development consent. The section clearly has no application in this instance.

Section 96A(1)(b) of the *Environmental Planning and Assessment Act* enables Council to revoke the development consent

Section 96A of the *Environmental Planning and Assessment Act* provides statutory authority to revoke a development consent in very limited circumstances. The circumstances are limited to when it appears appropriate to revoke the consent having regard to the provisions of a draft SEPP or REP (in the case of the Director-General) or having regard to the provisions of a draft LEP (in the case of Council). From our instructions, it would appear that these provisions would not be available to Council in this instance.

The power to revoke the consent

In *JR Hunt Real Estate Pty Ltd v Hornsby Shire Council (1997) 130 LGERA 45*, Lloyd DJ confirmed that a valid consent communicated to the applicant cannot, in the absence of statutory authority, be revoked or recalled by the consent authority.

Conclusion

The subject land, 29A KinGsley Drive, Boat Harbour was the residue of a Crown residential subdivision undertaken by the Crown in 1975. Crown subdivisions were permitted without the need to lodge a development application with the Council.

The residue land was incorporated into Reserve 82698 in 1980 and came under the management [but not ownership] of the Council.

The land was already zoned residential in 1974, and subsequently zoned 2(a) "Residential A" under the Port Stephens LEP 1987.

The reserve was never dedicated to Council for public recreation purposes as an outcome of the Crown Subdivision.

Crown land is able to be subjected to aboriginal land claims.

A land claims was made by the Worimi Local Aboriginal Land Council on 16th November, 1995 which was granted to Worimi local Aboriginal Land Council on 16th March, 1998.

At the time of the Minister administering Crown Lands Acts 1989 in making a determination on Aboriginal Land Claim for this subject land, the land in question was Crown land within the meaning of the Crown Lands Act 1989.

When the land was granted to the Worimi Aboriginal Land Council in 1998 the reserve status as made by the Department of Lands was automatically revoked by the grant.

The subject land was, therefore freehold land at the time Development Application No. 16-2006-0283 for Urban Housing – Ten (10) Dwellings (detached) and Ten (10) Lot Subdivision was lodged with Council on 31 March 2006.

Mr and Mrs Parkinson and others objected to the development application and made submissions to Council as a result of the application being exhibited and notified in accordance with Council policy from 8 May 2006.

These submissions were considered by Council as consent authority in its assessment of the development application.

The applicant for the proposal made amendments to the design to address, amongst other things, issues arising from those submissions.

In so far as the amendments related to Mr and Mrs Parkinson's submissions, the Town Planner's assessment report considered the amendments, which reduced the overall height of the development to match the levels indicated on the plans that had been originally notified.

The Town Planner's assessment report considered that an alternative residential development proposal (such as a single or two storey dwelling) would have a similar level of impact on both the amenity, and view loss experienced from Mr and Mrs Parkinson's property. The application was supported on this basis.

Council's determination of the development application was deferred based on legal advice received from the Council's Legal Services Manager, that indicated Native Title Claim applications lodged to the Federal Court (during the assessment of the subject development application) must be processed prior to determination of the application due to land ownership possibly changing as a result of those claims.

The Native title claims were unsuccessful, and following that an assessment of the application continued in accordance with the provisions of the *Environmental Planning and Assessment Act*. Consent was granted subject to conditions on 14 September 2010.

ATTACHMENTS

1) Mr and Mrs Parkinson letter to Council - 1 October 2010
2) Mr Warwick Briggs letter to Council - 2 November 2010
3) Department of Lands letter to Parkinson's - 10 November 2010
4) Harris Wheeler Lawyers (on behalf of PSC) letter to Mr Warwick Briggs – 10 November 2010
5) Chronology - Development Consent No. 16-2006-0283
6) Submissions made my Mr and Mrs Parkinson - Development Application No. 16-2006-0283
7) Department of Conservation and Land Management letter to Parkinson's – 28 May 1992

ATTACHMENT 1

PORT STEPHENS COUNCIL
6 OCT 2010

29 Kingsley Drive

BOAT HARBOUR 2316

49821559

Email: Judith.parkinson@bigpond.com

→ Ag MOP Anthony
For evaluation leading up to further meeting with Mr. and Mrs Parkinson on 12 or 14 Oct / Council 8/10/10.

David Broyd

Port Stephens Council

RAYMOND TERRACE. 2314

Hello David

Further to our meeting today,we enclose herewith a map of the subject land which shows the number of the Reserve. The history of this land is that it was notified as a Reserve dedicated for Public Recreation in 1960 (as per letter dated 28th May 1992 from the Dept of C & L) it was formally gazetted as such on the 1st February 1980 in Government Gazette Number 19, folio 524.

I am sending you this information to correct Mr. Gesling's public statement that "the land had never been a park for recreation".

We have been professionally advised that Council has failed procedurally in this matter. Fusthermore the applicants were not the registered owners of the land when the DA was lodged in 2005.

The fact that Council has in the past failed to recognize the status of the land and failed to correct the zoning when it was drawn to Council's attention , is a matter of serious concern.

We should also advise you that when the Dept. of Land & Water Conservation was considering the Worimi Land Council's claim, it asked Council if it required the land for a public purpose. Contrary to the status of the land and the Crown's desire to have the land kept as a public recreation area, Council initially said "no". This decision was made by a depleted group of councilors.. When the matter was brought to the attention of the remaining councilors and the gravity of the decision was discussed, the councilors reversed their decision and advised the D.L.W.C accordingly. However the person advising the Minister said "it was too late" and implied that Council was frivolous in changing its mind.

As advised to you, we have had our home on the market for four years without a single offer. We consider that because of the high density of the proposed development and the grotesque impact it will have on our property, our house has become unsellable. We look forward to meeting with you again.

Yours faithfully

ATTACHMENT 2

02/11/2010 16:59 0249382083 PAGE 02

Warwick Biggs LL.B.
Barrister & Solicitor ABN 49 096 596 316
'St Yves' Wollombi Road, Wollombi, NSW, Australia 2325
tel:(country code 61) (02) 4998 3205 fax: (02) 4998 8203

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

2 November 2010

Dear Sir,

Re: Parkinson J&W – Complaint – Failure to Notify Development Application in respect of Lot 576 DP48823 –Denial of Procedural Justice & Non-Compliance with EP&A Act

We are instructed by Judy and Warren Parkinson of 29 Kingsley Drive, Boat Harbour, NSW, 2316.

From the limited documents that our clients have been able to extract from Council it is evident that on 14 September 2010 Council granted development consent in respect of a 10 lot sub-division proposing 10 multi-storey dwellings on the above land (previously a vacant Crown Reserve) adjoining their waterfront home.

We are seriously concerned as to how a major waterfront development (similar to a controversial DA lodged 4 years earlier that attracted numerous objections) appears to have been re-submitted and determined by staff without contemporaneous advice or notice to Councillors, neighbours or prior Objectors.

As a direct consequence Objectors have been denied the opportunity to make detailed submissions or to seek a view or address Councillors. Councillors have not had the opportunity to call up and assess a major waterfront development in Boat Harbour or to address any of the objections, public policy or planning issues.

The failure of planning staff to provide contemporaneous advice of the DA after the native title land ownership hiatus (dating from 2006) was resolved renders the delegated determination null and void at law.

Unless Councillors are provided with contemporaneous advice of the resolution of a major impediment to assessment of a DA (the land ownership dispute) it is impossible for Councillors to exercise their statutory duty and consider exercising their power to call a controversial matter before Council.

Accordingly, a fundamental power vested in the elected community representatives under law is unlawfully abrogated.

In these circumstances the delegate planner who is a mere agent of the elected representatives under the instrument of delegation has no authority to proceed with a determination. His delegation is implicitly based upon the Councillors being provided with contemporaneous advice as to Council's capacity to determine the DA and this capacity did not crystallise until the resolution of the ownership dispute in February 2010.

The instrument of delegation requires that Councillors should have been notified after the resolution of the ownership dispute in February 2010. An email update to a handful of Councillors in June of 2008 is irrelevant because the land ownership dispute had not been resolved at that time.

We are instructed that at no stage was advice provided to Councillors of the resolution of the ownership dispute and Council's capacity to determine the DA. Therefore, there has been a fundamental failure of process.

There has also been a failure to notify the original Objectors and a failure to notify the adjoining neighbours in accordance with DCP 2007 of the resolution of the ownership dispute and the re-submission of an application that was significantly different from that lodged in 2006. This results in a denial of procedural fairness as well as reasonable expectations of an opportunity to make submissions or to have a controversial development considered by the elected representatives.

These failures constitute a clear breach of S.79C of the Environmental Planning & Assessment Act 1979, rendering the delegated determination void *ab initio*.

There were also other legal errors in the planner's assessment including his misinterpretation of the legal effect of the competing native title claims. He seems to have wrongly assumed that the failure of the Federal claim was evidence that the site had no cultural value or significance, without making any attempt to enquire of the relevant AHIMS database. In fact all the evidence suggests exactly the opposite. This constitutes a failure to comply with a major requirement of the coastal development SEPP 71.

It is also worth noting from the staff assessment that there were numerous non compliances with development control standards that were ultimately dismissed through a liberal application of SEPP1. The assessment of the application was not just technically flawed. It was a marginal proposal under the relevant standards and warrants detailed reconsideration.

Had this matter been properly notified to Councillors, Objectors and neighbours then the assessment would have been subjected to greater scrutiny. It would

have been tabled at a regular Council meeting and the defects identified above might have been corrected without Council incurring any legal liability to add to existing Council liabilities and the increasing possibility of bankruptcy.

However, there is still a legal avenue open to Council to reduce the risk of legal action and further adverse costs consequences to ratepayers. The matter can be called before Council to seek advice upon and debate whether action pursuant to Ss 109 (1) (b) & (c) of the Local Government Act 1993 and 96A (1) (b) of the Environmental Planning & Assessment Act 1979 is warranted.

Under these provisions Council has the power to revoke a development consent in a number of circumstances including for procedural and legal error. This applies whether or not the determination was made under delegated authority or not and should not be confused with other provisions relating to rescission or review.

As the consent was notified only relatively recently a revocation is unlikely to involve any serious inconvenience or detriment to the proponent. It will give Council the opportunity to correct the legal errors, ventilate community concerns and reassess or mediate the application.

Failing any appropriate action by Council we reserve our clients' rioghts including pursuant to S.123 of the EP&A Act and we may call upon Council to produce this letter on the subject of costs or otherwise in respect of legal proceedings.

ATTACHMENT 3

Land & Property Management Authority
Crown Lands

Cnr New England Highway & Banks Street
(PO Box 6) East Maitland NSW 2323
Contact Officer: Mr Graham Taylor
Phone:(02) 49 379 333
Fax: (02) 49 342252
E-mail: graham.taylor@lpma.nsw.gov.au

MR W. & MRS J. PARKINSON
29 KINGSLEY DRIVE
BOAT HARBOUR NSW 2316

Date: 10th November, 2010

Dear Mr & Mrs Parkinson

Reserve 82698 over Lot 576 DP 48823 at Boat Harbour

In response to a recent enquiry made by Port Stephens Council, I undertook to write to you to advise of an incorrect land status terminology and date provided in the former Department of Conservation's letter to you dated 28 May 1992 relative to the status of the subject reserve.

The second paragraph of the 28/5/92 letter should have read "The subject area shown on the attached diagram, is part of Reserve Number 82698, an area of Crown land **added (1st February 1980 Folio 524) to reserve 82698** for public recreation **notified 22 July 1960**. Care, control **and management** of the reserve **devolves upon** Port Stephens Shire Council under Section 344 of the Local Government Act**, 1919"**.

The reserve was never **dedicated** for public recreation as stated in the 1992 letter.

Control of this reserve continued to devolve upon Council pursuant to Section 48 of the Local Government Act, 1993 following a repeal of the 1919 Act.

Please accept my apologies on behalf of the Authority for the incorrect land status information previously provided.

Should you require further clarification of this matter, please do not hesitate to contact me on telephone (02) 49 379 333.

Yours sincerely,

Graham Taylor
Property Management Project Officer
Hunter Area
North Region

ATTACHMENT 4

Our Ref: FLG:VEH:74784
Email: lisa.gowing@harriswheeler.com.au
Your Ref:

16 November 2010

Warwick Biggs, Solicitor
St Yves
Wollombi Road
WOLLOMBI NSW 2325

Dear Colleague

J AND W PARKINSON RE: SAVAGE PTY LTD
29A KINGSLEY DRIVE, BOAT HARBOUR

We are instructed by Port Stephens Council to respond to your letter of 2 November 2010.

Your letter raises a number of issues, which we have attempted to extract.

Lot 576 DP 48823 ("the land" was at a relevant time "vacant Crown reserve")
From Council's enquiries it appears that the land was the residue of a Crown residential subdivision in the 1970's. It was incorporated into Reserve 82698 in 1980 and came under the management [but not ownership] of the Council and was subsequently zoned 2(a) "Residential A" under the Port Stephens LEP 1987. The reserve was never dedicated for public recreation and when the land was granted to the Worimi Aboriginal Land Council in 1998 the reserve status was automatically revoked by the grant.

Therefore at the time the development application was lodged by Savage Pty Ltd, the land was owned by the Worimi Aboriginal Land Council as freehold land and was zoned 2(a) "Residential A" under the Port Stephens LEP 1987.

Development Application 16-2006-283-1 ("the DA" was "re-submitted")
The DA was not re-submitted but was dealt with by Council as consent authority. The application was assessed after finalisation of a Native Title Determination filed by the owner of the land. This application sought a declaration that no native title existed with respect to the land. Upon that declaration being made and appeal rights exhausted, the DA was assessed and approved.

It is unclear on what basis it is suggested that the DA should have been "re-submitted".

There were apparently minor amendments to the application, however, it would appear that these amendments reduced the height of the development and made alterations to the basement. It would appear that neither of these amendments would have any adverse impact on the objectors or others affected by the development.

Objectors were "denied the opportunity to make detailed submissions or to seek a view or address councillors".
A number of objections were lodged with Council and were considered when the DA was assessed. The objectors, and your clients in particular, appear to have made numerous approaches to councillors, Members of Parliament and to Council with respect of the DA. It is difficult to see how it is suggested by you that they have been denied the opportunity to make submissions or address councillors.

A review of Council's files shows that the submissions made by the objectors were considered in the assessment of the DA.

The delegated authority of the planner is fettered by the necessity to give concurrent advice to Council
The authority delegated to the planner by the General Manager is not fettered by requiring advice to be furnished to the Council prior to the delegated authority being acted on. The delegation is: "*authority to evaluate and determine development applications in accordance with the provisions under section 79C and section 80, EP&A Act, unless the development application is called to Council"*.

There would appear to be nothing in the delegations requiring that the councillors be provided with contemporaneous advice with respect to any development application or this DA in particular.

The application granted was significantly different to that lodged in 2006.
As stated above, minor amendments were made to the development application reducing the height of the building and varying the basement. Material available would lead to the conclusion that these were not amendments that would enable a conclusion that the development as approved was significantly different from the DA.

There was a failure to comply with the provisions of SEPP 71.
The assessment report shows that SEPP 71 – Coastal Protection was indeed considered.

The development consent contains the following advice:

> "*Should any Aboriginal site or relic be disturbed or uncovered during the construction of this development, all works shall cease and the National Parks and Wildlife Service shall be consulted. Any person who knowingly disturbs an Aboriginal site or relic is liable for prosecution under the National Parks and Wildlife Act 1974*".

DCP 2007 was not complied with.
As is detailed above, those impacted were notified and objections were lodged and considered by Council in the assessment of the DA. Clause A1.5 of DCP 2007, however, provides that the prior development control plans, policies and codes continue to apply to development applications that were made prior to, but not determined, on the date of commencement of DCP 2007.

The DA was lodged on 31 March 2006 and DCP 2007 commenced on 31 May 2007.

Whilst it is not acknowledged that there is any obligation on Council to revoke the consent granted, you raise the issue of revocation and, accordingly, it is addressed.

Section 109(1)(b) & (c) of the *Local Government Act* enables Council to revoke the development consent.
Section 109 of the *Local Government Act* relates to the revocation or modification of an "approval". Section 75 of that Act provides that an application for approval may be made under this Part, that is, Chapter 7 Part 1. The approvals under that Part are detailed in section 68 and do not include applications under the *Environmental Planning and Assessment Act* for development consent. The section clearly has no application in this instance.

Section 96A(1)(b) of the *Environmental Planning and Assessment Act* enables Council to revoke the development consent.
Section 96A of the *Environmental Planning and Assessment Act* provides statutory authority to revoke a development consent in very limited circumstances. The circumstances are limited to when it appears appropriate to revoke the consent having regard to the provisions of a draft SEPP or REP (in the case of the Director-General) or having regard to the provisions of a draft LEP (in the case of Council). From our instructions, it would appear that these provisions would not be available to Council in this instance.

Council has the power to revoke the consent.
In *JR Hunt Real Estate Pty Ltd v Hornsby Shire Council (1997) 130 LGERA 45*, Lloyd DJ confirmed that a valid consent communicated to the applicant cannot, in the absence of statutory authority, be revoked or recalled by the consent authority.

In summary, the subject land was freehold land at the time the development application was lodged. Your clients and others objected to the development application and made submissions to Council. These submissions were considered by Council as consent authority in its assessment of the development application. Following an assessment of the application in accordance with the provisions of the *Environmental Planning and Assessment Act*, consent was granted subject to conditions.

We have attempted to deal with the issues raised in your letter on behalf of your client to avoid unnecessary litigation being commenced.

Yours faithfully
HARRIS WHEELER

Lisa Gowing
Special Counsel

ATTACHMENT 5

CHRONOLOGY - **DEVELOPMENT APPLICATION: NO.283/2006**

HOUSE NO: 29A KINGSLEY DRIVE, BOAT HARBOUR NSW 2316

TYPE OF WORK: URBAN HOUSING - TEN (10) DWELLINGS (DETACHED) & TEN LOT SUBDIVISION TT

APPLICANT: SAVAGE PROPERTY PTY LTD /ENVIRONMENTAL RESOURCES MANAGEMENT AUSTRALIA

OWNER: WORIMI LOCAL ABORIGINAL LAND COUNCIL

DATE LODGED: 31/03/2006

COST OF WORK: $3,000,000.00

DETERMINATION: APPROVED WITH CONDITIONS

DETERMINATION DATE: 14/09/2010

2006	03 FEBRUARY 2006	MINUTES OF DAP MEETING WITH SQUILLACE ARCHITECTS, ERM AND SAVAGE.
2006	31MAY 2006	DEVELOPMENT APPLICATION (283/2006). SUBMITTED FOR 10 LOT SUBDIVISION AND 10 TOWN HOUSES
2006	04 MAY 2006	FAX FROM PAUL MADER (SAVAGE PROPERTY) WITH ATTACHED FAX TO ERM REFERS TO ATTACHED LETTER PROVIDING CONSENT FROM OWNER SUPPLIED TO COUNCIL LETTER DATED 7.11.05 WATSON MANGIONI (LAWYERS) TO SAVAGE LAWYERS PROVIDING OWNERS CONSENT FROM WORIMI ABORIGINAL LAND COUNCIL
2006	11.MAY 2006	INTEGRATED DEVELOPMENT ASSESSMENT REFERRAL SECTION 100B OF THE RURAL FIRES ACT. BUSHFIRE REFERRAL. SENT TO RFS
2006	08 MAY 2006	ADVERTISEMENT AND NOTIFICATION LETTERS SENT
2006	2 MAY 2006.	COUNCIL'S LEGAL SERVICES MANAGER ADVISES DEVELOPMENT AND BUILDING THAT DUE TO NATIVE TITLE CLAIMS DETERMINATION OF THE DA MAY NOT BE POSSIBLE UNTIL THOSE

		CLAIMS ARE RESOLVED.
2006	MAY 2006.	SUBMISSION LETTERS RECEIVED
2006	4 JUNE 2006;	CR NELL CALLS THE DA TO COUNCIL.
	13 JULY 2006	COUNCIL'S LEGAL SERVICES MANAGER ADVISES DEVELOPMENT AND BUILDING SECTION OF TWO NATIVE TITLE LAND CLAIMS LODGED IN THE NATIONAL NATIVE E TITLE TRIBUNAL OF THE FEDERAL COURT OF AUSTRALIA.
	19 SEPTEMBER 2006	COUNCIL'S LEGAL SERVICES MANAGER ADVISES DEVELOPMENT AND BUILDING SECTION THAT ONE OF TWO NATIVE TITLE LAND CLAIMS REMAINS UNRESOLVED.
2006	7 NOVEMBER 2006	DEVELOPMENT PLANNER – SIMON POCOCK SEEKS ADVICE FORM COUNCIL'S LEGAL SERVICES MANAGER OF CLAIMANT AND NON-CLAIMANT LAND CLAIM STATUS IN RELATION TO WHETHER LAND CLAIMS ARE AN IMPEDIMENT TO DETERMINATION OF THE SUBJECT APPLICATION.
	15 NOVEMBER 2006	LEGAL SERVICES MANAGER ADVISE THAT
2006	9 NOVEMBER 2006	APPLICATION REFERRED TO DAP FROM DEVELOPMENT PLANNER – SIMON POCOCK (ASSESSING OFFICER) RECOMMENDED FOR APPROVAL SUBJECT RESOLUTION OF NATIVE TITLE CLAIMS PROCEEDINGS. PROCESSING OF APPLICATION DEFERRED.
2008	11 JANUARY 2007	PLANNER MELISSA THOMAS – SENIOR DEVELOPMENT PLANNER (NEW ASSESSING OFFICER) CLARIFIES WITH COUNCILLOR NELL REQUESTING THE APPLICATION BE REPORTED TO COUNCIL FOR A DECISION.

2008	24 JUNE 2008	PLANNER MELISSA THOMAS – SENIOR DEVELOPMENT PLANNER ADVISES COUNCILLORS OF AN UPDATE ON APPLICATION DETERMINATION GIVEN PREVIOUS REPRESENTATIONS AND REQUEST ATTENDANCE AT MEETING 1 JULY 2010.
2008	1 JULY 2008	PLANNER MELISSA THOMAS – SENIOR DEVELOPMENT PLANNER CONDUCTED A MEETING WITH COUNCILLORS AND PROVIDED AN UPDATE ON APPLICATION GIVEN PREVIOUS REPRESENTATIONS.
2008	2 JULY 2008	COUNCILLOR NELL AND DOVER WITHDREW THEIR PREVIOUS REQUEST TO HAVE THE APPLICATION CALLED TO COUNCIL. IT WAS AGREED THE DETERMINATION UNDER DELEGATION SHOULD BE HELD OFF UNTIL THE MATTER OF NATIVE TITLE WAS RESOLVED AND THEN DETERMINED BY THE DELEGATED OFFICER.
2008	20 OCTOBER 2008	DA RE-SUBMISSION AND INFORMATION REQUEST ADDRESSED ON PLANS LODGED BY ARCHITECTS.
2008	18 DECEMBER 2008	FEDERAL COURT DETERMINED NATIVE TITLE FEDERAL COURT DETERMINED THAT THERE IS NO NATIVE TITLE IN RESPECT TO THE PROPERTY

2009	23 JANUARY 2009	AMENDED APPLICATION PLANS LODGED BY ARCHITECTS. RIDGE HEIGHTS OF UNITS 1, 2, 3, 4, 5, 6, 7, 8 HAVE BEEN REDUCED AND MATCH THE (RELATIVE LEVEL) RL'S STATED ON THE ORIGINAL NOTIFICATION PLANS. RL OF THE UPPER LEVEL OF UNITS 1, 3, 5, AND 7 REDUCED BY 100MM. THE AMENDMENTS RESULT IN ONLY UNITS 1 AND 5 EXHIBITING NON-COMPLIANCE WITH THE 8M HEIGHT DEVELOPMENT STANDARD.
2009	29 JANUARY 2009	APPEAL FILE APPEAL LODGED WITHIN 21 DAYS
2010	2 FEBRUARY 2010.	APPEAL JUDGEMENT HANDED DOWN, DISMISSING THE APPEAL 28 DAYS SPECIAL LEAVE GIVEN TO APPEAL. NO APPEAL ATTEMPTED. LETTER FROM LISA MARSHALL CONFIRMS NO MORE OPPORTUNITIES TO APPEAL AND NO NEED FOR FURTHER MEETINGS WITH APPLICANT.
2010	12 JULY 2010	NATIVE TITLE TRIBUNAL ADVISE COUNCIL'S LEGAL SERVICES MANAGER NO APPEAL TO THE HIGH COURT LODGED. LEGAL SERVICES MANAGER ADVISE DEVELOPMENT AND BUILDING SECTION THAT THE DA CAN BE ASSESSED AND DETERMINED
2010	9 AUGUST 2010	DA RESENT TO NSW RURAL FIRE SERVICE (RFS) DUE TO NEW LEGISLATION AND REPORT FINALISED AS PER FILE NOTE STATUS FROM MELISSA THOMAS.

2010	31 AUGUST 2010	RFS RESPOND TO COUNCIL WITH NEW CONDITIONS UNDER SECTION 100B OF THE RURAL FIRES ACT.
2010	14 SEPTEMBER 2010	APPLICATION APPROVED 14 SEPTEMBER 2010. ADVERTISED DECISION IN PAPER 7 OCTOBER 2010

ATTACHMENT 6

PORT STEPHENS COUNCIL
File No. 16-2006-2 S.S.-1
15 MAY 2006
Action by SIP
Copy to

29 Kingsley Drive
BOAT HARBOUR 2316
49821559

Simon Pocock.
Port Stephens Council
31st May 2005

Hello Mr. Pocock

RE: DEVELOPMENT APPLICATION 29A KINGSLEY DR. BOAT HARBOUR

We have received the latest development application re the above property.

We object strongly to this application as it contravenes height restrictions, severely restricts light to our home, severely restricts air flow to our home and severely impinges on our privacy. It also completely denies us any view whatsoever to the ocean which was the reason we purchased our property in 1991. Before purchasing, we were assured in writing by the Dept of Land & Water Conservation that the subject property (a dedicated public reserve) would never be developed residentially. The original reserve was the Crown's Open Space contribution to the surrounding estate. If this proposal is approved, it will mean that no allowance for open space has been provided and in fact a high density situation will occur.

Apart from all of this, 29a Kingsley Drive is presently before the Federal Court (Native Title Claim (Nos. 1989/2004 and 208/2006); and before the Land and Environment Court (No. 30225/2006) and the Administrative Decisions Tribunal. (Nos 053219 and 0553335)

This property is owned by the Worimi Aboriginal Land Council. However as previously advised , groups of indigenous people are claiming Native Title (hence ownership) over the land. Sale to the applicant Developer cannot be completed until the requirements of the N.S.W. Land Rights Act are complied with i.e. the issue of 40D and 40AA Certificates.

It seems incongruous that neighbours have been given only until the 24th May to comment on this application when ownership of the land has not been established nor will it be for some time to come.

We look forward to your reply.

Yours faithfully

PORT STEPHENS COUNCIL
18 MAY 2006
File No. 16-2006-233-1
Action by ... S/P
Ack. by ...

29 Kingsley Drive
BOAT HARBOUR 2316
49821559

Mr. S Pocock
Port Stephens Council
RAYMOND TERRACE 2324
16th May 2006

Dear Mr. Pocock,

RE. D/A 29A KINGSLEY DRIVE BOAT HARBOUR:

I refer to the above Development Application and hereby submit my concerns which I wish Council to consider.

1: Ownership of the land has not been established and rests with the Federal Court.

2: The function of an architect is to fit an appropriate design to the land involved and at the same time incorporate all regulations and restrictions. Dwellings should be designed and adapted to the land. If this is not possible, then the wrong land and/or architect has been selected.

3: The contour plan of lot 576 (29a) does not show any abnormal or significant changes in slope. Even the small areas of exposed rock fall in the same contour level as the surrounds. Why can't the standard building envelope be conformed to?

4: I object to all height infringements. Ample light can be obtained by use of domed skylights. Datum Points should be strictly observed.

5: Plans for subdivisions 9 and 10 infringe setbacks.

6: When creating subdivision DP251247, the Crown contributed Reserve 82698 (now lot 575) as the Open Space component. Now a Plan for 10 dwellings is proposed. What land contribution is this developer making for this proposed subdivision.?

7: I object to infringement on my privacy, restriction of cross air flow (for cooling) to my house, restriction of light to my house; future noise pollution for which my residence was not designed to withstand, and total loss of ocean views

8: This proposed development is completely out of character with surrounding neighbourhood trends

9: If this development (or any similar) proceeds on lot 576, then it will be challenged in the Land and Environment Court on all the points as set out above.

Yours faithfully.....WARREN PARKINSON

ATTACHMENT 7

DEPARTMENT
OF CONSERVATION [redacted] AND LAND MANAGEMENT
Maitland Office

Mr.W. Parkinson
23 Vanilla Avenue
WAHROONGA 2076

YOUR REF. AAD 'P' SC
CONTACT OFFICER Mr. S.J. Clapham
TELEPHONE NO. (049) 302718

28 MAY 1992

Dear Sir,

LAND SOUTH OF LOT 6 SECT 20 DP 251247-OFF KINGSLEY DRIVE, BOAT HARBOUR PARISH OF TOMAREE

I refer to your letter dated 14th May, 1992 requesting search details on the subject land.

The subject area, shown on the attached diagram, is part of Reserve Number 82698, an area of Crown Land dedicated for Public Recreation in 1960. Care and control of the reserve is vested in the Port Stephens Shire Council under Section 344 of the Local Government Act.

Any use of the reserve by the Council must be in keeping with its dedication for Public Recreation, uses would include parks, picnic or sporting facilities. Any proposal to use the subject area for a purpose other than Public Recreation would require the consent of this Department and reclassification of the reserve, such action is considered to be very unlikely to be adopted.

This office is not aware of any proposal to alter the present use of Reserve 82698.

I trust that the above information is satisfactory, and please do not hesitate to contact me if you require further information.

Yours sincerely,

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1 **FILE NO: A2004-0217**

INFORMATION REGARDING LEGAL ACTION

COUNCILLOR: MACKENZIE

THAT COUNCIL:

1) Inform the councillors of any legal action to be taken by council or any legal action to be taken against council.

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

Cr Steve Tucker objected to allow discussion on the notice of motion.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

377	**Councillor Bruce MacKenzie** **Councillor Ken Jordan**	It was resolved that the Notice of Motion be adopted.

BACKGROUND

Councillors are currently provided with quarterly updates on legal proceedings via the Two-Way Conversation Program. The next Legal Services briefing is scheduled to be held early December.

Council deals with legal matters in accordance with and response to court ordered deadlines.

Notice of Motion 2 was dealt with prior to Item 1 of the Council Committee recommendations.

NOTICE OF MOTION

ITEM NO. 3 **FILE NO: A2004-0217**

COMMITTEE FORMATION FOR RE-DEVELOPMENT OF COUNCIL DEPOT

COUNCILLOR: MACKENZIE

THAT COUNCIL:

1) Form a committee consisting of Councillors Nell, Jordan, MacKenzie and Mayor Westbury to investigate the redevelopment of the council depot.

BACKGROUND REPORT OF: JEFF SMITH – GROUP MANAGER, COMMERCIAL SERVICES

Cr Steve Tucker objected to allow discussion on the notice of motion.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

378	**Councillor Bruce MacKenzie** **Councillor Ken Jordan**	It was resolved that the Notice of Motion be adopted.

BACKGROUND

In 2008 Council investigated the options into redeveloping the Raymond Terrace Depot and concept plans were designed in consultation with Council staff. The architects involved in drafting the plans in 2008 will be in attendance at the two way conversation on 30 November 2010 to discuss this proposal.

NOTICE OF MOTION

ITEM NO. 4 **FILE NO: A2004-0217 [16-2010-542-1]**

REPORT ON DA 542/2010 - JANET PARADE, SALT ASH

COUNCILLOR: MACKENZIE

THAT COUNCIL:

1) Prepare a report to come back to the next council meeting in regard to the Section 94 in regard to the paintball development in Janet Parade, Salt Ash.

BACKGROUND REPORT OF: DAVID BROYD – GROUP MANAGER, SUSTAINABLE PLANNING.

Cr Steve Tucker objected to the notice of motion to allow discussion on the Notice of Motion.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

379	**Councillor Bruce MacKenzie** **Councillor Ken Jordan**	It was resolved that the Notice of Motion be adopted.

BACKGROUND

Consent was granted to the use of the subject site as a tourist Facility (Paintball) on the 5th November 2010.

The application proposed that the paintball operation will share the facilities currently utilised for the existing horse trail riding tours operating from the site, ie: Reception, toilets and carpark for 15 vehicles. The current operation on site relating to horse tours runs 2 sessions a day with an average patronage of 5 people. These people quickly disperse from the site once the tour begins. It is planned that the start of each operation would be staggered to avoid a build up of people on site. The area designated for paintball operation is approximately 1Hectare in size to the rear of the site.

It is anticipated that the proposal will require 6 employees with 10 participants in any paintball session.

The application sought to operate the business from 9am – 5pm in low season (May – Sept) and 9am -7pm in high Season (October-April).

Section 94 Contributions

The development has attracted development contributions in line with the Port Stephens S94 Development Contributions Plan based on vehicle trip generation.

The amount of contributions levied for this application are contained within condition 3;

3) *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:-*

	Total
Roadworks	*($13,950)*

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 commencement of use.

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.

As stated in condition 3, development contributions for the development total $13,950 and have been applied as per Councils Sect5ion 94 Contributions Plan.

Contact has been made with the applicant who has been advised on the process involved in lodging an application to modify the consent.

RESCISSION MOTIONS

RECISSION MOTION

ITEM NO. 1 **FILE NO: 1510-000**

PROPERTY INVESTMENT AND DEVEOPMENT POLICY

COUNCILLORS: MACKENZIE, TUCKER, DOVER

That Council rescind its decision of 27 January 2010 on Item 1 of the Ordinary Council Meeting Report, namely Property Investment and Development.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

		Councillor MacKenzie with the agreement of Councillors Tucker and Dover withdrew the Rescission Motion.

Port Stephens
C·O·U·N·C·I·L
POLICY

Adopted: 27/01/04
Minute No:010
Amended:
Minute No:

FILE NO: 1510-000

TITLE: PROPERTY INVESTMENT & DEVELOPMENT POLICY

RESPONSIBLE OFFICER: BUSINESS & DEVELOPMENT MANAGER

BACKGROUND

The nature and status of Council's current investment and development portfolio has placed it in a credible position which may be continually enhanced by realising further investment and development opportunities.

This policy provides guidelines for consideration in the acquisition development and disposal of investment properties. Investment and Development properties are those that provide financial return to Council and or provide strategic pathways for future income generation.

Property Investment activities are those that have a pre-determined yield, a lower risk associated with return and are usually improved properties eg multi-storey commercial premises. Property Development activities require further input of capital and carry higher risk usually being unimproved properties eg vacant land.

The Principles of this policy provide a basis to ensure optimum financial return is realised through appropriate identification, selection and management of Council's investment portfolio including acquisition and disposal of assets. They also support the basis for recommendation upon which Council may determine to pursue acquisition or disposal of its investment properties including buildings.

The policy refers to Operational Land only as defined under the Local Government Act 1993 and provides no consideration for the acquisition or disposal of Community Land and its associated requirements. All land acquired, managed or disposed of in accordance with this policy will be classified "Operational" within the context of the Local Government Act 1993.

OBJECTIVE

- To invest in property and maintain a strong real estate portfolio as a strategy for providing capital growth and a recurrent source of key income in the

provision of services to the community.

- To acquire and maintain an optimum balance of short, medium and long term property investments ensuring exponential growth and the financial capacity to further invest and develop.
- To complement the current Cash Investment Policy in providing an alternate income source thereby reducing the call on rate revenue and other statutory income producing activities of Council.

PRINCIPLES

1) To ensure optimum financial return is realised through appropriate identification, selection and management of Council's Investment portfolio including acquisition and disposal of assets.

2) To utilise effective property management techniques and investment practices in the management of Council's assets to ensure maximum long term economic advantage to Council.

3) To satisfy the real property needs of Council by meeting the requirements and corporate objectives outlined in Council's investment portfolio model.

POLICY STATEMENT

The overall mix and nature of investment properties will provide a balanced source of income which complements existing cash holdings.

All future investment and development activities will provide return on investment greater than achievable cash rates at any specified time.

Council will systematically assess and review the performance of its investment portfolio and use this information to determine when and how to preserve or increase each properties value and usefulness or dispose of individual properties. Decisions in this regard will be based on analysis of cost information for individual properties and will reflect the viability of Council's commitment of financial resources to specific projects. Priority will be given to projects with a positive effect on investment returns without imposing on short term cash availability.

All property investment activities will be undertaken in accordance with Council's Management Plan and the Business and Development Business Plan and will reflect Council's ongoing commitment to sustainability. Community identified needs within the Management Plan will also provide guidelines for the suitability of property investment decisions in relation to the vision of Council and its corporate goals. Investment activities will reflect both financial and strategic objectives.

Borrowings may be considered in accordance with relevant policy, the Management Plan and targeted debt service ratios.

The attached Annexures A to E provide specific guidelines for Investment and Development Policy activities and will be applied in conjunction with the Policy

Objectives, Principles and Statement.

Annexure A	Structure of Investment Portfolio
Annexure B	Investment Considerations
Annexure C	Financial Considerations
Annexure D	Reporting Procedures
Annexure E	Distribution of Funds

RELATED POLICIES

Restricted Funds Policy
Cash Investment Policy
Business Development Funding Policy
Acquisition Policy (under development)
Disposal Policy (under development
Economic Development Strategy
Social Plan
Financial Management Strategy
Asset Management Policy

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Nil

ECONOMIC IMPLICATIONS

Efficient management of the acquisition development and disposal of Investment and Development properties will provide an ongoing income stream which reduces the call on rate revenue and provides funds for further investment.

ENVIRONMENTAL IMPLICATIONS

Nil

RELEVANT LEGISLATIVE PROVISIONS

Local Government Act 1993
Real Property Act 1900
Retail Leases Act 1994

IMPLEMENTATION RESPONSIBILITY

Property Unit

REVIEW DATE

One year from implementation.

Annexure A Structure of Investment Portfolio

Investment decisions will have regard to the changing nature of Council's portfolio requirements and the demand on its cash investments. In this respect an appropriate mix of properties will be held that will enable Council to both capitalise on long term investment strategies and provide short term cash flows where required. In order to achieve this balance a range of properties that enables diversification within the market will be maintained.

The optimum balance of properties will consist of short, medium and long term investments. This will enable Council to realise assets at varying rates and allow income streams to be generated at various points within the life cycle of the investment.

In determining the suitability of activities Council will also consider the nature of investments and their ability to meet future resource requirements.

An appropriate range of investment properties will be maintained in accordance with their categorisation within the following classifications:

- Greenfield
- Concept planned
- DA under development
- DA approved
- Development in progress
- On market

The following additional criteria are based on industry standards and considered an appropriate benchmark to determine suitability where lettable property is considered.

- Secure return to Council by achieving at least a ten year lease on "A" grade tenants, at least a five year lease on "B" grade tenants and three year lease term on "C" grade tenants. The definitions of these gradings are:

A Grade	Large lettable areas of 7000sqm leased to national tenants.
B Grade	Medium lettable areas of between 200sqm to 700sqm leased to well known, reputable and solvent tenants.
C Grade	Small lettable areas of less than 200sqm leased to lesser known tenants.

In assessing applications for occupancy of each grade of premises due diligence will be undertaken to establish applicants solvency and compliance with pre-determined industry accepted criteria.

Annexure B Investment Considerations

Considerations in determining suitability of investment properties for acquisition or disposal include but are not limited to:

- Analysis of the reason for purchase and the individual strategy for the future use of the property ie does the acquisition
  - satisfy the real property needs of Council or,
  - provide an income source for current and/or future revenue
- Current return on investment and its performance in accordance with Council's annual Key Performance Indicators noted in the Management Plan and Business Plan.
- Assessment of strategic value of property and Council's ability to further capitalise on investment.
- Initial value of the property in relation to the current market value of the property ie how has the property appreciated or depreciated in value.
- Current and future ability to return optimum rental on improved properties.
- Suitability of the property for identified purpose ie extent of development or design requirements and associated budgetary restrictions both short and long term.
- Acquisition costs ie purchase price and associated costs such as valuation, enquiries, stamp duty, contract and conveyancing fees.
- Holding costs incurred until future development or disposal occurs.
- Maintenance and preservation requirements of the asset both current and future and the need to commit financial resources based on cost analysis.
- Immediate income generation.
- Flexibility of Investment.
- Sustainability of investment income following disposal.

Council will aim to maximize its return on all property investments however statutory and social obligations may in some instances impose restrictions on the capacity to fulfil this requirement. For example this may occur as a result of Council's planning policies where policy implications restrict the ability to realise maximum return on investments. Where this occurs Council will apply sound business practice and determine the proposal based on its financial merit.

Alternatively where proposals indicate potential to fulfil future financial, social or statutory requirements investment decisions may consider the ability to meet long term investment goals ie initial low yield and long term potential benefit.

Annexure C Financial Considerations

The decision to proceed with acquisition or disposal of investment properties will be made having due regard to "Investment Considerations" and the following financial performance criteria:

Acquisition	Disposal
Ability to provide 10% or greater return on investment	Performance in relation to market expectations
Ability to purchase at or below market value	Ability to dispose of above market value
Short and long term impact on financial resources	Short term realisation of asset versus long term loss of income

By systematically assessing current economic climate, predominant market forces and financial performance of individual investment properties maximum return is achieved in accordance with financial and strategic goals.

Following acquisition of investment properties with improvements Council will maximise rental return by prudent management, review of rental payments, rental reviews, lease options and the monitoring of movements of rents and tenants on a local and regional level.

An annual budget will be prepared for the expenses related to the operation of investment and development properties and monitoring the placement of funds. The budget will also contain provision for holding and associated costs in respect of unimproved properties.

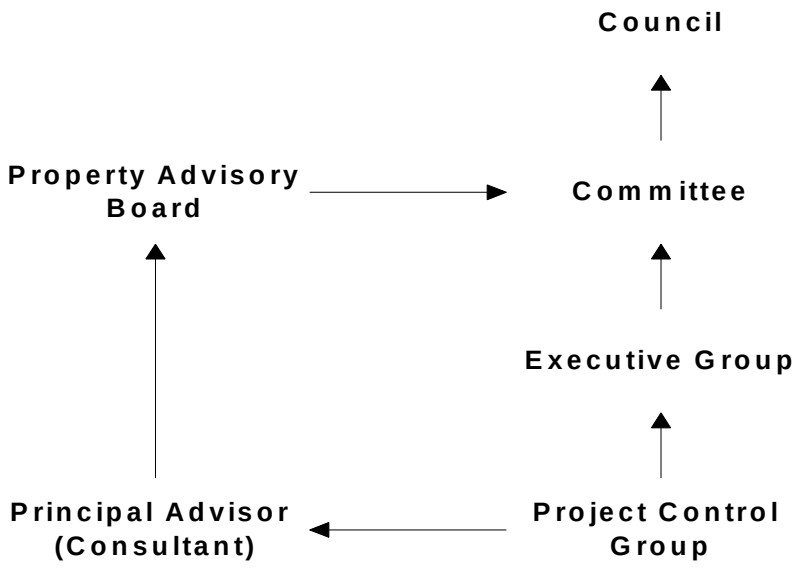
Annexure D Reporting Procedures

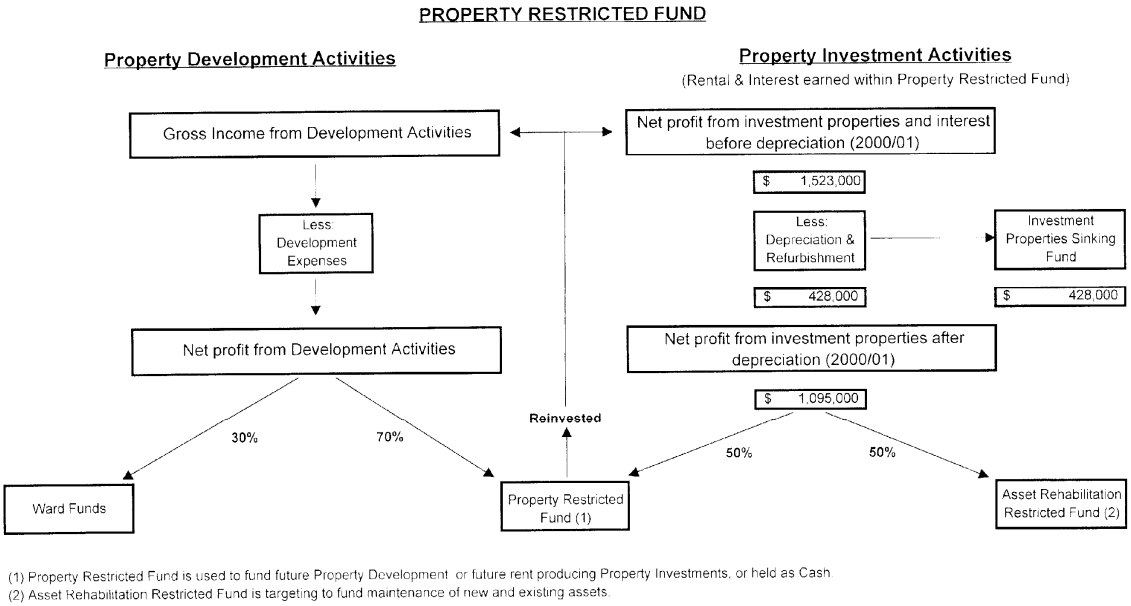
All proposals to acquire or dispose of property will be presented to the Property Advisory Board for consideration. The Board will be furnished with full and extensive details on the history, costs and benefits of each proposal in accordance with the Investment and Development Policy considerations. This detail together with Council's ability or otherwise to acquire for an amount less than or equal to current market value or dispose of for an amount equal to or in excess of current market value will provide the basis for determination of individual proposals prior to submission to Council for determination.

The performance of each investment property will be reported on a monthly basis detailing their ability to meet the pre-determined criteria of Council's Management Plan and the objectives therein.

Disposal of all investment properties will be undertaken in accordance with Council's Disposal of Land Policy (currently under development).

Acquisition of all investment properties will be undertaken in accordance with Council's Acquisition policy (currently under development).





Annexure E Distribution of Funds

Funds received from Investment Properties will be distributed in accordance with the Restricted Funds Policy ie where investment activities produce a net profit 50% of profit will be returned to Property Investment Restricted Fund and 50% will be allocated to Asset Rehabilitation Restricted Fund. Where land development produces a net profit 70% will be allocated to Property Investment Restricted Fund and the remaining 30% to Ward Funds.

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.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

380	**Councillor Ken Jordan** **Councillor Peter Kafer**	It was resolved that Council move into Confidential Session.

CONFIDENTIAL

ITEM NO. 1 **FILE NO: T13-2010**

TENDER – DEBT COLLECTION SERVICES

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

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

381	**Councillor Bruce MacKenzie** **Councillor Peter Kafer**	It was resolved that Council approve the award of the tender for the provision of Debt Collection Services to Australian Receivables Limited, on the terms proposed in the tender documentation.

CONFIDENTIAL

ITEM NO. 2 **FILE NO: T16-2010 & PSC2008-0476**

PROVISION OF SECURITY SERVICES – PORT STEPHENS BEACHSIDE HOLIDAY PARKS AND SAMURAI BEACH RESORT

REPORT OF: PHIL BUCHAN – COMMERCIAL ENTERPRISES MANAGER
GROUP: COMMERCIAL SERVICES

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

382	**Councillor Bruce MacKenzie** **Councillor Peter Kafer**	It was resolved that Council accept the tender received from SNP Security Services for the provision of security services for the operations of Beachside Holiday Parks and Samurai Beach Resort.

CONFIDENTIAL

ITEM NO. 3 **FILE NO: T15-2010**

PROVISION OF SECURITY SERVICES - ADMINISTRATION BUILDING & VARIOUS SITES

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

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

383	**Councillor Bruce MacKenzie** **Councillor Peter Kafer**	It was resolved that Council accept the tender received from SNP Security Services for the Provision of Security Services at Council's Administration Building, Libraries, Community Centres, Aquatic Centres & Recreational Facilities.

ORDINARY COUNCIL MEETING – 23 NOVEMBER 2010

384	**Councillor Peter Kafer** **Councillor Ken Jordan**	It was resolved that Council move out of Confidential Session.

There being no further business the meeting closed at 6.49pm.

I certify that pages 1 to 124 of the Open Ordinary Minutes of Council 23 November 2010 and the pages 125 to 138 of the Confidential Ordinary Minutes of Council 23 November 2010 were confirmed by Council at its meeting held on 14 December 2010.

……

Cr Bob Westbury
MAYOR