Minutes 9 FEBRUARY 2010

Post Stephens C·O·U·N·C·I·L

... a community partnership

Minutes of the Ordinary meeting of the Port Stephens Council held in the Committee Meeting Room, Raymond Terrace on 9 February 2010, commencing at 8.30pm.

PRESENT:

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

001	Councillor Sally Dover Councillor Ken Jordan	It was resolved that the apology from Cr Peter Kafer be received and noted.
002	Councillor Daniel Maher Councillor Steve Tucker	It was resolved that the Minutes of the Ordinary Council meeting of Port Stephens Council held on 15 December 2009 be confirmed.

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MOTIONS TO CLOSE

ITEM NO. 1 FILE NO: 3200-003

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM - EXECUTIVE OFFICER

GROUP: GENERAL MANAGERS OFFICE

.....

- 1) That pursuant to section 10A(2)(g) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Information Paper Item 1 on the Council Committee & Ordinary agenda namely *Development Application for Four (4) Lot Subdivision at No. 364 Six Mile Road, Eagleton.*
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information concerning the commercial arbitration and legal costs incurred and advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege
- 3) That disclosure of the information would, on balance, be contrary to the public interest, as it would prejudice Council's legal position and Council has an obligation to protect its interests and the interests of ratepayers.
- 4) That the report/information paper of the closed part of the meeting remain confidential.

.....

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Ken Jordan Councillor Shirley O'Brien	That the recommendation be adopted.
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ORDINARY MEETING - 09 FEBRUARY 2010

003	Councillor Ken Jordan Councillor Daniel Maher	It was resolved that the recommendation be adopted.

COUNCIL COMMITTEE RECOMMENDATIONS

ITEM NO. 1 FILE NO: 16-2009-105-1

DEVELOPMENT APPLICATION FOR FOUR (4) LOT SUBDIVISION AT NO. 364 SIX MILE ROAD, EAGLETON

REPORT OF: ANTHONY RANDALL - ACTING MANAGER, DEVELOPMENT & BUILDING

GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

Refuse Development Application 16-2009-105-1 for the reasons listed below.

- 1) The proposal has not demonstrated a future use or that the proposed allotments are capable of sustaining a permissible use in the future.
- 2) The development is inconsistent with Clause 37 and Clause 38 of the Port Stephens Council Local Environmental Plan 2000. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding, impact on occupants, property and impact on adjoining properties. Proposed lots 1, 2 and 3 would be severely affected by flooding depths of 4.2 metres and due to isolation in severe floods accessibility for emergency services would be severely limited.
- Approval of any intensification of land use as a result of the subdivision in high risk flood areas places further demand on already limited SES resources by way of domestic property protection, evacuation and/or resupply.
- 4) The development is considered to be an inappropriate land use under the Floodplain Development Manual, 2005.
- The development is not consistent with the provisions and objectives of Zone No 1 (a) (Rural Agriculture "A" Zone) of the Port Stephens Local Environmental Plan 2000. The proposal will fragment agricultural lands and will not protect the agricultural potential of the land. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding.
- 6) Insufficient information was submitted with the application to enable a comprehensive assessment of the use of the proposed allotments under Section 79C of the Environmental Planning and Assessment Act, 1979.
- 7) Insufficient information has been provided to assess the proposal in accordance with Clause 47 of the Port Stephens Local Environmental Plan 2000, in terms of demonstrating that the site has the capability for adequate facilities for water provision and wastewater treatment for any intensification of land use permissible as a result of the subdivision.
- 8) Insufficient information has been provided to demonstrate that adequate access can be achieved for all proposed allotments, and in particular proposed Lot 3 has no physical constructed access currently available.

- 9) The development is inconsistent with the principles of State Environmental Planning Policy (Rural Lands) 2008, as the development is not considered to be located in an appropriate location due to extent and nature of flooding.
- 10) It is not possible to implement an evacuation plan for proposed Lots 1-3, that would provide permanent, fail safe, maintenance free measures to ensure the timely, orderly and safe evacuation of any future development on the land, including animal based agricultural activities.
- 11) The development is contrary to the public interests and expectations, of an orderly and predictable built environment.
- 12) The development is inconsistent with the provisions of the Hunter Regional Environmental Plan 1989. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding.
- 13) Approval of this application would have an undesirable cumulative effect, having the potential to increase the community's susceptibility to flooding, in terms of social, economic and environmental consequences.

PLEASE NOTE:

This report was deferred at the Ordinary Council meeting held on 8 December for further information on the legal status of the roads relevant to the application and relating to the incidence of flooding history of the site.

This information has been provided as an Information Paper which has been put to this meeting for consideration. See Page 263 – Confidential Information Paper

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Frank Ward Councillor John Nell	That the recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Glenys Francis, Geoff Dingle, Frank Ward and John Nell.

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

Councillor Bruce MacKenzie Councillor Ken Jordan	That Council note its support for the development and that the Sustainable Planning Group Manager be requested to draft Conditions of Consent for consideration by Council.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Bruce MacKenzie, Shirley O'Brien, Bob Westbury, Steve Tucker, Glenys Francis, Ken Jordan, Sally Dover and Daniel Maher.

Those against the Motion: Crs Frank Ward, Geoff Dingle and John Nell.

ORDINARY MEETING - 09 FEBRUARY 2010

004	It was resolved that the Council Committee recommendation be adopted.

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

Those for the Motion: Crs Bruce MacKenzie, Shirley O'Brien, Bob Westbury, Steve Tucker, Glenys Francis, Ken Jordan, Sally Dover and Daniel Maher.

Those against the Motion: Crs Frank Ward, Geoff Dingle and John Nell.

BACKGROUND

The purpose of this report is to present a development application to Council for determination at the request of Councillor Jordan.

This development application was lodged on 24 February 2009, and proposes a four lot Torrens title subdivision, pursuant to Clause 12 (1)(a)(v) of the Port Stephens Local Environmental Plan 2000 (LEP), as the property is divided by public roads in three locations. One of these roads is Newline Road, and two of these roads are currently unformed.

Proposed lots 1 and 2 have frontage and direct access to Newline Road, similarly proposed lot 4 has frontage and access to Six Mile Road. Proposed lot 3 has frontage to two unformed public roads, one along the western boundary and one along the eastern boundary. The applicant amended the proposal during the assessment to delete a proposed right of way for Lot 3, and is now proposing to rely on the unformed road for access.

The subject site is zoned 1(a) – Rural Agriculture, which is described in LEP. The subdivision of the allotment, by road severance is permissible with consent, as specified by Clause 12 of the LEP.

This proposed development is located in a high flood risk area (High Hazard) as identified by the Lower Hunter Valley Floodplain Risk Management Study (2001), where the 1% Annual Exceedence Probability (AEP) flood level is recorded at 5.5 metres AHD. Even in moderate floods, for example, the 20% AEP (i.e. 1 in 5 year event the property will be inundated by floodwater. The Flood Planning Level is 5.2 metres AHD. Proposed lots 1, 2 and 3 are substantially flat at a level of approximately RL 1.0, and therefore would be severely affected by flooding of up to 4.2 metres.

In this regard, while consent is not being sought for any post subdivision uses as part of this application, Council officers consider that the likely post subdivision uses are relevant as a matter of public interest under Section 79C of the Environmental Planning and Assessment Act 1979. This is to ensure that the lots could be developed for a range of permissible uses, and that the fragmentation of agricultural land is not occurring without adequate justification.

The applicant has not provided an anticipated use for the resultant allotments, despite numerous requests from Council officers. The applicant has stated, in part:

'As with all subdivisions the future intended use of lots to be created is unknown at this time and the future use of the lots cannot be restricted by the issue of consent to the subdivision. The purpose of the subdivision is to make the lots available for future disposition and sale and their future uses is unknown and more importantly could include any and all of the uses permissible within the zone, subject to the further consent of Council.....'

- '...If future applications for inappropriate land uses are received by Council let Council deal with them at the time they are lodged. Trying to consider all possible end uses for the land at this time is tantamount to Council considering the likelihood of meteorite strikes on the land....'
- '.... The owner has advised that they will not entertain any further discussion in this matter and will be lobbying Councillors to have the matter brought before Council as soon as possible....'

Council officers have significant concerns with this approach. As stated above, any permissible use in the Rural 1(a) zone could be proposed in a forthcoming development application. In this regard, Council officers consider it necessary to assess all land uses permissible by the LEP, to assess whether these lots being created, would legitimately have any future uses once subdivided noting the flooding issue and other site constraints.

The assessment of these uses has been performed in accordance with Floodplain Development Manual 2005 (FDM). The FDM also provides the framework from which Council has determined the hazard characterisation of land, which is 'high hazard'.

High Hazard is defined by situations where there is possible danger to personal safety; evacuation by trucks difficult; able-bodied adults would have difficulty in wading to safety and potential for significant structural damage to buildings.

The assessment revealed that the majority of future potential uses are likely to be unacceptable, and that any appropriate uses, for example agriculture, would be less viable as a result of the subdivision.

It is also noted that Clause 12 (2) of LEP 2000 states:

Subdivision of land for a purpose specified in subclause (1) (a) does not have the effect of precluding development of the land for any purpose for which it might have been developed immediately prior to the subdivision (except in so far as the land has been taken for a road as referred to in subclause (1) (a)).

In this regard, Council would be prevented from conditioning the allotments to have no dwelling entitlements. The three additional allotments would therefore have a dwelling entitlement given that they are larger than $4000m^2$. Accordingly, approval of this application has the potential to create three additional high hazard flood prone allotments, upon which future owner's may seek dwellings or the like.

The applicant states that the subdivision by road severance may also allow for the sale of those lands to adjoining land owners. It is noted that this same outcome could be facilitated by proposing a boundary adjustment in accordance with Clause 12 (1)(a)(ii) of the LEP. A boundary adjustment would be the more desirable option as it would not have the affect of creating additional dwelling potential on flood prone land.

On 26 August 2008 Council refused an identical development application DA 16-2008-388-1 at the property under delegated authority due to the high hazard flooding constraint on the site. The application was relodged with Council without any significant amendments.

The key issues associated with this proposal are as follows:-

- Flooding
- Suitability of the site
- Insufficient information submitted to enable an adequate assessment
- Inconsistent with provisions of environmental planning instruments

An assessment of these issues is provided within the attachments.

It is recommended that this application be refused.

The subject site is considered to be highly constrained with regard to flooding, given the proximity to the Williams River and the likelihood of the river flooding on a regular basis. The grounds for refusal are on the basis of the social and economic impacts of flooding on future occupants of any land use proposed in the future, including the ability of emergency services to access, rescue and support residents in flood prone areas and the precedent set by approving subdivisions in a flood prone area.

Further, the rural parcel will become fragmented and accordingly, less agriculturally viable.

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL AND POLICY IMPLICATIONS

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

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

The development application is inconsistent with Council's Areas Affected by Flooding and/or Inundation Policy originally adopted on 27 January 1998 and most recently amended by Council on 16 December 2008. The objectives of this policy include:

OBJECTIVES

- To manage the development of land subject to or affected by the likelihood of flooding and/or tidal inundation defined as flood prone land in the Port Stephens Local Environmental Plan 2000.
- To base the nature of the restriction applied to an affected site on the principles of the NSW Floodplain Development Manual 2005, the Port Stephens Foreshore (Floodplain) Management Study and Plan 2002, the Paterson River Floodplain Management Study and Plan 2001, the draft Lower Hunter Valley Floodplain Management Study 2001, the Williamtown Salt Ash Flood Study and any further flooding information available to Council at the time.
- To ensure that decision in relation to the acquisition and development of land are made having regard to the best flooding information available
- To ensure that Council complies with the provision of \$733 of the Local Government Act 1993 Exemption from liability flood liable land and land in coastal zone.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Approval of this subdivision has the potential to increase the community's susceptibility to the effects of flooding and the associated consequences, by creating additional dwelling entitlements or opportunities to intensify land use. The effects of flooding may be distinguished between social, economic and environmental implications

The social implications directly attributable to flood inundation include but are not limited to risks to public safety, potential loss of human life, community disruption,

direct and indirect damages caused by floodwaters, (property damage, loss of goods and personal possessions), emotional, mental and physical health costs, provision of food and accommodation for evacuees, loss of wages and opportunity cost to the public caused by the closure or limited operation of public facilities.

In terms of economic impacts, the subdivision of this land has the potential to result in three additional land owners with an expectation that the land can be developed. As detailed in this assessment, Council officers would not recommend approval of a dwelling or other intensification of the land due to the flooding constraint. This may incur financial hardship to these future owners. Refusal of this application may have an immediate economic impact upon the property owner but, in the long term, reduces private and public economic losses attributed to flooding.

Environmental impacts are likely to be created by the impacts of unsuitable development on flood prone land contributing to environmental pollution through erosion, waterborne debris, residual debris, structural failure of dwellings, fences, outbuildings and other domestic/rural infrastructure, and possible effluent pollution (from onsite sewage treatment systems).

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

CONSULTATION

As the proposed subdivision is less than 5 allotments, the proposal was not required to be notified, as prescribed in the Port Stephens Development Control Plan 2007.

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

OPTIONS

- 1) Adopt the recommendation.
- 2) Amend the Recommendation.
- 3) Reject the recommendation and approve the development application. In this instance, reasons for approval will need to be drafted by Councillors including supporting justification as a basis for defence in any potential legal proceedings.

ATTACHMENTS

- 1) Locality Plan
- 2) Flood Extent Mapping 20% AEP (i.e. the 1 in 5 year flood event)
- 3) Assessment
- 4) Reasons for Refusal

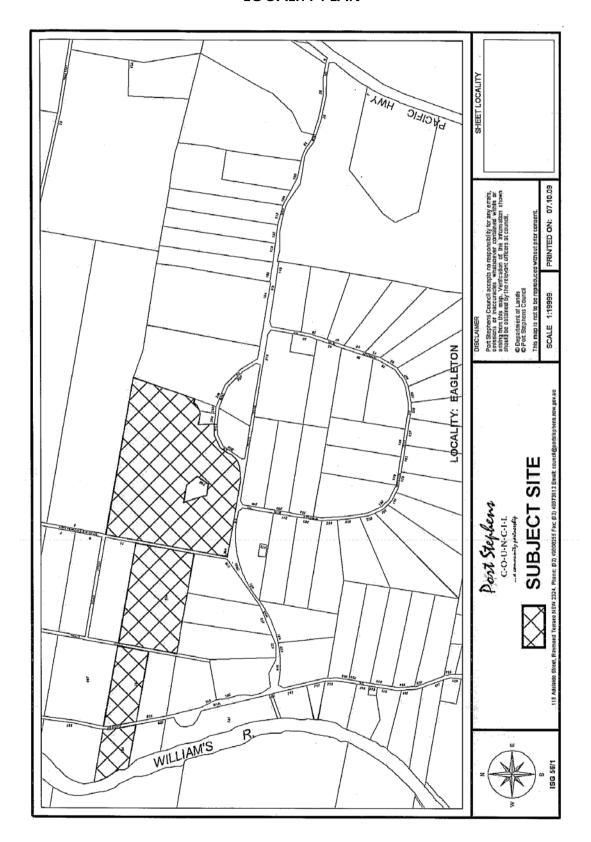
COUNCILLORS ROOM

- 1) Plans and elevations/site plan.
- 2) Council Policy Areas Affected by Flooding and/or Inundation
- 3) S733(4) Local Government Act 1993 Exemption from liability flood liable land and land in coastal zone

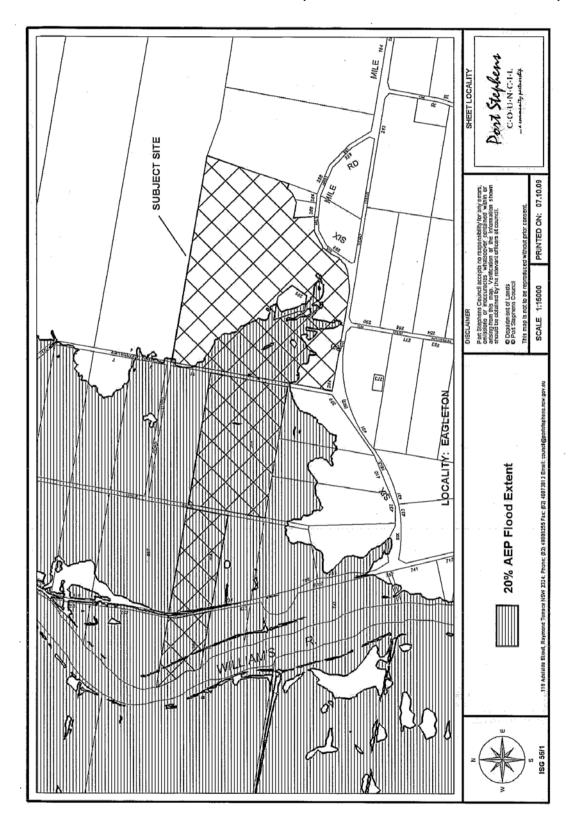
TABLED DOCUMENTS

Nil

ATTACHMENT 1 LOCALITY PLAN



ATTACHMENT 2
FLOOD EXTENT MAPPING – 20% AEP (I.E. THE 1 IN 5 YEAR FLOOD EVENT)



ATTACHMENT 3 ASSESSMENT

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

THE PROPOSAL

The proposal is a four lot torrens title subdivision, proposed pursuant to Clause 12 (1)(a)(v) of the LEP, as the property is divided by public roads in three locations. One of these roads is Newline Road, and two of these roads are unformed.

The proposed lot sizes are:

- Lot 1 6.59 hectare
- Lot 2 10.66 hectares
- Lot 3 26.15 hectares
- Lot 4 75.02 hectares

Proposed lots 1 and 2 have frontage and direct access to Newline Road, similarly proposed lot 4 has frontage and access to Six Mile Road. Proposed lot 3 has frontage to two unconstructed dedicated public roads, one along the western boundary and one along the eastern boundary. The applicant amended the proposal during the assessment to delete a proposed right of way for Lot 3, and is now proposing to rely on the unformed road for access.

THE APPLICATION

Owner N.L. & H.G. HAMMOND

Applicant Paul Le Mottee Project Management Pty

Limited

Detail Submitted Plan of proposed subdivision and

Statement of Environmental Effects

(including two addendums)

THE LAND

Property Description Lot 11 DP 833856

Address 364 Six Mile Road EAGLETON

Area 118.53 hectares

Dimensions Length of allotment including roads is

approximately 2.79 kms. The width of the allotment varies from 240 metres to 585

metres.

Characteristics The site has varying grades from small hills

to flood plain flats. There is an existing dwelling on the highest area of the

allotment (i.e. on proposed lot 4).

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning Rural 1(a) RURAL AGRICULTURAL "A"

Relevant Clauses 10 Zone objectives and development

control table 11 Rural zonings

12 Subdivision within rural zones generally 37 Objectives for development on flood

prone land

38 Development on flood prone land 39 Development near the Williams River

47 Services

Development Control Plan Port Stephens Development Control Plan

2007

Regional Environmental Planning Policies Williams River Catchment Regional

Environmental Plan 1997

Hunter Regional Environmental Plan 1989 (now superseded but applicable at date

of lodgement)

State Environmental Planning Policies State Environmental Planning Policy (Rural

Lands) 2008

Discussion

NSW Floodplain Development Manual 2005 (FDM)

Glossary of terms:

Annual Exceedance Probability (AEP) - When floods do sporadically occur they vary greatly in likelihood of occurrence, as measured by AEP. The AEP of a particular flood discharge at a particular point in a particular catchment is the probability that the discharge will be equalled or exceeded in any one year. Typically, AEP is quoted in terms of percentages, for example, a flood with a 10% AEP has a 10% or one-in-ten chance of occurring in any year.

The 1% AEP flood – this term is a statistical event occurring on average once every 100 years, ie, there is a 1% chance of a flood of this size or greater occurring in any given year.

Flood Planning Level (FPL) - Flood levels selected for planning purposes which should be based on an understanding of the full range of flood behaviour and the associated flood risk, including the social, economic and ecological consequences associated with floods of different severities. Different FPL's may be appropriate for

different categories of land-use and for different flood plans. Accordingly, the advice provided in this report with respect to FPL are only applicable to dwellings.

AHD = Australian Height Datum - refers to metres above mean sea level (or mean tide).

Assessment:

The FDM, prepared by the Department of Infrastructure, Planning and Natural Resources provides the framework from which decisions are made with respect to development affected by flooding. The FDM notes that case-by-case decision making cannot account for the cumulative impacts on flood behaviour and risks, caused by individual developments or works. This form of ad hoc assessment contravenes the principles of the manual.

Under the provisions of the FDM, Council is responsible for managing development on flood prone land. In this regard, Council has adopted specific provisions in the LEP relating to development on flood prone land. Council has also completed a Williams River Flood Study (prepared by BMT WBM Pty Ltd in 2009), which was prepared in accordance with the FDM.

This proposed development is located in a high flood risk area (High Hazard) as identified by the Lower Hunter Valley Floodplain Risk Management Study (2001), where the 1% AEP flood level is recorded at 5.2 metres AHD. Even in moderate floods, for example, the 20% AEP (i.e. 1 in 5 year event the property will be inundated by floodwater.

All proposed lots are affected by flooding. Proposed lots 1, 2 and 3 are substantially flat at a level of approximately RL 1.0 and severely affected by flooding. The south western half of proposed lot 4 is also affected by flooding. A substantial creek also runs through all properties. Flooding could not be reasonably mitigated for development on the proposed lots 1, 2 and 3. The occupants of proposed lots 1, 2 and 3 would be severely affected by flooding depths of 4.2 metres and isolation in severe floods and emergency services would be severely limited.

In addition, climate change trends towards higher ocean levels and an increase in storm severity with more intense rainfall are likely to increase the prevalence and severity of flooding and associated damage.

Development placed above RL 5.2 m AHD on lot 4 would mitigate flooding and it is noted that a dwelling already exists on this allotment.

It is noted that the applicant has not provided the future land use for the allotments proposed to be created, and has stated that as the LEP allows subdivision by road severance, that consideration of future end uses should be dealt with at such time as development applications are lodged for any future uses. Council officers have significant concerns with this approach, as this subdivision has the potential to create three additional dwelling entitlements on high hazard flood prone land. This developer's insistence that this issue does not have to be addressed therefore has a

significant potential of creating a situation where three new owners will propose dwellings that Council will have to assess. The outcome of these applications would be for planning staff to recommend refusal, which may incur financial hardship to these future owners.

It is also noted that any permissible use in the Rural 1(a) zone could be proposed in a forthcoming development application. In this regard, Council officers considered it necessary to assess all land uses permissible by the LEP, to assess whether these lots being created for no nominated future use, would legitimately have any future uses once subdivided. This assessment is detailed below in the assessment of the LEP.

It is not possible to condition this application to mitigate the effects of flooding on proposed lots 1-3 and therefore the proposed development is likely to increase the community's susceptibility to flooding. There is no permanent, fail safe evacuation plan in place to ensure a timely, orderly and safe evacuation of occupants. In an emergency, evacuation of occupants would only be possible by boat or helicopter, which may place rescuers/operators at risk. Whilst any future uses of this land could prepare an evacuation plan, the SES has advised that private evacuation plans are usually ineffective thereby placing additional demand upon limited SES resources.

On the basis of the above assessment, Council's Flooding Engineer has recommended that the subdivision not be approved due to the severe affectation of flooding.

Local Environmental Plan 2000 (LEP)

Clause 10 Zone objectives and development control table

This clause of the LEP requires Council to consider the likelihood that development would result in increased stormwater run-off, erosion or sedimentation or other significant pollution within the Williams River catchment, or have a significant adverse effect on water quality in the Williams River.

It is noted that the subdivision in itself does not create any physical works.

It is considered that the subdivision has the potential to create additional dwellings entitlements which would require non-reticulated waste water treatment systems, which has the potential to affect the water quality of the Williams River. Many other permissible uses have the potential to create water quality issues, as detailed in Table 1 below.

Clause 11 - Rural Zonings

The objectives of the Rural Agriculture "A" Zone seek to maintain the rural character of the area and to promote the efficient and sustainable utilisation of rural land and resources. The specific objectives are addressed below:

(a) regulating the development of rural land for purposes other than agriculture by ensuring that development is compatible with rural land uses

and does not adversely affect the environment or the amenity of the locality, and

It is noted that the subdivision is not in itself incompatible with surrounding rural land uses

(b) ensuring development will not have a detrimental effect on established agricultural operations or rural activities in the locality, and

It is noted that the subdivision is not in itself incompatible with surrounding rural land uses, however the subdivision will result in fragmentation of rural land, which has the potential to significantly reduce the agricultural potential of the existing holding.

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

Applicant's response to this objective:

'...the subdivision in accordance with clause 12 (1)(a)(v) is clearly in recognition that the land is already fragmented by the existence of the public roads and the LEP specifically provides for this subdivision and as such it will not result in further fragmentation of grazing or prime agricultural lands, it will not alter the agricultural potential of rural land not identified for alternative land use, and will not result in any additional cost to the community of isolated development or rural land and the providing, extending and maintaining public amenities and services in that the subdivision will not create the demand for an increase in services and amenities beyond the capacity of Council to provide such services through its \$94 Plan and contributions applicable under than plan.'

Council officer assessment:

Whilst the subject site is technically severed by public roads in three locations, only one of these roads is constructed. It is noted that the other two roads would be unlikely to be constructed in the foreseeable future. In this regard, the allotment is able to function as a rural property without significant physical barriers. This is significant as it allows the flood prone land to be contiguous to non-flood prone land, so that in times of flood animals using the site can find refuge above the flood planning level.

The subdivision creates the potential that the property can be sold to four separate owners, accordingly in excess of 40 hectares of flood prone rural land would be without flood refuge, thereby reducing the agricultural potential for the land.

Further, should these allotments be sold to separate users, there is a real potential that these future users would seek to use these properties in a rural residential context, thereby further limiting and fragmenting the rural land.

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

It is noted that the subdivision in itself would not create any physical works.

It is considered that the subdivision has the potential to create additional dwellings entitlements which would require non-reticulated waste water treatment systems. This has the potential to affect the water quality of the Williams River. Many other permissible uses have the potential to create water quality issues, as detailed in Table 1 below.

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

Applicant's response to this objective:

'The subdivision will not result in development likely to reduce the incidence of loss of life and damage to property and the environment in localities subject to flooding and will not prevent future uses and development consistent with floodplain management practices.'

Council officer assessment:

As previously discussed in this assessment, Council officers consider that the likely post subdivision uses are relevant as a matter of public interest. As the subdivision, for example, has the potential to create three additional dwelling entitlements on high hazard flood prone land, it is considered that this subdivision may have the potential to increase the incidence of loss of life and damage to property

Discussion of uses permissible in the Rural Agriculture "A" Zone

It is noted that the applicant has not provided the future land use for the proposed allotments, and has stated that as the LEP allows subdivision by road severance, that consideration of future end uses should be dealt with at such time as development applications are lodged for any future uses. As previously stated in this report, Council officers have significant concerns with this approach.

It is noted that the applicant has advised:

'The purpose of the subdivision is to make the lots available for future disposition and sale and their future uses is unknown and more importantly could include any and all of the uses permissible within the zone, subject to the further consent of Council.'

It is therefore considered that any permissible use in the Rural 1(a) zone could be proposed in a forthcoming development application. In this regard, Council officers considered it necessary to assess all land uses permissible by the LEP, to assess whether these lots being created for no future use, would legitimately have any future uses once subdivided.

It is considered that should any of these uses be clearly unacceptable, then this is a reason to refuse the application. Upon completion of this assessment, it became apparent that the majority of permissible uses were inappropriate, or that any potential appropriate uses, such as agriculture, are likely to be made less viable as a result of the subdivision.

The assessment of these uses has been performed in accordance with FDM, and the classification of the land as a 'high hazard', which is defined by situations where there is possible danger to personal safety; evacuation by trucks difficult; ablebodied adults would have difficulty in wading to safety; potential for significant structural damage to buildings.

The significance of the hazard is also a function of the type of development and occupant mobility. The following factors can affect the assessment of hazard:

- the existence of special evacuation needs;
- level of occupant awareness;
- isolated residential development;
- hazardous industries or hazardous storage establishments; and
- potential for damage and danger to personal safety

TABLE 1: Assessment of potential future uses on the proposed allotments

NOTE:

* The above table addresses all land uses identified in the LEP. It is noted that additional uses may exist that are considered to be innominate uses or uses that are exempt development.

- ** Similar development types have been grouped for the purposes of this assessment.
- *** The below assessment relates only to the subject site. It is noted that the above uses may be appropriate on other flood prone land, depending on the specific nature of each site. For example, in relation to the 5(g) zone in Raymond Terrace, certain development may be considered differently taking into account factors including historical land use settlements, proximity to services, evacuation opportunities, level of isolation and the extent and nature of the flooding.

Development allowed with d	Issues with respect to flooding constraint, or other site specific	Likelihood of being appropriate
without development conse	issues	on resulting allotments.
agriculture	The applicant has Stated that in their opinion, due to the soil types present, that there are significant issues or limitations for agriculture on the existing holding due to flood hazard, permanently high water tables, seasonal water logging, foundation hazard, ground water pollution hazard, localised tidal inundation, highly plastic potential acid sulphate soils of low fertility and localised shallow soils. Regular flooding enhances agricultural productivity by increasing soil moisture, recharging groundwater and depositing fertile silt across the floodplain. However, flooding can also interfere with production, communication and agricultural practices, destroying high value crops. It is however noted that the subdivision of the land would create further issues, in that it would fragment fully flood prone allotments from the higher land that exists to the east of the site on proposed lot 4. Therefore, should animal based agriculture be proposed, proposed lots 1-3 would not have any flood refuge area for animals. Accordingly, the risk of animal deaths is likely to be significant. It is further noted that any proposed land fill to create a flood refuge has the potential to alter flood movements at the detriment of adjoining or downstream properties, and may create a significant visual impact. In terms of crop based agriculture on proposed lots 1-3, the three allotments have a risk of loss of plantings and property due to flooding.	SIGNIFICANTLY REDUCED POTENTIAL AFTER SUBDIVISION

	In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with high hazard floodwaters.	
flood mitigation works Clearing Dam Earthworks telecommunications facility	It is not considered that there is a nexus between subdivision and these uses.	N/A
abattoir	It is considered that the waste and pollution issues surrounding this form of land use, would create a significant downstream environmental risk in times of flooding. It is further considered that the proximity to existing dwellings may be an issue for this use. Isolation and evacuation issues for staff in times of flooding may also create a risk to human life. In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters.	UNLIKELY APPROPRIATE USE
advertisement	As per Clause 15, no stand alone advertisements are permitted on rural land.	MEDIUM (Only with another approved use)
Airport Race Track	The resultant allotments after the subdivision are likely to be too small/short for such a use. Further the location of the creek further reduces the potential for this use. It is considered that issues including damage to property and evacuation of users during times of flooding are concerns. Fuel or chemicals stored in conjunction with this use, may create a significant downstream environmental risk in times of flooding.	UNLIKELY APPROPRIATE USE

	It is further noted that any proposed land fill to accommodate such a use has the potential to alter flood movements at the detriment of adjoining or downstream properties, and may create a significant visual impact.	
animal establishment	The subdivision, which would result in the fragmentation of the existing rural holdings, would result in three allotments (i.e. proposed lots 1-3) that do not have any flood refuge area for animals. Accordingly, the risk of animal deaths is likely to be significant.	UNLIKELY APPROPRIATE USE
	It is further noted that any proposed land fill to create a flood refuge has the potential to alter flood movements at the detriment of adjoining or downstream properties, and may create a significant visual impact.	
	In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters.	
aquaculture	The Aquaculture Permit Application Guidelines prepared by the Department of Primary Industries has broad criteria for native freshwater fish/crayfish farms. These criteria include that such farms must be constructed above the 1/100 year flood level. Accordingly, it is not considered that proposed lots 1-3 could accommodate such uses.	Unlikely appropriate use
bed and breakfast establishment	Uses would have to be in conjunction with a dwelling, which due to the flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3. The Floodplain	Unlikely appropriate use
home-based child care or family day care home	Development Manual notes that due to the likely low level of occupant awareness of flooding issues and likely specific evacuation needs, this use is not desirable uses on flood prone land.	

		<u> </u>
	It is noted that on lot 4 an existing dwelling exists above the flood planning level. These uses are a possibility for this existing dwelling.	
Camp/ caravan site club community facility educational establishment health consulting rooms Hospitals hotel Institutions	Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4. The Floodplain Development Manual notes that due to the likely specific evacuation needs of this form of use, and likely low level of occupant awareness of flooding issues it is not desirable on flood prone land.	UNLIKELY APPROPRIATE USE
Place of Public Worship tourist facility	It is further noted that any proposed land fill to accommodate such a use has the potential to alter flood movements at the detriment of adjoining or downstream properties, and may create a significant visual impact.	
	In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters. Further, caravan structures can easily wash away during time of flooding and cause risk to life and property down stream.	
child care centre	Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4. The Floodplain Development Manual notes that due to the likely specific evacuation needs of this form of use, it is not desirable on flood prone land.	UNLIKELY APPROPRIATE USE
dwelling-house	Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4.	Unlikely appropriate use
dual occupancy housing	It is noted that on lot 4 an existing dwelling exists above the	

	flood level.	
exhibition home	It is noted that exhibition homes are by industry practice	Unlikely appropriate use
	converted to dwellings at a point in time. Due to flooding	
	constraint, it would be inappropriate to propose a dwelling on	
	proposed lots 1-3 and for the majority of proposed Lot 4.	
	It is further noted that due to the isolation from any recent	
	residential subdivisions, that this use would not be appropriate	
	in the location.	
extractive industry	The subdivision, which would result in the fragmentation of the	Unlikely appropriate use
	existing rural holdings, is likely to result in allotments not large	
mine	enough to sustain an extractive industry.	
	Further it is noted that potential pollution issues from erosion,	
	fuel and chemical storage, waste water ponds created in	
	conjunction with this use, may create a significant	
	downstream environmental risk in times of flooding.	
forestry	The subdivision, which would result in the fragmentation of the	Unlikely appropriate use
	existing rural holdings, is likely to result in allotments not large	
	enough to sustain such an activity.	
	It is further noted that the risk of flooding creates a significant	
	risk of loss of plantings and property.	
helicopter landing site	It is considered that the potential issues surrounding this form	Unlikely appropriate use
	of land use, for example storage of fuels and chemicals have	
heliport	the potential to create a significant downstream	
	environmental risk in times of flooding. It is further considered	
	that the proximity to existing dwellings would be a likely issue	
	for this use in terms of noise impacts.	
home employment	Uses would have to be in conjunction with a dwelling, which	Unlikely appropriate use
	due to flooding constraint, it would be inappropriate to	
home occupation	propose such a use on proposed lots 1-3 and for the majority	

	of proposed Let A	
intending and otherwal constitu	of proposed Lot 4.	CICAUTIC A NITL V DEDUCED
intensive agricultural pursuit	Regular flooding enhances agricultural productivity by	SIGNIFICANTLY REDUCED
	increasing soil moisture, recharging groundwater and	POTENTIAL AFTER SUBDIVISION
intensive animal husbandry	depositing fertile silt across the floodplain. However, flooding	
	can also interfere with production, communication and	
	agricultural practices, destroying high value crops.	
	The applicant has stated that in their opinion, due to the soil	
	types present, that there are significant issues or limitations for	
	agriculture due to flood hazard, permanently high water	
	tables, seasonal water logging, foundation hazard, ground	
	water pollution hazard, localised tidal inundation, highly	
	plastic potential acid sulphate soils of low fertility and	
	localised shallow soils.	
	It is however noted that the subdivision of the land would	
	create further issues, in that it would fragment fully flood	
	prone allotments from the higher land that exists to the east of	
	the site. Therefore, should animal based agriculture be	
	proposed, these three allotments would not have any flood	
	refuge area for animals. Accordingly, the risk of animal	
	deaths is likely to be significant. It is further noted that any	
	proposed land fill to create a flood refuge has the potential	
	to alter flood movements at the detriment of adjoining or	
	downstream properties, and may create a significant visual	
	impact.	
	In terms of crop based agriculture on the flood prone lots,	
	there is a significant risk of loss of plantings and property due	
	to flooding.	
	The Environmental Management Guidelines for the Dairy	
	Industry authored by the Department of Primary Industries in	
	2008 advises that due to environmental risks to surface and	
	subsurface waters, that sheds and waste or ponding areas	
	should not be sited in areas subject to flooding at 1-in-25-year	

	or more frequent levels, unless adequate safeguards can be incorporated. Such safeguards include systems that are above the flood line or protected from floodwater. Similar standards exist in the Environmental Impact Statement Guidelines for Cattle Feedlots (1996) prepared by the Department of Urban Affairs and Planning and the NSW Meat Chicken Farming Guidelines prepared by DPI in 2004. Lots 1-3 could not comply with these industry standards.	
	In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters.	
intensive agriculture	Does not apply to the Williams River Catchment.	N/A
Marina	Not applicable, as subdivision relates only to land, not adjoining waterway.	N/A
tourist boats		
mineral sand mine	Given the soil type of the site, it is not considered likely that such a use would be proposed. Further, the subdivision, which would result in the fragmentation of the existing rural holdings, is likely to result in allotments not large enough to sustain a mining activity.	UNLIKELY APPROPRIATE USE
recreation area	Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4. The Floodplain Development Manual notes that due to the likely specific evacuation needs of this form of use, and likely low level of occupant awareness of flooding issues it is not desirable on flood prone land.	UNLIKELY APPROPRIATE USE
	It is further noted that any proposed land fill to accommodate such a use has the potential to alter flood movements at the detriment of adjoining or downstream properties, and may create a significant visual impact.	

	It is noted that uses such as sportfields may be appropriate uses on some flood prone land areas, however, given the location of the creek, as well as isolation issues, it is considered unlikely that this site is appropriate.	
restaurant	Pursuant to clause 14A of LEP 2000, a restaurant would only be permissible with a tourist facility. Due to the flooding constraint, as discussed below, a tourist facility would not be an appropriate use. The Floodplain Development Manual notes that due to the likely specific evacuation needs of this form of use, and likely low level of occupant awareness of flooding issues it is not desirable on flood prone land.	UNLIKELY APPROPRIATE USE
retail plant nursery	Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority	UNLIKELY APPROPRIATE USE
Market	of proposed Lot 4.	
	It is considered that the risk of flooding creates a significant risk of loss or damage to property, and due to the nature of the uses, there are potentially evacuation issues for workers or customers.	
roadside stall	Roadside stalls are only permissible if they sell only primary products produced on the property on which the building or place is situated. As detailed in this table, the ability for the fragmented allotments to sustain an primary production activity would be significantly reduced by the subdivision. Accordingly such a use would be unlikely. It is also noted that damage to property, including debris washing downstream, could result from this form of use.	UNLIKELY APPROPRIATE USE
rural industry	Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4. It is considered that the potential pollution issues surrounding	UNLIKELY APPROPRIATE USE

	this form of land use, for example waste products and fuels/chemicals stored on the site have the potential to create a significant downstream environmental risk in times of flooding. It is further noted that the risk of flooding creates a significant risk of loss or damage to property. In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters.	
utility installation utility undertaking	Not applicable to private development, as these works can only be undertaken by a public authority.	N/A
veterinary hospital	Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4. The Floodplain Development Manual notes that due to the likely specific evacuation needs of this form of use, and likely low level of occupant awareness of flooding issues it is not desirable on flood prone land. Accordingly, the risk of animal deaths is likely to be significant. In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters.	UNLIKELY APPROPRIATE USE

Clause 12 Subdivision within rural zones generally

The proposed subdivision is proposed in accordance with Clause 12 (1)(a)(v), which states that

- (1) A person must not subdivide land within any rural zone except:
 - (a) for any of the following purposes:
 - (v) the creation of allotments corresponding to the parts into which a single allotment is divided by a public road

It is also noted that Clause 12 (2) states:

Subdivision of land for a purpose specified in subclause (1) (a) does not have the effect of precluding development of the land for any purpose for which it might have been developed immediately prior to the subdivision (except in so far as the land has been taken for a road as referred to in subclause (1) (a)).

In this regard, Council would be prevented from conditioning the allotments to have no dwelling entitlements. Accordingly, approval of this application has the potential to create three additional high hazard flood prone allotments, upon which future owner's may seek dwellings or the like.

It is noted that the applicant states that the subdivision by road severance may also allow for the sale of those lands to adjoining land owners. It is noted that this same outcome could be facilitated by proposing a boundary adjustment in accordance with Clause 12 (1)(a)(ii) of the LEP. A boundary adjustment would be the more desirable option as it would not have the affect of creating additional dwelling potential on flood prone land.

<u>Clause 37</u> <u>Objectives for development on flood prone land and Clause 38</u> Development on flood prone land

The subject site is identified as flood prone land, and accordingly consideration of these clauses is required. These clauses prescribe that before granting consent to development on flood prone land the consent authority must consider certain matters. A more detailed assessment addressing the considerations has been previously provided in this report as part of the assessment of the FDM, however below is a summary of the assessment:

Consideration

(a) the extent and nature of the flooding or inundation hazard affecting the land,

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

Response

All proposed lots are affected by flooding. The flood planning level is 5.2 metres AHD. Proposed lots 1, 2 and 3 are substantially flat at a level of approximately RL 1.0 and severely affected by flooding. The south western half of proposed lot 4 is also affected by flooding, with a depth of water of up to 4.2 metres above natural ground level. A substantial creek also runs through all properties. Whilst the subdivision itself does not propose any physical works, it is noted that any proposed land fill to accommodate future land uses on the land has the potential to alter flood movements at the detriment of adjoining or downstream properties. Flooding could not be reasonably mitigated for development on the proposed lots 1, 2 and 3. Development placed above RL 5.2 m AHD on lot 4 would mitigate flooding.

The occupants of proposed lots 1, 2 and 3 would be severely affected by flooding depths of 4.2 metres and isolation in severe floods and emergency services would be severely limited. Council has not adopted any floodplain management plan or development control plan for this area.

On the basis of the assessment, Council's Flooding Engineer has recommended that the subdivision not be approved due to the severe affectation of flooding.

Clause 39 Development near the Williams River

This clause specifies that development must not result in a significantly increased risk of (a) soil erosion or other environmental degradation, loss of vegetation or habitat,

disturbance of sodic or dispersive soils, or degradation of water quality or the quality of groundwater supplies.

The subdivision in itself does not directly create the impacts referred to above.

Many land uses permissible in the Rural 1(a) zone, if undertaken on proposed Lots 1-3, have the potential to have significant environmental impacts to the river system in time of flooding.

Clause 47 Services

It is noted that any future land uses on the subject site may have constraints in terms of servicing. Due to the isolation, the site would not be serviced by reticulated water and sewer. It is further noted that the flood prone nature of the land would likely result in environmental issues with any on-site waste water system, further that substantial costs to install systems on this type of site would be extremely costly.

Hunter Regional Environmental Plan 1989

Division 1 Rural land - Clause 24 Objectives

The objectives of this plan in relation to planning strategies concerning rural land are:

- (a) to protect prime crop and pasture land from alienation, fragmentation, degradation and sterilisation,
- (b) to provide for changing agricultural practices, and
- (c) to allow for the development of small rural holdings and multiple occupancy on land capable of such developments in appropriate locations.

As detailed above in the assessment of the Local Environmental Plan 2000 and Table 1, the proposal is likely to fragment, and potentially hinder the agricultural use of proposed lots 1-3.

Should future purchasers of the land proposed to use the land for rural residential purposes, Council officers would recommend refusal due to the high hazard flood risk.

<u>Division 3 Environmental hazards - 52 Objectives</u>

The relevant objectives of this plan have been considered, including:

(b) control developments on flood liable lands and encourage flood plain management practices which ensure maximum personal safety and appropriate land uses,

As discussed previously in this assessment, the subdivision is not considered to be proposed in an appropriate location given the flooding constraint on the subject site.

Clause 53 Policies for plan preparation and control of development

In determining applications for consent to development for urban, tourist or rural residential purposes, Councils should consider the likelihood of environmental issues including flooding, coastal erosion or storm damage and cumulative catchmentwide impacts, together with the means of controlling and managing such impacts.

Applicant's comment:

...it is advised that as the subdivision is not for the purpose of urban, tourist or rural residential purposes the provisions of this clause do not apply.

Council officer's comments:

It is noted that the applicant's advice with respect to this clause is contrary to the advice provided elsewhere, where the applicant advises that dwelling houses, or other permissible uses that includes tourist facilities, are future potential end uses for the proposed allotments.

In terms of urban, tourist and rural residential uses, the site is not considered to be an appropriate location given the flooding constraint on the subject site.

State Environmental Planning Policy (Rural Lands) 2008

Clause 8 Rural Subdivision Principles

The Rural Subdivision Principles are addressed as follows:

Consideration (a) the minimisation of

rural land fragmentation,

(b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses. (c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when

considering lot sizes for

Response

As discussed previously, in the assessment of the proposal pursuant to the LEP, and in table 1, it is considered that the proposal has a significant impact on rural land in terms of fragmentation. It is noted that the subdivision is not in itself incompatible with surrounding rural land uses.

It is not considered that

the location is an

appropriate location to plan future supply of rural residential land due to the

flooding constraint.

rural lands.

(d) the consideration of the natural and physical constraints and opportunities of land,

(e) ensuring that planning for dwelling opportunities takes account of those constraints.

As discussed previously, in the assessment of the proposal pursuant to the LEP, and in table 1, it is considered that the subdivision will limit future opportunities for the land, particularly with respect to agricultural use of proposed lots 1-3, with respect to the flooding constraint. It is not considered that the location is an appropriate location to create additional dwelling opportunities due to the flooding constraint.

<u>Clause 10 Matters to be considered in determining development applications for rural subdivisions or rural dwellings</u>

This clause requires Council to take into account the following matters when considering subdivision of land proposed to be used for the purposes of a dwelling. Whilst it is noted that the application does not include a dwelling at this stage, the subdivision creates an additional three dwelling entitlements on lots 1-3 as they will be greater than 4000m² in area, and accordingly an assessment of this clause is detailed below.

Consideration

- (a) the existing uses and approved uses of land in the vicinity of the development,
- (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,
- (c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),
- (d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land

Response

It is noted that the subdivision is not in itself incompatible with surrounding rural land uses. It is noted that the subdivision is not in itself incompatible with surrounding rural land uses.

It is noted that the subdivision is not in itself incompatible with surrounding rural land uses.

The land is not situated within a rural residential zone.

within an adjoining rural residential zone.

(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).

Not applicable.

Development Control Plan 2007

Chapter B1 – Subdivisions and Streets

Insufficient information has been provided to assess the proposal in terms of the vehicular accesses proposed for the resultant allotments.

Chapter B2 - Environment and Construction Management

Insufficient information has been provided to assess the suitability of the proposal in relation to Section B2.12 Waste Water, in terms of demonstrating that the site capability for water provision and wastewater treatment could be provided for any intensification of land use permissible as a result of the subdivision.

2. Likely Impact of the Development

As discussed previously in this assessment, it is considered that the subdivision, which could facilitate intensification of high hazard flood prone land, including at least three additional dwelling entitlements, is likely to increase the community's susceptibility to the effects of flooding in terms of social, economic and environmental consequences.

This impact also include that in a moderate flood, the access roads will be inundated by floodwaters, rendering any future occupants of the lots isolated and reliant upon the SES for property protection, evacuation and/or supplies.

Any development that may result in intensification of flood prone land is undesirable as it increases the number of people and amount of personal property susceptible to flooding, and places an excessive demand on already limited SES resources due to the ineffectiveness of private evacuation plans.

3. Suitability of the Site

Proposed allotments 1-3 are not likely to be suitable for any intensification of land use, as demonstrated in Table 1, including future dwellings. The subject land is considered unsuitable for the majority of land use permissible in the 1(a) zone, with the exception of some agricultural purposes, taking into account the level of flood risk and likely social, economic and environmental consequences. Future occupants or land uses on proposed lots 1, 2 and 3 would be severely affected by flooding depths of 4.2 metres and isolation in severe floods and emergency services would be severely limited.

It is considered that the subdivision would result in the land being less viable for agriculture due to fragmentation.

The subject site is identified bushfire prone. The proposal is considered to be satisfactory with respect to this constraint.

4. Submissions

No public submissions have been received in relation to the proposal. The application did not require public exhibition pursuant to Council's exhibition policy in DCP2007.

5. Public Interest

The public interest is relevant as it is considered likely that the subdivision will give rise to future development applications for permissible uses of the subdivided lots, which in terms of potential future flooding impacts and the fragmentation of rural lands, would be largely unlikely to be supported due to the site constraints.

The proposal would create an additional three allotments on land that is entirely flood prone. This has the potential to create an expectation that a dwelling or the like could be sought on these newly created allotments.

The assessment revealed that the majority of future potential uses are likely to be unacceptable, and that any appropriate uses, for example agriculture, would be less viable as a result of the subdivision. The subdivision creates the potential that the property can be sold to four separate owners, accordingly in excess of 40 hectares of flood prone rural land would be without flood refuge, thereby reducing the agricultural potential for the land.

This proposal is contrary to the public interest in that it has the potential to further exacerbate the impact of flooding and private and public losses in this locality, the potential to increase demand upon emergency services and an unnecessary and unreasonable demand on limited SES resources.

ATTACHMENT 4 REASONS FOR REFUSAL

- 1) The proposal has not demonstrated a future use or that the proposed allotments are capable of sustaining a permissible use in the future.
- 2) The development is inconsistent with Clause 37 and Clause 38 of the Port Stephens Council Local Environmental Plan 2000. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding, impact on occupants, property and impact on adjoining properties. Proposed lots 1, 2 and 3 would be severely affected by flooding depths of 4.2 metres and due to isolation in severe floods accessibility for emergency services would be severely limited.
- 3) Approval of any intensification of land use as a result of the subdivision in high risk flood areas places further demand on already limited SES resources by way of domestic property protection, evacuation and/or resupply.
- 4) The development is considered to be an inappropriate land use under the Floodplain Development Manual, 2005.
- The development is not consistent with the provisions and objectives of Zone No 1 (a) (Rural Agriculture "A" Zone) of the Port Stephens Local Environmental Plan 2000. The proposal will fragment agricultural lands and will not protect the agricultural potential of the land. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding.
- 6) Insufficient information was submitted with the application to enable a comprehensive assessment of the use of the proposed allotments under Section 79C of the Environmental Planning and Assessment Act, 1979.
- 7) Insufficient information has been provided to assess the proposal in accordance with Clause 47 of the Port Stephens Local Environmental Plan 2000, in terms of demonstrating that the site has the capability for adequate facilities for water provision and wastewater treatment for any intensification of land use permissible as a result of the subdivision.
- 8) Insufficient information has been provided to demonstrate that adequate access can be achieved for all proposed allotments, and in particular proposed Lot 3 has no physical constructed access currently available.
- Planning Policy (Rural Lands) 2008, as the development is not considered to be located in an appropriate location due to extent and nature of flooding.
- 10) It is not possible to implement an evacuation plan for proposed Lots 1-3, that would provide permanent, fail safe, maintenance free measures to ensure the timely, orderly and safe evacuation of any future development on the land, including animal based agricultural activities.

- 11) The development is contrary to the public interests and expectations, of an orderly and predictable built environment.
- 12) The development is inconsistent with the provisions of the Hunter Regional Environmental Plan 1989. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding.
- 13) Approval of this application would have an undesirable cumulative effect, having the potential to increase the community's susceptibility to flooding, in terms of social, economic and environmental consequences.

ITEM NO. 2 FILE NO: 16-2008-827-1

DEVELOPMENT APPLICATION FOR CHANGE OF USE FROM SHED TO DWELLING AT NO. 470 MARSH ROAD, BOBS FARM

REPORT OF: KEN SOLMAN - ACTING MANAGER, DEVELOPMENT & BUILDING

GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

Refuse Development Application 16-2009-105-1 for the reasons listed below.

- 1. The development is contrary to the public interests and expectations, of an orderly and predictable built environment;
- 2. The development is inconsistent with the 1 (a)—Rural Agriculture "A" Zone objectives of Port Stephens Local Environmental Plan 2000 (LEP2000). The development is out of character with the immediate area and does not maintain an acceptable level of residential amenity;
- 3. The development is inconsistent with the provisions of Clause 37 (Objectives for development on flood prone land) and Clause 38 (Development on flood prone land) of the LEP2000. The habitable floor levels proposed are below the flood planning level of RL 2.5m AHD and pose an unacceptable risk of damage to property, and do not provide an acceptable residential amenity;
- 4. The development is inconsistent with Council's Resolution of 24 February 2009;
- 5. The development is inconsistent with the design requirements of the Port Stephens Development Control Plan 2007 (DCP). The proposed dwelling is not consistent with the requirements relating to unbroken roof ridgelines and blank walls:
- 6. The development is not consistent with the aims of State Environmental Planning Policy No 71—Coastal Protection. The proposal is not considered to be suitable given its type, location and design and its relationship with the surrounding area;
- 7. The proposal is not consistent with the rural planning principles contained in State Environmental Planning Policy (Rural Lands) 2008. The development is not considered to provide opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities:
- 8. The development is inconsistent with the provisions and objectives of the Hunter Regional Environmental Plan 1989 (HREP 1989), in terms of being an inappropriate landuse;

9. Insufficient information submitted to enable a comprehensive assessment under Section 79C of the Environmental Planning and Assessment Act, 1979.

.....

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Bruce MacKenzie Councillor Sally Dover	That Council note its support for the development and that the Sustainable Planning Group Manager be requested to draft Conditions of Consent for consideration by Council.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Bruce MacKenzie, Shirley O'Brien, Bob Westbury, Steve Tucker, Glenys Francis, Frank Ward, Ken Jordan, Sally Dover and Daniel Maher.

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

ORDINARY MEETING - 09 FEBRUARY 2010

005	Councillor Ken Jordan Councillor Steve Tucker	It was resolved that the Council Committee recommendation be adopted.

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

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

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present a development application to Council for consideration in regard to a proposed permanent conversion of an existing shed to a dwelling.

Council is in receipt of a development application for a change of use, to permanently convert an existing machinery shed to a dwelling. The site has been occupied as an alleged unauthorised dwelling for at least two years, and has been

the subject of an ongoing compliance investigation that was reported to Council. In this regard, on the 24 February 2009, Council resolved to:

'issue orders allowing occupation of the machinery shed for five years until a separate dwelling has been constructed. Milestones would be required to show continued progress and that the wastewater management system be upgraded within six (6) months.'

Further, on 28 April 2009:

'It was resolved that there being no objection, that Council not pursue the upgrading of wastewater disposal facilities in relation to the Shed occupied at Bobs Farm, being Assessment No. 164046, given the review carried out by Bruce Petersen, Manager of Environmental Services.'

It is reinforced that the application currently before Council for consideration is seeking to permanently convert the shed to a dwelling, rather than to construct a separate replacement dwelling, which would have been required to comply with Council's aforementioned resolution.

Reference is made to the previous Council report dated 28 July 2009 (refer Appendix 1) wherein the above proposal was discussed. Council staff made the following recommendation in relation to this matter:

- 1) Defer determination of Development Application 16-2008-827-1 to request applicant to submit additional plans for a separate replacement dwelling to facilitate and reinforce the Council resolution dated 24 February 2009.
- 2) Require submission of additional plans for a separate replacement dwelling within six (6) months.
- 3) Delegate the determination of Development Application 16-2008-827-1 to the General Manager, subject to the receipt of plans for a separate replacement dwelling within six (6) months.
- 4) Should additional plans for a separate replacement dwelling not be received by Council within six (6) months, delegate the refusal of Development Application 16-2008-827-1 to the General Manager

Council's Resolution on 28 July 2009 was:

'that the matter be deferred to allow for a meeting between the applicant and Council's Sustainable Planning Group.'

The above mentioned meeting occurred on the 18 August 2009 with the Mayor Cr MacKenzie, Acting Manager Development Building and Senior Development Planner in attendance on behalf of Council, and a representative from applicant's consultant firm Port Stephens Design. Port Stephens Design proposed design measures to allow the structure to have a more 'standard' dwelling appearance.

Amended plans in this respect were submitted to Council on the 3 November 2009. These plans demonstrate a carport along the eastern elevation and an awning along the northern frontage facing Marsh Road.

These design measures provide visual relief to the structure and accordingly would appear less bulky to street and adjoining properties. However, there are still significant non-compliances with Council's Development Control Plan 2007, as discussed in the report shown at Attachment 1. Further to this concern, the applicant has further amended the proposal to include additional habitable areas on the lower level of the building, including the kitchen. The floor level of this area remains lower than the minimum flood planning level which is RL 2.5m AHD. Non compliance with this floor level creates an unacceptable risk to the owner's property and future amenity.

The proposal to permanently convert the shed to a dwelling is considered to be contrary to the public interest. The development is not considered to be in keeping with the design characteristics of dwellings within the existing area, and would be inconsistent with public expectations of orderly development. Most significantly, the proposal has the potential to create a precedent for other land owners to seek approval to live in sheds, and future applications may be in more visually prominent locations. Conversion of sheds to dwellings is usually sub-standard in terms of built form and should be discouraged to protect the future character of the rural areas in Port Stephens.

On this basis the applicant should lodge a development application for a replacement dwelling.

It is recommended that the permanent approval of the shed/dwelling conversion not be supported by Council, as providing consent in the configuration proposed would create a precedent which has the potential to be used in future development applications as reason for consent noting fairness, consistency and equity in the application of Council's planning provisions. Accordingly, Council may in the future be in a position of dealing with additional compliance matters and the associated liabilities.

FINANCIAL/RESOURCE IMPLICATIONS

The unauthorised occupation of a shed as a dwelling should not be condoned. To do so may encourage other unauthorised developments that will increase the demand on Council's development compliance resources. As demonstrated in Appendix 2 – Chronology, this matter has had a significantly higher demand on time and resources compared to an appropriately compliant dwelling on a suitable site. To investigate and appropriately deal with illegal or unauthorised development demands significant Council resources and limits service provision in other positive areas.

It is further noted that the application for a 'Change of Use' has incurred significantly less development application lodgement fees, than an application that would go through the standard and correct procedures adopted by the Council.

LEGAL AND POLICY IMPLICATIONS

The development application is inconsistent with Council's Policy.

Given the time that has elapsed since this DA was lodged and the lack of adequate information and plans to fully satisfy this application, refusal would normally have been issued under delegation by this time.

Refer to Confidential Information Paper 'Development Application to Change Use from Shed to Dwelling at No.470 Marsh Road Bobs Farm.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

If Council approve the permanent conversion of the shed to a dwelling rather than to encourage the construction of a replacement dwelling, then the development would be contrary to the public interest and expectations of an orderly and predictable built environment.

Council should actively discourage the unauthorised occupation of sheds as dwellings, or additional owners may inhabit structures that are not built to a safe and appropriate standard.

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

It is not considered that the development application is likely to incur any economic implications to Council should any dwelling approved on this property be approved and constructed to the relevant standards.

The development, if approved by Council, may set an undesirable precedent in the Port Stephens Local Government Area (LGA). This precedent may lead to detraction from the accepted rural character and environment of the locality, i.e. the existing character is predominantly single storey weatherboard or brick dwellings with pitched roofs. As dwellings are replaced over time, Council should encourage sympathetic buildings that do not detract from the desired or established environment.

CONSULTATION

The application was exhibited in accordance with Council policy and no submissions were received. It is advised that subsequent to this matter being reported in July 2009, Council received three letters of support for the proposal from directly adjoining neighbours.

OPTIONS

- 1) Adopt the recommendation to refuse the development application to permanently convert the shed to a dwelling, based on the current plans and information submitted.
- 2) Progress compliance action by issuing a penalty notice for 'development carried out without development consent' with a maximum penalty of \$600.
- 3) Approve the development application to allow temporary use as a dwelling for five (5) years, to align with the Council resolution of 24 February 2009. The use of the shed as a temporary dwelling would be time limited until 24 February 2014, and a development application for a separate dwelling should be required for lodgement with Council by 24 February 2013.
- 4) Defer the determination until additional plans for a permanent replacement dwelling are submitted by the applicant.
- 5) Reject or amend the Recommendations.

ATTACHMENTS

- 1) Previous Council Report dated 28 July 2009
- 2) Chronology

COUNCILLORS ROOM

1) Development plans and supporting documentation.

TABLED DOCUMENTS

Nil

ATTACHMENT 1 PREVIOUS COUNCIL REPORT DATED 28 JULY 2009

ITEM NO. 2

FILE NO: 16-2008-827-1

DEVELOPMENT APPLICATION TO CHANGE USE FROM SHED TO DWELLING AT NO. 470 MARSH ROAD BOBS FARM

REPORT OF: ANTHONY RANDALL - ACTING MANAGER, DEVELOPMENT AND BUILDING

RECOMMENDATION IS THAT COUNCIL:

- 1) Defer determination of Development Application 16-2008-827-1 to request applicant to submit additional plans for a separate replacement dwelling to facilitate and reinforce the Council resolution dated 24 February 2009.
- 2) Require submission of additional plans for a separate replacement dwelling within six (6) months.
- 3) Delegate the determination of Development Application 16-2008-827-1 to the General Manager, subject to the receipt of plans for a separate replacement dwelling within six (6) months.
- 4) Should additional plans for a separate replacement dwelling not be received by Council within six (6) months, delegate the refusal of Development Application 16-2008-827-1 to the General Manager

BACKGROUND

The purpose of this report is to present a development application to Council for consideration in regard to a proposed permanent conversion of an existing shed to a dwelling.

Council is in receipt of a development application for a change of use, to permanently convert an existing machinery shed to a dwelling. The shed has been the subject of a recent compliance investigation that was reported to Council. In this regard, on the 24 February 2009, Council resolved to:

'issue orders allowing occupation of the machinery shed for five years until a separate dwelling has been constructed. Milestones would be required to show continued progress and that the wastewater management system be upgraded within six (6) months.'

It is reinforced that the application currently before Council for consideration is seeking to permanently convert the shed to a dwelling, rather than to construct a separate replacement dwelling.

The proposal to permanently convert the shed to a dwelling is considered to be contrary to the public interest. The development is not considered to be in keeping with the design characteristics of dwellings within the existing area, and would be inconsistent with public expectations of orderly development. Most significantly, the proposal has the potential to create a precedent for other land owners to seek approval to live in sheds, and future applications may be in more visually prominent locations. Conversion of sheds to dwellings is sub-standard in terms of built form and should be discouraged to protect the future character of the rural areas in Port Stephens.

It is noted that the surrounding area contains similar sheds. However the key point of difference is that these other sheds are being used in a rural capacity, usually in conjunction with a 'standard' dwelling. It is likely that the subject site is justifiably suitable have a single dwelling development, provided that issues including bushfire and flooding are addressed in the design. It is considered that the subject site has a dwelling entitlement, as the size of the property is greater than 4000m² as required by the Local Environmental Plan 2000, and the allotment was not created for a purpose other than a dwelling. However it is the built form of the shed to be converted to a dwelling that is considered to be inappropriate because of the bulky appearance. In terms of considering the appropriate form of development in the rural area, a site context analysis of the surrounding area has been undertaken. The surrounding properties are predominantly characterised as single storey dwellings of 'standard' appearance, with some double storey dwellings.

A 'standard' dwelling is numerically characterised as having a wall to ceiling height of 2.7 metres, and for double storey dwellings, the levels are usually broken by articulation and eaves. Roof pitches are generally 22 degrees, with maximum roof ridgelines of less than 10 metres. Generally the materials used for a 'standard' appearance dwelling are weatherboard or brick, with tile or corrugated iron pitched roofing. There are also some new 'project' homes style residences being constructed in the area. Many of the dwellings are well set back from the street and shielded by vegetation.

In contrast, this proposal involves unbroken roof ridgelines of 18.4 metres and blank walls far in excess of Council's Development Control Plan design requirements, and accordingly gives an excessively bulky appearance with no articulation or visual relief. The double storey structure does not have eaves, nor any articulation between the two levels to relief the mass of the walls. The single colour of the metal sheeted structure further exacerbates this bulky appearance, as does the shallow roof pitch of around 10 degrees. The proposed dwelling is not considered to incorporate a design with high quality materials and detailing, nor does it reflect the predominant design of the surrounding area.

It is considered that cosmetic design features would not extend so far as to give this structure the appearance of a 'standard' dwelling, however additions including awnings and pergolas may alleviate the impacts to some extent. These kinds of structures attached to the shed would create an unusual appearance that is inconsistent with the surrounding dwellings in terms of the erected built form outcome in rural localities. Whilst the appearance to the street is an issue, it is noted

that the proposal has a large street setback. However, the structure will be highly visible to adjoining properties, particularly those using the shared right-of-way to the east of the subject site.

In addition to the visual appearance issues, the development fails to satisfy relevant planning considerations and establishes an unacceptable level of impact on the amenity for future occupants due to the habitable floor space not being directly accessible to the private open space area. This issue is a result of the building being required to amend the existing structure so that all habitable rooms are above the flood planning level, i.e. they would need to be relocated to the second storey which does not have a balcony or the like proposed, to provide access to private open space from living areas.

The application as proposed has a habitable room, being a 'bar and games room' currently proposed on the lower level. This room is considered to be unacceptable as the floor level proposed, 1.8m AHD, is below the minimum flood planning level which is 2.5m AHD. The 1% flood level at this location is 1.88m AHD, and therefore the proposal would be 80mm below this level without the further provision of a freeboard, nor the provision of the 0.91 metre increase adopted by Council to cater for sea level rise. Accordingly, this room would need to be relocated, and this creates the open space issue referred to above.

It is noted that some of the issues discussed in this report could be addressed by requesting the applicant to make amendments to the proposal or by providing additional information. However, it was considered that requesting additional information would incur additional costs without the reasonable likelihood that the application would be supported in the current form, based on the Council's resolution of 24 February 2009 to restrict occupancy of the shed to five years, with construction of a separate replacement dwelling. In this regard, it is considered more reasonable to request additional plans for a replacement dwelling, rather than to require the applicant to incur further costs in relation to designing the shed conversion.

Further, in terms of the wastewater issues on the site, should additional plans for a replacement dwelling be submitted, Council would not be likely to require an upgrade to the existing wastewater system on the site in the five year period extension period provided by the Council resolution dated 24 February 2009. However, should permanent approval be given to occupy the shed, then the applicant would be required to upgrade this system in the immediate future.

In general, should owners wish to establish temporary occupation of machinery sheds and like during periods of construction for their permanent dwellings, then these owners should be encouraged to establish this as part of their development application for the permanent dwelling. Should this approach be taken, issues including residential amenity, the Building Code of Australia, flooding, bushfire and wastewater disposal can be considered in the shed design to ensure that the temporary structures and safe and habitable for the temporary period of occupation.

However, approval of a permanent shed/dwelling conversion has the potential to create a precedent in the Port Stephens Local Government Area, wherein applicants are not encouraged to lodge a staged, well conceived staging plan for the construction of a dwelling. It is recommended that the permanent approval of the shed/dwelling conversion not be supported by Council, as providing consent in the configuration proposed would create a precedent which has the potential to be used in future development applications as reason for consent noting fairness, consistency and equity in the application of Council's planning provisions. Accordingly, Council may in the future be in a position of dealing with additional compliance matters and the associated liabilities.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

SOCIAL SUSTAINABILITY – Council will preserve and strengthen the fabric of the

community, building on community strengths.

CULTURAL SUSTAINABILITY - Council will assist to inspire a sense of pride and

place as well as enhancing quality of life and

defining local identity.

ECONOMIC SUSTAINABILITY – Council will support the economic sustainability of its

communities while not compromising its

environmental and social well being.

ENVIRONMENTAL Council will protect and enhance the environment

while

SUSTAINABILITY – considering the social and economic ramifications of

decisions.

BUSINESS EXCELLENCE - Council will use the Business Excellence Framework to

innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence

Journey

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL AND POLICY IMPLICATIONS

Given the time that has elapsed since this DA was lodged and the lack of adequate information and plans to fully satisfy this application, refusal would normally have been issued under delegation by this time. Given Council's Resolution of February 2009 however the recommendation to seek additional plans within the next six (6) months is put forward.

Refer to Confidential Information Paper 'Development Application to Change Use from Shed to Dwelling at No.470 Marsh Road Bobs Farm.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 6) **INFORMATION AND KNOWLEDGE** Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** Behave in an ethically, socially and environmentally responsible manner.
- 8) **SUSTAINABLE RESULTS** Focus on sustainable results, value and outcomes.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

If Council approve the permanent conversion of the shed to a dwelling rather than to encourage the construction of a replacement dwelling, then the development would be contrary to the public interest and expectations of an orderly and predictable built environment.

Council should actively discourage the unauthorised occupation of sheds as dwellings, or additional owners may inhabit structures that are not built to a safe and appropriate standard.

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

ECONOMIC IMPLICATIONS

It is not considered that the development application is likely to incur any economic implications to Council should any dwelling approved on this property be approved and constructed to the relevant standards. It is noted that constructing a replacement dwelling would incur costs to the applicant.

ENVIRONMENTAL IMPLICATIONS

The development, if approved by Council, will set a precedent in the Port Stephens Local Government Area (LGA). This precedent may result in a decay of the accepted rural character and environment of the locality, i.e. the existing character is predominantly single storey weatherboard or brick dwellings with pitched roofs. As dwellings are replaced over time, Council should encourage sympathetic buildings that do not detract from the desired or established environment.

CONSULTATION

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

OPTIONS

Council can:

- 1) Adopt the recommendation to defer the determination until additional plans for a permanent replacement dwelling are submitted by the applicant.
- 2) Approve the development application to permanently convert the shed to a dwelling, subject to conditions
- 3) Indicate in principle direction to refuse the development application to permanently convert the shed to a dwelling, based on the current plans and information submitted and request the Group manager, Sustainable Planning to bring forward draft reasons for refusal.
- 4) Reject or amend the Recommendations in other ways.

ATTACHMENTS

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

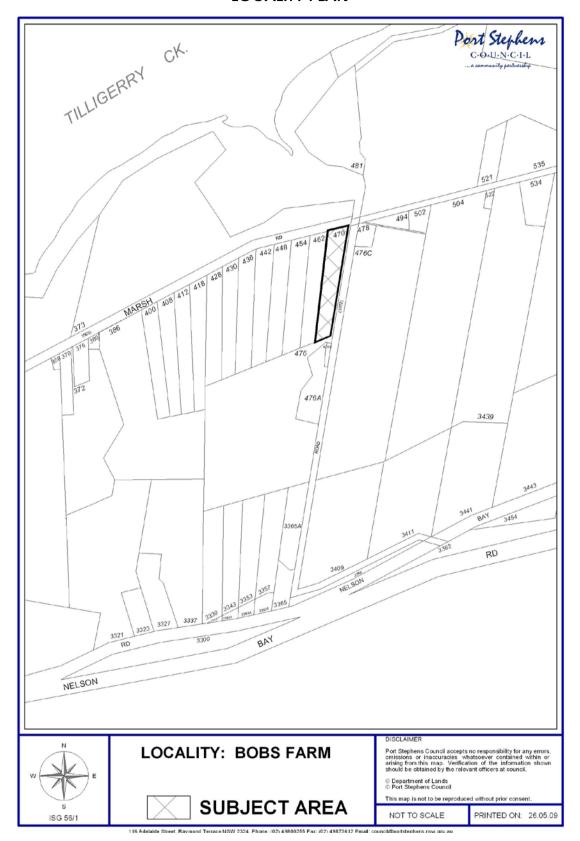
COUNCILLORS ROOM

Nil.

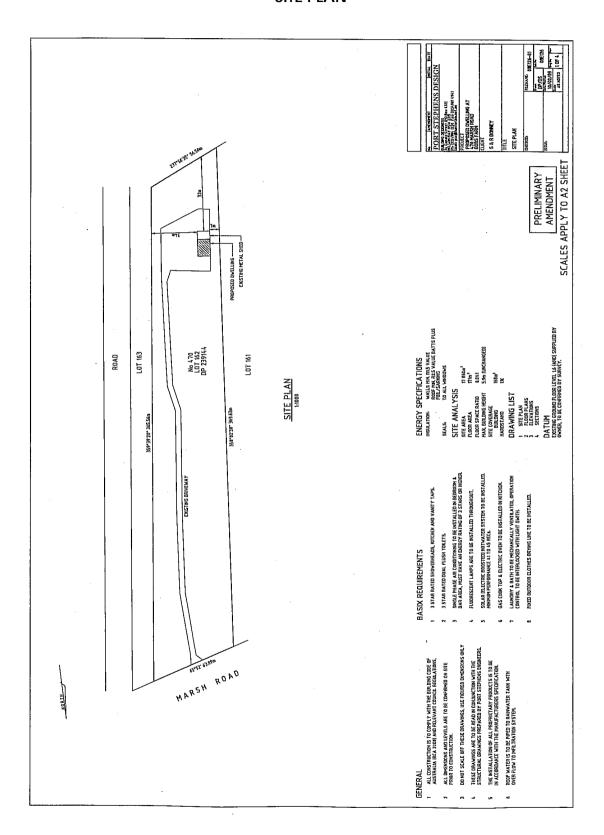
TABLED DOCUMENTS

Nil.

ATTACHMENT 1 LOCALITY PLAN



ATTACHMENT 2 SITE PLAN



ATTACHMENT 3 ASSESSMENT

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

THE PROPOSAL

The proposal is for a change of use, from a shed to a dwelling. The shed was approved in 2004 for general rural purposes and was not considered at this time as to appropriateness for habitable purposes.

The proposal would involve three additional windows and awnings, internal modifications including extension of mezzanine level to include kitchen and living area.

The shed has been the subject of a compliance investigation and Council have resolved to allow the continued occupation of the shed as a dwelling for a period of five years subject to the satisfaction of certain criteria, namely the construction of a separate replacement dwelling.

THE APPLICATION

Owner MR S K & MRS R J BONNEY

Applicant MR S K BONNEY

Detail Submitted Site Plan, Floor Plans, Elevations, Sections,

Survey Plan, Statement of Environmental Effects, BASIX Certificate and Bushfire

Report

THE LAND

Property Description Lot 162 DP 239144

Address 470 Marsh Road Bobs Farm

Area 1.97 hectares

Dimensions Approximately 60 metres by 365 metres
Characteristics The site is generally flat with some patches

of vegetation.

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning 1 (a) (Rural Agriculture "A" Zone)

Relevant Clauses 11 Rural zonings

14 Dwelling-houses and dual occupancy

housing in rural zones

37 Objectives for development on flood

prone land

38 Development on flood prone land

47 Services

Development Control Plan 2007 B2 - Environmental and Construction

Management

B6 - Single and Dual Occupancy Dwellings

State Environmental Planning SEPP No 14—Coastal Wetlands

Policies (SEPP) SEPP No 71—Coastal Protection

SEPP (Building Sustainability Index: BASIX)

2004

SEPP (Rural Lands) 2008

Hunter Regional Environmental Plan 1989

Discussion

Local Environmental Plan 2000

11 Rural zonings

The subject site is zoned 1 (a)—Rural Agriculture "A" Zone and dwellings are permissible in this zone.

However, the current proposal, being the conversion of an existing shed into a dwelling in this locality, is not considered to be consistent with the objectives of this zone, namely:

- (a) regulating the development of rural land for purposes other than agriculture by ensuring that development is compatible with rural land uses and does not adversely affect the environment or the amenity of the locality, and
- (e) reducing the incidence of loss of life and damage to property and the environment in localities subject to flooding and to enable uses and developments consistent with floodplain management practices.

It is considered that the proposed appearance of this dwelling has the potential to have a detrimental impact to the amenity of the locality, and that the habitable floor levels proposed are below the flood planning level of 2.5m AHD poses an unacceptable risk of damage to property.

It is noted that it is likely that the subject site is justifiably suitable to have a separate single dwelling development. However it is the form of dwelling proposed that is considered to be inappropriate. In terms of considering the appropriate form of development in the rural area, a site context analysis of the surrounding area has been undertaken. The surrounding properties are predominantly characterised as single storey dwellings of 'standard' appearance, with some double storey structures.

Generally the materials used for the dwellings is weatherboard or brick, with tile or corrugated iron pitched roofing. There are also some new 'project' homes style residences coming into the area. Many of the dwellings are well set back from the street and shielded by vegetation.

However, in contrast, it is considered that the current proposal will have a negative overall visual impact to the streetscape and adjoining properties. The proposed building is not considered to be in keeping with the design characteristics of dwellings with the existing area, and would constitute development that is inconsistent with public expectations of orderly development in the rural area.

This proposal involves unbroken roof ridgelines of 18.4 metres and blank walls far in excess of Council's Development Control Plan design requirements, and accordingly gives an excessively bulky appearance with no articulation or visual relief. The double storey structure does not have eaves, nor any articulation between the two levels to relief the mass of the walls. The single colour of the metal sheeted structure further exacerbates this bulky appearance, as does the shallow roof pitch of around 10 degrees. The proposed dwelling is not considered to incorporate a design with high quality materials and detailing, nor does it reflect the predominant design of the surrounding area.

14 Dwelling-houses and dual occupancy housing in rural zones

The proposal is considered to satisfy the requirements of this clause, as the subject allotment has an area of at least 4,000 square metres.

37 Objectives for development on flood prone land

One of the objectives for development on flood prone land is to minimise risk to human life and damage to property caused by flooding and inundation through controlling development.

Given that the proposed dwelling has habitable floor levels below the flood planning level of 2.5m AHD, it is considered that the design poses an unacceptable risk of damage to property. However, it is noted that the proponent could amend the proposal to satisfy the flood planning level, by internally reconfiguring all habitable floor space to the upper level. However, direct access to private open space at ground level is not achievable in this design.

The current application as proposed has a habitable room, being a 'bar and games room' currently proposed on the lower level. This room is considered to be unacceptable as its floor level proposed, 1.8m AHD, is below the minimum flood planning level which is 2.5m AHD. The 1% flood level at this location is 1.88m AHD, and therefore the proposal would be 80mm below this level without the provision of a freeboard, nor the provision of the 0.91 metre increase adopted by Council to cater for future sea level rise. Accordingly, this room would need to be relocated, and this creates an open space issue which is discussed later in the assessment.

38 Development on flood prone land

Before granting consent to development on flood prone land, Council must consider, amongst other matters, the following:

- (c) whether the risk of flooding or inundation affecting the proposed development could reasonably be mitigated and whether conditions should be imposed on any consent to further the objectives of this plan,
- (d) the social impact of flooding on occupants, including the ability of emergency services to access, rescue and support residents of flood prone areas,
- (e) the provisions of any floodplain management plan or development control plan adopted by the Council.

The proposal as lodged does not satisfy Council's policy in this area, i.e. that all habitable floor levels are required to be at a minimum level of 2.5m AHD.

As discussed above, it is noted that this floor level could be achieved should a redesign of the proposal occur, however based on the application as lodged, the application should be refused on flooding grounds.

47 Services

The subject site is not connected to reticulated sewer. In this regard the applicant has lodged an application to operate an on-site waste water treatment system. It is acknowledged that the proposed design would comply with Council's requirements. However, it is noted that the existing currently being used, i.e. the system previously approved for the shed, would not satisfy the standard requirements. Conditions of consent can address this issue.

Development Control Plan 2007

The dwelling proposed is considered to be contrary to the provisions of Port Stephens Development Control Plan 2007 (DCP 2007), specifically in relation to building design elements and visual appearance. This DCP requirement underpins the intent and objectives of Port Stephens Council Local Environmental Plan 2000 for dwellings in the 1 (a)—Rural Agriculture "A" zone which states:

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

The adoption of the Port Stephens DCP 2007 provides clear direction for future development in the local government area. This change was motivated by the growing concern that previous DCP's provided no clear guidance for Council or development assessment staff in relation to desired design requirements for single dwellings. This issue is significant public interest, that being the orderly and predictable form of development occurring within rural areas.

It is noted that one of the outcomes of the recent Futures Project was that 'The scenic qualities of Port Stephens, particularly in the rural areas, are important and need to be preserved'.

To assist in providing a strategic approach to land use management and property development, the inclusion of additional controls in relation to external appearance is reflected in the principles which were adopted within the DCP 2007 to provide guidance for developers and land owners. These principles, as well as the relevant controls as discussed below.

Summary of numerical compliance with DCP standards

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
Front setback	More than 200	12 metres	YES
	metres		
Height	5.9 metres	9 metres	YES
Side setbacks	More than 7 metres	2 metres for second	YES
		storey	
Unbroken roof	18.4 metres	Maximum 10m in	NO
ridgelines		length	
Blank walls	7.5 metres	Maximum 5m in	NO
		length	
Carparking	At least 1 space	1 space	YES
Private Open	Living areas would	Directly accessible	NO
Space	be required to be	from living area	
	relocated to upper		
	levels.		

B2 - Environmental and Construction Management B2.12 Waste Water

The subject site is not connected to reticulated sewer. In this regard the applicant has lodged an application to operate an on-site waste water treatment system. It is acknowledged that the proposed design would comply with Council's requirements. However, it is noted that the existing currently being used, i.e. the system previously approved for the shed, would not satisfy the standard requirements. For the dwelling to be occupied permanently, the existing non-compliant system would be required to be decommissioned and replaced.

The proposed replacement system meets the requirements of the On-site Sewage Management Strategy. Treated effluent from the treatment system will be discharged to a raised and vegetated irrigation area. The location within the Tilligerry Creek catchment prescribes that appropriate disposal, environmental protection and minimisation of public health impacts overrides re-use options.

B6 - Single and Dual Occupancy Dwellings

Numerical standards have been addressed in the table above. The principles and merit based criteria are discussed below.

B6.3 Streetscape & Front Setback

It is noted that on a rural property, streetscape issues are considered differently to that of residential properties, given the lower density of development and provision of larger front setbacks. This application proposes a particularly large front setback, however, the building will be some what visible to the street and accordingly the streetscape principles are required to be considered.

In this regard the proposal is considered to be inconsistent with the DCP principles in relation to streetscape. Specifically:

B6.P1 – Development should be of scale and appearance that reinforces the existing or the desired future character of the area.

B6.P2 - Development should be sympathetic to the existing context...

Whilst it is noted that rural sheds are not inconsistent with the surrounding, it is considered that the conversions required to upgrade this structure to a dwelling standard would result in a structure that would be unsympathetic to the streetscape. This is due to bulk and scale issues and the building design elements, which are discussed in detail below.

B6.5 Bulk and Scale

It is considered that the proposal is inconsistent with the following principles of the DCP:

P6.C20 – the bulk and scale of a dwelling should be sympathetic to the local street context.

B6.P21 – the bulk, scale and location of a new dwelling should minimise the impact on the amenity of adjacent dwellings and land

As discussed above, it is considered that the conversions required to upgrade this structure to a dwelling standard would result in a structure that would be unsympathetic to the surrounding area. The proposal provides minimal, if any architectural relief or articulation to reduce the bulk and scale of the structure. Additional discussion in this regard is detailed below in B6.9 Building Design Elements.

B6.9 Building Design Elements

It is not considered that the conversion of the shed into a dwelling will be able to achieve the following principles of the DCP:

B6.P31Development should reflect street character through use of local design elements, materials and forms.

B6.P33 Building design should balance horizontal and vertical proportions, windows positions and openings on all building facades.

B6.P34 Façade design should use high quality materials and detailing.

Further the proposal does not comply with the following controls:

B6.C55 Unbroken roof ridgelines must not exceed 10m in length and blank walls without a window must not exceed 5m in length.

B6.C57 The selection of colours and materials must be used to highlight the shape of building masses and detail elements. Single colour buildings are not acceptable.

In general, it is considered that the proposal will have a detrimental impact to the visual landscape, both to the streetscape and to adjoining houses. The dwelling is not considered to incorporate a design with high quality materials and detailing, or reflect the design of the surrounding areas.

The proposal involves unbroken roof ridgelines and blank walls far in excess of Council's design requirements, and accordingly will give an excessively bulky appearance. The single colour of the metal sheeted structure further exacerbates the bulky appearance.

B6.10 Energy Efficiency

It is noted that an engineering certification has been provided in relation to BASIX requirements.

B6.11 Private Open Space

Whilst it is noted that the subject site provides sufficient land for private open space, the design of the shed conversion to dwelling is not conducive to the future amenity of the occupants.

Specifically, as all habitable rooms will be required to be located on the mezzanine level, as subsequently the proposal will not comply with the following control:

B6.C64 The principle private open space area must be directly accessible from the living area of the dwelling.

It is considered that the current design does not provide the minimum amenity requirements as specified by the DCP.

B6.12 Privacy and Amenity

Given the setback distances proposed, it is considered unlikely that the proposal would create any significant privacy impacts.

B6.14 Vehicular Access & Parking

The proposal complies with the carparking requirements.

B6.15 Stormwater & Greywater

Stormwater management is achievable for the proposal through conditions of consent.

B6.17 Site Facilities & Services

The subject site has suitable areas for the provision of facilities, e.g. clothes drying area and garbage storage.

State Environmental Planning Policies

SEPP No 14—Coastal Wetlands

Land adjacent to the site is identified as containing SEPP 14 wetlands. However given that these areas are separated from the site by a road, it is considered that the proposal is unlikely to have any significant impacts to this area.

SEPP No 71—Coastal Protection

An assessment of the proposal pursuant to the 'matters for consideration' contained in this policy, the proposal is considered to be inappropriate. Specifically, the proposal is not considered to be suitable given its type, location and design and its relationship with the surrounding area.

SEPP (Building Sustainability Index: BASIX) 2004

It is noted that an engineering certification has been provided in relation to BASIX requirements. The existing shed will require modifications including insulation and window awnings. It is noted that the erection of awnings would have benefits to the appearance of the structure.

SEPP (Rural Lands) 2008

This policy aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes, and to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,

It is not considered that the current proposal is consistent with the following rural planning principles contained in this policy:

(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities

This policy prescribes that the following matters are required to be considered in determining development applications for rural dwellings:

Matters for consideration	Comment
(a) the existing uses and approved uses of land in the vicinity of the development,	It is noted that the surrounding area contains similar sheds. However the key point of difference is that these other sheds are being used in a rural capacity. The proposal will involve the conversion of a shed structure into a dwelling style construction. It is considered that this will create an unusual appearance that is inconsistent with the surrounding lands and uses.
 (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development, (c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b), 	The conversion of sheds to dwellings is considered to be generally inconsistent with the preferred and the predominant land uses in the vicinity of the development, as detailed in the context analysis contained in this report. It is noted that the dwelling use is not inconsistent with the surrounding area, however that the built form of the dwelling proposed is inconsistent with the
(d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,	built form established in the locality. It is not considered that the area is a rural residential area.
(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).	It is not considered that design features could be incorporated into the shed/dwelling design to achieve consistency with the surrounding area in terms of character and design. It is noted that window awnings, pergola and cladding materials will provide cosmetic relief to the bulk and scale of the shed, but will not contribute to the otherwise inconsistent appearance of the shed structure with rural dwellings, in relation to wall heights, ridge lengths, articulation or roof pitch.

Building and Construction Matters

As the proposal involves the conversion of a shed to dwelling, Building Code of Australia issues are relevant to the assessment, i.e. whether the Class 10 structure can be reasonably converted to be Class 1A structure.

The matters to be considered include:

- Critical structural details, being the size and spacing of floor joists
- Certification from an engineer that structure has or can be modified to be suitable for the new intended use as a class 1a structure in accordance with AS1170 i.e. required to shown that the class 10(a) structure meets class 1(a)
 - o Issues relating to the class of the building include:
 - Wall/roof sarking
 - Wet areas waterproofed
 - Wall to ceiling height of 2.4 metres
 - Light and ventilation
- Certification from an engineer that the structure has been modified to be suitable for Class 1(a) and is structurally capable of standing all loads imposed thereon, eg mezzanine level
- Certification from an engineer that the footings are capable of additional point loads for existing and proposed works
- Certification from an engineer that structure is designed and built in accordance with NSW Government Floodplain Management Manual (2001)
- Certification from a qualified person that the electrical components comply with NSW Government Floodplain Management Manual and that all electrical connections are above the flood planning level
- Certification from a plumber that the plumbing work complies with AS3500 and is installed above flood level
- Termite treatment certificate

Council has received written certification from an engineering consultancy stating that their review of the existing building confirmed that the design and construction of the structural elements satisfy the requirements of AS 1170 (Loading Code) and the existing structure is suitable for use as a Class 1A building. They have also confirmed that the structure and footings are also suitable for the change of use from a shed to a dwelling and the building is capable of withstanding the forces and impacts of a 1% design flood.

Bushfire

The subject site is identified as bushfire prone, and accordingly an assessment pursuant to Section 79BA of the Environmental Planning and Assessment Act 1979 has been undertaken. It is considered that the proposal could comply with the requirements of Planning for Bushfire Protection 2006 provided that it was built to level 1 construction, a static water source was provided, as well as asset protection zones from 10-16 metres.

2. Likely Impact of the Development

This development application has the potential to create a cumulative impact in the Port Stephens Local Government Area, in that it could potentially create a precedent.

3. Suitability of the Site

It is noted that it is likely that the subject site is justifiably suitable have a single dwelling development. However it is the built form of the dwelling proposed that is considered to be inappropriate.

4. Submissions

The proposal was notified in accordance with Council policy and no submissions were received by Council.

5. Public Interest

The proposal is contrary to the public interest as the development fails to satisfy relevant planning considerations and establishes an unacceptable level of impact on amenity due to lack of appropriate private open space area and by not providing a floor level above the minimum flood planning level. Further it is considered that the proposal will have a negative overall visual impact to the streetscape and adjoining properties.

The proposed building is not considered to be in keeping with the design characteristics of dwellings with the existing area, and would constitute development that is inconsistent with public expectations of orderly development.

ATTACHMENT 2 CHRONOLOGY

- 22/8/2007 Council became aware of that the shed may be occupied as an unauthorised dwelling
- 29/8/2007 Council officers spoke with occupier who advised that the shed was being used as an unauthorised dwelling. Occupier advised of Council's intention to issue a notice of entry to inspect the site and gather information on the site
- 5/9/07 Council officers undertook site inspection
- 25/9/07 Council officers posted a letter to occupier requesting further information on the property and the use of the shed
- 11/10/07 Owner/occupier responded to Council's request advising that one third of the shed was being used as an unauthorised dwelling
- 24/10/07 Council officers posted a letter to owner/occupier stating that it
 was Council's intention to request that the occupants cease the unauthorised
 occupation of the machinery shed as a dwelling due to safety, amenity and
 environmental concerns
- 12/11/07 Council officers had discussions with owner/occupier. Owner/occupier discussed possibility of lodging a development application
- 7/12/07 Council officers sought legal advice in regard to risks associated with unauthorised occupation of shed
- 14/2/08 On the basis of legal advice, a letter was posted to the owner/occupier requesting information, nominating a timeframe for compliance by 14/3/08
- 20/3/08 Meeting held between owner/occupier, Councillor Francis and Council staff in relation to matter. Owner/occupier advised that he was prepared to lodge an application to change the shed to a dwelling. The owner/occupier was asked if he considered building another dwelling on the property. He said he would be prepared to do that but would require approximately 5 years before he could commence construction. The owner/occupier was requested to advise Council by 28/3/08 of when he intended to lodge a DA
- 28/3/08 Council officers received a call from Port Stephens Engineers who advised that they are consultants for the owner/occupier
- 29/4/08 Council officers posted a letter to the owner/occupier restating Council officer's position and matters discussed at the meeting on 20/3/08
- 29/7/08 Council officer contacted the owner/occupier and advised that as Council had not been given confirmation of his intentions that further action was being initiated to require the habitation of the shed to cease. The owner/occupier advised that information was being prepared, and that personal issues had delayed the progress
- 22/9/08 Council officers contacted the owner/occupier to advise that a
 notice would be posted today advising that an order is intended to be issued
 to require the use of the shed as a dwelling to cease due to the risk to the
 inhabitants. The owner/occupier expressed significant distress at this advice
 and advised that a development application would be lodged within days,
 and Council officers deferred the action for further consideration

- 30/09/08 After further consideration the Manager Sustainable Planning advised that due to significant risk, the intention to issue an order to cease occupational within three months was to progress.
- 21/10/08 The owner/ occupier lodged an application with Council to change the use of the shed to a dwelling
- 5/1/09 Council officers posted an intention to issue an order to the owner/occupier, advising that the 3 month extension had lapsed Council required the occupation of the shed to cease prior to March 1 2009
- 13/1/09 Letter requesting additional information to assess development application sent to owner/occupier
- 10/2/09 Some of the information requested for the development application received
- 11/2/09 Council officers posted the order to the owner/occupier requiring that they cease the occupation of the shed as a dwelling within 1 month from the date of the notice.
- 19/2/09 Further information requested for the development application received by Council
- 24/2/09 Council considered a report by Council staff during the February Ordinary Meeting where they were to note that staff had requested the owner/occupier to cease the occupation of the shed as a dwelling by May 11 2009
- Council made a resolution to allow the owner/occupier to remain in the shed for a period of 5 years to enable the construction of a separate dwelling. The resolution also required that the waste water treatment system was to be upgraded within 6 months
- 3/3/09 Following the resolution Council officers reviewed the shed with regard to safety issues in relation to the construction of the shed. Council officers sought additional legal advice in relation to these issues.
- 10/3/09 Council officers wrote to the owner/occupier requesting an undertaking within 7 days to provide certification by duly qualified persons that the structure was safe for occupation including areas of plumbing (wastewater) and electrical.
- 16/3/09 Council officers were advised that the owner/occupier had contacted the Mayor and that the Mayor had said that the requirement to provide the undertaking was not required
- 19/3/09 The Mayor and Manager Environmental Services undertook a site inspection in relation to the wastewater system. The result of the inspection was that there was no urgent need to upgrade the waste water treatment system
- 20/3/09 Council officers contacted the owner/occupier to request that Council staff be allowed to inspect the inside of the shed and the works undertaken to construct the mezzanine, electrical and plumbing. During this conversation, the owner/occupier advised that his engineers were working on some information and it should be provided to Council shortly.
- The owner/occupier later advised that he would not allow access to the shed for Council staff to undertake an inspection.
- 9/5/09 Port Stephens Engineers provided advice on certification required in response to a letter delivered on 10/3/09

- 19/6/09 All outstanding information requested in relation to development application received
- 14/7/09 Council officers reported the development application for Change of Use from Shed to Dwelling to the Council. Council resolved that the matter be deferred to allow a site inspection
- 21/7/09 Councillor site inspection held.
- 28/7/09 Council resolved 'that the matter be deferred to allow for a meeting between the applicant and Council's Sustainable Planning Group.'
- 18/8/09 Meeting held with the Mayor Cr MacKenzie, Acting Manager Development Building and Senior Development Planner in attendance on behalf of Council, and a representative from applicant's consultant firm Port Stephens Design. Port Stephens Design proposed design measures to allow the structure to have a more 'standard' dwelling appearance.
- 3/11/09 Amended plans in this respect were submitted to Council. These plans demonstrate a carport along the eastern elevation and an awning along the northern frontage facing Marsh Road.

ITEM NO. 3 FILE NO: PSC2009-07013

PLANNING PROPOSAL TO PERMIT A MEDICAL CENTRE AT 2 KEEL STREET, SALAMANDER BAY

REPORT OF: PETER MARLER - ACTING MANAGER INTEGRATED PLANNING

GROUP: SUSTAINABLE PLANNING

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RECOMMENDATION IS THAT COUNCIL:

1) Prepare a planning proposal under Part 3 of the Environmental Planning and Assessment Act 1979 to permit with consent a medical centre at 2 Keel Street Salamander Bay (Lot 101 in DP 880861) via an enabling clause in the Port Stephens Local Environmental Plan 2000.

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PROPOSAL DETAILS

Subject Land 2 Keel Street Salamander Bay (Lot 101 in DP 880861)

(Attachment 1)

Owners SK & SI Pty Ltd (submission by RPS HSO)

Current Zone 2(a) Residential (to be retained) (Attachment 2)

Proposed Amendment Permit with consent a medical centre as a site-specific

permissible use

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Frank Ward
Councillor John Nell

That Council

- 1) Not proceed with the Planning Proposal to permit a medical centre at 2 Keel Street, Salamander Bay.
- 2) That the applicant be directed to operate in accordance with the Council approval "professional consulting rooms" and all the conditions that were attached to the approval.
- 3) That the applicant be advised that if they wish to build a Medical Centre as indicated in the business paper the applicant can acquire a suitable site in the commercial zone area in accordance with the Council's Plan.

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

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

Those against the Motion: Nil.

ORDINARY MEETING - 09 FEBRUARY 2010

Councillor Frank Ward Councillor Glenys Franc	It was resolved that the Council Committee recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

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PROPOSAL DETAILS

Subject Land 2 Keel Street Salamander Bay (Lot 101 in DP 880861)

(Attachment 1)

Owners SK & SI Pty Ltd (submission by RPS HSO)

Current Zone 2(a) Residential (to be retained) (Attachment 2)

Proposed Amendment Permit with consent a medical centre as a site-specific

permissible use

BACKGROUND

The purpose of this report is to consider a planning proposal to amend the *Port Stephens Local Environmental Plan 2000* (the LEP) to permit with consent a medical centre on land zoned 2(a) Residential at 2 Keel Street Salamander Bay.

The existing premise is approved to operate as "professional consulting rooms" by definition and is limited to three health care professionals and 3 associated employees (refer to DA 7-1998-60693).

For a "medical centre" to be permissible on the subject land an amendment to the LEP is required.

This report deals with whether it is appropriate to make a medical centre permissible on the subject land. It does not seek to address compliance with the existing development consent nor assess the merits of a particular development application. A summary of compliance with the existing development consent for "professional consulting rooms" is provided at **Attachment 1 – Development Compliance Response.** In any case, the medical centre provided the following advice concerning the current operation of the business:

- 6 permanent employees and 1 casual
- 4 permanent doctors and 1 part time
- Services include general medicine, pathology, childhood and adult immunisation, counselling, women's and men's health and aviation medicals.

The site and context

The site is located at the corner of Bagnall Beach Road and Keel Street, Salamander Bay. To the north, east and south is residential development. Salamander Bay Shopping Centre and a variety of other businesses are located on the opposite side of Bagnall Beach Road, on land zoned for commercial development.

Keel Street is residential in character and surrounding dwellings are predominantly single storey. The business operates from a building that has the appearance of a two storey dwelling. If the LEP is amended to permit a medical centre on the subject land it will be open to the applicant to make a development application.

The proximity of the site to a major commercial centre and Bagnall Beach Road presents an opportunity to provide ongoing medical services with relatively easy access to public and private transport and commercial services.

Vehicle access is provided to the site by a single entry and exit located on Keel Street. No access is provided from Bagnall Beach Road. Because the site is located at the entrance to Keel Street there is little or no need for vehicles to travel beyond the medical centre and along Keel Street.

The location of the site is shown in Attachment 2 - Aerial Photograph.

The current zoning of the site is shown in **Attachment 3 – Existing Zoning Map**.

FINANCIAL/RESOURCE IMPLICATIONS

Implications for Council

If Council resolves to prepare a draft amendment to the LEP staff time will be allocated to its preparation.

Stage 1 rezoning lodgement fees of \$4 000 have been paid by the proponent. If the Department of Planning LEP Review Panel supports the amendment Stage 2 rezoning fees will apply.

Proponent request

The proponent submits that to operate in accordance with the existing consent, as professional consulting rooms, is socially unacceptable in terms of the adequate provision of medical services on the Tomaree Peninsula and will limit business growth at the site. It is also submitted that selling the site and relocating to suitably zoned land has severe financial implications and could result in the closure of the practice, however, this is not demonstrated in the information submitted by the proponent. The proponent submits that the most suitable option is to remain at the existing site and amend the LEP to allow a medical centre (RPS HSO Planning Proposal, page 5).

LEGAL, POLICY AND RISK IMPLICATIONS

Strategic Planning for Medical Centres

Population growth and aging is an important issue to consider. According to the *Port Stephens Community Settlement and Infrastructure Strategy* (CSIS 2007) the Tomaree Peninsula is the fastest growing planning district in the LGA, with a 25.7% increase in population since 1996. Additionally there are a high proportion of residents over 55 years of age at 30%, compared to the NSW average of 25% (ABS 2006). The provision of medical facilities and access to health is identified as a future social challenge in the CSIS (page 23). If the planning proposal is successful it will assist in addressing this challenge.

There are other businesses throughout the Port Stephens local government area providing medical-type services in the form of professional consulting rooms on sites similar to 2 Keel Street, Salamander Bay. That is, they are located on residential zoned land, on main transport routes and are adjacent to commercial areas. Examples include the professional consulting rooms on Adelaide Street in Raymond Terrace. This demonstrates that such sites service a demand for the provision of medical services, and highlights a need to consider the broader merits of allowing medical centres in these locations as part of a general future amendment to the LEP as part of the Principal LEP review process. It is also particularly relevant given the indicative demand for medical services on the Tomaree Peninsula and the Hunter Region generally. Council and community consideration of a medical centre at 2 Keel Street should provide an indication of whether this approach has merit and should be considered in a general amendment to the LEP at a later date.

Definitions

'Medical centre' is defined under the LEP as a building or place used for the purpose of providing professional health services (such as preventative care, diagnosis, medical or surgical treatment or counselling) to out-patients only.

'Professional consulting rooms' was defined under the *Port Stephens Local Environmental Plan 1987* means a room or number of rooms forming either the whole of or part, attached to or within the cartilage of a dwelling-house and used by not more than three legally qualified medical practitioners or by not more than three dentists within the meaning of the Dentists Act, 1934, or by not more than three health care professionals, who practise therein the profession of medicine, dentistry or health care respectively, and if more than one, practise in partnership, and who employ not more than three employees in connection with that practice.

The important difference between the two definitions is that a medical centre is not limited in scale. Professional consulting rooms are deliberately smaller in scale and likely to be compatible with the residential character of the 2(a) Residential zone. As such, medical centres are not permissible within the 2(a) Residential zone and usually permissible within commercial zones.

Amending the Port Stephens Local Environmental Plan 2000

The most appropriate mechanism for permitting a medical centre on the subject land is a site-specific enabling clause. This will make a medical centre permissible with consent within the existing 2(a) Residential zone and prevent other general commercial uses from occurring on the site and in the 2(a) Residential zone generally.

Enabling Clause

The planning proposal is proposed to be based upon a site-specific enabling clause to permit a medical centre on the site, within the existing 2(a) Residential zone. This will restrict commercial use of the site to a medical centre only and continue to prohibit other types of commercial use within the 2(a) Residential zone.

Zoning land provides certainty to the community about the amenity of an area and the types of land uses that are permitted. The subject land is zoned for residential development and it is reasonable to assume there is a level of community expectation that the land will maintain its residential character. It follows that the business operating at the subject site sought and received approval for professional consulting rooms, consistent with the scale and intensity of development envisioned within a residential zone, but seeks to legally expand beyond this.

Once a business expands beyond the scale of professional consulting rooms or home employment it is generally appropriate to relocate from a residential area to a business or other suitable zone. This is the policy position set down in the LEP and the *Port Stephens Development Control Plan 2007.* It provides certainty in the planning process and equity to other businesses that operate within, or establish according to, legal land use requirements.

Section 117 Planning Directions

Council is required to be consistent with State planning directions issued under section 117 of the *Environmental Planning and Assessment Act 1979* when preparing planning proposals.

Direction 3.4 Integrating Land Use and Transport applies and its objective, as it relates to the planning proposal, is to ensure land use locations improve transport sustainability. Direction 3.4 requires planning proposals to be consistent with the documents Improving Transport Choice – Guidelines for planning and development (DUAP 2001) and The Right Place for Business and Services – Planning Policy (DUAP 2001). The amendment is consistent with Direction 3.4 because the site is located adjacent to the existing commercial centre at Salamander Bay and well located to a major local transport route and public transport services.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Amending the LEP to permit a medical centre on the site will enable application to be sought for a medical centre on the subject land within the existing 2(a) Residential zone. Any future proposal will need to demonstrate that the proposal meets the requirements of the Building Code of Australia. And can satisfy car parking and other development application requirements for a medical centre.

CONSULTATION

Development and Building Team

Development and Building advice is that any subsequent development application for a medical centre on the subject land will be assessed on merit and using the development controls for commercial premises.

Social Planning Team

Social Planning section advise that access to health services and facilities need to expand in correlation with population growth to ensure the health needs of the existing and future population are met.

OPTIONS

Resolve to prepare a draft amendment to the LEP and insert an enabling clause allowing a 'medical centre' on the subject land.

Not prepare a draft amendment to the LEP and require the use to comply with the existing approval as a 'professional consulting room'.

ATTACHMENTS

- 1) Aerial Photograph
- 2) Existing Zoning Map
- 3) Development Compliance Response

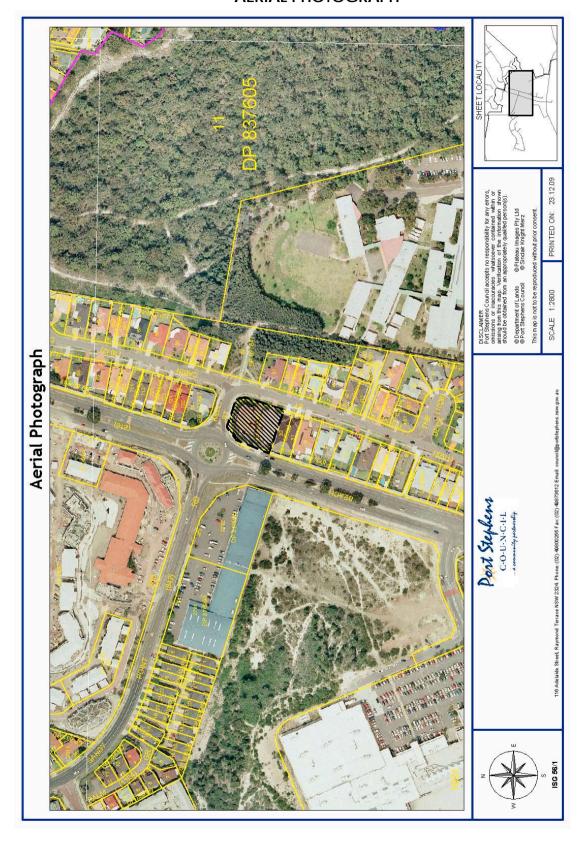
COUNCILLORS ROOM

1) Planning Proposal (RPS HSO, September 2009)

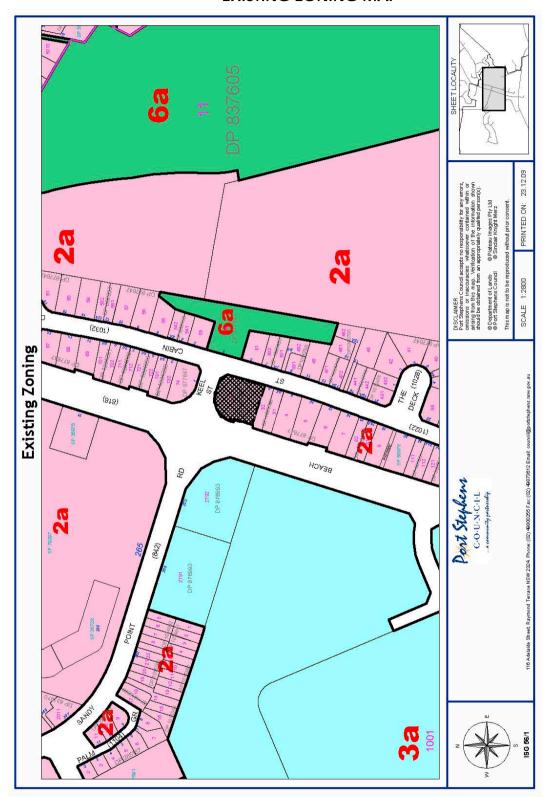
TABLED DOCUMENTS

Nil

ATTACHMENT 1 AERIAL PHOTOGRAPH



ATTACHMENT 2 EXISTING ZONING MAP



ATTACHMENT 3 DEVELOPMENT COMPLIANCE RESPONSE

In March 2009 Council's Development Compliance Officer was advised that the Salamander Bay Medical Centre at 2 Keel Street, Salamander Bay may not be operating within the conditions of development consent (DA 693/ 1998 Dwelling & Surgery - Professional Consulting Rooms) by expanding their business beyond that which was approved.

A site inspection was conducted and initial contact was made with the Medical Centre staff. A meeting with the owners took place on 1 April 2009. The owners cooperated with the investigation and provided information that suggested the use of the land was at a scale greater than that approved by Council.

At the request of the owners a meeting with the Mayor took place on 14 April 2009. The owners were advised that staff have characterised the current land use as a Medical Centre which is prohibited by *Port Stephens Local Environmental Plan 2000* in the 2(a) zone where this development is situated. The owners said that they wished to remain at the site due to their substantial investment and demand for their services by patients.

As Medical Centres are not permissible, staff advised the owners that one option available to them would be to seek a rezoning to make the use permissible and to allow an application for a Medical Centre to be assessed. The operators advised that they would consider the options.

On 27 May 2009 the operators and their consultant met with planning staff to pursue an application seeking an amendment to the *Port Stephens Local Environmental Plan 2000* to rezone the land. At that meeting the owners advised Council staff that they were considering an expansion to the current operation which would be dependent on the application for rezoning.

It was considered that the owners should be given the opportunity to lodge an application for rezoning prior to initiating enforcement action as the risks identified at the site do not require immediate intervention by Council. If the operators failed to lodge an application within a reasonable time frame, without reasonable excuse, or the application is not supported by either Council or the Department of Planning, enforcement action will commence seeking compliance with the conditions of development consent or the relocation of the business to suitably zoned land.

ITEM NO. 4 FILE NO: 2008-3522

REVIEW (2010) OF PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000

REPORT OF: PETER MARLER - ACTING MANAGER INTEGRATED PLANNING

GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Prepare a Planning Proposal pursuant to the Environmental Planning and Assessment Act 1979 to amend the Port Stephens Local Environmental Plan (LEP) 2000 to:
 - Alter the Heritage Conservation Area boundary;
 - Include the Farm Silo Steel Street Williamtown as an additional heritage item of local significance;
 - Make a general administrative update to Schedule 2 of LEP 2000 to reflect changes to lot numbers, deposited plans etc and bring the Schedule into the Standard Instrument format;
 - Provide a minor addition to Schedule 3 Exempt development signage for sponsorship in open space areas;
 - Rezone Lot 1 DP 874513, 51 William Street Raymond Terrace from 3(a) General Business to 5(c) Proposed Road Zone;
 - Remove superfluous provisions from the Exempt and Complying Schedules in accordance with the State Environmental Planning Policy (SEPP) (Exempt and Complying Development Code) 2008 which are scheduled to take effect on 27 February 2010;
 - Rezone and reclassify part of Lot 61 DP 24364, Johnson Avenue Karuah from Residential 2(a) to Public Open Space 6(a).
- 2) On receipt of the Authorisation to Exercise Delegation from the Minister, place the draft LEP and supporting documentation on exhibition in accordance with the requirements of the Department of Planning.
- 3) Note that No 2,4,6 and 11 Irrawang Street, Raymond Terrace have been identified as potential heritage items and should be considered for listing if any funding becomes available.

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor John Nell	That the matter be deferred to allow for a 2-
Councillor Ken Jordan	way conversation.

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

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

Those against the Motion: Nil.

ORDINARY MEETING - 09 FEBRUARY 2010

007	Councillor John Nell Councillor Ken Jordan	It was resolved that the Council Committee recommendation be adopted.
	Councillor Ken Jordan	recommendation be adopted.

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

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

Those against the Motion: Nil.

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The purpose of this Report is to recommend Council resolve to prepare and place on exhibition an amendment to the Port Stephens Local Environmental Plan (LEP) 2000. The Amendment is the result of a comprehensive review of the existing Heritage Conservation Areas at Raymond Terrace, Tipperary Hill and Hinton in association with Council's Heritage Advisory Committee, a minor addition to Schedule 3 Exempt development, the actioning of two Council resolutions and removal of provisions in the Exempt and Complying Schedules resulting from the implementation of the SEPP Exempt and Complying Development Code which is effective 27 February 2010.

In addition Council resolved on 28 July 2009 to initiate a draft amendment to Clause 14 of LEP 2000 to enable permissibility of dwellings on allotments created prior to the appointed date. To progress the proposed amendment the Department of Planning has confirmed Council will need to undertake an analysis of the implications having regard to the State Environmental Planning Policy (Rural Lands) 2008. This work is currently being prepared and will be presented to Council once completed.

Council also resolved on 24th October 2006 to rezone and reclassify part of Lot 61 DP 24364, Johnson Avenue Karuah from Residential 2(a) to Public Open Space 6(a) in order for the land to be maintained as a public park as part of Aliceton Reserve. This recommendation will implement Council's earlier resolution on this matter.

BACKGROUND

Previously Council has requested that LEP 2000 be reviewed regularly to ensure the document is current and reflects the changing demands on land use provisions. Since the 2008 General Review additional matters have been identified to be addressed prior to the Principal LEP required in 2011. A copy of the Planning Proposal and draft instrument are provided as **Attachments 1** and **2**.

Key Proposed Amendments

Heritage

As part of the preparation of the Principal LEP the current heritage schedule and Heritage Conservation Areas have been reviewed. As the work has been completed it is considered appropriate to progress these amendments now rather than wait for the Principal LEP. Council's Heritage Advisory Committee (the Committee) had initially reviewed the current schedule of heritage items and their associated level of significance with the recommended changes being addressed in the 2008 General Review. The Committee and Council's Heritage Advisor have now reviewed the existing three Heritage Conservation Areas of Hinton, Tipperary Hill and Raymond Terrace.

A review of the three Heritage Conservation Areas, two located within Raymond Terrace and the third at Hinton, was conducted by the Heritage Advisor between August 2008 and February 2009 in consultation with the Committee. The purpose of this review was to ascertain the integrity of the conservation areas. Recommendations from the Committee for retaining existing boundaries or contraction of some areas within the HCA's are outlined as follows:

1) Raymond Terrace

The precinct nominated as the Raymond Terrace Conservation Area generally describes a section of Raymond Terrace which contains the majority of listed heritage items. There has been some new residential development occur in the Melba Crescent/ Bourke Street area, which mostly contains residences that are of a post war period with little or no heritage significance. Likewise there are areas that have had commercial development of an unsympathetic heritage nature that now require removal from the conservation area boundaries.

Main areas to be deleted:

Location: The residential block bounded by Irrawang, Bourke and Melba Crescent. Modern housing development has occurred in this area, which appears to be generally made up of typical post war housing with little or no heritage significance.

Location: Properties to the west of Adelaide Street between Glenelg and William Street. This is predominantly vacant commercial land and is located in a commercial precinct that has no heritage significance.

Recommendation: Remove existing HCA boundaries to the above 2 areas, and other minor locations in accordance with the attached map.

Refer to **Attachment 3** for the existing HCA boundary for Raymond Terrace and **Attachment 4** for the proposed conservation area boundary.

2) Tipperary Hill

It is recommended that this Heritage Conservation Area be deleted due to very recent and dense housing unit development. It is also recommended that the following residences be locally heritage listed due to their local significance, historical and visual qualities - Numbers 2, 4, 6 and 11 Irrawang Street.

Recommendation: Delete Tipperary Hill Heritage Conservation Area and consider listing of No 2, 4. 6 and 11 Irrawang Street as heritage items of local significance.

3) Hinton

Currently bounded by Nulla Nulla Street in the east and the Patterson River and bridge to the west. Generally following Hinton Road, and side streets and Patterson Street towards the Patterson River either side. (Refer to map at **Attachment 5**)

While there has been a considerable amount of development along Hinton Road on the eastern approaches to the village, the former Residential 2(a) zoned land to the north and south of Hinton Road, as far east as Dillin Lane and the western boundaries of the properties fronting Bounty Close, this land is important in the cultural landscape setting of the village. This includes land around Stuart Park and its heritage-listed grandstand, where Heritage Conservation Area controls are considered necessary to ensure that new development enhances rather than detracts from the heritage values of Hinton.

Recommendation: Retain existing Hinton Heritage Conservation Area boundaries.

Heritage Conservation Area Maps

The HCAs are identified on a separate map from the LEP zone maps. As a result they are often considered difficult to find. To improve interpretation and allow ease of access it is proposed to include the Heritage Conservation Area on the zone maps. To allow this to occur an additional clause is proposed to be included in LEP 2000 stating the names of the Heritage Conservation Areas and referencing the zoning maps. The relevant definitions have been amended accordingly.

<u>Proposed Additional Heritage Item – Lot 2001 DP 1033856 20 Steel Street Williamtown</u> On 25 November 2008 a Mayoral Minute resolved:

To prepare a draft amendment to Port Stephens Local Environmental Plan 2000 to include the silo at Steel Street, Williamtown in the schedule of items of local heritage significance and consult with the Heritage Advisor as part of the process.

To progress this Resolution a heritage assessment of the silo was undertaken in accordance with the NSW Heritage Office assessment criteria and by a suitably

qualified heritage expert. This work has now been completed and the heritage expert has recommended that the silo be listed as an item of local significance in LEP 2000. This Heritage Assessment document will form part of the supporting documentation for the public exhibition period and a copy has been placed in the Councillors Rooms.

Administrative Update

In preparation for the Principal LEP, an administrative review of the Heritage Schedule in LEP 2000 was undertaken. This review has allowed for the updating of property information and conversion into the format required by the Department of Planning for the Principal LEP. Excluding the proposed listing of the silo in Williamtown and the reformatting of the document is administrative only, no other changes are recommended to the items currently listed in Schedule 2 of LEP 2000.

<u>Schedule 3 Exempt development – signage for sponsorship in open space areas.</u>
The LEP 2000 Schedule 3 identifies Exempt development. Exempt development, is development that does not require approval under the Environmental Planning and Assessment Act, 1979.

The Schedule identifies several types of relatively minor development including signage. One type of sign listed is for sporting fields which specifies a maximum 5m width and 0.9 height as well as locational restrictions and consistency with an adopted Plan of Management. However, this only relates to sporting fields with no provisions included for other open space areas. As a result, an amendment to the Schedule is proposed to allow sponsorship signage in open space areas with a maximum width of 5m and height of 1m, a maximum of 1 sign per site and in accordance with an adopted Plan of Management.

Rezoning - Lot 1 DP 874513 51 William Street Raymond Terrace

The subject site is the former Raymond Terrace Fire Brigade Station. On 25 August 2009 Council resolved to identify the site as public road. The resolution outlined a series of legal steps the Council would need to undertake to identify the land as public road. The final step was to refer the information to the Strategic Planning Section to rezone the site from 3(a) (Business General "A" Zone) to 5(c) Proposed Road Zone under LEP 2000. A draft LEP to rezone the site is located at **Attachment 6**.

<u>State Environmental Planning Policy (Exempt and Complying Development Codes)</u> 2008

State Environmental Planning Policy (Exempt and Complying Development Code) 2008 (the SEPP) commenced on 27 February 2009. The SEPP has implications for Schedules 3 and 4 of LEP 2000 Exempt and Complying provisions in so far as any inconsistency with the SEPP, the SEPP prevails over LEP 2000.

For a 12 month period the SEPP allowed exempt and complying development under Councils LEP 2000 to run concurrently with the SEPP, however, from 27 February 2010 the SEPP will prevail to the extent of any inconsistency.

Department of Planning have advised that Council's Schedules will not automatically be updated by Parliamentary Counsel in the short term. This will leave

superfluous information in LEP 2000 when the LEP is inconsistent with the SEPP creating confusion for those using the document. To overcome this problem it is proposed to amend the Schedule by deleting duplicated provisions under Section 73A of the Act. This part of the Act deals with administrative amendments which do not alter policy and do not require exhibition.

Rezone part of Lot 61 DP 24364, Johnson Avenue Karuah from Residential 2(a) to Public Open Space 6(a).(Aliceton Reserve)

In 2006 Council considered a proposal to subdivide a portion of lot 61 DP 24364 for 8 residential lots at Johnson Avenue Karuah. The land currently forms part of Aliceton Reserve at Karuah. Most of the land that forms part of the reserve (approx. 3.4 ha) is currently zoned 6(a) while a small proportion is zoned 2(a) (approx. 0.6 ha). In 2006 Council was considering a proposal to subdivide the 2(a) portion for residential purposes, however community opposition, potential ecological values and the recognition by Council officers that the Reserve has the potential to become the town's most highly utlised park, resulted in the following resolution being adopted by Council on 24th October 2006:

- 1) There be no further action regarding this matter; and
- 2) That the subject land be reclassified from operational to community; and
- 3) That a draft LEP be initiated under the Environmental Planning and Assessment Act 1979 with the intent of rezoning from Residential 2(a) to Public Open Space 6(a) in the Port Stephens LEP 2000.

The proposed rezoning and reclassification of Aliceton Reserve was previously included in Council's draft LEP amendment for the rezoning and reclassification of various parcels of Council owned land throughout the LGA, which was considered and recommended by Council at its meeting of 28th July 2009. However, due to the additional information requirements of the Department of Planning and the large number of properties to be rezoned from public open space to residential purposes, it is considered appropriate to expedite the rezoning of the subject land as part of this LEP amendment.

The Reserve is currently classified as operational land, therefore it can be reclassified to community land through the Council resolution (which has occurred on 24th October 2006) and therefore only the rezoning component need to be included as part of this LEP amendment. As the land is being reclassified to community land, a public hearing is not required. A draft LEP to rezone the site is located at **Attachment 7**.

FINANCIAL/RESOURCE IMPLICATIONS

The financial impacts associated with this review and the resultant amendments have been funded from the existing operational budget and using current staff resources. No additional funds are being sort to complete this work.

Reference has been made to the potential of listing of heritage items in Williamtown and Raymond Terrace (Tipperary Hill). As stated, to comply with the requirements of the Heritage Office additional work would need to be undertaken. The cost of this

additional work could be up to \$10,000. There is no allocation in Council's budget for this work.

The proposed 5(c) zone for William Street Raymond Terrace will require acquisition and associated costs to Council at some point in time. However; these matters were dealt with in a previous Council report 25 August 2009.

LEGAL AND POLICY IMPLICATIONS

Adoption of the recommendations of this Report will formally commence the process of amending LEP 2000, in order to improve its operation. The Environmental Planning and Assessment Act, 1979 requires Council to resolve to prepare a draft planning proposal (amending LEP) and forward it to the Department of Planning LEP Review Panel for Authorisation of Delegation prior to proceeding to public exhibition.

In addition to the request to list four properties recommended by the Heritage Advisory Committee in the review of the Tipperary Hill Heritage Conservation Area, a submission to list the Williamtown Primary School has also been received. As in the case of the request to list the silo in Williamtown, a heritage assessment prepared in accordance with the Heritage Office guidelines would need to be undertaken. Council does not have a budget allocation for this work.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

To support a sustainable Port Stephens, in accordance with Council's Sustainability Policy, LEP 2000 needs to maintain its accuracy and currency to respond to changes in trends, demands and government policy for land use. The annual review and proposed amendments to LEP 2000 provides Council with the opportunity to make amendments or clarifications which assist in the interpretation and operation of the document for both the community and Council officers. By amending the LEP, Council continues to emphasise its commitment to streamline the development assessment process.

CONSULTATION

The results of the above reviews of the Heritage Conservation Area have been mapped and presented to the Heritage Advisory Committee for comment. No issues were raised by the Committee and the recommendations made by the Heritage Advisor were adopted. External consultation will occur in accordance with the provisions of the Act. The Committee will be advised of any submissions received relating to their recommendations.

The Recreation and Strategic Planning Sections discussed the legal requirements of signage proposed on Council assets to ascertain the current development requirements and ensure compliance. As a result of these discussions only a minor amendment was required.

In relation to the partial rezoning of Aliceton Reserve Karuah from 2(a) Residential to 6(a) Public Open Space, previous consultation has occurred with West Ward Councillors, the Business and Support Group Manager, Recreation Services Manager, Recreation Planner, Property Unit Co-ordinator, Property focus Group and members of the Karuah Progress Association.

OPTIONS

- 1) Council resolve to support the recommendations of this Report to refer the draft Amendment to the Minister seeking Authorisation to Exercise Delegation and proceed to exhibition. This is the recommended option.
- 2) Request changes to the draft Amendment. This would require the reallocation of resources to undertake requested changes and delay both this Amendment and the preparation of the Principal LEP.
- 3) Not support the recommendation. This is not the preferred option and will not assist the improvement in the operation of the document or support the improvements to the development assessment process.

ATTACHMENTS

- 1) Planning Proposal
- 2) Instrument
- 3) Map Existing Raymond Terrace Heritage Conservation Area boundary
- 4) Map Proposed Raymond Terrace Heritage Conservation Area boundary
- 5) Map Hinton Existing Conservation Area
- 6) Rezoning Map Lot 1 DP 874513, 51 William Street Raymond Terrace
- 7) Rezoning Map Lot 61 DP 24364, Johnson Avenue Karuah

COUNCILLORS ROOM

1) Copy of Heritage Assessment of the Silo Steel Street Williamtown.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1 - PLANNING PROPOSAL

Planning Proposal - Amendment to Port Stephens LEP 2000

Part 1 – Objectives or Intended Outcomes

To amend the conservation area boundaries to reflect more appropriately areas to be identified as conservation areas, list an additional heritage item of local significance and undertake a general administrative update of the Schedule to reflect changes to lot numbers, deposited plans etc. The Planning Proposal also recommends the rezoning of an existing commercially zoned site to proposed road reserve in accordance with an approved Road Widening Scheme, a minor addition to Schedule 3 Exempt development – signage for sponsorship in open space areas and Section 73A amendment to Exempt and Complying development Schedules in response to the SEPP Exempt and Complying Development Codes 2008 changes in force 27 February 2010. In additional the proposal seeks to rezone part of Lot 61 DP 24364, Johnson Avenue Karuah from Residential 2(a) to Public Open Space 6(a) in order for the land to be maintained as a public park as part of Aliceton Reserve.

Part 2 – Explanation of Provisions

The intent of the proposal is to:

- Alter the Heritage Conservation Area boundary;
- Include Farm Silo Steel Street Williamtown as a heritage item of local significance;
- Undertake a general administrative update of Schedule 2 of LEP 2000 to reflect changes to lot numbers, deposited plans etc and bring the Schedule into the Standard Instrument format;
- Undertake minor addition to Schedule 3 Exempt development;
- Rezoning of Lot 1 DP 874513, 51 William Street Raymond Terrace.
- Rezone and reclassify part of Lot 61 DP 24364, Johnson Avenue Karuah from Residential 2(a) to Public Open Space 6(a).

Part 3 – Justification

Section A - Need for the planning proposal

1) Is the planning proposal a result of any strategic study or report?

The Amendment is the result of a comprehensive review of the Heritage Conservation Areas in Port Stephens LEP 2000 in association with Council's Heritage Advisory Committee, a minor addition to Schedule 3 Exempt development and the

actioning of two Council resolutions. Part of the amendment relates to updating and reformatting the heritage schedule in readiness for its move across to the Standard Template LEP format.

The following is the detail of what is proposed in the Planning Proposal and the rationale for the Amendment.

Heritage

As part of the preparation of the Principal LEP the current heritage schedule and Heritage Conservation Areas have been reviewed. As the work has been completed it is considered appropriate to progress these amendments now rather than hold them back and wait for the Principal LEP. Council's Heritage Advisory Committee had initially only reviewed the current schedule of heritage items and their associated level of significance with the recommended changes being addressed in the 2008 General Review (Amendment 31). The Committee have now reviewed the existing three Heritage Conservation Areas of Hinton, Tipperary Hill and Raymond Terrace.

The purpose of a heritage conservation area (HCA) is to identify and protect an area recognised as having both important visual and historic qualities. Development within the HCA is required to be monitored to ensure that the areas unique qualities are not compromised in any manner by poorly conceived or unsympathetic acts.

A review of the three HCA, two located within Raymond Terrace and the third at Hinton, was conducted by the Heritage Advisor between August 2008 and February 2009 in consultation with the Committee. The purpose of this review is to ascertain the integrity of the conservation areas and make recommendations for the effective management of each area. Recommendations from the Committee for retaining existing boundaries or contraction of some areas within the HCA's are outlined as follows:

4) Raymond Terrace

The precinct nominated as the Raymond Terrace Conservation Area generally describes a section of Raymond Terrace which contains the majority of listed heritage items. There has been some new residential development occur in the Melba Crescent/ Bourke Street area, which mostly contains residences that are of a post war period with little or no heritage significance. Likewise there are areas that have had commercial development of an unsympathetic heritage nature that now require removal from the conservation area boundaries.

Main areas to be deleted:

Location: The residential block bounded by Irrawang, Bourke and Melba Crescent. Modern housing development has occurred in this area, which appears to be generally made up of typical post war housing with little or no heritage significance.

Location: Properties to the west of Adelaide Street between Glenelg and William Street. This is predominantly vacant commercial land and is located in a commercial precinct that has no heritage significance.

Recommendation: Remove existing HCA boundaries to the above 2 areas, and other minor locations in accordance with the attached map.

Refer to **Attachments** for the existing HCA boundary for Raymond Terrace and for the proposed conservation area boundary.

5) Tipperary Hill

It is recommended that this HCA be deleted due to very recent and dense housing unit development. It is also recommended that the following residences be locally heritage listed due to their local significance, historical and visual qualities - Numbers 2, 4, 6 and 11 Irrawang Street.

Recommendation: Delete Tipperary Hill HCA and consider listing of No 2, 4. 6 and 11 Irrawang Street.

6) Hinton

Currently bounded by Nulla Nulla Street in the east and the Patterson River and bridge to the west. Generally following Hinton Road, and side streets and Patterson Street towards the Patterson River either side. (Refer to map for details)

While there has been a considerable amount of development along Hinton Road on the eastern approaches to the village, the former Residential 2(a) zoned land to the north and south of Hinton Road, as far east as Dillin Lane and the western boundaries of the properties fronting Bounty Close, this land is important in the cultural landscape setting of the village. This includes land around Stuart Park and its heritage-listed grandstand, where HCA controls are considered necessary to ensure that new development enhances rather than detracts from the heritage values of Hinton.

Recommendation: Retain existing Hinton HCA boundaries.

Heritage Conservation Area Maps

The Heritage Conservation Areas are identified on a separate map from the zone maps. As a result they are often considered difficult to find. To improve interpretation and allow ease of access the Heritage Conservation Areas will now appear on the zone maps. To allow this to occur an addition clause will be included in LEP 2000 stating the names of the areas and referencing the zoning maps. The relevant definitions have been amended to reflect the change in reference to the specific parts of the LEP. An example being **heritage item means** a building, work, relic tree or place listed in *Part 1 of Schedule 2* rather than the reference to *Part 1 or 2 of Schedule 2*.

<u>Proposed Additional Heritage Item – Lot 2001 DP 1033856 20 Steel Street Williamtown</u> On 25 November 2008 a Mayoral Minute resolved:

To prepare a draft amendment to Port Stephens Local Environmental Plan 2000 to include the silo at Steel Street, Williamtown in the schedule of items of local heritage significance and consult with the Heritage Advisor as part of the process.

To progress this Resolution a heritage assessment of the silo was required to be undertaken in accordance with the Heritage Office criteria and by a suitably qualified heritage expert. This work has now been completed and the heritage expert has recommended that the silo be listed as an item of local significance in LEP 2000. This Heritage Assessment document will form part of the supporting documentation for the public exhibition period.

<u>Administrative Update</u>

In preparation for the Principal LEP, an administrative review of the Heritage Schedule in LEP 2000 was undertaken. This review has allowed for the updating of property information and conversion of the information into the format required by the Department of Planning for the Principal LEP. Excluding the proposed listing of the silo in Williamtown and the reformatting of the document, there are no other changes recommended to the items currently listed in Schedule 2 of LEP 2000.

<u>Schedule 3 Exempt development – Signage for sports fields and open space access.</u> The LEP 2000 Schedule 3 identifies Exempt development. Exempt development, is development that does not require approval under the Environmental Planning and Assessment Act, 1979.

The Schedule identifies several types of relatively minor development including signage. One type of sign listed is for sporting fields which specifies a maximum 5m width and 0.9 height as well as locational restrictions and the need to be in accordance with an adopted Plan of Management. However, this only relates to sporting fields with no provisions included for other open space areas. As a result, an amendment to the Schedule is proposed to allow sponsorship signage in open space areas with a maximum width of 5m and height of 1m, a maximum of 1 sign per site and in accordance with an adopted Plan of Management.

Rezoning - Lot 1 DP 874513 51 Williams Street Raymond Terrace

The subject site is the former Raymond Terrace Fire Brigade Station. On 25 August 2009 Council resolved to identify the site as public road. The resolution outlined a series of legal steps the Council would need to undertake to return the site to this status. The final step was to refer the information to the Strategic Planning Section to rezone the site from 3(a) (Business General "A" Zone) to 5(c) Proposed Road Zone under LEP 2000.

Rezone part of Lot 61 DP 24364, Johnson Avenue Karuah from Residential 2(a) to Public Open Space 6(a).

The land currently forms part of Aliceton Reserve at Karuah. Most of the land that forms part of the reserve (approx. 3.4 ha) is currently zoned 6(a) while a small proportion is zoned 2(a) (approx. 0.6 ha). The Reserve is well utilised by the residents and visitors to Karuah and is anticipated to be highly utilised in the future.

The proposed rezoning and reclassification of part of Aliceton Reserve was previously included in Council's draft LEP amendment for the rezoning and reclassification of various parcels of Council owned land throughout the LGA, which was considered and recommended by Council at its meeting of 28th July 2009. However, in order to

expedite the rezoning, it is considered appropriate to remove this rezoning from this draft amendment. The Reserve is currently classified as operational land, therefore it can be reclassified to community land through the Council resolution and therefore only the rezoning component need to be included as part of this LEP amendment.

2) Is the planning proposal the best means of achieving the objectives of intended outcomes or is there a better way?

The Planning Proposal is the only means of achieving the intended outcomes as Council is unable to move outside the legislative framework determined by the Environmental Planning and Assessment Act, 1979.

3) Is there a net community benefit?

Consideration of net community benefit is not relevant to what is proposed in this Planning Proposal.

Section B - Relationship to strategic planning framework

4) Is the planning proposal consistent with the objectives and actions contained with the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The Planning Proposal is consistent with the Lower Hunter Regional Strategy (LHRS) 2006. The changes proposed are generally minor in nature having regard to the broad strategic context of the LHRS.

5) Is the planning proposal consistent with the local council's Community Strategic plan or other local strategic plan?

The Planning Proposal is consistent with Council's adopted Community Settlement and Infrastructure Strategy (CSIS). The proposed Amendment is considered of minor planning significance in the boarder strategic context.

6) Is the planning proposal consistent with the applicable state environmental planning policies?

The Planning Proposal is consistent with the relevant state environmental planning policies.

7) Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

<u>Business and Industrial Zones</u> (1.1) – The Planning Proposal is considered to be consistent with the Direction. Although the proposal will result in a minor reduction of commercial zone by one small parcel of land, the new use will facilitate better traffic flow by improving the existing network.

Heritage Conservation (2.3) – The Planning Proposal is generally consistent with this Direction. An additional item is recommended for listing as an item of local significance. A comprehensive review of the Heritage Conservation Areas (HCA) has been undertaken. Changes are in accordance with the Heritage Office Guidelines. It is recommended that Tipperary Hill be removed due to the limited number of contributory items and recent developments which have compromised the integrity of the HCA. The Raymond Terrace HCA had been reviewed and recommended to be reduced in size. There has been limited development in the area, however, a large proportion of this area could not be considered as contributory items for a HCA. As a result the proposal is considered appropriate in this instance.

<u>Implementation of Regional Strategies</u> (5.1) – The proposal is consistent with the Lower Hunter Regional Strategy.

Reserving Land for Public Purposes (6.2) – the proposed rezoning of the site in William Street Raymond Terrace is for the purpose of public road. This site has been the subject of a previous Council Report relating to the implementation of a Road Widening Scheme. The property is owned by the Department of Lands who is aware of the proposal. As a result the proposal is considered to be consistent with this Direction. The proposed rezoning to Public Open Space of land in Johnson Street Karuah is consistent with this direction.

Section C - Environmental, social and economic impact

8) Is there any likelihood that critical habitat or threatened species, populations or ecological communities or their habitats, will be adversely affected as a result of the proposal?

The Planning Proposal relates mainly to heritage matters with one rezoning being located in an established commercial area. As a result the proposal will not have an impact on critical habitat or threatened species, populations or ecological communities or their habitats.

9) Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No other environmental effects are envisaged as a result of this Planning Proposal.

10) How has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal is of minor planning significance and will not result in any adverse social and economic effects. In regard to the proposed listing of the silo at Williamtown, the property owner is the Department of Defence who are aware of Council's desire to retain the silo. The silo is located on land purchased by the

Department as part of their buffer area around the RAAF Base at Williamtown. The Department will be notified as an affected property owner during the exhibition process. A copy of the Mayor Minute is attached for your information.

Section D - State and Commonwealth interests

11) Is there adequate public infrastructure for the planning proposal?

The Planning Proposal is of minor planning significance and will not adversely affect public infrastructure demand.

12) What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Excluding the Department of Defence and Department of Lands as property owners no additional consultation has occurred with public authorities at this point in the process. The NSW Heritage Office will be consulted as part of the exhibition process.

Part 4 - Community Consultation

A 14 day public consultation is suggested having regard to the relatively minor nature of the development and the explanation provided in the Department of Planning's A guide to preparing local environmental plans. The property owners affected by the changes to the heritage conservation areas will be notified in writing. The property owners affected as a proposed heritage item and road reserve will also be notified in writing. In addition to these, the Raymond Terrace Business Chamber will be invited to comment on the changes to the heritage conservation areas. Advertisements will be placed in the paper and details will be available on Council's website and local library.

Conclusion

The Planning Proposal provides an overview of the intent of the amendments, however, for a full disclosure of the proposed changes please refer to the attached draft Instrument.

ATTACHMENT 2 - DRAFT INSTRUMENT

(draft)	
Port Stephens Local Environmental Pla	n
2000 (Amendment No)	

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the Environmental Planning and Assessment Act 1979.

Minister for Planning

Port Stephens Local Environmental Plan 2000 (Amendment No)

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

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

2 Commencement

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

3 Aims of Plan

This Plan aims to amend Port Stephens Local Environmental Plan 2000:

- (a) to alter the Heritage Conservation Area boundaries at Raymond Terrace and Tipperary Hill;
- (b) to include the Farm Silo Steel Street Williamtown as an additional heritage item of local significance;
- (c) to make a general administrative update to Schedule 2 of LEP 2000 to reflect changes to lot numbers and deposited plans and bring the Schedule into the Standard Instrument format;
- (d) to provide a minor addition to Schedule 3 Exempt development signage for sponsorship in open space areas;
- (e) to rezone part of the land to which this Plan applies from Zone 3(a) (General Business) to Zone 5(c) (Proposed Road Zone) to facilitate the construction of a road:
- (f) to remove superfluous provisions from the Exempt and Complying Schedules in accordance with the State Environmental Planning Policy (SEPP) (Exempt and Complying Development Code) 2008 which are scheduled to take effect on 27 February 2010;
- (g) to rezone part of the land to which this Plan applies from Zone No 2(a) (Residential) to Zone No 6(a) (Public Open Space) to facilitate the continued use of the land as a public reserve.

4 Land to which Plan applies

This plan applies to all land to which the *Port Stephens Local Environmental Plan 2000* applies, including:

The Areas and items listed in Schedule 1 Amendment of Port Stephens Local Environmental Plan 2000 and Lot 1 DP 874513 and part of Lot 61 DP 24364 at William Street Raymond Terrace and Johnson Avenue Karuah, as shown edged heavy black and lettered "5(c)" or "6(a)" on the map marked "Port Stephens Local Environmental Plan 2000 (Amendment No)" deposited in the office of Port Stephens Council.

Schedule 1 Amendment of Port Stephens Local Environmental Plan 2000

[1] Schedule 2, Heritage

Omit Part 1 including title

Insert instead Part 1 Heritage Items

Anna Bay	Underground water tank	Nelson Bay Road	Lot 884 DP 737049	Local
Anna Bay	Birubi Point Cemetery	Ocean Avenue	DP 753204	Local
Duns Cre ek	Duninald House Group – Old Duninald, including mature plantings and landscape setting	Paterson Road	Lot 101 DP 549398	State
Duns Cre ek	Duninald House Group – Duninald, including mature plantings, lagoon and landscape setting	Paterson Road	Lot 50 DP 100311	State
Eagleton	Eagleton Shipyard site	Newline Road	Lot 2 DP 826917	Local
East Sea ha m	Road alignment and indigenous roadside vegetation including Corymbia maculate (Spotted Gum), Eucalyptus siderophloia (Iron Bark), Eucalyptus fibrosa (Iron Bark), Eucalyptus tereticornis (Forest Red Gum) and Eucalyptus punctata (Grey Gum)	East Seaham Road and Road Reserve		Local
East Seaham	Seaham Knitting Circle Memorial	New Line Road	Lot 2 DP 214077	Local
Fingal Bay	Point Stephens Lighthouse Group, including lighthouse station, tower, remains of lighthouse keepers cottage	Marine Drive	Lot 177 DP 753204	State
Fullerton Cove	Stanley Park House	Fullerton Cove Road	Lot 11 DP 258848	Local
Glen Oak	Glen Oak School of Arts, including Memorial gates and war memorial plaque	Clarencetown Road	Lot 227 DP 752497	Local
Heatherbra e	Trees – 2 specimen of Ficus macrophylla	Pacific Highway Reserve Road	Adjacent to Lot 102, DP	Local

	(Moreton Bay Fig)		807522	
Hinton	Anglican Cemetery	Elizabeth Street	Lot 801 DP 881208	Local
Hinton	Baptist Church	Elizabeth Street	Lots 36 and 38 DP 975910	State
Hinton	Former Police Station	Elizabeth Street	Lot 55 DP 975910	Local
Hinton	Wallalong/Bowthorne War Memorial	High Street	Lot 1 DP 979470	Local
Hinton	School of Arts, including two large white marble war memorial plaques	Hinton Road	Pt Lot 31 DP 752487	State
Hinton	Hinton Pioneer Cemetery	Hinton Road	Lot 7002 DP 1052993	Local
Hinton	Rosemount, including outbuildings, landscape settings and Bunya Pine trees	Hinton Road	Lots 18-19 DP 1044452 Lots 20-23 DP 1053120	State
Hinton	Hinton Bridge over Paterson River	Hunter River		State
Hinton	Rosemount, including outbuildings, landscape settings and Bunya Pine trees	Hunter Street	Lots 18-19 DP 1044452 Lots 20-23 DP 1053120	State
Hinton	Prospect House, Including outbuildings and landscape setting	McClymonts Swamp Road	Lot 1 DP 65422	State
Hinton	Public School, including main building, shelter sheds, memorial gates	Paterson Street	Lot 100 DP 808856	State
Hinton	Victoria Hotel	Paterson Street	Lot 1 DP 75465	Local
Hinton	Timber Cottage	Paterson Street	Lot 21 DP 770598	Local
Hinton	Timber Cottage	Paterson Street	Lot 14 DP 975920	Local
Hinton	Georgian cottage	Paterson Street	Lot 70 DP 1045778	Local
Hinton	Former St John the Evangelist Church	Paterson Street	Lot 802 DP 881208	Local
Hinton	Grandstand, Stuart Park	Swan Road	Reserve Number 10417	Local
Hinton	Rosemount, including outbuildings, landscape settings and Bunya Pine trees	Swan Street	Lots 18-19 DP 1044452 Lots 20-23 DP 1053120	State
Karuah	Karuah Town War Memorial (Memorial Park/Lion Park)	Memorial Drive	Lot 6 DP 753196	Local
Karuah	Karuah Cemetery	Tarean Road	Reserve Number	Local

			40511	
Lemon Tree Passage	Johnson's Cottage	Johnson Parade	Lot 1 DP 818801	Local
Nelson Bay	Former oil-burning street lamp – on boundary of Lot 1, DP 507368 and Lot 60, DP 24943	Christmas Bush Avenue	Lot 1 DP 507368	Local
Nelson Bay	Apex Park Group, including Centaph, well, remains of the memorial steps and tree – specimen of Ficus rubiginosa (Port Jackson Fig)	Laman Street	Reserve Number 64421 Pt Lot 154 DP 753204	Local
Nelson Bay	Former oil-burning street lamp – corner of Laman Street and Government Road	Laman Street Road Reserve		Local
Nelson Bay	Point Stephens Lighthouse Group, Nelson Head Lighthouse, cottage and reserve	Lighthouse Road	Lot 427 DP 39728	State
Nelson Bay	The Native Flora Reserve, including site of former migrant camp, foundations of HMAS Assault, Aboriginal scar tree, burial site and below water artefacts and items including Higgins landing barges, army jeeps, various munitions and anchor of USS Henry S Grant	Lighthouse Road	DP 753204	Local
Nelson Bay	Gan Gan Army Camp	Nelson Bay Road	Lot 11 DP 841401	State
Nelson Bay	Nelson Bay Cemetery	Stockton Street	Reserve Number 82387	Local
Port Stephens	Stockton Beach Dine System, including Aboriginal site and shell middens, ship wrecks, WWII ramparts, tank traps, proofing range, rifle range and tin huts	Coxs Lane	Lots 216-219 DP 1044608	State
Port Port	Stockton Beach Dine System, including Aboriginal site and shell middens, ship wrecks, WWII ramparts, tank traps, proofing range, rifle range and tin huts	Nelson Bay Road	DP 753204	State State
Port	traps, proofing range, rifle	Nelson Bay Road		Reserve

Stephens	System, including Aboriginal site and shell middens, ship wrecks, WWII ramparts, tank traps, proofing range, rifle range and tin huts		Number 51277	
Port Stephens	Stockton Beach Dine System, including Aboriginal site and shell middens, ship wrecks, WWII ramparts, tank traps, proofing range, rifle range and tin huts	Stockton Bight Track	Lots 216-219 DP 1044608	State
Raymond Terrace	Old school hall (Raymond Terrace Public School), including WWI school honour board	Adelaide Street	Lot 11 DP 1034823	Local
Raymond Terrace	The Free Presbyterian Church of Eastern Australia	Adelaide Street	Lot 2 Sec 16 DP 758871	Local
Raymond Terrace	Woodlands - timber cottage	Adelaide Street	Lot 76 DP 621767	Local
Raymond Terrace	Tree – specimen of Ficus oblique (Fig Tree)	Adelaide Street	Lot 28 DP 753161	Local
Raymond Terrace	Roslyn, including house, outbuildings, mature trees and landscape setting	Binns Street	Lot 4 DP 811055	Local
Raymond Terrace	Raymond Terrace Cemetery and Pioneer Hill Cemetery	Elizabeth Avenue	Pt Lot 20, DP 753161 Lot 7008, DP 1051708	Local
Raymond Terrace	Part of St Johns Anglican Church Group – former school and rectory	Glenelg Street	Lot 5 DP 38912	State
Raymond Terrace	Former Ingleburn Private Hospital	Glenelg Street	Pt Lot 2 Sec 9 DP 758871	Local
Raymond Terrace	Sandstone Block Timber Clad House	Hunter Street	Lot 1 DP 739811	Local
Raymond Terrace	Cadell Cottage (former doctor's house)	Hunter Street	Lot 2 DP 522978	Local
Raymond Terrace	Part of St Brigid's Catholic Church Group – St Brigid's Convent	Irrawang Street	Lot 13 Sec 15 DP 758871	State
Raymond Terrace	Part of St Brigid's Catholic Church Group – St Brigid's Church Hall	Irrawang Street	Lot 16 DP 547042	State
Raymond Terrace	Timber Cottage (former mounted police barracks)	Irrawang Street	Lot 6 DP 38088	Local
Raymond Terrace	Boomerang Park, including former stone quarry and mature tree	Irrawang Street	Lot 1 DP 1018979	Local

	planting			
Raymond Terrace	Bailiwick – cottage	Irrawang Street	Cnr Lot 2 DP 346695	Local
Raymond Terrace	Part of St John's Anglican Church Group – former parish hall	Jacaranda Avenue	Lot 11 DP 859130	State
Raymond Terrace	Raymond Terrace War Memorial	Jacaranda Avenue	Lot 1 Sec 23 DP 1014247	Local
Raymond Terrace	Ornamental planting of Jacaranda trees (Jacaranda mimosifolia)	Jacaranda Avenue Road Reserve (between Glenelg and Swan Streets)		Local
Raymond Terrace	Kia-ora, including mulberry tree beside driveway	Kia-ora Street	Lot 13 DP 24939	Local
Raymond Terrace	Part of King Street Group - residence (former hotel)	King Street	Lot 1 DP 741492	State
Raymond Terrace	Part of King Street Group - shop (former boot and shoe emporium)	King Street	Lot 1 DP 737678	State
Raymond Terrace	Part of King Street Group - shop and residence (former hardware store)	King Street	Lot 1 DP 783549	State
Raymond Terrace	Part of King Street Group - shop (former grocery store)	King Street	Lot 5 DP 707022	State
Raymond Terrace	Part of King Street Group - hall (former shop and residence)	King Street	Lot 1 DP 301752	State
Raymond Terrace	Part of King Street Group - shop (former Princess Café, including leaded glass highlights over front door and windows)	King Street	Pt Lot 5 Sec 4 DP 758871	State
Raymond Terrace	Part of King Street Group - shop (former drapery)	King Street	Lot 14 DP 748967	State
Raymond Terrace	Part of King Street Group - brick warehouse (former bond store)	King Street	Pt Lot 5 Sec 4 DP 758871	State
Raymond Terrace	Part of King Street Group - residence (former shop and residence)	King Street	Lot 12 DP 711577	State
Raymond Terrace	Part of King Street Group - shop (former shop and residence)	King Street	Lot 10 DP 712299	State
Raymond Terrace	Tree – specimens of Ficus macrophylla (Moreton Bay Fig) – The Marriage Trees	King Street	Lot 1 DP 79440	Local
Raymond Terrace	Ornamental planting of Pheonix canariensis	Port Stephens Street		Local

	(Canary Islands Date Palm)	Road Reserve (Adam Place)		
Raymond Terrace	Timber Cottage	Port Stephens Street	Lot 4 Sec F DP 939306	Local
Raymond Terrace	Former Post Office	Port Stephens Street	Lot 41 DP 776800	Local
Raymond Terrace	Former Schoolhouse	Port Stephens Street	Lot 3 DP 252996	Local
Raymond Terrace	Library (former Mayo's Building)	Port Stephens Street	Pt Lot 10 Sec 3 DP 758871	Local
Raymond Terrace	Tree – specimen of Ficus rubiginosa (Port Jackson Fig)	Sketchley Street (Pacific Highway)	Pt Lot 138 DP 24655	Local
Raymond Terrace	Part of St Johns Anglican Church Group – church	Sturgeon Street	Lots 3 and 4 Sec 9 DP 758871	State
Raymond Terrace	Part of St Johns Anglican Church group – rectory and ornamental planting of 2 Araucaria heterophylla (Norfolk Island Pine)	Sturgeon Street	Council Subdivision54 /536	State
Raymond Terrace	Euripides – stone cottage	Sturgeon Street	Lot 22 DP 613174	Local
Raymond Terrace	Old school hall (Raymond Terrace Public School), including WWI school honour board	Swan Street	Lot 2 DP 868750	Local
Raymond Terrace	Roeth House – two storey timber house	Swan Street	Lot 23 DP 588932	Local
Raymond Terrace	Kinross, including stone shed and landscape setting	Wahroonga Street	Lot 721 DP 805426	State
Raymond Terrace	Saber Jet fighter aircraft on display in Bettles Park	Wahroonga Street	Pt Lot 138 DP 24655	Local
Raymond Terrace	Fitzgerald Bridge	William Bailey Street, Hunter River		Local
Raymond Terrace	Courthouse	William Street	Lot 10 Sec 11 DP 758871	State
Raymond Terrace	Part of St Brigid's Catholic Church Group – St Brigid's Presbytery	William Street	Lot 11 Sec 15 DP 758871	State
Raymond Terrace	Part of St Brigid's Catholic Church Group - St Brigid's Church	William Street	Pt Lot 12 Sec 15 DP 758871	State
Raymond Terrace	Junction Inn	William Street	Lot 1 DP 734368	Local
Raymond Terrace	Ralston's Building (former AJS Bank)	William Street	Lot 1 DP 111303	Local
Raymond	National Australia Bank	William Street	Lot 1	Local

Terrace			DP 912155	
Raymond Terrace	Uniting Church, including bell tower and WWI honour board	William Street	Lot 19 DP 770935	Local
Raymond Terrace	Police Station	William Street	Lot 10 Sec 11 DP 758871	Local
Seaham	Burrowel Homestead, off Dixon Street	East Seaham Road	Lot 2 DP 194920	Local
Seaham	Seaham Cemetery	Grape Street	DP 758899	Local
Seaham	Balikera House	Italia Road	Lot 1 DP 563430	State
Seaham	Tom McLennan's Cottage -slab cottage	Middle Crescent	Lot 1 Sec 31 DP 758899	Local
Seaham	Eskdale House	Seaham Road	Lot 17 DP 881861	Local
Seaham	Seaham Quarry, including interpretive sign originally installed by Professor Edgeworth David	Warren Street	Lot 10, DP 258195 Lot 95, DP 42639	State
Seaham	St Andrew's Church	Warren Street	Lots 4-7 Sec 31 DP 758899	State
Seaham	Brandon, including house, stables and landscape setting	Warren Street	Lot 149 DP 1003827	State
Seaham	School of Arts, including memorial pillars and photographic collection of WWI servicemen, timber war memorial honour board, Friendly Society dispensation and Seaham ferry bell	Warren Street	Lot 8 Sec 10 DP 758899	Local
Seaham	Porphyry Point site	Warren Street	Lot 1 DP 538498	Local
Shoal Bay	Remains of WWII fortifications, Fort Tomaree, including gun base and torpedo bases, torpedo tube jetty	Shoal Bay Road	Lot 454 DP 705463	State
Shoal Bay	Tomaree Holiday Lodge Precinct	Shoal Bay Road	Lot 453 DP 705463	State
Soldiers Point	Grave of Cecilia Cromarty – adjacent to Seaview Crescent	Soldiers Point Road	Lot 321 DP 595752	Local
Tanilba Bay	Part of Henry Halloran Group - Mosaic Temple of the Stork	Admiralty Avenue	Lot 45 DP 16873	State
Tanilba Bay	Part of Henry Halloran Group – Sunset Park, including 2 stone seats,	Caswell Crescent	Reserve Number 63326	State

	large stone table, stone			
	fireplace and kilns			
Tanilba Bay	Part of Henry Halloran Group – Stone wall west of Tanilba House	Caswell Crescent	Lot 2 DP 548644	State
Tanilba Bay	Part of Henry Halloran Group – Palm Circle – specimens of <i>Livistona</i> australis (Cabbage Tree Palm)	Caswell Crescent	Lot 13 DP 16873	State
Tanilba Bay	Tanilba House, including remnants of convict barracks, garden cottage, water tank, stone walls, circular drive, wishing chair, direction finder, olive tree, rustic pergola and wisteria vine and garden setting, including Bunya Pine and fig tree	Caswell Crescent	Lot 1 DP 548644	State
Tanilba Bay	Part of Henry Halloran Group - Meridian Park, including 6 Pheonix canariensis (Canary Islands Date Palm), remains of circle planting of Livistona australis (Cabbage Tree Palm), stone seat, relocated barbecue and possible site of 3 burials	Caswell Crescent	Lot 2, DP 182666 Lot 1, DP 848809 Lot, 7018, DP 1052527	State
Tanilba Bay	Part of Henry Halloran Group – former summer house, remains of former barbecue and commemorative stone work	Caswell Crescent	Lot 36 DP 16873	State
Tanilba Bay	Part of Henry Halloran Group - Portal to the Peerless	Road Reserve – Avenue of the Allies (Foch Forum)		State
Tanilba Bay	Part of Henry Halloran Group – Centenary Gateway (Water Arch), including avenue planting of Araucaria heterphylla (Norfolk Island Pine)	Road Reserve – Avenue of the Allies (Haig Hexagon)		State
Tanilba Bay	Part of Henry Halloran Group – former bathers' changing room and circular rock wall	Road Reserve, Pomona Place		State
Taylors Beach	Tree – specimen of Ficus rubiginosa (Port Jackson	Taylor Road	Lot 636 DP 27628	Local

	Fig)			
Tomago	Tomago House Chapel and landscape setting	Tomago Road	Lot 1 DP 770610	State
Tomago	Tomago House and its landscape setting, including pinetum and pleasure garden	Tomago Road	Lot 1 DP 111486	State
Wallalong	Former Wallalong Broom Factory	McClymonts Swamp Road	Lot 140 DP 836929	Local
Wallalong	Wallalong House, including stables, outbuildings, gardens and landscape setting	Wallalong Road	Lot 577 DP 864399	State
Williamtown	Devon House, including former Moxey's slab cottage, dairy, hay shed and slab barn	Cabbage Tree Road	Lot 1 DP 832554	Local
Williamtown	St Saviour's Anglican Church, including WWI memorial plaque	Cabbage Tree Road	Lot 1 DP 607447	Local
Williamtown	Farm Silo	Steel Street	Lot 2001 DP 1033856	Local
Woodville	Former All Saints Church	Clarencetown Road	Lot 1 DP 137188	State
Woodville	General Store and Post office	Clarencetown Road	Pt Lot 24 DP 10074	Local
Woodville	Dunmore Bridge	Clarencetown Road, Paterson River		State
Woodville	Stradbroke, including stone barn, and landscape setting	Paterson Road	Lot 101 DP 546779	State
Woodville	School of Arts	Paterson Road	Pt Lot 51 DP 752451	Local
Woodville	Tressingfield (former Carlton Cottage), including gardens and landscape setting	Paterson Road	Lot 1 DP 948190	Local
Woodville	Pomfrett's Cottage – slab cottage	Paterson Road	Lot 2 DP 782062	Local

Schedule 2, Part 2

Omit the Part including title

Insert instead Part 2 Heritage Conservation Areas

Description	Identification on Zoning Map
Hinton	Shown by a heavy black broken line marked "Hinton Heritage Conservation Area".
Raymond Terrace	Shown by a heavy black broken line marked "Raymond Terrace Heritage Conservation Area".

[2] Schedule 3 Exempt development

Insert under Advertising sign in alphabetical order

(h) Signage for	
sponsorship in open	Maximum size 5m length x 1m
space areas	height
	1 sign per site
	Sponsorship must relate
	directly to activities held on
	the site
	Must be in accordance with
	an adopted Plan of
	Management.

[3] Dictionary.

(a) Omit the definitions "heritage conservation area", "heritage item", and "heritage item of Local significance". Insert instead in alphabetical order:

heritage conservation area means an area of land that is shown edged by a heavy black broken line on the zoning map and listed in Part 2 of Schedule 2.

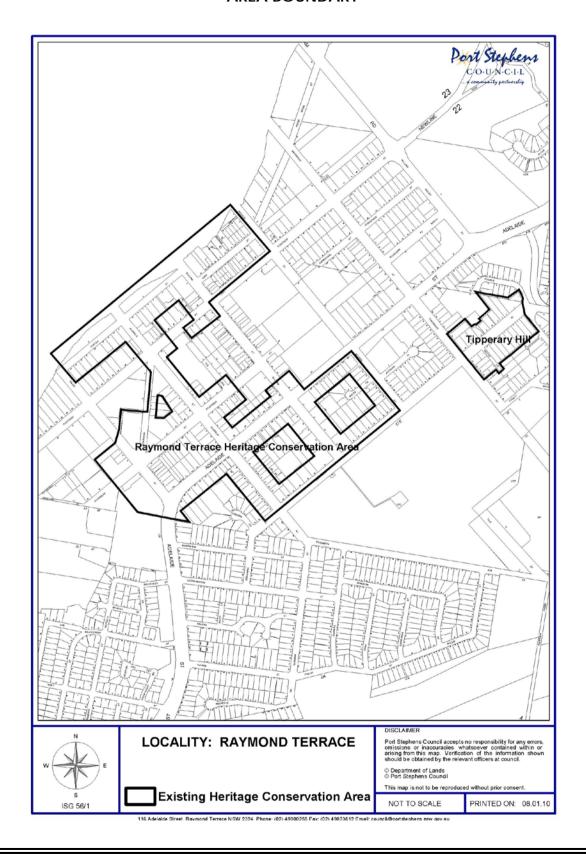
heritage item means a building, work, relic tree or place listed in Part 1 of Schedule 2.

heritage item of Local significance means a heritage item listed in Part 1 of Schedule 2.

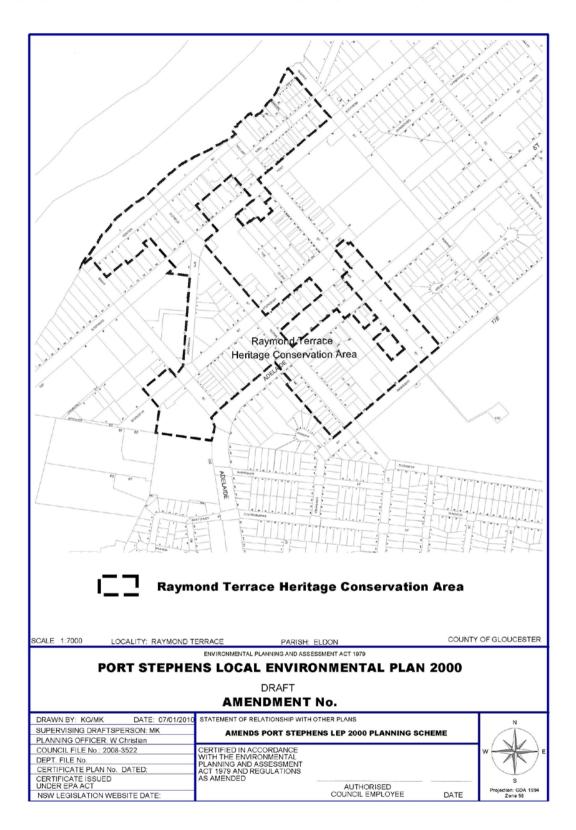
(b) Insert in appropriate order in the definition of the map:

Port Stephens Local Environmental Plan 2000 (Amendment No)

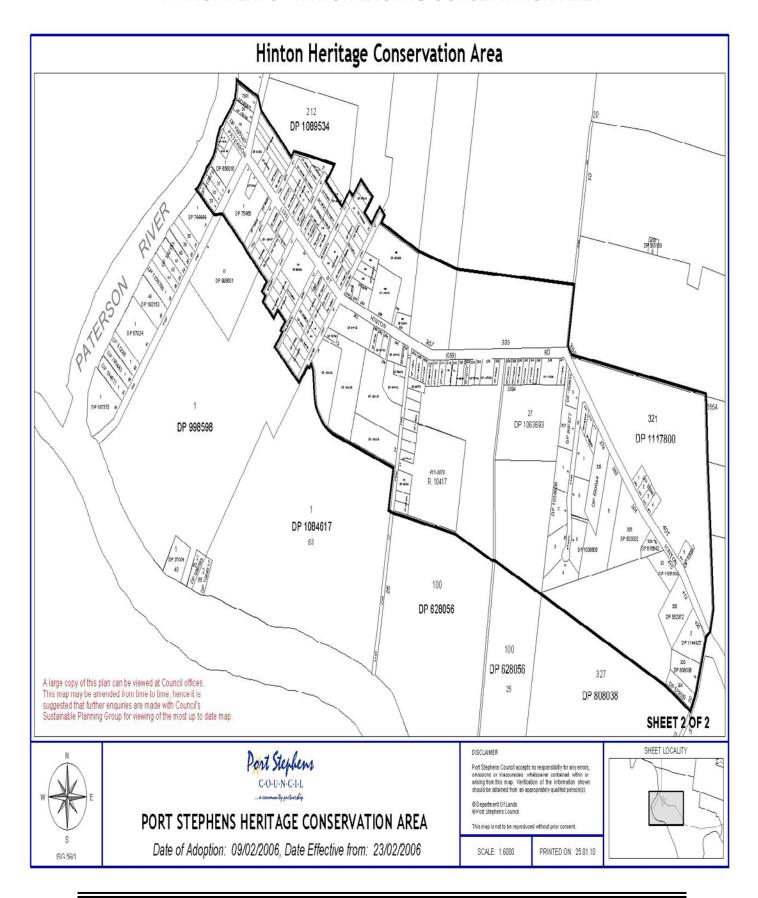
ATTACHMENT 3 – EXISTING RAYMOND TERRACE HERITAGE CONSERVATION AREA BOUNDARY



ATTACHMENT 4 PROPOSED RAYMOND TERRACE HERITAGE CONSERVATION AREA BOUNDARY



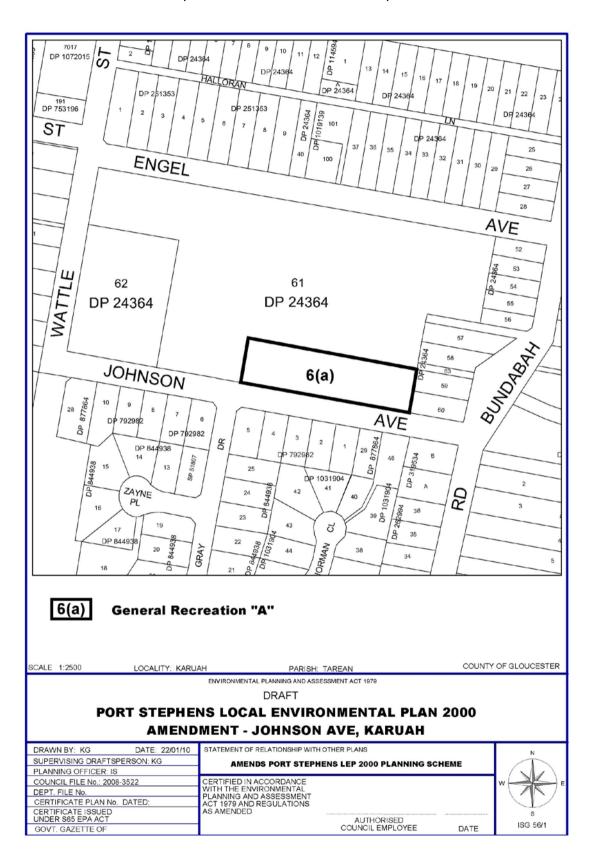
ATTACHMENT 5 - HINTON EXISTING CONSERVATION AREA



ATTACHMENT 6 -LOT 1, DP 874513 -51 WILLIAM STREET, RAYMOND TERRACE



ATTACHMENT 7 – DRAFT REZONING MAP LOT 61, DP 24364 -JOHNSON AVE, KARUAH



ITEM NO. 5 FILE NO: A2004-0511

LOCAL TRAFFIC COMMITTEE MEETING – 8TH DECEMBER 2009

REPORT OF: SCOTT PAGE - ACTING INTEGRATED PLANNING MANAGER

GROUP: SUSTAINABLE PLANNING

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RECOMMENDATION IS THAT COUNCIL:

Adopt the recommendations contained in the minutes of the Local Traffic Committee meeting held on 8th December 2009.

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

	Councillor John Nell Councillor Sally Dover	That the recommendation be adopted.

MATTER ARISING:

Councillor Sally Dover Councillor John Nell	That Council investigate the establishment of a pedestrian crossing at Victoria Road and Shoal Bay Road intersection.
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ORDINARY MEETING - 09 FEBRUARY 2010

008	Councillor Daniel Maher Councillor Sally Dover	It was resolved that the recommendation be adopted.

MATTER ARISING:

009	Councillor Daniel Maher Councillor Sally Dover	It was resolved that Council investigate the establishment of a pedestrian crossing at Victoria Road and Shoal Bay
		Road intersection.

BACKGROUND

The purpose of this report is to bring to Council's attention traffic issues raised and detailed in the Traffic Committee minutes and to meet the legislative requirements for the installation of any regulatory traffic control devices associated with Traffic Committee recommendations.

FINANCIAL/RESOURCE IMPLICATIONS

Council has an annual budget of \$41 000 (\$25 000 grant from the RTA and General Revenue) to complete the installation of regulatory traffic controls (signs and markings) recommended by the Local Traffic Committee. The construction of traffic control devices and intersection improvements resulting from the Committee's recommendations are not included in this funding and are listed within Council's "Forward Works Program" for consideration in the annual budget process.

The local Traffic Committee procedure provides a mechanism to respond to and remedy problems in accordance with Council's "Best Value Services" Policy. The recommendations contained within the local Traffic Committee Minutes can be completed within the current Traffic Committee budget allocations and without additional impact on staff or the way Council's services are delivered.

SAFETY PRIORITIES

The installation of regulatory traffic controls or traffic control devices that are noted as having a Safety Priority shall be attended to before other works undertaken by Council. These works are generally of an urgent nature requiring immediate action.

The items with a Safety Priority are listed as follows: NIL

LEGAL AND POLICY IMPLICATIONS

The local Traffic Committee is not a Committee of Council; it is a technical advisory body authorised to recommend regulatory traffic controls to the responsible Road Authority. The Committee's functions are prescribed by the Transport Administration Act with membership extended to the following stakeholder representatives; the Local Member of Parliament, the Department of Transport, NSW Police, Roads & Traffic Authority and Council.

The procedure followed by the local Traffic Committee satisfies the legal requirements required under the Transport Administration (General) Act furthermore there are no policy implications resulting from any of the Committee's recommendations.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The recommendations from the local Traffic Committee aim to improve traffic management and road safety.

A safer road environment reduces costs to the Council and community by reducing the number and severity of accidents on our roads.

Transport efficiency and road user safety; contribute positively to the quality of life for residents and visitors to Port Stephens. Improved road user safety distributes benefits to all road users including commercial and private motorists, cyclists and pedestrians. These benefits include improved accessibility, mobility and safer road environment.

CONSULTATION

The Committee's technical representatives are the Police, RTA, and Council Officers; they investigate issues brought to the attention of the Committee and suggest draft recommendations for further discussion during the scheduled meeting. One week prior to the local Traffic Committee meeting copies of the agenda are forwarded to the Committee members, Councillors, Facilities and Services Group Manager, Integrated Planning Manager and Road Safety Officer. During this period comments are received and taken into consideration during discussions at the Traffic Committee meeting.

No additional consultation took place as a part of the meeting of 8th December 2009.

OPTIONS

- 1) Adopt all or part of the recommendations.
- 2) Reject all or part of the recommendations.
- 3) Council may choose to adopt a course of action for a particular item other than that recommended by the Traffic Committee. In which case Council must first notify both the RTA and NSW Police representatives in writing. The RTA or Police may then lodge an appeal to the Regional Traffic Committee.

ATTACHMENTS

1) The minutes of the local Traffic Committee meeting held on 8th December 2009 are contained in ATTACHMENT 1.

ATTACHMENT 1

LOCAL TRAFFIC COMMITTEE MEETING HELD ON TUESDAY 8TH DECEMBER, 2009 AT 9:30AM

Present:

Senior Constable John Simmons – NSW Police, Mr Bill Butler – Roads and Traffic Authority, Mr Joe Gleeson (Chairperson), Ms Michelle Page, Mr Graham Orr - Port Stephens Council

Apologies:

Mr Craig Baumann MP – Member for Port Stephens, Cr Peter Kafer, Mr Brian Mosely – Hunter Valley Buses, Mr Mark Newling – Port Stephens Coaches

- A. ADOPTION OF MINUTES OF MEETING HELD 10[™] NOVEMBER, 2009
- B. BUSINESS ARISING FROM PREVIOUS MEETING
- C. LISTED MATTERS
- D. INFORMAL MATTERS
- E. GENERAL BUSINESS

PORT STEPHENS LOCAL TRAFFIC COMMITTEE AGENDA

INDEX OF LISTED MATTERS TUESDAY 8th December, 2009

A.	ADOPTION OF THE MINUTES OF 10 TH NOVEMBER 2009		
B. BUSINESS AR		RISING FROM PREVIOUS MEETING	
C.	LISTED MATTE	ERS	
C.1	41_12/09	ADELAIDE STREET RAYMOND TERRACE - REQUEST TO INSTALL TEMPORARY PARKING RESTRICTIONS AT THE RAYMOND TERRACE COURT HOUSE FOR POLICE AND CORRECTIVE SERVICES VEHICLES	
C.2	42_12/09	LAMAN STREET NELSON BAY - REQUEST FOR INSTALLATION OF SIGNS AND PAVEMENT MARKING TO PREVENT VEHICLES QUEUING ACROSS THE GOVERNMENT ROAD INTERSECTION	
C.3	43_12/09	VICTORIA PARADE NELSON BAY - REQUEST TO IMPROVE SAFETY FOR PEDESTRIANS AROUND FLY POINT	
C.4	44_12/09	MARKET STREET FINGAL BAY - REQUEST FOR SHORT-TERM PARKING RESTRICTIONS AT THE NEWSAGENCY	
D.	INFORMAL M	1ATTERS	
E.	GENERAL BU	SINESS	
E.1	609_12/09	SCHEDULE OF LOCAL TRAFFIC COMMITTEE MEETING DATES FOR 2010	
E.2	610_12/09	PROPOSED CHANGES TO BUS SERVICES AS PART OF THE HUNTER REGION BUS NETWORK REVIEW BY NSW TRANSPORT AND INFRASTRUCURE	
E.3	611_12/09	NEXT SCHEDULED MEETING DATES	

C. Listed Matters

C1 <u>Item:</u> 41_12/09

ADELAIDE STREET RAYMOND TERRACE - REQUEST TO INSTALL TEMPORARY PARKING RESTRICTIONS AT THE RAYMOND TERRACE COURT HOUSE FOR POLICE AND CORRECTIVE SERVICES VEHICLES

Requested by: NSW Police

File:

Background:

The Raymond Terrace Police Station is relocating temporarily to the former leisure centre behind the Council administration building during construction of the new Police Station on the existing site. As a consequence alternative arrangements are required for prisoner transfer to the Raymond Terrace Court House. Currently prisoners are transferred directly from the Police Station to the Court House however transfer from the temporary Police Station will require the use of Corrective Services vehicles. It is proposed that the Corrective Service vehicles will park on Adelaide Street adjacent to the Court House during court sessions.

Comment:

A new gate and entrance to the Court House will be constructed on the eastern corner of the property to minimise the distance between the transport vehicle and the Court House entry.

Legislation, Standards, Guidelines and Delegation:

ARR Part 12 Div.2 - Rule 168 - No Parking signs
AS 1742.11 - Parking controls
RTA signs database - R5-41
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Recommendation to the Committee:

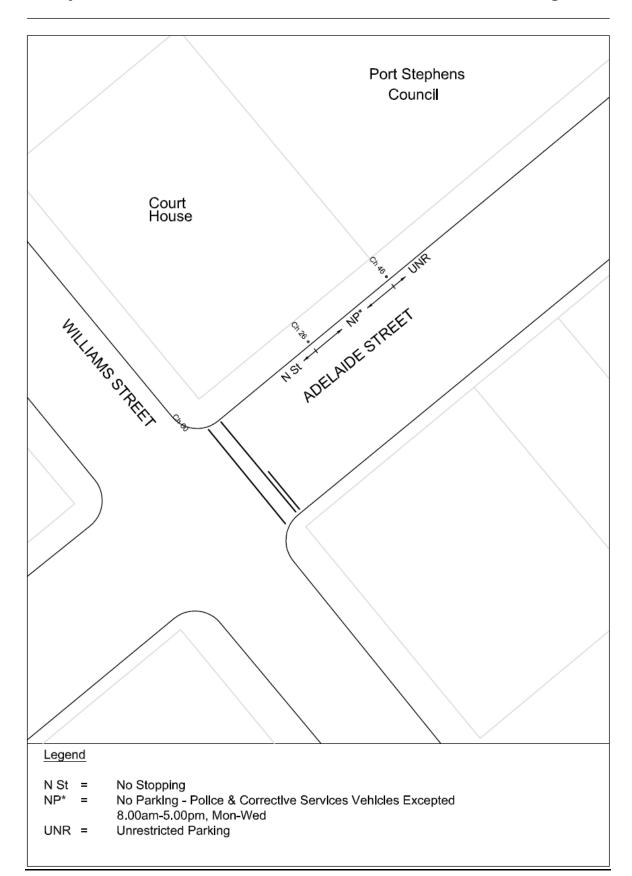
Install 20m of 'No Parking – Police and Corrective Services vehicles excepted' on the northern side of Adelaide Street Raymond Terrace, adjacent to the Court House, as shown on the attached sketch, Annexure A.

Discussion:

Support for the recommendation:

1	UNANIMOUS	✓
2	MAJORITY	
3	SPLIT VOTE	
		·
4	MINORITY SUPPORT	
5	UNANIMOUS DECLINE	

PORT STEPHENS TRAFFIC COMMITTEE Tuesday 8 December 2009 ITEM NO. 41_12/09 Street: Adelaide Street ANNEXURE A Page 1 of 1



C2 <u>Item:</u> 42_12/09

LAMAN STREET NELSON BAY – REQUEST FOR INSTALLATION OF SIGNS AND PAVEMENT MARKING TO PREVENT VEHICLES QUEUING ACROSS THE GOVERNMENT ROAD INTERSECTION

Requested by: Cr Nell

File:

Background:

At the Port Stephens Council meeting held 10th November 2009 it was resolved that the following matter arising be adopted: "That the issue of traffic exiting Laman Street, Nelson Bay at Victoria Parade be referred to the Local Traffic Committee to investigate the possibility of appropriate signage to resolve the traffic queuing issues."

Comment:

The Traffic Inspection Committee noted that there are potential benefits to preventing traffic from queuing across the intersection. When traffic is stopped during the pedestrian phase, there is potential for traffic to make the right-turn out of Laman Street during busy times if the intersection is clear.

Legislation, Standards, Guidelines and Delegation:

ARR Part 11 Div.2 - Rule 128 - Entering blocked intersections AS 1742.2 - Traffic control devices for general use RTA Delineation Guidelines - Section 9 Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Recommendation to the Committee:

- 1. Install 'Keep Clear' pavement markings and hold lines at the Government Road intersection, as shown on the attached sketch, Annexure A.
- 2. Install left and right turn arrows and 'TB' holding line in Laman Street at the Government Road intersection, as shown on the attached sketch, Annexure A.

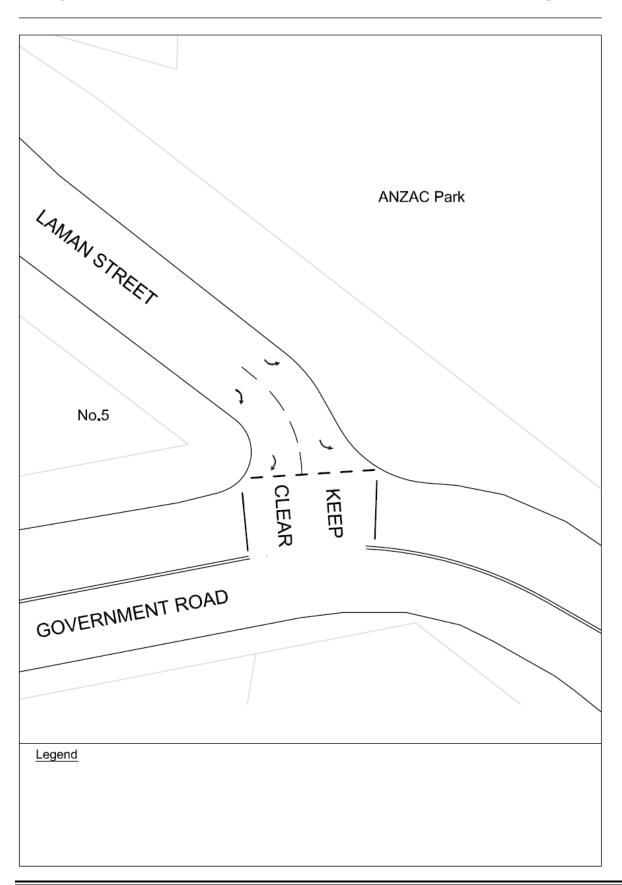
Discussion:

RTA to advise if the hold line is required to be a broken or solid line.

Support for the recommendation:

1	UNANIMOUS	✓
2	MAJORITY	
_	T	
3	SPLIT VOTE	
4	MINORITY SUPPORT	
_		
5	UNANIMOUS DECLINE	

PORT STEPHENS TRAFFIC COMMITTEE Tuesday 8 Decamber 2009 ITEM NO. 42_12/09 Street: Laman Street ANNEXURE A Page 1 of 1



C3 <u>Item:</u> 43_12/09

VICTORIA PARADE NELSON BAY - REQUEST TO IMPROVE SAFETY FOR PEDESTRIANS AROUND FLY POINT

Requested by: A resident

File: PSC2005-4019/219

Background:

A resident has contacted Council to request safety improvements for pedestrians around Fly Point at Nelson Bay. The residents concerns relate to the lack of a separate footpath for pedestrians and the impact of parked cars forcing pedestrians onto the road. The resident has asked that Council:

- Widen the pedestrian zone to a consistent and safe width by either extending the bitumen on the side of the road, moving the painted line over (the road is certainly wide enough if the cars are not travelling too fast) or a combination of both
- Slow all vehicle traffic by suitably placed speed humps for the length of the road (taking into consideration the Australia Day "billy cart" races at the Fly Point end)
- Extend the pedestrian zone at the Little Beach end by having a no parking zone adjacent to the initial section of kerb and gutter that will then provide safe pedestrian access into the car park entry at the children's play ground and then onto the public footpath
- Ensure that cars do not park in the pedestrian zone. During busy periods cars park over the pedestrian zone that again forces pedestrians to walk in the middle of the roadway.
- Make it clear to all vehicle traffic that the road is only a "one way" direction road.
 We get the impression that some motorists think the road is "two way" and they keep to the left that forces them towards the pedestrians

Comment:

The Traffic Inspection Committee noted the following:

- That the position of the edge line in relation to the edge of bitumen, around Fly Point, does vary and that a consistent lane width would assist pedestrians as well as helping to slow traffic.
- Additional pedestrian and cyclist symbols on the road would also help to alert drivers that the edge of pavement is a shared path.
- Installation of 'No Parking' signs on the southern side of the road in the confined areas would deter cars from parking and from forcing through-traffic onto the pedestrian path.
- Additional pavement arrows would help to highlight the one-way travel direction
- There is a need to improve pedestrian connections at the Little Beach end of the road and to formalise a suitable pathway connection. This has been identified in the Council's updated footpath and cycleway plan.
- The installation of speed humps is not supported at this time as the area is a low speed environment already.

Legislation, Standards, Guidelines and Delegation:

ARR Part 12 Div.2 - Rule 168 - No parking signs
AS 1742.2 - Traffic control devices for general use
RTA signs database - R5-40
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Recommendation to the Committee:

Install 'No stopping' and 'No Parking' signs on Victoria Parade Nelson Bay, as well as pavement symbols, as shown on the attached sketch.

Re-mark the existing edge line at a consistent width to provide for pedestrians and cyclists.

Discussion:

The Committee noted that the one-way direction of travel is not clear to all drivers. It is common to see vehicles heading the wrong way around Fly Point with vehicles entering from Little Beach end as well as from the parking around Fly Point.

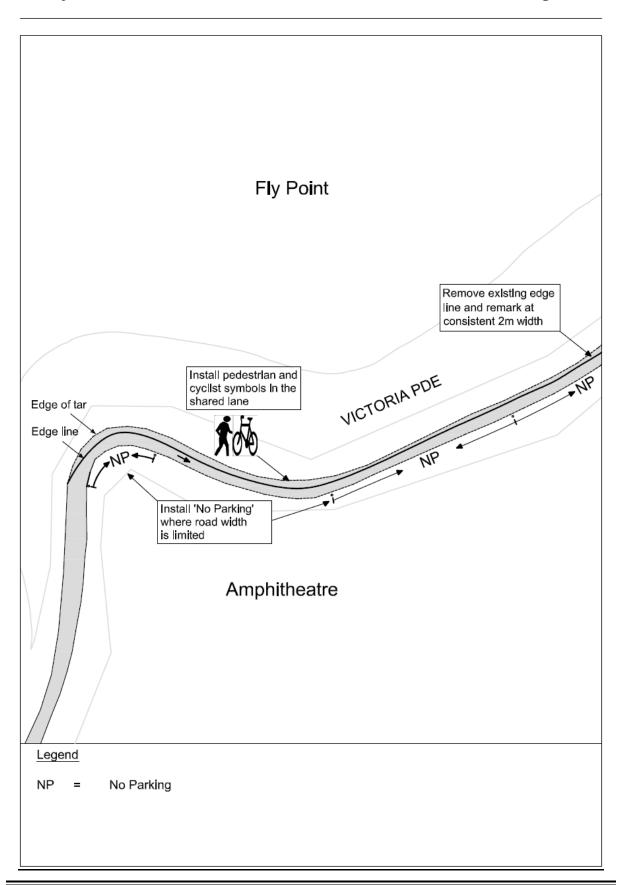
There needs to be a review of the existing signage and pavement markings to ensure that there are sufficient warnings to drivers.

The Committee also requested that Council include plans for construction of a suitable off-road, shared pathway in the Forward Works Plan. This is to include a connection at the Little Beach end.

Support for the recommendation:

1	UNANIMOUS	✓
2	MAJORITY	
3	SPLIT VOTE	
4	MINORITY SUPPORT	
5	UNANIMOUS DECLINE	

PORT STEPHENS TRAFFIC COMMITTEE Tuesday 8 December 2009 ITEM NO. 43_12/09 Street: Victoria Pde ANNEXURE A Page 1 of 1



C4 <u>Item:</u> 44_12/09

MARKET STREET FINGAL BAY - REQUEST FOR SHORT-TERM PARKING RESTRICTIONS AT THE NEWSAGENCY

Requested by: Cr Ward

File: PSC2005-4019/247

Background:

Cr Ward asked if it is possible to install 15 minute parking bay in front of the service station and paper shop at Fingal Bay. A large number of seniors from the Village and other local retirees need a quick stop to get their papers and a 15 minute parking space there would provide a great amenity for them.

Comment:

There is currently a bus stop on Market Street prior to the Boulder Bay Road intersection, as well as a mail box. There are new commercial premises with accommodation above that are not yet occupied. It is anticipated that short-term parking would benefit these premises as well.

Legislation, Standards, Guidelines and Delegation:

ARR Part 12 Div.7 - Rule 205 - Parking for longer than indicated AS 1742.11 - Parking controls RTA signs database - R5-15 Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Recommendation to the Committee:

Install 2 spaces of 15 minute parking on the eastern side of the existing bus stop and replace missing posts and signs, as shown on the attached sketch.

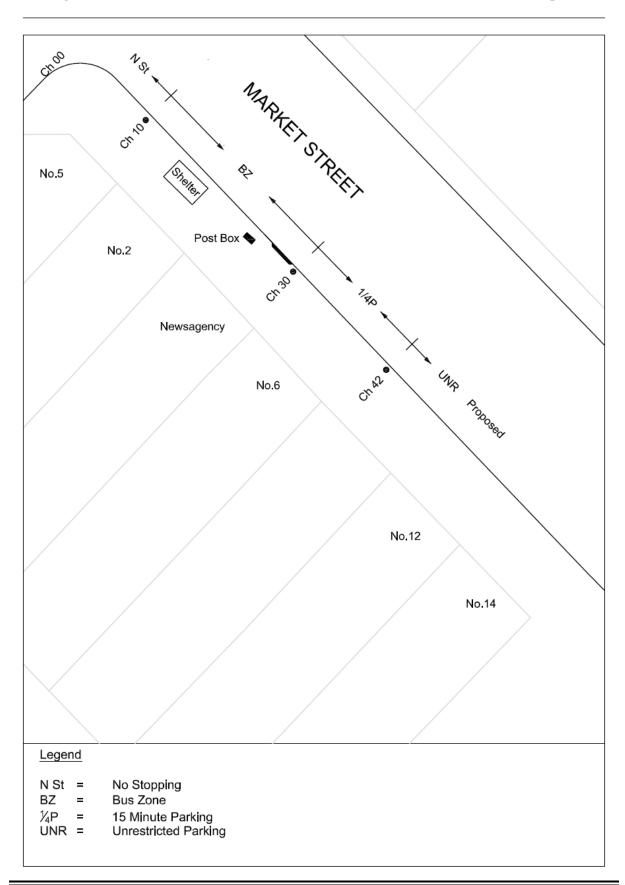
Discussion:

The Committee noted that the post box is situated within the bus zone. This could lead to potential conflicts and enforcement difficulties. The Committee recommended that Council contact the postal service regarding the possibility of relocating the post box or providing a separate mail zone, before the short-term parking restrictions are installed.

Support for the recommendation:

1	UNANIMOUS	✓
2	MAJORITY	
3	SPLIT VOTE	
4	MINORITY SUPPORT	
5	UNANIMOUS DECLINE	

PORT STEPHENS TRAFFIC COMMITTEE Tuesday 8 December 2009 ITEM NO. 44_12/09 Street: Market Street ANNEXURE A Page 1 of 1



E: GENERAL BUSINESS

E1 <u>Item:</u> 609_12/09

SCHEDULE OF MEETING DATES FOR PORT STEPHENS LOCAL TRAFFIC COMMITTEE FOR 2010

File:

Background:

Below is a draft schedule of meeting dates for Traffic Inspection Committee and for Port Stephens Local Traffic Committee for 2010.

Comment:

Port Stephens Local Traffic Committee schedule for 2010:

	PORT STEPHENS LOCAL TRAFFIC COMMITTEE	TRAFFIC INSPECTION COMMITTEE
	THE WITTER STATE	OGIVIIVIITEE
JANUARY	NO MEETING	WEDNESDAY 20 [™]
FEBRUARY	TUESDAY 2 ND	WEDNESDAY 17 [™]
MARCH	TUESDAY 2 ND	WEDNESDAY 17 [™]
APRIL	TUESDAY 6™	WEDNESDAY 21 ST
MAY	TUESDAY 4 [™]	WEDNESDAY 19 [™]
JUNE	TUESDAY 1 ST	WEDNESDAY 16 [™]
JULY	TUESDAY 6™	WEDNESDAY 21 ST
AUGUST	TUESDAY 3 RD	WEDNESDAY 18 [™]
SEPTEMBER	TUESDAY 7 TH	WEDNESDAY 22 ND
OCTOBER	TUESDAY 5 [™]	WEDNESDAY 20 [™]
NOVEMBER	TUESDAY 2 ND	WEDNESDAY 17 [™]
DECEMBER	TUESDAY 7 [™]	NO MEETING

E2 <u>Item:</u> 610_12/09

PROPOSED CHANGES TO BUS SERVICES IN THE PORT STEPHENS LOCAL GOVERNMENT AREA AS PART OF THE HUNTER REGION BUS NETWORK REVIEW BY NSW TRANSPORT AND INFRASTRUCURE

File:

Background:

Operating contracts between bus operators and the NSW Government include the need to carry out a review of bus services within the first three years of the contract. This requirement to review services came out of the recommendations of the NSW Governments Review of Bus Services, known as the Unsworth Review.

The review of bus services is critical to ensure local people are connected with local places and with other bus routes or modes of transport.

Currently NSW Transport and Infrastructure are carrying out a review of bus services in the outer metropolitan regions of NSW. Port Stephens LGA falls into this category and the proposed changes to bus services are now out on public exhibition. NSW Transport and Infrastructure are seeking feedback from the community regarding the proposed changes.

Comment:

Maps and bus frequency tables will be tabled at the Traffic Committee meeting for the information of members and advisors.

Discussion:

The Committee noted that the proposed changes will impact Lemon Tree Passage commuters in particular. The need to purchase separate tickets for each service to connect to Newcastle will be a financial burden on the disadvantaged. Integrated ticketing would overcome these problems.

The Committee also noted that proposed route changes in Nelson Bay will impact Council by requiring new bus stops at Little Beach and Tomaree Hospital. It was also noted that buses may have difficulty making the turns from Gowrie Avenue to Kerrigan Street.

E3 <u>Item:</u> 611_12/09

SCHEDULE OF NEXT MEETINGS

Traffic Committee Inspections: Wednesday 20th January 2010

Port Stephens Traffic Committee: Tuesday 2nd February 2010

ITEM NO. 6 FILE NO: PSC2005-3964

CULTURAL PROJECTS FUND - REVIEW

REPORT OF: PAUL PROCTER - ACTING MANAGER INTEGRATED PLANNING

GROUP: SUSTAINABLE PLANNING

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RECOMMENDATION IS THAT COUNCIL:

- 1. Endorse the introduction of two categories to the Cultural Projects Fund:
 - a. 'One-off small grants' one year projects for up to \$1,000
 - b. 'Cultural Partnerships' where the funded project is over \$1,000 and/or spans up to three financial years, with additional application requirements and conditions.
- 2. Discontinue the practice of allocating \$20,000 to each Ward on an annual basis and note that Council's Cultural Planner will recommend assessment and selection criteria and processes to the Strategic Cultural Committee to ensure equitable distribution of funds.

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COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Bruce MacKenzie Councillor Bob Westbury	That Council continue the practice of allocating \$20,000 to each Ward on an annual basis.
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Cr Bruce MacKenzie withdrew the recommendation above.

	That the matter be deferred to allow for further consultation with relevant Council staff and Councillors at a 2 way
	conversation.

ORDINARY MEETING - 09 FEBRUARY 2010

010	Councillor Daniel Maher Councillor John Nell	It was resolved that the Council Committee recommendation be adopted.
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BACKGROUND

The purpose of this report is to improve the outcomes of Council's Cultural Projects Fund, through a revision of its structure and process. The Fund will operate as a partnership program, supporting projects aligned with Council's Cultural Plan and coordinated through the Strategic Cultural Committee.

The Cultural Projects Fund is currently designed to support projects that:

- Complement Council's own community and cultural objectives, strategies and programs and will contribute to a vibrant cultural and community life for Port Stephens and its permanent and visiting community;
- Extend or diversify knowledge or experience of cultural or artistic programs or skills of practitioners in the community and has the ability to attract new audiences;
- Increase opportunities to extend community capacity for cultural and/or artistic activity; and
- Offer opportunities for employment generation.

The Cultural Projects Fund is key to the new Cultural Framework. The framework is to be guided by a Cultural Plan, lead by the Strategic Cultural Committee, delivered in partnership through a network of community teams and for Council's financial contributions to joint initiatives to be resourced through the Cultural Projects Fund.

In November 2009 it was resolved by Council to 'Endorse that the Cultural Projects Fund' be tied to the Cultural Plan, where the resources assist organisations to address identified cultural priorities' (Council Ordinary Meeting, 24 November 2009, item 6).

The 2009-2010 Cultural Projects Fund was brought into line with best practice, with the introduction of a selection process including a Selection Panel. In November 2009 it was resolved by Council to 'Endorse that the Councillors nominated to the new 'Strategic Cultural Committee' serve as the selection panel for the Cultural Project Fund, rather than having an additional separate committee' (Council Ordinary Meeting, 24 November 2009, item 6). As the Strategic Cultural Committee is to partner in the delivery of the cultural plan, it makes sense to link the Cultural Projects Fund with the committee.

Further areas for improvement have been identified as outlined in this report.

Currently, grant applications vary greatly in terms of quality, and the size of projects range from small one-off to large long-term initiatives.

There are some groups that have historically received funding over many years despite the program being for 'one-off' allocations. This has created expectations that the funds are ongoing and established a dependency on the funding for standard operational expenses. This is not in line with the purpose of the fund.

Many initiatives take a number of years to achieve sustainability. While the fund is only committed year by year, it is a challenge for community groups to progress with

a project without knowing if there are the resources will be made available. Being a competitive process, they would not know if they are successful for the second year of a project's development which hinders its success.

The recommendations are designed to group projects into two categories:

- a. 'One-off small grants' one year projects for up to \$1,000
- b. 'Cultural Partnerships' where the funded project is over \$1,000 and/or spans up to three financial years, with additional application requirements and conditions.

See the attached 'Cultural Projects Fund Eligibility Flowchart' (Attachment 1) which is designed to assist applicants to determine if the project is eligible, their organisation is eligible and to which funding category they would apply.

Those seeking smaller amounts of financial support for short term projects will have a simplified process. Those seeking longer-term and more significant financial support would be required to meet additional criteria and conditions.

Making a financial commitment to a cultural project for up to three years provides an adequate time for projects to become self-sufficient while at the same time having a clear sunset to the financial arrangement. There is then an opening for other new initiatives to receive the same support.

Those seeking longer/greater financial commitment from Council would be expected to demonstrate that they have a plan, their community is involved and that they will participate in Council's Cultural Framework (Council's Strategic Cultural Committee and associated teams). Therefore the following conditions would apply to multi-year / large projects:

- Demonstrate involvement of at least two other community/business groups in the project
- Report each year on the project's progress and expenditure
- Participation in the 'Culture Port Stephens Network'

To be eligible for consideration, applicants to the Cultural Partnerships category would be required to provide the following, in additional to the application form:

- A business plan using a provided template
- Letters from at least two other organisations confirming involvement in the proposed project.
- Evidence that demonstrates the project is meeting a community need photos, council/community documents and plans

It is a standard condition for all projects to recognise Council as a project partner in all promotional material and associated events.

FINANCIAL/RESOURCE IMPLICATIONS

The Cultural Projects Fund is an annual funding program with a \$60,000 budget for the 2010-2011 financial year. The Cultural Projects Fund' is tied to the Cultural Plan, where the resources assist organisations to address identified cultural priorities.

This report recommends that funding applications can be made for projects spanning up to three financial years.

These projects would provide an acquittal on the expenditure of one year allocation before being eligible to receive their allocation from the next year's budget. Therefore, while the funds are committed in a previous year, each year's budget is spent that same year.

There need to be caps on the value of allocations each year to prevent funds being locked up by previous commitments and preventing establishment of new projects. The recommended schedule ensures that each year the previous commitments are honoured and funds also be available for new projects, all within budget.

The proposed formula would be:

	ANNUAL BUDGET ALLOCATION
ONE-OFF / ONE YEAR PROJECTS	\$15,000 MINIMUM
1 ST YEAR OF 3 YEAR PROJECTS	\$15,000 MAXIMUM
2 ND YEAR OF 3 YEAR PROJECTS	\$15,000 MAXIMUM
3RD YEAR OF 3 YEAR PROJECTS	\$15,000 MAXIMUM
TOTAL COUNCIL BUDGET ALLOCATION	\$60,000

This formula provides \$15,000 for one-off / one year projects, and \$45,000 for multi-year / larger projects.

The first two years of the new structure would vary as there would be no projects in their later years. Therefore it is recommended that a two year project timeframe be incorporated for the transition.

The proposed formula for 2010-2011financial year allocations:

	ANNUAL BUDGET ALLOCATION
ONE OFF / ONE VEAD DDG IFOTO	ACC COC BAININALINA
ONE-OFF / ONE YEAR PROJECTS	\$30,000 MINIMUM
1 ST YEAR OF 2 YEAR PROJECTS	\$15,000 MAXIMUM
1 ST YEAR OF 3 YEAR PROJECTS	\$15,000 MAXIMUM
TOTAL COUNCIL BUDGET ALLOCATION	\$60,000

Therefore in the 2010-2011financial year, \$30,000 for one-off / one year projects, and \$30,000 for multi-year / larger projects.

The proposed formula for 2011-2012 financial year allocations:

ANNUAL BUDGET ALLOCATION
\$15,000 MINIMUM
\$15,000 MAXIMUM
\$15,000 MAXIMUM
\$15,000 MAXIMUM
\$60,000

Therefore in the 2011-2012 financial year, \$15,000 for one-off / one year projects, and \$45,000 for multi-year / larger projects.

LEGAL, POLICY AND RISK IMPLICATIONS

Governance of the fund is improved, therefore decreasing risk.

See the attached 'Cultural Projects Fund Management Process Flowchart' (Attachment 2)

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are currently social equity issues around distribution of the funds, so some groups have received funds year after year while others have not had the opportunity to attract resources. The recommendations will improve access to the funds across all eligible organisations.

Currently the fund is split with \$20,000 budgeted per ward. This measure was introduced to ensure equitable geographic distribution of the funds. Not that we have established a new Cultural Framework, this equity can be achieved without formally dividing the funding pool. The Cultural Framework is to be lead by a Strategic Cultural Committee, with a delegate from each planning district. Four Councillors are currently nominated to this committee. This committee is charged with the responsibility to ensure equitable distribution, assessing the applications and making recommendations to Council.

The fund is designed to build the capacity of cultural groups and their initiatives toward becoming financially self-sufficient. This is achieved through an extended program of support through the establishment phase of the project. This is then phased out as they stand in their own right, as partners with Council rather than dependants.

CONSULTATION

Feedback and liaison with cultural and community groups has been undertaken on how the program has run in the past, how it is currently structured and potential improvements. These recommendations balance the expectations of those who have historically received funding and those who would like to be considered for new initiatives.

OPTIONS

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

ATTACHMENTS

1) Cultural Projects Fund Eligibility Flowchart

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1 Cultural Projects Fund Eligibility Flowchart

Cultural Project Fund Eligibility flowchart

Follow the flowchart below to determine if the project is eligible, if your organisation is eligible and to which funding category you will apply.

1. Does the project:

- Extend or diversify knowledge or experience of cultural or artistic programs or skills of practitioners in the community and has the ability to attract new audiences; and/or
- Increase opportunities to extend community capacity for cultural and/or artistic activity; and/or
- Offer opportunities for employment generation; and/or
- Complement Council's own community and cultural objectives, strategies and programs and will contribute to a vibrant cultural and community life for Port Stephens and its permanent and visiting community.

Yes No The project is not eligible. Fither: Revise the project; OR Find an alternative funding program which is more appropriate.

2. Is the applicant:

- A not-for-profit community organisation
- Managed by a community based management committee
- Based in Port Stephens, or delivering cultural projects to Port Stephens
- Providing a program or managing a cultural venue

Yes No The applicant is not eligible. Find an organisation that may be interested in 'auspicing' the project. This means they would be responsible for governance of the project and accountable for the funds. You could add your original applicant as a 'project partner'.

Your project and organisation are eligible!

Now you need to determine what type of application you are submitting, either a one-off small grant or a cultural partnership application.

3. Is the project requesting less than \$1000?

(This relates just to the contribution requested from Council, NOT the total project budget which could include other financial sources such as fund-raising, sponsorships, project revenue)

Yes

No

4. When will the Council funds be spent?

(What is the duration of the funded phase of the proposed project?)

Within one financial year

Over more than one financial year (up to three financial years)

You are applying for a 'one-off small grant'

This is a simpler application process with fewer conditions on the project.

Conditions:

- Recognition of Council as a project partner in all promotional material and at associated events.
- Provide a report on the project and expenditure.

Essential documents:

• The 2010-2011 funding round application form

Optional documents:

- Letters of support/ participation from community/business groups
- Quotes from providers of goods/services to demonstrate anticipated expenses
- Examples of how such a project has worked somewhere else
- Evidence that demonstrates the project is meeting a community need – photos, council/ community documents and plans.

You are applying for a 'cultural partnership'

Being a greater commitment than a 'one-off small grant', there are additional requirements.

Conditions:

- Recognition of Council as a project partner in all promotional material & at associated events.
- Involvement of at least two other community/business groups in the project
- Report each year on the project's progress and expenditure
- Participation in the 'Culture Port Stephens Network' (Council's Strategic Cultural Committee and associated teams)

Essential documents:

- The 2010-2011 funding round application form
- A business plan using the provided template
- Letters from at least two other organisations confirming involvement in the project.
- Evidence that demonstrates the project is meeting a community need – photos, council/community documents and plans

Optional documents:

- Letters of support from community and business groups
- Quotes from providers of goods/services to demonstrate anticipated expenses
- Examples of how such a project has worked somewhere else.

PORT STEPHENS COUNCIL

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- Submit your application to Council by the closing date for consideration.
- Wait to be notified of the selection process outcome (3-4 months).
- If successful you will be invited to a presentation ceremony.

ITEM NO. 7 FILE NO: PSC2009-04981

WALLAWA ROAD NELSON BAY – REPORT INTO TRAFFIC CALMING INVESTIGATION

REPORT OF: SCOTT PAGE - ACTING MANAGER INFRASTRUCTURE PLANNING

GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

1) Resolve to support a 3 month trial installation of road cushions in Wallawa Road, Nelson Bay. The project will be placed in the forward Works Plan with an expectation that the estimated required funding of \$15 400 will be available in the financial year 2010/2011.

2) Monitor the effectiveness of the trial and provide a follow up report, for further consideration of the need for permanent traffic calming.

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Bob Westbury Councillor Sally Dover	That the matter be deferred to allow the investigation of funding the proposal in 2009-2010.
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ORDINARY MEETING - 09 FEBRUARY 2010

011	Councillor John Nell Councillor Bob Westbury	It was resolved that the Council Committee recommendation be adopted.
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BACKGROUND

The purpose of this report is to inform Council of the results of the recent community survey conducted in the Wallawa Road area and to recommend a course of action that will meet the community's needs for facilities and services with regard to Wallawa Road. (Port Stephens Council Plan 2006-2009 – Section 8.6: Infrastructure)

Council has received comment from numerous community members/groups following a traffic accident that occurred in August 2009 when a vehicle travelling on Wallawa Road collided with a parked car. Residents have been lobbying Council

staff and Councillors to have some action taken to improve safety for traffic and pedestrians in Wallawa Road.

Wallawa Road is classified as a local street under the Port Stephens Council road hierarchy. It has a pavement width of approximately 7m, has no footpath on either side of the road and a posted speed limit of 50km/h. Council conducted a speed and volume survey of traffic in Wallawa Road in October 2009 which indicated an annual, average, daily traffic (AADT) flow of approximately 1800 vehicles per day (vpd) with an 85th percentile speed of 60km/h. This traffic volume is well above the 1000vpd expected in a local street. Council's accident database indicates that there has been 1 other reported accident in Wallawa Road over the most recent 5 year period. This also involved a vehicle losing control and hitting a parked vehicle.

Wallawa Road is part of a bus route and there have been strong submissions from some residents to prevent buses from using the street. According to the bus operator there are currently 144 school students and approximately 250 people (predominately senior citizens) who use the bus services per week. If bus services were removed from Wallawa Road the lack of alternative routes combined with the surrounding steep terrain would certainly make access to bus services unachievable for many local residents. The request to relocate the bus route is not supported by Council staff or by the Port Stephens Local Traffic Committee.

The Port Stephens Local Traffic Committee at the meeting held 10th November 2009, recommended that a series of road cushions be installed on a trial basis in Wallawa Road. An example of the use of road cushions is in Sergeant Baker Drive where traffic volumes were reduced from 1 700vpd to 1 180vpd and the 85th percentile speed reduced from 61km/h to approximately 53km/h. 98% of survey respondents in that area support the permanent installation of road cushions in Sergeant Baker Drive.

Reducing traffic volumes in Wallawa Road would benefit other residents in the area such as those living in Spinnaker Way, by encouraging traffic onto the collector and distributor roads such as Bagnalls Beach Road and Government Road.

FINANCIAL/RESOURCE IMPLICATIONS

The recommended trial installation of rubber speed cushions in Wallawa Road has not been budgeted for in any of Council's ongoing infrastructure programs. The trial installation would rely on procurement of capital works funding from Council's Forward Works Plan in order to proceed.

The anticipated cost for installation of road cushions and necessary signage in Wallawa Road is \$15 400 with ongoing maintenance costs to be met from the Traffic Facilities budget.

LEGAL, POLICY AND RISK IMPLICATIONS

The installation of traffic control devices on a public road is controlled by provisions of the Roads Act 1993 and requires a 28 day period of public exhibition prior to a final decision being made by the relevant roads authority. The community survey

which has been conducted in Wallawa Road meets this requirement and Council could resolve to install a traffic calming scheme in Wallawa Road on the basis of the community feedback already received. However, given the large response group of Wallawa Road residents that favoured a full closure of Wallawa Road Council could consider that it is necessary to conduct a further public consultation including a fully detailed traffic calming scheme utilising road cushions.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The installation of traffic calming would benefit Wallawa Road residents by reducing the speed and volume of traffic using the street and by improving their amenity and safety. People will be less inclined to use Wallawa Road as a short cut and will be more likely to use the collector and distributor roads that are designed for higher traffic volumes. The options of a full road closure and to a lesser extent the half-road closure would have social and economic implications form the perspective of reducing accessibility for the area. While this would benefit some residents it would negatively impact those residents who rely on public transport. It could potentially increase travel times and have safety implications by reducing emergency service access and increasing response times. It should be noted that Police and NSW Fire Brigades as well as Council's Waste Services have responded that they are opposed to a full closure because of the risks and difficulties that it would cause.

CONSULTATION

A community survey was carried out in the Wallawa Road area to gauge the feeling of residents towards the safety of Wallawa Road and toward four different traffic calming options. The survey was in the form of a covering letter and an information paper briefly outlining the advantages and disadvantages of each of the options put forward. The consultation was posted to non-resident property owners and was hand delivered to all properties within the target area. As well, the letter was sent to Police and emergency services and other affected stakeholders.

Approximately 300 properties were included in the target area and from the survey approximately 100 responses were received.

The survey asked people to rate the degree of road/pedestrian safety in Wallawa Road. The responses received by Council indicate that 77% of respondents feel unsafe or very unsafe with only 15% of respondents feeling mostly safe or better.

The survey also asked people whether they believed that some form of traffic calming was required to which 84% of responses said yes.

The community consultation letter offered 4 different traffic calming options for the consideration of residents and other stakeholders. These 4 options were:

- Road cushions
- Slow points
- Half-closure (One-way traffic flow)
- Full closure

The fourth option was included only at the specific request of some of the residents and is not considered as a practical option. This is because of the serious impacts that a full road closure would have on the delivery of essential services and increased emergency response times. A full road closure would also require construction of a turnaround area suitable for heavy vehicles. This would inflate the cost and may not be practically possible given the terrain in the area.

The results of the community consultation are as follows:

The percentage of respondents supportive of some form of traffic calming in Wallawa Road = 84%

The percentage of respondents supportive of road cushions = 42%*
The percentage of respondents supportive of slow points = 3%
The percentage of respondents supportive of a half closure = 5%
The percentage of respondents supportive of a full closure = 35%
The percentage of respondents who did not nominate an option = 10%

A full analysis of the community consultation is included as attachment 1.

OPTIONS

- 1) Adopt the recommendation to list the trial installation of traffic calming in Wallawa Road on Council's Forward Works Plan
- 2) Reject the recommendation, resolving to take no action for a 12 month period and then review the situation.

ATTACHMENTS

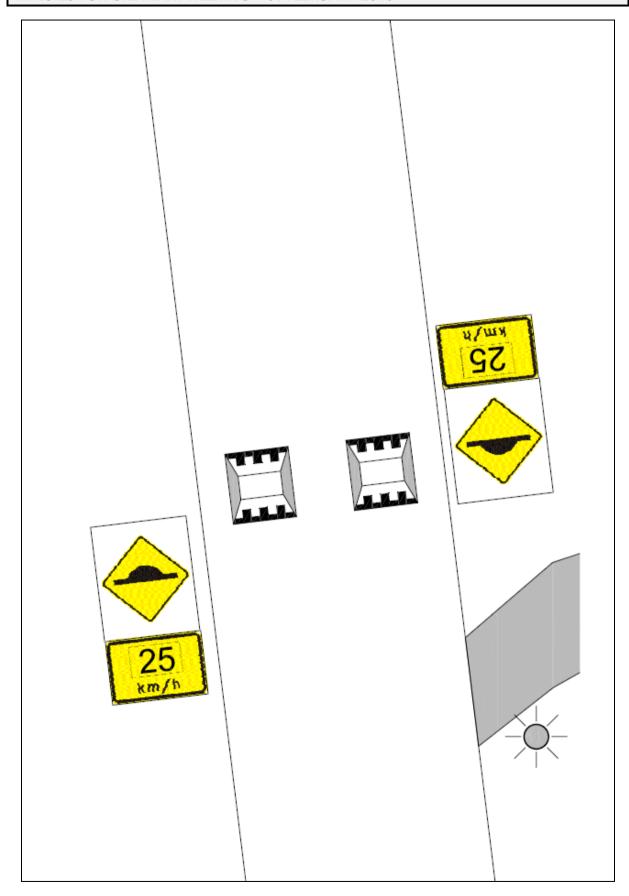
- 1) Summary of the community consultation conducted in the Wallawa Road area
- 2) Detailed plan of the trial installation of road cushions in Wallawa Road

^{*} The remaining 5% of responses nominated a combination of options – these were either a combination of road cushions and slow points (4%) or road cushions and half closure (1%).

Summary of the Wallawa Road survey responses

D		Colored and Warren	
Bayview Street – respo Results	nses = 8	Spinnaker Way – responses = Results	11
% in favour of traffic calmir	na = 63%	% in favour of traffic calming =	64%
% preferring option 1 =	25%	% preferring option 1 =	45%
% preferring option 2 =	0%	% preferring option 2 =	9%
% preferring option 3 =	25%	% preferring option 3 =	0%
% preferring option 4 =	25%	% preferring option 4 =	27%
No option stated =	25%	No option stated =	18%
	Total 100%	Total	100%
Safety	000/	Safety	EE0/
% Who feel very unsafe = % Who feel unsafe =	63% 0%	% Who feel very unsafe = % Who feel unsafe =	55% 9%
% Who feel mostly safe =	13%	% Who feel mostly safe =	9%
% Who feel safe =	0%	% Who feel safe =	9%
% Who feel very safe =	0%	% Who feel very safe =	9%
Unstated =	25%	Unstated =	9%
1	Total 100%	Total	100%
		-	
Canomii Close - respo	nses = 20	Wallawa Road – responses = 4 Results	43
Results	FEO/		000/
% in favour of traffic calmir	ng = 55% 55%	% in favour of traffic calming = % preferring option 1 =	98% 25%
% preferring option 1 = % preferring option 2 =	5%	% preferring option 2 =	0%
% preferring option 3 =	5%	% preferring option 3 =	9%
% preferring option 4 =	0%	% preferring option 4 =	64%
No option stated =	35%	No option stated =	2%
	Total 100%	Total	100%
Safety		Safety	
% Who feel very unsafe =	40%	% Who feel very unsafe =	82%
% Who feel unsafe =	13%	% Who feel unsafe =	9%
% Who feel mostly safe =	27%	% Who feel mostly safe =	5%
% Who feel safe =	7%	% Who feel safe =	0%
% Who feel very safe =	7%	% Who feel very safe = Unstated =	0% 5%
Unstated =	7% Total 100%	Total	100%
'	100%	Total	10076
Galoola Drive - respor	nses = 7	Wollomi Avenue - responses :	= 8
Results	- F70/	Results	1000/
% in favour of traffic calmin	•	% in favour of traffic calming =	100%
% preferring option 1 = % preferring option 2 =	63% 8%	% preferring option 1 = % preferring option 2 =	100% 0%
% preferring option 3 =	0%	% preferring option 2 =	0%
% preferring option 4 =	0%	% preferring option 4 =	0%
No option stated =	29%	No option stated =	0%
	Total 100%	Total	100%
Safety		Safety	
% Who feel very unsafe =	29%	% Who feel very unsafe =	63%
% Who feel unsafe =	29%	% Who feel unsafe =	25%
% Who feel mostly safe =	29%	% Who feel mostly safe =	13%
% Who feel safe =	0%	% Who feel safe =	0%
% Who feel very safe =	14%	% Who feel very safe =	0%
Unstated =	0%	Unstated =	0%
1	Total100%	Total _	100%





ITEM NO. 8 FILE NO: A2004-0323

ANNUAL FINANCIAL REPORTS 2008-2009

REPORT OF: DAMIEN JENKINS - FINANCIAL SERVICES MANAGER

GROUP: COMMERCIAL SERVICES

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RECOMMENDATION IS THAT COUNCIL:

1) Adopt the 2008/09 General Purpose Financial Reports and accept the Auditor's Report, as submitted by PricewaterhouseCoopers

2) Present the audited Financial Reports for the year ending 30 June 2009, together with the Auditor's Reports, the public

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Bob Westbury Councillor Shirley O'Brien	 That Council: Adopt the 2008/09 General Purpose Financial Reports and accept the Auditor's Report, as submitted by PricewaterhouseCoopers. Present the audited Financial Reports for the year ending 30 June 2009, together with the Auditor's Reports to
	the public.

ORDINARY MEETING - 09 FEBRUARY 2010

012	It was resolved that the Council Committee recommendation be adopted.

BACKGROUND

The purpose of this report is to advise Council that Council officers have prepared the 2008/09 Financial Reports in accordance with the Local Government Act 1993 (as amended) and associated Regulations, International Financial Reporting

Standards 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 2009, 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 28 January 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 8 December 2009 with a representative from PricewaterhouseCoopers regarding these reports.

Sustainable Finances Health Check

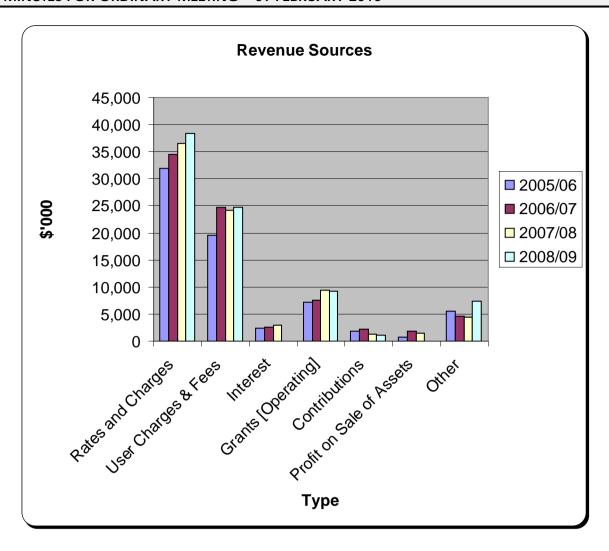
The Local Government Managers Australia (LGMA) has developed a set of financial indicators which concisely and consistently demonstrate Council's current state of financial health. The Local Government Sustainable Finance Health Check has been endorsed by the former Minister for Local Government and are intended to be indicative of the financial health and presence of good management practices being conducted at Port Stephens Council.

Where appropriate a colour coded "traffic light" system has been developed to rate and present the relative position of Council's performance under the health check.

GREEN	AMBER	RED

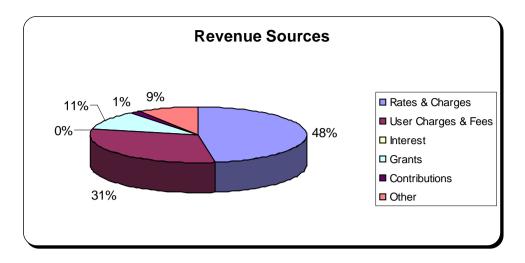
Revenue Sources

This information points to a reliance on certain revenue sources, which if they should dry up or not be available on a longer term basis or fluctuate with economic conditions (e.g., interest rates or Section 94 contributions), then they may expose Council in its ability to service its constituents and meet its obligations.



Revenue from rates & annual charges totalled 47.52% of Council's operational revenue. Given the nature of these charges, this revenue stream is considered secure and sustainable in the long term. Over the last 4 years, there has been little change to the proportional make-up of total revenue.

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 specific purpose. Total income received in operating grants and contributions in 2008/09 was \$10.37 million (previous year, 2007/08 was \$10.67 million). This represents a percentage of total income in 2008/09 of 13% (previous year, 2007/08 was 13%).

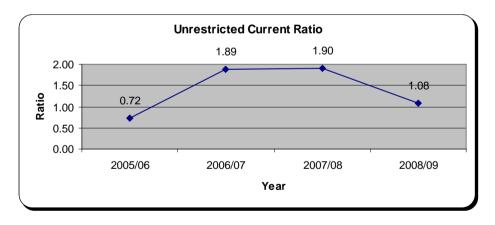


Indicator # 1. Cash/Liquidity Position

Indicator 1.1 - Unrestricted Current Ratio

The most focus for Council's cash/liquidity position is on the Unrestricted Current Ratio (UCR) as it is a more specific financial indicator for local government. The UCR is the ratio of current assets to current liabilities after accounting for external reserves that must be set aside by law and it in fact represents the general funds of Council.

This ratio demonstrates the ability of Council to satisfy its financial obligations in the short term, excluding the assistance of externally restricted funds. A higher ratio indicates a stronger financial position.



The Gauge

Less than 1:1 Red
Between 1:1 and 2:1 Amber
Greater then 2:1 Green
Greater than 10:1 Red

Council's UCR is 1.08:1 and indicates that Council is operating within the amber section (between 1:1 and 2:1). The decrease in the UCR from 1.90 to 1.08 is attributable to the Employee Leave Entitlements (ELE) provision and loans payable increasing during the year.

Council's overall cash & investments position has decreased from \$31.805 million at the end of 2007/08 to \$28.843 million at the end of 2008/09. All of Council's cash is restricted in its use to specific purposes by external bodies, legislation and Council resolution, with the level of unrestricted cash & investments being nil.

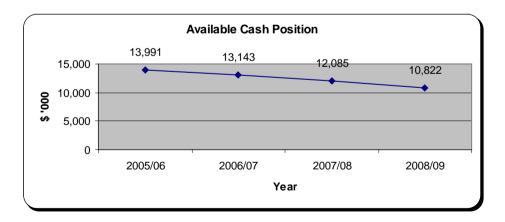
Indicator 1.2 - Available Cash Position

This information is provided to assist in assessing the funds available, providing the capacity to respond to opportunities or react to unforseen commitments that may arise. It demonstrates Council funds available either for unplanned works or commitments or the existence of emergency provisions.

Available Cash Assets are defined as total cash assets held by Council less any externally restricted cash assets. This indicator presents the available cash assets as both a dollar value and a percentage of total revenue (refer 1.3 below).

Council's level of available cash assets at the end of the year was \$10.82 million compared with \$12.08 million in the previous year.

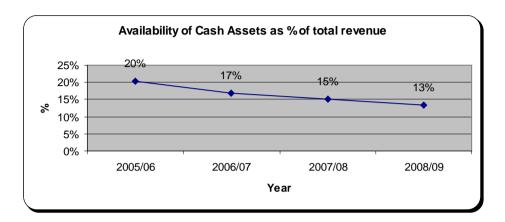
This information mirrors Note 6 of the General Purpose Financial Reports.



Unrestricted Available Cash Assets takes the above indicator one step further and subtracts both external and internal restrictions from the total cash assets held. This indicator highlights cash assets that are completely free of usage restriction. Council's level of unrestricted cash assets at the end of the year was nil. Council hasn't held any unrestricted cash since 30 June 2005.

Indicator 1.3 – Availability of Cash Assets as a % of Total Revenue

This indicator assists in interpreting indicators 1.1 and 1.2. If the ratio is too low Council has an inability to commit to too many projects. If the ratio is too high then conservative cash management may be restricting progress.

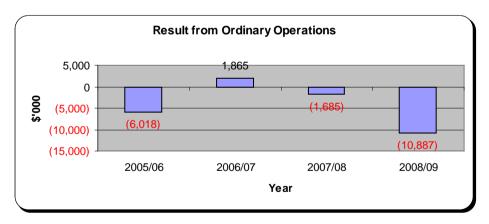


The above graph shows that Council's available cash assets equalled 13% of revenue from ordinary activities for the year.

This information mirrors Note 6 of the General Purpose Financial Reports.

Indicator # 2. Operating Result

The operating result for the year was a deficit of \$10.887 million before capital grants and contributions compared with a deficit of \$1.685 million and a surplus of \$1.865 million in financial years 2007/08 and 2006/07 respectively.



The Gauge

Deficit Red
Surplus Amber
3 successive surpluses Green

This performance indicator shows that Council is operating within the red section (deficit).

	2008/09	% of total	2007/08	% of total	Increase (Decrease)
	\$′000		\$'000		\$'000
Revenues before capital items					
Rates & annual charges	38,347	47%	36,469	45%	1,878
User charges & fees & other	31,982	40%	30,077	38%	1,975
revenues					
Grants & contributions	10,371	13%	10,673	13%	(302)
Interest & investment revenue	0	0%	2,861	4%	(2,861)
	80,700	100%	80,080	100%	690
Expenses					
Employees benefits & on-costs	31,313	34%	27,167	33%	4,146
Materials, contracts & other	39,762	44%	39,090	49%	672
expenses					
Depreciation	18,302	20%	13,449	16%	4,853
Borrowing costs	2,210	2%	2,059	2%	151
	91,587	100%	81,765	100%	9,822
Surplus(Deficit) before capital items	(10,887)		(1,685)		9,202
Grants & contributions provided for	6,616		7,085		(469)
capital purposes	0,010		7,000		(409)
Capital pulposes					
Net Surplus(Deficit) for the year	(4,271)		5,400		(9,671)

The Income Statement shows a deficit of \$10.887 million before capital amounts (2007/08 \$1.685 million deficit) which includes non cash items such as depreciation, and movements in provisions for expenses accrued but not yet paid.

The Income Statement provides some indication that Council is not earning sufficient revenue to carry out day to day operations and maintain the current level of assets over the short term. Council and the community are faced with the challenge in the coming years to continue to match the appropriate level of community amenities and services with the revenues received.

The table above shows an overall decrease over the previous year of \$9.671 million. Significant fluctuations over the previous year were;

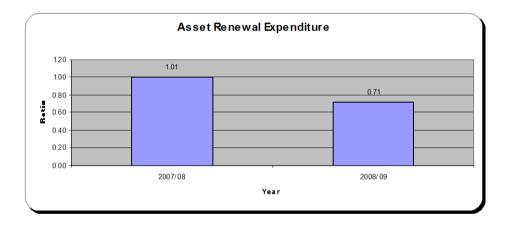
- Depreciation charge up 36% as a result of the revaluation and condition assessment of building assets
- Employee costs up 15% being in line with the Enterprise Agreement forecasts and workers' compensation increasing from \$1.2 million to \$1.8 million

- Council was successful with a large insurance claim from the aircraft noise matter and \$3 million was recognised as revenue during the year.
- Interest & investment revenue being recorded as a loss of \$1.7 million as a result of impairment losses being recognised on some of Council's CDO investments; and
- Loss on sale of assets amounted to \$138,000 compared to a gain of \$1.436 million the previous year. This is due to some real estate assets being sold in the previous year.

Indicator # 3. Asset Renewal Expenditure

This measure is intended to reflect the extent to which council is maintaining the conditions of its assets, either through repairs and maintenance or the adequacy of its provision to replace those assets as they become due, as a financial charge (depreciation) of those assets.

Asset renewal is a longer term indicator of the condition and cost to maintain public infrastructure assets and the major messages from this indicator will come from trends over time.



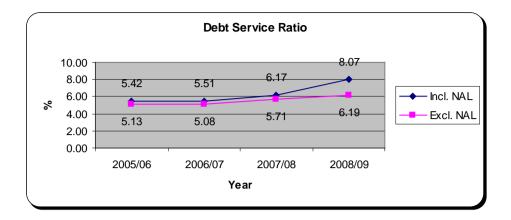
The Gauge

1:1 Green Less than 1:1 Red

Council spent \$9.871 million on replacing or refurbishing (capital expenditure) existing infrastructure assets during the year compared to \$9.514 million in 2007/08.

Indicator # 4. Debt Service Ratio

This ratio demonstrates the cost of servicing council's debt obligations (principal + interest) with available revenue from ordinary activities.



The Gauge

Greater than 15% Red Between 10 – 15% Amber Less than 10% Green

The graph above presents the Debt Service Ratio on a consolidated basis and also excluding the loans provided to the Newcastle Airport.

This ratio indicates that Council is operating within the green section (<10%) and is regarded as an industry accepted measure.

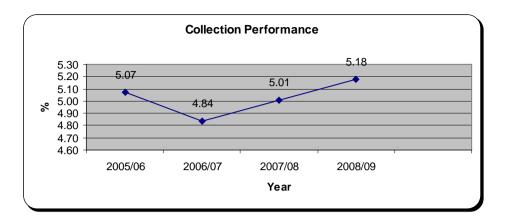
Council's debt position has increased with a total debt outstanding of \$46.32 million (previous year, 2007/08 was \$33.55 million). New loans taken out during the year were:

- \$12 million to the Newcastle Airport for extensions, and;
- \$4 million for infrastructure rehabilitation

A lower ratio is a positive financial indicator as it indicates a lesser call on revenues to service debt obligations.

Indicator # 5. Collection Performance

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.



The Gauge

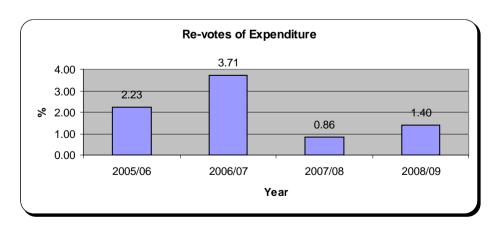
Greater than 9% Red Between 6 – 9% Amber Less than 6% Green

Council's outstanding rates, annual charges, interest & extra charges percentage at the end of the year was 5.18% and indicates that Council is operating within the green section (<6%) and is regarded as an industry accepted measure.

Indicator # 6. Re-votes of Expenditure

Clause 15 of the Local Government (General) Regulation 2005 requires Council to authorise to vote additional funds for lapsed votes. It is important that Council properly budget for and manage the resources that are available to fulfil the Council Plan. The existence and use of re-votes, which if not incorporated into the formal planning and budgeting cycle can be misused.

The measure used is the percentage of re-votes to the total expenses for the year (operating + capital).



The Gauge

Greater than 5% Red Between 2 – 5% Amber Less than 2% Green

At the ordinary meeting of Council on 22 September 2009, it was resolved to re-vote \$1,642,000 of funding to 2009/10 to allow for completion of works/activities.

This ratio indicates that Council is operating within the green section (<2%)

Indicator # 7. Accuracy/Timeliness of Financial Data/Budget/Compliance

Councils are very significant business and trading enterprises. They are financially and operationally managing very significant assets, earning sizeable revenues and incurring significant expenses. They also employ significant resources and personnel. As in any commercial enterprises, good business management practices dictate that the business undertake formal planning and budgeting functions and that management and the elected corporate governance representatives receive regular and up to date financial management information and reports.

It is a measure of the corporate health Council as to the timeliness and accuracy of financial information and the ability of the council to stay within and also properly predict its budgeted performance. This must be achieved over a period of time and not contrived by or impacted by any one off instances. This is an indicator of the comparative performance of the finance function and the credibility as a service.

The measures below should be taken over a 3 year period with reporting year 2008/09 being year 1.

MEASURE	YES	NO
FINANCIAL BOTTOM LINE (BEFORE CAPITAL) MATCHED TO FORECASTS TO A LEVEL OF +/- 10%?		✓
RECEIPT OF UNQUALIFIED AUDIT REPORTS?		✓
STATEMENTS LODGED TO MEET COMPLIANCE DEADLINE?		✓
TIMELINESS OF RESULTS AND REPORTING TO MANAGEMENT AND STATUTORY AUTHORITIES		
DO YOU REPORT MONTHLY TO MANAGEMENT - WITH 5		✓

 DAYS OF MONTH END? DO YOU REPORT QUARTERLY – WITH 21 DAYS OF QUARTER END? 	✓	
DO YOU REPORT ANNUALLY – WITHIN 21 DAYS OF YEAR END?		✓
BUDGETS INCORPORATE A 3 YEAR PLAN WHERE THE 2 ND YEAR BECOMES THE BASE FOR THE FOLLOWING YEAR?	✓	
RIGOUR OF BUDGET REVIEW AND THEN ONGOING	✓	
MONTHLY/QUARTERLY BUDGET TO RESULTS ANALYSIS?		
DOES THE ROA (RESPONSIBLE ACCOUNTING OFFICER) FORMALLY	✓	
REPORT TO COUNCIL ON THE SIGN OFF OF COUNCIL'S FINANCIAL		
STATEMENTS – SECT 413(2)(C)?		
LIAC COUNCIL ESTADUCUED AN AUDIT COMMUTTEE COMPRISING	√	
HAS COUNCIL ESTABLISHED AN AUDIT COMMITTEE COMPRISING ELECTED MEMBERS AND COMMUNITY REPRESENTATIVES IN THE	_	
INTERESTS OF BEST CORPORATE GOVERNANCE PRACTICE?		

The Gauge

Less than 5 "yes" ticks Red Between 5 – 7 "yes" ticks Amber Greater than 7 "yes" ticks Green

This indicator presents that council is operating in the amber section.

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 28 January 2010.

Copies of the audited Financial Reports have been available for inspection by members of the public from 28 January 2010 and any person can make written submissions to Council with respect to the reports until 16 February 2010. Any submission 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

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

1) 2008/09 Annual Financial Reports

ITEM NO. 9 FILE NO: PSC2005-2588

ACCESS TO FORMER WASTE TRANSFER STATION AT LEMON TREE PASSAGE

REPORT OF: CARMEL FOSTER - COMMERCIAL PROPERTY MANAGER

GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Accepts the legal access provided to the former Waste Transfer Station by Land and Property Management Authority (LPMA) plan D.P.1138957
- 2) Requests LPMA to change the purpose of Reserve 89686 from "for Rubbish Depot" to "for Community Services" or "for Local Government" purposes.
- 3) Rescind points 2,3,4 and 5 of resolution 303 dated 24th July 2001.

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Bruce MacKenzie Councillor Geoff Dingle	That the recommendation be adopted.
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ORDINARY MEETING - 09 FEBRUARY 2010

013	Councillor Bruce MacKenzie Councillor Steve Tucker	It was resolved that the recommendation be adopted.

BACKGROUND

The purpose of this report is to recommend acceptance of LPMA's DP1138957 which provides legal access to R89686 and to attempt to have the purpose of the reserve containing the original Waste Depot changed to provide more opportunities for community purposes or services.

In 2001 Council resolved to create a legal or formal access to the Waste Transfer Station. The access which has been used for many years was over Crown Land with no right for it to be used as such. That led to resolution number 303 of 24 July 2001 and further resolution number 368 of 10th November 2009 (see attachment 1).

The plan on registration at the office of Land and Property Information created a legal access to that site so there is no need to continue negotiations with LPMA in

that regard. There are no issues with continued use of the existing access as it is constructed.

Council and LPMA staff have discussed a preference for the use of the site to be more open for community benefit, where as at the moment it is technically restricted to being a waste site. Discussions are continuing regarding the changing of the purpose to the reserve.

FINANCIAL/RESOURCE IMPLICATIONS

There will be very limited resources or funds required as LPMA has carried out and paid for the surveying that Council could have been responsible for under the previous resolution. There may be some staff time involved in discussions to finalise the process.

LEGAL, POLICY AND RISK IMPLICATIONS

The registration of D.P.1138957 provides legal access to R89686 for which Council is trustee.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There will be no such implications as no construction or physical alterations will take place. There will be no evidence of change to the general public's perception.

CONSULTATION

LPMA staff, Councils Engineering Services Manager, Principal Property Advisor and Waste Management Co-ordinator.

OPTIONS

Accept recommendations
Reject recommendations
Change proposed alterations to "purpose" of R89686

ATTACHMENTS

- 1) Resolution 368
- 2) D.P.1138957
- 3) Locality Plan
- 4) Resolution 303 24 July 2001

COUNCILLORS ROOM

Nil

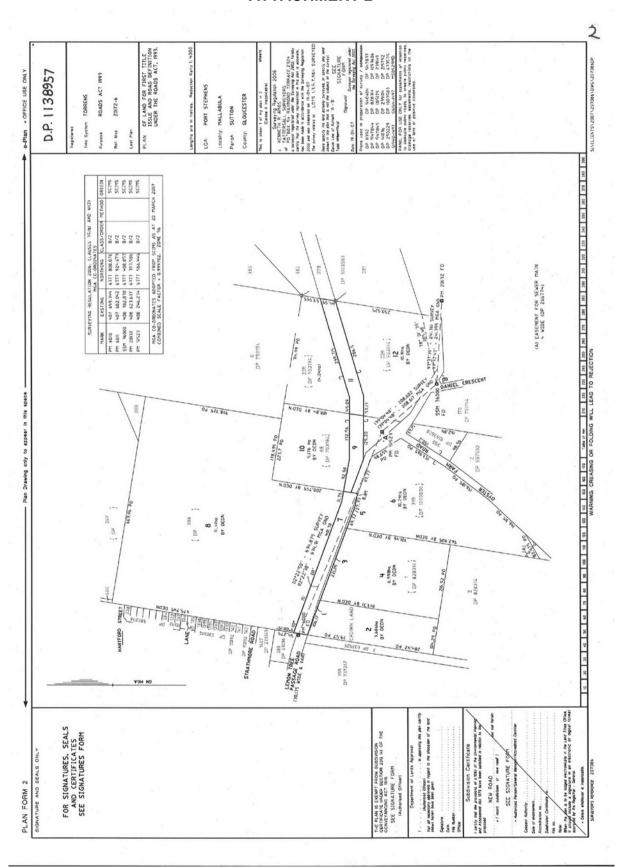
TABLED DOCUMENTS

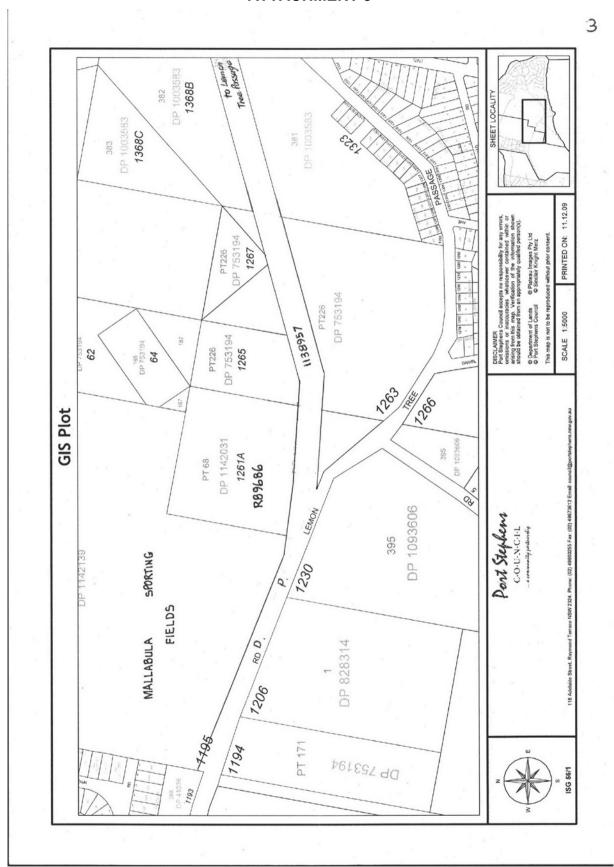
Nil

MINUTES OF ORDINARY COUNCIL - 10 NOVEMBER 2009 ITEM NO. FILE NO: E5810-013 & PSC2005-2588 ACCESS TO LEMON TREE PASSAGE FORMER WASTE TRANSFER STATION REPORT OF: CARMEL FOSTER - COMMERCIAL PROPERTY MANAGER GROUP: COMMERCIAL SERVICES RECOMMENDATION IS THAT COUNCIL: 1) Following the request to Land & Property Management Authority (LPMA), formerly Department of Land & Water Conservation, Council acts on the negotiations authorised by Council resolution 24th July 2001 (303), as soon as LPMA's new plan is registered. 2) Enters into negotiation with LPMA for possible amendments to R89686 for rubbish depot in regards to the boundaries and access. 3) Following agreement with LPMA concerning recommendation 2 above Council carries out the necessary notifications in the Government Gazette to formalise the outcome of negotiations with LPMA to create legal access. COUNCIL COMMITTEE MEETING - 10 NOVEMBER 2009 **RECOMMENDATION:** Councillor Bruce MacKenzie That the recommendation be adopted. **Councillor Steve Tucker** ORDINARY COUNCIL MEETING - 10 NOVEMBER 2009 368 Councillor Steve Tucker It was resolved that the recommendation Councillor Geoff Dingle be adopted.

PORT STEPHENS COUNCIL

1.





MINUTES OF 24 JULY 2001 ORDINARY MEETING

ITEM NO. 7

FILE NO: 5810-013

ACCESS TO LEMON TREE PASSAGE WASTE TRANSFER STATION

AUTHOR: CLIFF JOHNSON- PRINCIPAL PROPERTY ADVISOR

RECOMMENDATION IS THAT COUNCIL:

- Requests the Department of Land and Water Conservation (DLAWC) to provide legal access to the Waste Transfer Station at Lemon Tree Passage by including the existing access within the Crown Reserve R89686 for Rubbish Depot.
- Acquires and declares as Public Road the section of the existing access from Lemon Tree Passage Road to the new gates being constructed across the access to the transfer station.
- 3) Negotiates with DLAWC for the acquisition of the residue of land enclosed within the present man-proof fence, excluding the Reserve R89686 and the access, to be acquired, for a possible rehabilitation area for injured koalas.
- 4) Offers no compensation to DLAWC for items 1,2, and 3 above.
- 5) Applies to the Minister for Local Government for Compulsory Acquisition of items 1 and 2 above, if this is necessary.
- 6) Be provided with a further report as the negotiations proceed.

Operations Committee Recommendation: That the recommendation be adopted.

303 Councillor Yudaeff Councillor Busteed Resolved that the Operations Committee's Recommendation be adopted

PORT STEPHENS COUNCIL

29

ITEM NO. 10 FILE NO: 16-2009-841-1 &

PSC2008-1566

CREATION OF RIGHT OF CARRIAGE WAY OVER LOT 3 D.P.880718 STURGEON STREET, RAYMOND TERRACE

REPORT OF: CARMEL FOSTER - COMMERCIAL PROPERTY MANAGER

GROUP: COMMERCIAL SERVICES

.....

RECOMMENDATION IS THAT COUNCIL:

- 1) Consents to the creation of a Right of Carriage Way 3.2 and 5 metres wide over Councils land, lot 3 DP880718 in favour of lot 1 DP160216.
- 2) Grants authority to affix Council's Seal and Signatures to the Transfer Granting Easement document or Section 88B instrument used to create the easement.

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COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Bruce MacKenzie Councillor Ken Jordan That the recommendation be adopted.			That the recommendation be adopted.
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ORDINARY MEETING - 09 FEBRUARY 2010

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

BACKGROUND

The purpose of this report is to recommend the creation of the Right of Carriage Way (R of W) and the execution of the document to create it.

Council has received an application for redevelopment of lot 1 DP160216 – adjoining the Best & Less building in William Street. There is no vehicular access available to the site from William Street but it has been available for many years from the car park at the rear of the site. This access has been set aside out of the marked parking over Councils land. There has never been a R of W created over this access and because the applicant wishes to continue the use of it, it should be legalised. The applicant will be responsible for all actions and costs involved in the creation of the R of W. It will have no impact on Council or the existing car parking, other than having the R of W shown on the title of the land.

FINANCIAL/RESOURCE IMPLICATIONS

There will not be any financial or resource issues for Council as all costs are to be borne by the applicant.

LEGAL, POLICY AND RISK IMPLICATIONS

The proposed actions will formalise what has been in existence for many years and will place more responsibility on the applicant.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There will be no implications as the proposed actions will not physically change the parking arrangements and the public's perception will not be altered.

CONSULTATION

Councils Senior Development Planner, Principal Property Advisor, Commercial Property Manager and Consultants for the applicant.

OPTIONS

Accept the recommendation Reject the recommendation

ATTACHMENTS

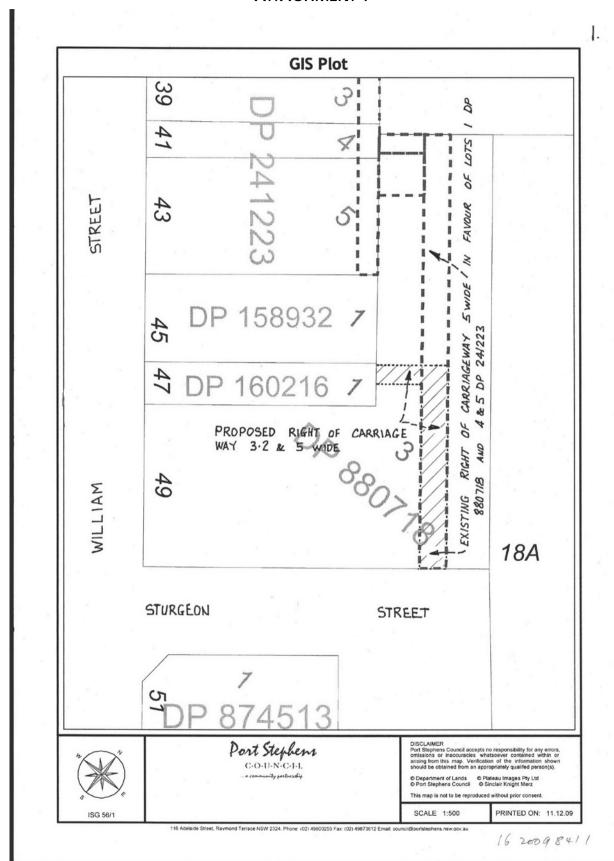
1) Site of Proposed Right of Way

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil



ITEM NO. 11 FILE NO: A2004-0865

DECLARATION OF EXISTING ROADS AT SHOAL BAY AS PUBLIC ROAD UNDER SEC. 16 ROADS ACT 1993

REPORT OF: CARMEL FOSTER - COMMERCIAL PROPERTY MANAGER

GROUP: COMMERCIAL SERVICES

.....

RECOMMENDATION IS THAT COUNCIL:

- 1) Declares the existing streets and lane at Shoal Bay shown in Deposited Plan 9186 public roads, excluding the part of Bullecourt Street previously closed.
- 2) Places notice in the Port Stephens Examiner newspaper in compliance with Section 17 Roads Act 1993, under the heading "Notice to Untraceable Owners" (attachment 1)
- 3) After 28 days from the publication of the above notice, the streets and lane be declared as public roads, if no response is received by the Land & Environment Court.
- 4) Notifies the declaration in the State Government Gazette under Section 16 Roads Act 1993

.....

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

	Councillor Bob Westbury Councillor Sally Dover	That the recommendation be adopted.

ORDINARY MEETING - 09 FEBRUARY 2010

015	Councillor John Nell Councillor Frank Ward	It was resolved that the recommendation be adopted.	

BACKGROUND

The purpose of this report is to recommend Council confirms the streets and lane at Shoal Bay are public roads as no previous dedications can be found.

Horace, Siddons, Peterie, Sylvia and parts of Bullecourt and Messines Streets and the lane between Government Road and Horace Street as well as part of the pathway between Horace and Rigney Streets, shown on D.P.9686 have never been declared

Public Roads. These streets have been under Council's control and maintenance since 1919 and the proposed action simply will confirm Councils authority over the streets.

Section 16 Roads Act 1993 caters for these circumstances and it is proposed to utilise that section with notices required under section 17 of that Act in regard to notifications. The notices allow 28 days for a person claiming ownership of the streets to apply to the Land and Environment Court for declaration that dedication should not take place. The proposed action will remove any possible future doubts as to Councils authority.

FINANCIAL/RESOURCE IMPLICATIONS

The passing of this resolution will confirm Council's ownership of the roads etc, as public roads, nothing will alter what had been always assumed, and no implications above normal responsibilities of Council will be experienced. The only costs involved will be for the publication of the two notices.

LEGAL, POLICY AND RISK IMPLICATIONS

The proposed action may prevent expensive legal actions in the future and will certainly save considerable time being spent every time the issue is raised. The Roads Act is the appropriate legislation to use for the gazettal of public roads and this Act regulates the process involved.

There are two processes involved. The first is to serve notice on the owners of the subject roads. Council assumes it owns the road but a notice must be served, and the only way to accomplish this is to place a notice in the newspapers to "Untraceable Owners" and allow 28 days before any further actions.

The second is to place the declaration notice in the Government Gazette. This notice is final and the end of the process.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There will be no implications as the proposed actions will not physically change anything and the public's perception will not be altered.

CONSULTATION

Principal Property Advisor, Engineering Services Manager Land and Property Management Authority.

OPTIONS

- 1) Accept recommendations
- 2) Reject recommendations

ATTACHMENTS

- 1) Notice to Untraceable Owners
- 2) Location map
- 3) Deposited Plan

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil



Notice to Untraceable Owners

Roads Act 1993, Sections 16 & 17

Names of Owners: Unknown

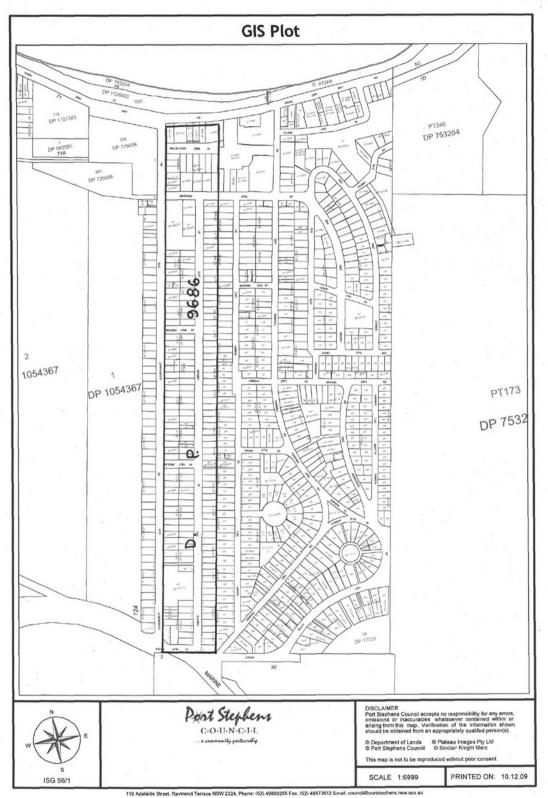
Description of land

All the lands (roads) shown by various names as Streets, Lane and Pathway within the Deposited Plan 9686 Parish of Tomaree County of Gloucester at Shoal Bay.

This notice is given under sections 16 and 17 of the Roads Act 1993, which read:

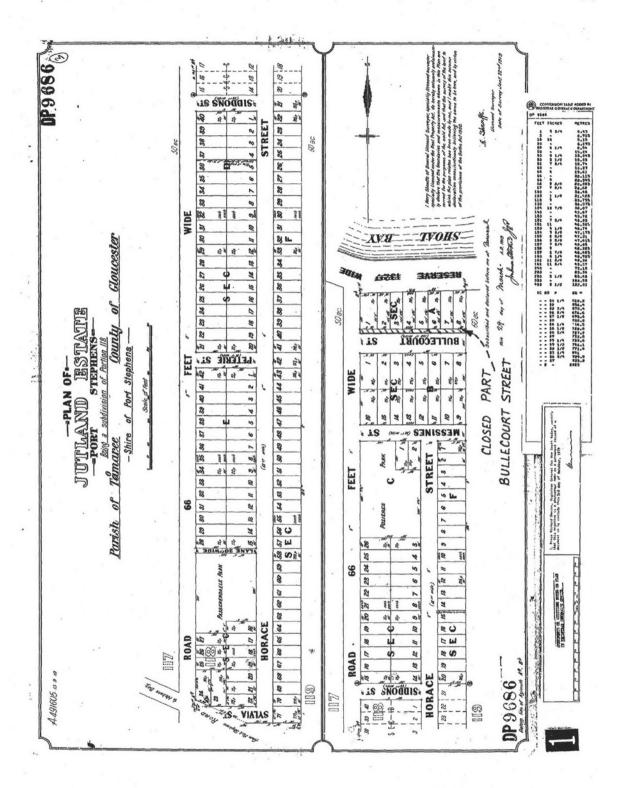
- 16(1) This section applies to land that is set aside for the purpose of the road left in a subdivision of land effected before 1 January 1907 (the dated of commencement of the Local Government Act 1906) or in a plan of subdivision that was registered by the Registrar-General before 1 January 1920 (the date of commencement of the Local Government Act 1919)
 - (2) The council of the local government area within which such land is situated, may by notice published in the Gazette, dedicate the land as a public road.
- (3) On the publication of the notice in the Gazette:
 - the land described in the declaration becomes free of all trusts, restrictions, reservations, obligations and interests; and
 - (b) the land is dedicated as a public road.
- (4) No compensation is payable to any person with respect to any loss or damage arising from the operation of this section.
- 17(1) Before dedicating land as a public road under section 16, the council must cause at least 28 days notice of its intention to do so to be served on the owner of the land.
 - (2) During that period of 28 days, the owner of the land, may in accordance with rules of court, apply to the Land and Environment Court for the declaration that the land should not be dedicated as a public road.

2.



PORT STEPHENS COUNCIL

3.



ITEM NO. 12 FILE NO: PSC2009-02637

AUDIT COMMITTEE & INTERNAL AUDIT FUNCTION

REPORT OF: WAYNE WALLIS - GROUP MANAGER CORPORATE SERVICES

GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Establish an Audit Committee as an advisory committee of Council pursuant to Section 355B of the Local Government Act 1993, as presented in this report.
- 2) Adopt the Audit Committee Charter and Internal Audit Charter, as presented with this report.
- 3) Appoint the Mayor and a Councillor as the Council representatives on the Audit Committee.
- 4) Authorise the General Manager to invite public expressions of interest for the appointment of two (2) independent external representatives to the Audit Committee, for a three (3) year term.
- 5) Establish a selection panel comprising the Mayor, two Councillors and General Manager to recommend to Council the preferred candidates for appointment as the two (2) independent external representatives to the Audit Committee.
- 6) Authorise the payment of a meeting allowance of \$100 per meeting to each independent external representative of the Audit Committee. This allowance to be reviewed annually by Council.

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Glenys Francis Councillor Shirley O'Brien	That the recommendation be adopted.

ORDINARY MEETING - 09 FEBRUARY 2010

016	Councillor John Nell Councillor Geoff Dingle	It was resolved: 1) That the recommendation be adopted.
		2) Councillors Geoff Dingle and John

Nell be nominated as the Councillor representatives on the selection panel. 3) Councillor Bob Westbury be nominated as the Councillor representative on the Audit Committee.

.....

BACKGROUND

The purpose of this report is to recommend the establishment of an Audit Committee as an advisory committee of Port Stephens Council and adoption of an Audit Committee Charter and Internal Audit Charter.

The report is in response to recommendation 18 (oversight of internal audit function) of the NSW Department of Local Government (DLG) Promoting Better Practice Program review of Port Stephens Council in 2005, where Council advised DLG of its intention to establish an Audit Committee in compliance with DLG guideline 08/64.

This follows the establishment of an internal audit function by Council in August 2005 and appointment of Forsyths Pty Ltd as Council's Internal Auditor. Forsyths has been engaged under contract to provide internal audit services to Council and this contract is due for renewal in June 2010.

The objective of the Audit Committee (Committee) is to enhance the corporate governance of Council through the provision of independent oversight, review and advice. The Committee will assist Council by providing independent assurance and assistance on the organisation's governance, risk, control and compliance frameworks.

In fulfilling its objective, the ability of the Committee to maintain independent and objective judgement is vital.

An audit committee establishes the importance and executive direction for an internal audit function and ensures that Council achieves the maximum value from its internal audit services. The audit committee sets the appropriate governance tone and oversight.

Establishing an Audit Committee

The DLG guidelines 08/64 on internal audit provide extensive detail on the establishment and operation of an audit committee and internal audit function. Some pertinent information is provided below.

Why establish an Audit Committee?

Establishing an Audit Committee is regarded as good governance practice. The audit committee plays a critical role in the governance framework by overseeing and monitoring management's and the external auditor's participation in the financial reporting and governance processes. It will also examine issues such as approaches being adopted by management to address business risk, monitor controls, and ensure corporate and financial governance responsibilities and legal compliance.

An audit committee provides an important independent role between Council and its management and the community. As an advisory committee it has no authority to act independently of Council. Its primary role is to provide suggestions and recommendations to Council and/or management about actions that should be taken to enhance risk control, compliance and financial reporting that it considers to be in the best interests of the local community.

The overall objective of an audit committee is to assist Council and the General Manager to best discharge financial and management responsibilities imposed under the Local Government Act and other relevant legislation.

Independence and objectivity

An audit committee will achieve its independence and objectivity by having a strong presence of independent members external to Council and its operations. To gain the most benefit from having an audit committee, it is important that Council appoints appropriately skilled people, who have extensive expertise in business, risk and financial management.

Structure and membership

The structure and membership of an audit committee in the NSW local government environment depends on the specific needs of the Council. Membership should have a balance of independent external members and Councillors. Good practice in governance is for Council staff not to be members of the committee and the chair should be an independent external member. A suggested membership is:

- 2 Councillors
- 2 independent members, with financial, risk and business expertise and one of whom should be the Chair

The General Manager, Group Managers and other designated officers should attend meetings of an audit committee for specific agenda items as required by the committee. They have no voting entitlements. The external auditor and the internal auditor should also be invited to attend as observers.

An audit committee must have its own charter that sets out the roles and responsibilities of the audit committee and its oversight of the internal and external

audit functions. The elected Council should approve and regularly review the audit committee charter.

Audit Committee operations

1. Meetings

Generally, the audit committee should meet at least four times a year, as necessary to meet its responsibilities. It is also appropriate to have meetings dedicated to considering the annual audit plan, management letters and Council's audited annual financial reports.

2. Functions

Clear roles and responsibilities should be given to an audit committee, and documented in the audit committee charter. The broad responsibilities for best practice include monitoring of the following:

- Risk management
- Governance control framework
- External accountability
- Legislative compliance
- Internal audit
- External audit

An audit committee, as a crucial component of corporate governance, is fundamental to assisting the General Manager and Council with their oversight function to:

- Ensure key controls are operating effectively
- Ensure key controls are appropriate for achieving corporate goals and objectives
- Meet their statutory and fiduciary duties
- Provide a forum for discussion of problems and issues that may affect Council meeting its objectives and goals
- Provide a forum to encourage discussion and identification of potential areas containing risks that would be reduced or benefit from examination or monitoring by internal audit
- Review and endorse the annual audit plans (internal and external) and monitor the implementation of audit recommendations

Objectives and scope of Internal Audit

The General Manager established an Internal Audit Committee in 2005. The Internal Audit Committee comprises the Executive Management team, Legal Services Manager and Internal Auditor.

Internal audit is an essential component of a good governance framework. At both a management and Council level, it must strive to ensure there is a culture directed toward realising opportunities and managing risks that challenge local government.

Internal audit is widely used as a key mechanism to assist councils to manage risk and improve efficiency and effectiveness.

The mission of internal auditing is to provide an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

The scope of services provided by internal audit encompass:

- The examination and evaluation of the adequacy and effectiveness of systems of internal control, risk management, governance, and the conduct of ethical behaviour
- Ascertaining conformity with the goals and objectives of Council
- Assessment of the economic and efficient use of resources
- The examination of compliance with policies, procedures, plans and legislation
- Assessment of the reliability and integrity of information
- Assessment of the safeguarding of assets
- Any special investigations as directed by the audit committee and within the scope of the committee and internal audit charter
- All activities of Council, whether financial or non-financial, manual or computerised

To this end, internal audit should undertake reviews of Council's activities and furnish the audit committee and all levels of management with reports containing analyses, appraisals, recommendations, comments and observations generally. Internal audit will not undertake reviews of activities that are not directly controlled by Council.

It is intended that the existing officer based Internal Audit Committee be replaced by the proposed Audit Committee.

Audit Committee Charter and Internal Audit Charter

A charter for the Audit Committee and Internal Audit function has been drafted for Council consideration (refer attachment). The Charters have been prepared in accordance with DLG guideline 08/64 requirements.

The two charters aim to clarify the roles and responsibilities of Council and management with respect to audit responsibilities and confirm that the Audit Committee is an advisory committee of Council pursuant to the Local Government Act 1993.

The combination of an effective audit committee and internal audit function provides a formal means by which Council can obtain assurance that governance, risk control, compliance and financial reporting is working effectively.

COMMUNITY STRATEGIC PLAN/OPERATIONAL PLAN

Goal 8 of the 2009-2013 Council Plan provides that Council will show leadership through effective, accountable management. The establishment of an audit function will enhance the management of business risk, corporate and financial governance responsibilities and legal compliance.

FINANCIAL/RESOURCE IMPLICATIONS

There are no significant financial implications arising from the establishment of the Audit Committee. It is suggested that the external skill based members be paid a meeting allowance (\$100 each per meeting) to cover out of pocket expenses only. This can be accommodated within existing budgetary allowances.

LEGAL, POLICY AND RISK IMPLICATIONS

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

CONSULTATION

The establishment of an Audit Committee was presented to the two way conversation held with Councillors on 4 August 2009 and 15 December 2009.

Consultation on the proposed Audit Committee and Internal Audit Charter has been undertaken with Council's internal auditor, Forsyths, external auditor, Price Waterhouse and legal services provider, Harris Wheeler.

If endorsed by Council, it is proposed that public expressions of interest will be invited for suitable external representatives to the Audit Committee during February/March 2010. A relevant media campaign to generate public interest in the appointments will be undertaken.

OPTIONS

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

ATTACHMENTS

- 1) Audit Committee Charter
- 2) Internal Audit Charter

COUNCILLORS ROOM

1) Copies of the Audit Committee Charter and Internal Audit Charter have been placed in the Councillors Room.

TABLED DOCUMENTS

Nil.

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1. OBJECTIVE

The objective of the Audit Committee (Committee) is to enhance the corporate governance of Port Stephens Council (Council) through the provision of independent oversight, review and advice. The Committee will assist Council by providing independent assurance and assistance on the organisation's governance, risk, control and compliance frameworks.

In fulfilling its objective, the ability of the Committee to maintain independent and objective judgement is vital.

The Committee will report to Council and provide independent advice and recommendations on matters relevant to the Committee's Charter. The Committee will also act as a forum for communication between Council, General Manager, senior management, internal audit and external audit.

2. AUTHORITY

Port Stephens Council will establish the Audit Committee to operate as an independent and objective advisory committee to Council. The Committee is established as an advisory committee of Council pursuant to Section 355B of the Local Government Act 1993 (as amended).

The Council authorises the Committee, within the scope of its roles and responsibilities, to:

- Obtain information it needs from any employee or external party (subject to their legal obligations to protect information and with prior consultation with the General Manager)
- Discuss any matters with the internal and external auditors or other external parties (subject to confidentiality considerations)
- Request the attendance of any employee at Committee meetings (subject to prior consultation with the General Manager)
- Obtain external legal or other professional advice considered necessary to meet its responsibilities (in accordance with Council procurement arrangements and subject to prior consultation with the General Manager)

The Committee does not have any delegations or authority to implement actions not otherwise specified or authorised by Council. The Committee does not have any management functions and is independent of management.

3. COMPOSITION AND TENURE

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

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

3.1 ELECTED MEMBER OF COUNCIL

The elected member of Council (in addition to the Mayor) appointed to the Committee will have relevant and appropriate experience in business, risk, law and financial management.

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

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

3.2 INDEPENDENT EXTERNAL MEMBER

The two independent external members will have relevant and appropriate experience in business, risk, law and financial management.

The independent external members will be appointed on the terms and conditions determined by Council.

Council may resolve to appoint an independent external member for consecutive terms.

3.3 INVITEES (NON-VOTING)

Unless the Committee determines otherwise, the following Council officers and representatives will be required to attend meetings of the Committee for specific agenda items:

- General Manager
- Group Managers
- Manager Financial Services
- Manager Legal Services
- Executive Officer
- Corporate Risk Manager
- Representatives of the external auditor
- Representatives of the internal auditor

> Other officers may attend by invitation as requested by Chair of the Committee.

The Council officers and representatives will have no voting entitlements.

3.4 INDEPENDENT CHAIR

An independent external member will be the Chair of the Committee.

Appointment of the independent external member Chair to the Committee will be determined by the Committee as resolved from time to time.

The Committee may resolve to appoint an independent external member as Chair for consecutive terms.

In the absence of the Chair the members present at the meeting will elect an acting Chair.

4. ROLES AND RESPONSIBILITIES

The Committee has no executive powers, but may from time to time be delegated specific powers by Council.

In carrying out its responsibilities, the Committee must at all times recognise that primary responsibility for management of Council rests with the Council and the General Manager as defined by the Local Government Act.

Council or the General Manager may refer any matter to the Committee within the scope of its roles and responsibilities.

The responsibilities of the Committee may be revised or expanded by the Council from time to time.

The Committee's specific responsibilities include:

4.1 RISK MANAGEMENT

- Review Council's risk management framework to ensure comprehensive processes exist to identify operational, strategic, financial and fraud risks. Review controls to ensure effective processes to reduce risks to an acceptable residual level
- Review whether a sound and effective approach has been followed in developing strategic risk management plans for major projects or undertakings
- Review the impact of the risk management framework on its control environment and insurance arrangements

- Review whether a sound and effective approach has been followed in establishing business continuity planning arrangements, including whether plans have been tested periodically; and
- Review and endorse the Risk Management (and related) policies and procedures

4.2 CONTROL FRAMEWORK

- Review whether management has adequate internal controls in place, including over external parties such as contractors and advisors
- Review whether management has in place relevant directives and procedures, and these are periodically reviewed and updated
- Progressively review whether appropriate processes are in place to ensure adequate compliance to policies and procedures
- Review whether appropriate policies and procedures are in place for the management and exercise of delegations; and
- Review the Code of Conduct as it applies to ethical and lawful behaviour

4.3 EXTERNAL ACCOUNTABILITY

- In consultation with management ensure the annual financial reports comply with applicable Australian Accounting Standards and Department of Local Government Guidelines
- Review the external audit opinion, including whether appropriate action has been taken in response to audit recommendations and adjustments
- Consider responses on contentious financial reporting matters in conjunction with Council's management and external consultants
- Review the processes in place designed to ensure financial information included in the annual report is consistent with the signed financial statements
- Ensure timely and accurate publishing of the annual report to include the signed financial statements as per Australian Accounting Standards and Department of Local Government Guidelines
- Ensure appropriate controls are in place to satisfy compliance to State Government reports and recommendations
- Ensure management has in place an appropriate framework to link organisational objectives and outcomes meet Council expectations

4.4 LEGISLATIVE COMPLIANCE

Ensure an appropriate compliance framework exists to identify risks and controls over legislative compliance to relevant laws, regulations and associated government policies

4.5 INTERNAL AUDIT

- Ensure the Internal Audit Plan meets the objectives of management and recommend adoption as required
- Consider the adequacy of internal audit resources to carry out its responsibilities, including completion and compliance of the approved Internal Audit Plan within the designated timeframe
- Provide input (but not decision) into the tender, remuneration and appointment of the internal auditor
- Ensure the existence and provide input into an effective long-term internal audit strategic plan
- Receive audit reports and consider significant issues that have been identified. Review recommendations and ensure appropriate follow up of issues is effected within a timely manner
- Review and endorse the Internal Audit Charter
- Periodically review the performance of Internal Audit

4.6 EXTERNAL AUDIT

- Review and endorse the proposed scope and engagement terms of the external auditor
- Review and ensure management implement recommendations contained within the external auditor's management letter as appropriate
- Provide input (but not decision) into the tender, remuneration and appointment of the external auditor

4.7 RESPONSIBILITIES OF MEMBERS

Members of the Committee are expected to:

- Have a good understanding of the Committee's position within the Council's governance framework
- Understand the regulatory and legislative requirements appropriate to Council
- Understand and ensure clearly defined roles and responsibilities for audit related positions and consultancies exist
- Ensure effective communication exists between the Committee, management and key stakeholders

- Provide professional competency to be able to meet the objectives of the Committee
- Contribute effectively to the quality assurance and continuous improvement process as it relates to the objectives

5. REPORTING

5.1 REPORTING TO COUNCIL

The Committee, through the Chair, will report regularly to Council on significant governance, risk and internal control issues including:

- > Significant control weaknesses or breakdowns in critical controls;
- > Fraudulent or illegal activities;
- > Evaluation of the effectiveness of the internal and external audit functions; and
- > Endorsement of the financial statements.

The Committee will also report immediately to the General Manager any matter it deems of sufficient importance.

Where the Committee makes a recommendation to Council on a matter within the scope of its Charter, the matter will be listed as an agenda item for consideration by Council.

The Committee will submit an annual report to Council summarising its activities for the previous year.

5.2 INTERNAL AUDIT REPORTING

At the first Committee meeting after 30 June each year, Internal Audit will provide a performance report of:

- The performance of Internal Audit for the financial year as measured against agreed key performance indicators
- The approved Internal Audit Plan of work for the previous financial year showing the current status of each audit

ADMINISTRATIVE ARRANGEMENTS

6.1 MEETING PRACTICE

Unless otherwise specified in this Charter and in accordance with any Local Government Act requirements, the Committee will determine its meeting practice, processes and protocols.

6.2 VOTING

Matters under consideration by the Committee will be determined by consensus whenever possible. In the event that consensus cannot be achieved, an item is adopted by the Committee where a majority of members vote for the subject. If the voting is tied the Chair has a second (casting) vote which is used to break the deadlock.

6.3 MEETING SCHEDULE

The Committee will meet at least four times per year, with one of these meetings to include review and endorsement of the annual audited financial reports and external audit opinion.

The need for any additional meetings will be decided by the Chair of the Committee, though the Council, General Manager or other Committee members may make requests to the Chair for additional meetings.

A forward meeting plan, including meeting dates and agenda items, will be agreed by the Committee each year. The forward meeting plan will cover all Committee responsibilities as detailed in this Audit Committee Charter (refer attachment A).

6.4 ATTENDANCE AT MEETINGS AND QUORUMS

A quorum will consist of a majority of Committee members, including at least one independent external member.

6.5 SECRETARIAT

The General Manager will ensure that appropriate secretariat support is provided to the Committee. The Secretariat is the liaison between the Committee and the day to day operations and staff of Council.

6.6 AGENDA

The Secretariat will ensure the agenda for each meeting and supporting papers are circulated to members in sufficient time (at least three working days) before the meeting.

Circulation of the agenda will be by normal postal services or electronic means as determined by the Committee.

6.7 MINUTES

Minutes of Committee meetings will be recorded by the Secretariat and reviewed by the Chair prior to circulation to members for information and action arising.

The minutes will be circulated within three weeks of the meeting being held.

6.8 IMPLEMENTATION OF AUDITOR RECOMMENDATIONS

The Committee will maintain a register to track the implementation of both internal and external audit recommendations. The register will include all audit recommendations, together with management responses, that have yet to be implemented or where implementation is in progress. The status of recommendations will be reviewed by the Committee at each meeting.

6.9 CODE OF CONDUCT

Committee members are bound by the terms and conditions of the Port Stephens Council Code of Conduct.

Committee members must declare any conflicts of interest at the start of each meeting. Details of any conflicts of interest must be appropriately minuted.

Where members or invitees at Committee meetings are deemed to have a real or perceived conflict of interest, it may be appropriate they be excused from Committee deliberations on the issue where the conflict of interest may exist.

6.10 INDUCTION

The General Manager will ensure that new Committee members receive relevant information and briefings on their appointment to assist them to meet their Committee responsibilities.

6.11 PERFORMANCE ASSESSMENT

The Chair of the Committee will initiate an annual review of the performance of the Committee. The review will be conducted on a self-assessment basis (unless otherwise determined by the Committee), with appropriate input from management and any other relevant stakeholders, as determined by the Committee.

6.12 REVIEW OF AUDIT COMMITTEE CHARTER

The Committee will review the Audit Committee Charter on an annual basis and make recommendation on any changes to Council for its determination.

Any changes to the Audit Committee Charter must be approved by Council.

Approved: Port Stephens Council Meeting Date:

ATTACHMENT A AUDIT COMMITTEE -WORK PLAN

TASK	TIMING
RECEIVE PRESENTATIONS AND REPORTS FROM INTERNAL AND EXTERNAL AUDITORS	STANDING ITEM
REVIEW IMPLEMENTATION OF INTERNAL AND EXTERNAL AUDIT RECOMMENDATIONS	STANDING ITEM
REVIEW RISK REGISTER ACTIONS AND IMPLEMENTATION	STANDING ITEM
REVIEW FRAUD AND CORRUPTION PREVENTION PLAN	FEBRUARY
REVIEW RISK MANAGEMENT FRAMEWORK	FEBRUARY
APPROVE ANNUAL INTERNAL AUDIT PROGRAM	MAY
DETERMINE AUDIT COMMITTEE MEETING SCHEDULE	MAY
REVIEW AUDIT COMMITTEE'S PERFORMANCE	JULY
REVIEW AUDIT COMMITTEE CHARTER	JULY
REVIEW AND APPROVE THE AUDIT COMMITTEE'S ANNUAL REPORT TO COUNCIL	OCTOBER
REVIEW ANNUAL FINANCIAL STATEMENTS	OCTOBER

Audit Committee - Proposed Meeting Schedule

July

October (Financial Statements)

February

May

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INTERNAL AUDIT CHARTER

OBJECTIVE

The objective of internal auditing is to provide an independent, objective assurance and consulting activity designed to improve an organisation's operations. Internal Audit helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of the organisations governance, risk management, control and compliance environments.

2. PURPOSE

This Internal Audit Charter is a formal statement of purpose, authority and responsibility for an internal auditing function within Council.

- ➤ It establishes Internal Audit within Council and recognises the importance of such an independent and objective service to the organisation.
- ➤ It outlines the legal and operational framework under which Internal Audit will operate.

The Internal Audit Charter authorises the General Manager to promote and direct a broad range of internal audits across Council.

3. AUTHORITY

The General Manager is authorised to direct a comprehensive program of internal audit work in the form of reviews, previews, consultancy advice, evaluations, appraisals, assessments and investigations of functions, processes, controls and governance frameworks in the context of the achievement of Council's business objectives.

For this purpose, all members of Internal Audit are authorised to have full, free and unrestricted access to all functions, property, personnel, records, information, accounts, files, monies and other documentation, as necessary for the conduct of their work.

The General Manager is responsible for ensuring that the Internal Audit function of Port Stephens Council (Council) is conducted in accordance with the International Standards for the Professional Practice of Internal Auditing (Standards) issued by the Institute of Internal Auditors.

4. OBJECTIVITY AND INDEPENDENCE

Objectivity requires an unbiased mental attitude. As such, all Internal Audit staff and contractors will perform internal audit engagements in such a manner that they have an honest belief in their work product and that no significant quality compromises are made. Further, it requires Internal Audit staff not to subordinate their judgment on internal audit matters to that of others.

To facilitate this approach, Internal Audit will have independent status within Council, and for this purpose will be responsible directly through the General Manager to the Audit Committee.

Internal Audit will be independent of the activities reviewed, and therefore will not undertake any operating responsibilities outside internal audit work. Neither will Internal Audit staff have any executive or managerial powers, authorities, functions or duties except those relating to the management of Internal Audit. Internal Audit staff and contractors will report to the Audit Committee and General Manager any situations where they feel their objectivity may be impaired.

The work of Internal Audit does not relieve the staff of Council from their accountability to discharge their responsibilities. All Council staff are responsible for risk management and the operation and enhancement of internal control. This includes responsibility for implementing remedial action endorsed by management following an internal audit.

Internal Audit is not responsible for operational activities on a daily basis, or in the detailed development or implementation of new or changed systems, or for internal checking processes.

The scope of services provided by Internal Audit will encompass:

- The examination and evaluation of the adequacy and effectiveness of systems of internal control, risk management, governance, and the status of ethical behaviour.
- Ascertaining conformity with the goals and objectives of Council.
- Assessment of the economic and efficient use of resources.
- The examination of compliance with policies, procedures, plans and legislation.
- Assessment of the reliability and integrity of information.
- Assessment of the safeguarding of assets.
- Any special investigations as directed by the Audit Committee or General Manager.
- All activities of Council, whether financial or non-financial, manual or computerised.

In particular, the scope of services may include:

Assurance services – objective examination of evidence for the purpose of providing an independent assessment on risk management, control, or governance processes for the organisation. Examples may include financial, performance, operational, compliance, system security, and due diligence engagements.

Consulting services – advisory and related client service activities, the nature and scope of which are agreed with the client and which are intended to add value and improve an organisation's governance, risk management, and control processes without the internal auditor assuming management responsibility. Examples include counsel, advice, facilitation and training.

Internal Audit will use the most appropriate methodology for each internal audit engagement, depending on the nature of the activity and the pre-determined parameters for the engagement. Generally, internal audits will include:

- Planning.
- Reviewing and assessing risks in the context of the audit objectives.
- > Examination and evaluation of information.
- Communicating results.
- Following up on implementation of audit recommendations.

7. OPERATING PRINCIPLES

Internal Audit will conform with:

- > The Standards and Code of Ethics issued by the Institute of Internal Auditors.
- ➤ Where relevant, the Statement on Information Systems Auditing Standards issued by the Information Systems and Control Association.
- Relevant auditing standards issued by the Auditing and Assurance Standards Board.

Internal Audit staff will:

- Possess the knowledge, skills, and technical proficiency essential to the performance of internal audits.
- > Be skilled in dealing with people and in communicating audit issues effectively.
- Maintain their technical competence through a program of continuing education.
- Exercise due professional care in performing internal audit engagements.
- Conduct themselves in a professional manner.
- Conduct their activities in a manner consistent with the concepts expressed in the Standards and the Code of Ethics.

8. REPORTING

The General Manager will report the findings of Internal Audit to the Audit Committee.

At each Audit Committee meeting the General Manager will submit a report summarising all audit activities undertaken during the period, indicating:

- Internal audit engagements completed or in progress.
- Outcomes of each internal audit engagement undertaken.
- Remedial action taken or in progress.

On completion of each internal audit engagement, Internal Audit will issue a report to its audit customers detailing the objective and scope of the audit and resulting issues based on the outcome of the audit. Internal Audit will seek from the responsible senior executive an agreed and endorsed action plan outlining remedial action to be taken, along with an implementation timetable and person responsible. Responsible officers will provide written management responses and action plans in response to issues and recommendations contained in internal audit reports.

The General Manager will make available all internal audit reports to the Audit Committee. However, the work of Internal Audit is solely for the benefit of Council and is not to be relied on or provided to any other person or organisation, except where this is formally authorised by the Audit Committee or General Manager.

In addition to the normal process of reporting on work undertaken by Internal Audit, the General Manager will draw to the attention of the Audit Committee all matters that, in the General Manager's opinion, warrant reporting in this manner.

9. PLANNING

Internal Audit will use a risk-based rolling program of internal audits to establish an annual Internal Audit Plan to reflect a program of audits over a 12 month period. This approach is designed to be flexible, dynamic and more timely in order to meet the changing needs and priorities of Council.

The General Manager will prepare an annual Internal Audit Plan for review and approval by the Audit Committee, showing the proposed areas for audit. The annual Internal Audit Plan will be based on an assessment of the goals, objectives and business risks of Council, and will also take into consideration any special requirements of the Audit Committee and General Manager.

The General Manager has discretionary authority to adjust the Internal Audit Plan as a result of receiving special requests from management to conduct reviews that are not on the plan, with these to be approved at the next meeting of the Audit Committee.

10. QUALITY ASSURANCE

The General Manager will oversee the development and implementation of a quality assurance and improvement program for Internal Audit, to provide assurance

that internal audit work conforms to the Standards and is focused on continuous improvement.

11. CO-ORDINATION WITH EXTERNAL AUDIT

Internal Audit will periodically consult with the external auditor, to discuss matters of mutual interest, to co-ordinate audit activity, and to reduce duplication of audit effort.

12. REVIEW OF THE INTERNAL AUDIT CHARTER

The General Manager will periodically review the Internal Audit Charter to ensure it remains up-to-date and reflects the current scope of internal audit work. Any proposed changes to the Internal Audit Charter will be referred to the Audit Committee for determination.

13. EVALUATION OF INTERNAL AUDIT

The General Manager will develop performance measures (key performance indicators) for consideration and endorsement by the Audit Committee, as a means for assessing the performance of Internal Audit. The performance measures will be periodically evaluated by the Audit Committee and General Manager.

Internal Audit will also be subject to an independent quality review at least every three years. Such review will be in line with the Standards of Professional Practice in Internal Audit and be commissioned by and report to the Audit Committee.

CODE OF CONDUCT

Internal auditors are bound by the terms and conditions of the Port Stephens Council Code of Conduct.

Internal auditors are not to provide audit services for work for which they may previously have been responsible. Whilst the Audit Standards provide guidance on this point and allow this to occur after 12 months, each instance should be carefully assessed.

When engaging internal audit contractors, the General Manager will take steps to identify, evaluate the significance, and manage any perceived or actual conflicts of interest that may impinge upon internal audit work.

Instances of perceived or actual conflicts of interest are to be immediately reported to the Audit Committee by the General Manager.

Any changes to this Internal Audit Charter must be approved by the Audit Committee.

Approved:	Council meeting:	Date:
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ITEM NO. 13 FILE NO: A2004-1025

EXTENSION OF GIGGINS ROAD

REPORT OF: CARMEL FOSTER - COMMERCIAL PROPERTY MANAGER

GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Cease negotiations formerly approved on 26th June 2001 (259) by Council to acquire part of Lots 2 & 3 DP634750 from the owners to allow the extension of Giggins Road, Heatherbrae.
- 2) Notify property owners of decision to postpone acquisition as the present owners of the adjoining land are considering a different road alignment for the extension of Giggins Road.
- 3) Rescind Council resolution 259 of 26th June 2001.

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Bruce MacKenzie Councillor Ken Jordan	That the recommendation be adopted.
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ORDINARY MEETING - 09 FEBRUARY 2010

017	Councillor Steve Tucker Councillor Ken Jordan	It was resolved that the recommendation be adopted.

BACKGROUND

The purpose of this report is to cease negotiations for the acquisition of part of Lots 2 & 3 DP634750 for road widening purposes at Heatherbrae.

Council resolution number 259 of the 20th June 2001 (see attachment 1) required negotiations with the owners of Lots 2 & 3 DP634750 for the acquisition of part of that land for future road widening and the connection of both sections of the currently constructed Giggins Road at Heatherbrae.

Developers of the land between the two sections of Giggins Road have since sold the land and the new owners of the land have not submitted any plans for development of the area. It is understood that various options are being considered for a new route for Giggins Road through their property and on finalisation of design a determination can be made on the boundaries within lots 2 and 3. Until then there is little value in negotiations continuing. See attachment 2 for Location Plan.

FINANCIAL/RESOURCE IMPLICATIONS

Nil as Council is not continuing with negotiations.

LEGAL, POLICY AND RISK IMPLICATIONS

Nil as Council is not continuing with negotiations until a more definite route for the road is finalised.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil as Council is not continuing with negotiations.

CONSULTATION

Council's Engineering Services Manager, Property Officer and Principal Property Advisor.

OPTIONS

Adopt recommendations Reject recommendations

ATTACHMENTS

- 1) Minutes of 20th June 2001
- 2) Location Plan

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

MINUTES OF 26 JUNE 2001 ORDINARY MEETING

ITEM NO. 3

FILE NO: 5360-031 1544-099

EXTENSION OF GIGGINS ROAD

AUTHOR: MICHAEL SKINN - GROUP MANAGER FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

- Approve in principle the acquisition of part of Lots 2 and 3 DP 634750 to allow the extension of Giggins Road, Heatherbrae.
- 2) Enter into negotiations with the owner of Lots 2 & 3 DP 634750 for the dedication of the area required for the extension of Giggins Road.
- 3) Enter into negotiations with the owner of Lot 5 DP 238159 for:
 - a) the design and construction of Giggins Road over Lots 2 & 3 DP 634750;
 - b) the deferral of payment for the design and construction of Giggins Road over Lots 2 & 3 DP 634750 for 3 years.
- 4) Receive a further report on the results of the negotiations.

259 Councillor Titmarsh Councillor Plowman

Resolved that the Recommendation be adopted

PORT STEPHENS COUNCIL

ORDINARY MEETING - 26 JUNE 2001

ITEM NO. 3

FILE NO: 5360-031 1544-099

EXTENSION OF GIGGINS ROAD

AUTHOR: MICHAEL SKINN - GROUP MANAGER FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve in principle the acquisition of part of Lots 2 and 3 DP 634750 to allow the extension of Giggins Road, Heatherbrae.
- Enter into negotiations with the owner of Lots 2 & 3 DP 634750 for the dedication of the area required for the extension of Giggins Road.
- 3) Enter into negotiations with the owner of Lot 5 DP 238159 for:
 - a) the design and construction of Giggins Road over Lots 2 & 3 DP 634750;
 - b) the deferral of payment for the design and construction of Giggins Road over Lots 2 & 3 DP 634750 for 3 years.
- 4) Receive a further report on the results of the negotiations.

BACKGROUND

The purpose of this report is to seek approval to:

- a) negotiate the acquisition of part of Lots 2 & 3 DP 634750 to allow the extension of Giggins Road, Heatherbrae;
- b) negotiate with the owner of Lot 5 DP 238159 regarding the design and construction of Giggins Road, Heatherbrae over Lots 2 & 3 DP 634750.

LD5 Industrial Land at Heatherbrae established a road pattern to allow the development of the area as an industrial park while denying access to the Pacific Highway.

Todate, approximately 20% of the road pattern identified in LD5 has been constructed.

Council has received an application from the owners of Lot 5 DP 238159 which will see the construction of a further section of the road network (see Attachment 1). Council has also been advised that the owner of Lot 4 DP 238159 is committed to construct a further section of Giggins Road in conjunction with the road construction over Lot 5 DP 238159. This construction was required under Development Consent No. F1541/97 however could not be proceeded with until access became available over Lot 5 DP 238159.

A Road Reserve to the south of Lots 2 & 3 DP 634750 and Lot 5 DP 238159 has already been dedicated on DP1026709 (see Attachment 1) and should proceed following completion of the adjacent link.

PORT STEPHENS COUNCIL

ORDINARY MEETING - 26 JUNE 2001

With the work proceeding under current approvals, a half width of road across Lots 2 & 3 DP 634750 would remain unconstructed (see Attachment 1).

The owner of Lot 5 DP 238159 has suggested that they would be willing to design and construct this section of road on a cost-basis in conjunction with their own works, with Council repaying the cost of this work at a future date (2-3 years). The owner of the lots over which the section of half road would be constructed is prepared to donate the area of land required subject to the appropriate property adjustments being carried out.

LINKS TO CORPORATE PLANS

This report relates to the objective within the Road, Drainage and Waste Management program in Council's Management Plan "Managing a safe, efficient and effective network which transports people and goods within and through Port Stephens.

FINANCIAL/RESOURCE IMPLICATIONS

Until the designs for Giggins Road are completed the cost of the road construction required over Lots 2 & 3 DP 238159 is unknown as are the cost of the associated property adjustments.

There are however normally financial savings in the construction of larger and full width sections of road due to economies of scale in the purchase of materials and the ease of construction compared to a half width, short section.

Council has not allocated funds within its current or 2001/02 financial year budget to cover the cost of such work.

LEGAL AND POLICY IMPLICATIONS

There is no legal impediment to Council negotiating the dedication and construction of a section of a road or agreeing to a deferred payment arrangement.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Nil

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

G K Lindsay, Development and Building Consultant Development Planner Subdivision Engineer Engineering Services Manager

PORT STEPHENS COUNCIL

ORDINARY MEETING - 26 JUNE 2001

OPTIONS

- 1) As per the recommendation.
- 2) Elect not to proceed at this time.

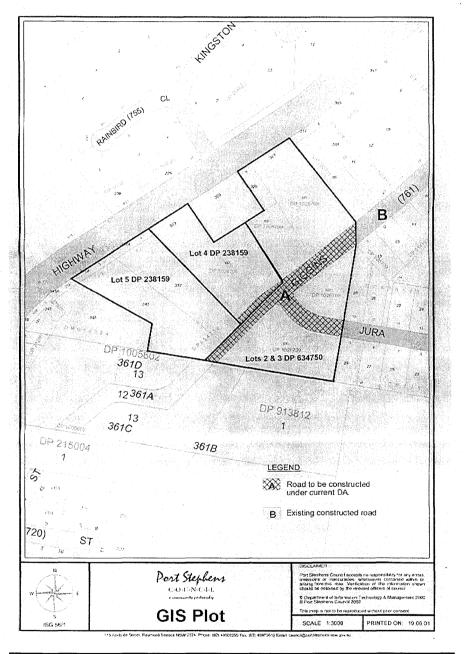
ATTACHMENTS

1) Site Plan

PORT STEPHENS COUNCIL

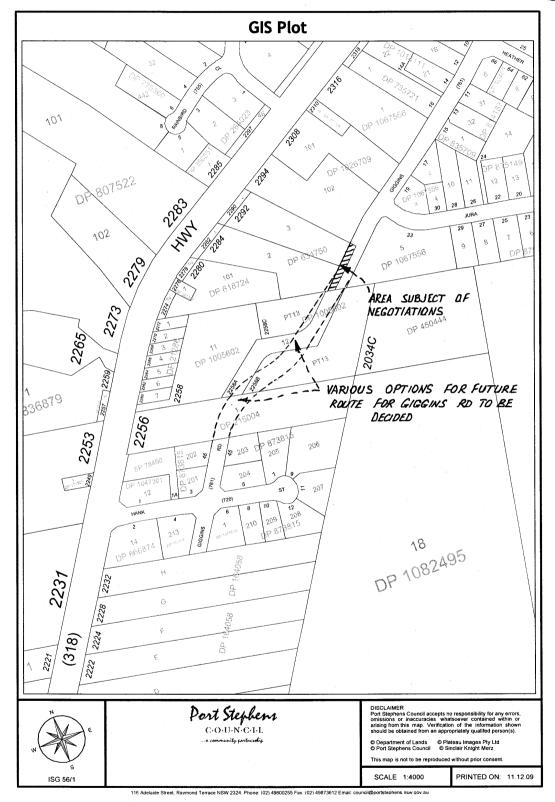
ORDINARY MEETING - 26 JUNE 2001

ATTACHMENT 1



PORT STEPHENS COUNCIL





ITEM NO. 14 FILE NO: PSC 2009-06551

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

REPORT OF: MICK LOOMES - ENGINEERING SERVICES MANAGER

GROUP: FACILITIES AND SERVICES

.....

RECOMMENDATION IS THAT COUNCIL:

- 1. Revokes the current policy "Contribution to Works for Kerb and Gutter Construction & Footpath paving/cycleway Construction File number E5255-000 & E5075-000 Adopted 18/07/2000 Minute Number 360 (Attachment 3)
- 2. Adopts the amended draft policy "Contributions to Works Kerb and Gutter Construction 2010" (Attachment 2)

.....

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Bruce MacKenzie Councillor John Nell	That the recommendation be adopted.
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ORDINARY MEETING - 09 FEBRUARY 2010

018	Councillor Ken Jordan Councillor Bruce MacKenzie	It was resolved that the recommendation be adopted.
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MATTER ARISING

O19 Councillor Glenys Francis Councillor Ken Jordan	It was resolved that the policy state that if ratepayers elect to pay by instalments that the method of payment be by Direct Debit only.
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.....

BACKGROUND

The purpose of this report is to present Council with the results from the 28 day public exhibition of the draft Policy for charging adjoining owners a contribution towards the cost of kerb and gutter construction.

On 20 October 2009 a report to Council was prepared which separated the two areas of contributions to works, being kerb & gutter, and footpath/cycleway paving into two policies. Council resolved to place the draft policy "Policy for Charging Adjoining Property Owners a Contribution to Works for Footpath Kerb and Gutter Construction" on public exhibition for 28 days. This was done over November 2009.

Five submissions were received following the exhibition period, details as follows:

A) Supporting the Policy

No submissions of support were received

B) Opposing the Policy

Five submissions opposing the policy were received for one or more of the following reasons:

- Council rates should cover the cost of all kerb and gutter construction
- Home owners were suffering financial hardship and had many economic constraints
- That kerb and gutter was not actually on their property
- Property owners should be able to accept or veto kerb and gutter proposals

C) Proposing Alternative methods of payment

A submission was received from Council's Financial Services section which outlines repayment terms and conditions, as well as adding a reference to Council's Debt recovery and Hardship Policy. The submission was for the contribution to works for Footpath paving & cycleway construction, but the contents are applicable for contributions to works kerb and gutter construction as well.

These additions are considered reasonable as they define areas of the policy previously open to discretion, and offers alternatives not previously mentioned. These have been added into the current draft policy to become the amended draft policy "Contributions to Works Kerb and gutter Construction 2010" (see Attachment 2).

Of the five submissions received opposing the draft policy,

- One submission was received from a property owner who has had kerb and gutter constructed adjacent to their property in the last 6 months.
- One submission was received from a property owner who has been advised that footpath paving is scheduled for their street soon.
- The remaining submissions were from interested landowners in various parts of the local government area.

Since 20 October 2009 new kerb and gutter has been constructed in Rigney St, Shoal Bay as well as in Lloyd George Grove and Clemenceau Crescent, Tanilba Bay as part of the President Poincare Parade capital works project currently underway.

More kerb and gutter construction in Nelson Bay, Mallabula, Corlette, Tanilba Bay and Anna Bay is scheduled for construction over the next six months.

Since this issue came to Council's attention in the middle of 2009, many landowners who have been issued with invoices for newly constructed kerb and gutter are withholding contributions to works payment whilst Council considers this issue.

FINANCIAL/RESOURCE IMPLICATIONS

Council still has a number of Capital works projects to complete in the 2009/2010 transport capital works program involving the construction of kerb and gutter. As outlined in the 20 October Council Report, approximately \$150,000 worth of contributions to works are forecasted to be collected.

Should Council decide to <u>discontinue</u> seeking contributions towards kerb and gutter construction, it will need to either increase its deficit or review its current works program and reduce the number of projects it can undertake. In addition, it will need to decide the date on which the change in policy is to be implemented.

LEGAL, POLICY AND RISK IMPLICATIONS

Section 217 of the Roads Act 1993 allows the Roads Authority (Council) to recover up to 50% of the costs of kerb and gutter if Council has resolved to do so. As attached to the 20 October Council report, it is common practice amongst Hunter Councils to charge adjoining owners a contribution to works for kerb and gutter construction.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

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

Kerb and gutter contributions for an "average" property in an urban area in 2009/10 will amount to approximately \$940 for a property with one frontage.

Most landowners generally accept that the kerb and gutter adds to value of their property as well as protection from stormwater runoff. The limited number of submissions against this policy seems to reinforce this assumption.

CONSULTATION

The draft policy titled "Policy for Charging Adjoining Property Owners a Contribution to Works for Footpath Kerb and Gutter Construction" was put on public exhibition from the 29 October to 27 November 2009. Five submissions were received.

OPTIONS

Or

Or

- 1) The recommendation, which is to revoke the current policy "Contribution to Works for Kerb & Gutter Construction & Footpath Paving/Cycleway Construction" and adopt the <u>amended</u> draft Policy "Contribution to Works Kerb and Gutter Construction 2010" (Attachment 2)
- 2) Revoke the current policy "Contribution to Works for Kerb & Gutter Construction & Footpath Paving/Cycleway Construction" and adopt the draft policy "Policy for Charging Adjoining Property Owners a Contribution to Works for Footpath Kerb and Gutter Construction" as was originally placed on public exhibition without change (Attachment 1)
- 3) Discontinue the policy of seeking contributions to works for kerb and gutter from a set date:
 - a. 1 July 2009 Start of the 2009/10 Financial Year or
 - b. 20 October 2009 The date on which Council resolved to place the draft policy on public exhibition or
 - c. 9 February 2010 Today's date
- 4) Another option

ATTACHMENTS

- 1) Draft Policy "Policy for Charging Adjoining Property Owners a Contribution to Works for Footpath Kerb and Gutter Construction" as put on public exhibition over November 2009
- 2) Amended draft Policy "Contribution to Works for Kerb and Gutter Construction 2010" with altered repayment terms and conditions and deferred payment options
- 3) Current Policy "Contribution to Works for Kerb & Gutter Construction & Footpath Paving/Cycleway Construction"

COUNCILLORS ROOM

1) Submissions are available for viewing in the Councillors Room

TABLED DOCUMENTS

Nil



POLICY

Adopted: Minute No: Amended: Minute No:

FILE NO: PSC2009-06551

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

BACKGROUND

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

24/4/79 (Minute No. 372): Contribution rate be 50%

11/7/95 (Minute No. 287) Council to continue charging adjoining property owners

for footpath construction.

30/1/96 (Minute No. 36): Method of charging be amended by adding a provision

for corner lots to pay 2/3 of the frontage rate for the

length of the construction.

20/7/99 (Minute No. 324) Council continue charging the property owner for

footpath and kerb and gutter construction.

18/7/00 (Minute No. 360) Policy document adopted by Council for contributions to

works for kerb and gutter construction and

footpath/cycleway construction.

This new draft policy has been prepared to separate out the "kerb and gutter" component of the previous policy adopted on 18/7/00 which was for contributions to both footpath paving and kerb and gutter. This new draft policy deals only with contributions for kerb and gutter. It has been prepared to ensure that Council is able to apply a contribution criteria and costing structure that is easily understood and ensures equity and consistency in its application with respect to contributions by adjoining property owners towards the cost of kerb and gutter construction.

OBJECTIVE

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

PRINCIPLES

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

POLICY STATEMENT

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

ASSESSING THE APPLICATION BASED ON LAND ZONING

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

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

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

BOUNDARY LOCATION & CALCULATIONS OF CONSTRUCTION COSTS

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

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

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

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

RELATED POLICIES

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications.

SOCIAL IMPLICATIONS

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

ECONOMIC IMPLICATIONS

Kerb and gutter contributions for an "average" property in an urban area in 2009/10 will amount to approximately \$940 for a property with one frontage. Some

landowners have difficulty meeting one-off levies of this amount so Council has adopted a practice of allowing landowners to progressively pay off their debt over a number of years. Most landowners accept that kerb and gutter adds to the value of their property.

ENVIRONMENTAL IMPLICATIONS

Nil

RELEVANT LEGISLATIVE PROVISIONS

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

Section 217 of the Roads Act 1993
Division 3 Kerbing and guttering etc by roads authorities
217 Roads authority may recover cost of paving, kerbing and guttering footways

- (1) The owner of land adjoining a public road is liable to contribute to the cost incurred by a roads authority in constructing or paving any kerb, gutter or footway along the side of the public road adjacent to the land.
- (2) The amount of the contribution is to be such amount (not more than half of the cost) as the roads authority may determine...[except as provided by \$217].

IMPLEMENTATION RESPONSIBILITY

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

REVIEW DATE

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

ATTACHMENT 2



POLICY

Adopted: Minute No:

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

PSC2009-06551

BACKGROUND

FILE NO:

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

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

Changes

Delete- Policy for charging adjoining property owners a **Insert-** 2010

Insert- Responsible Officer: Design & Project Development Engineer

Move point to bottom of list

This new draft policy has been prepared to separate out the "kerb and gutter" component of the previous policy adopted on 18/7/00 which was for contributions to both footpath paving and kerb and gutter. This new draft policy deals only with contributions for kerb and gutter. It has been prepared to ensure that Council is able to apply a contribution criteria and costing structure that is easily understood and ensures equity and consistency in its application with respect to contributions by adjoining property owners towards the cost of kerb and gutter construction.

OBJECTIVE

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

PRINCIPLES

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

<u>Changes</u> <u>Delete</u>- new draft

Delete- new draft

POLICY STATEMENT

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

Changes

Delete- paragraph **Insert-** (Insert changes at end of document)

Insert - In the absence of a fortnightly repayment arranged as above, contributions are payable in full within 30 days from issue of Council's invoice

Insert- Aged Pensioners who satisfy the eligibility criteria may make application to defer any contribution towards kerb & gutter construction under Council's Debt Recovery & Hardship Policy.

ASSESSING THE APPLICATION BASED ON LAND ZONING

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

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

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

BOUNDARY LOCATION & CALCULATIONS OF CONSTRUCTION COSTS

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

Front boundaries: 50.0% of the

average construction cost

Corner Lots - Side & Front boundaries: 33.3% of the

average construction cost

Rear boundaries: 25.0% of the

average construction cost

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

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

RELATED POLICIES

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications.

Changes

SOCIAL IMPLICATIONS

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

ECONOMIC IMPLICATIONS

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

ENVIRONMENTAL IMPLICATIONS

Nil

RELEVANT LEGISLATIVE PROVISIONS

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

Section 217 of the Roads Act 1993

Division 3 Kerbing and guttering etc by roads authorities 217 Roads authority may recover cost of paving, kerbing and guttering footways

(1) The owner of land adjoining a public road is liable to contribute to the cost

incurred by a roads authority in constructing or paving any kerb, gutter or

footway along the side of the public road adjacent to the land.

(2) The amount of the contribution is to be such amount (not more than half of

the cost) as the roads authority may determine...[except as provided by \$217].

Changes

IMPLEMENTATION RESPONSIBILITY

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

REVIEW DATE

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

Changes

Insert- After implementation, this policy will be reviewed every two years.

Changes

> Contributions may be repaid over a period of time provided payments are made fortnightly in accordance with the following schedule:

_		_		
N	Ion	Per	ารเด	ners

CONTRIBUTION AMOUNT =<\$500 >\$500 TO \$1,000 >\$1,000

(\$)

TIME TO PAY UP TO 12 UP TO 2 YEARS UP TO 4 YEARS

MONTHS

MINIMUM FORTNIGHTLY \$20 \$20 \$20

REPAYMENTS

Pensioners

CONTRIBUTION AMOUNT =<\$500 >\$500 TO \$1,000 >\$1,000

(\$)

TIME TO PAY UP TO 2 YEARS UP TO 4 YEARS UP TO 5 YEARS

MINIMUM FORTNIGHTLY \$10 \$10 \$10

REPAYMENTS

t Stephens

C·O·U·N·C·I·L POLICY

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

FILE NO: E5255-000 & E5075-000

TITLE: CONTRIBUTION TO WORKS FOR KERB & GUTTER CONSTRUCTION &

FOOTPATH PAVING/CYCLEWAY CONSTRUCTION

BACKGROUND

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

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

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

OBJECTIVE

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

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

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

PRINCIPLES

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

POLICY STATEMENT

- Maximum fees are to be reviewed annually and must be approved by Council.
- > The amount charged is not to be more than half of the actual cost of construction.
- ➤ The owner of the property becomes liable to pay the amount on receiving the notice. If the property is sold after notification has been given, the liability to pay the contribution will be the responsibility of the new owner.
- ➤ Council will advise potential new property owners by indicating what liabilities exist when issuing a certificate under section 603.
- Contributions are not applicable when the Manager of Engineering Services determines that no direct benefit can be derived from the construction, i.e. no feasible access or significant difference in level between property boundary and kerb and gutter to be constructed.
- Any person on written application may be permitted to pay their contribution by instalments to pay off the dept over a period of time (minimum fortnightly/monthly instalments) as agreed by Council.
- Regardless of the original source of funding for the construction of kerb and gutter and/or footpath/cycleway (original source must be less than 100% of the total cost of

construction), Council will require owners' contribution in all cases where such construction fronts privately owned land as zoned below.

ASSESSING THE APPLICATION BASED ON LAND ZONING

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

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

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

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

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

BOUNDARY LOCATION & CALCULATIONS OF CONSTRUCTION COSTS.

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

1.	Front boundaries	50.0% of the average construction cost

2. Corner Lots - Side & Front

boundaries 33.3% of the average construction cost

3. Rear boundaries 25.0% of the average construction cost

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

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

RELATED POLICIES

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

REVIEW DATE

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

RELEVANT LEGISLATIVE PROVISIONS

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

SECTION 217 OF THE ROADS ACT 1993 DIVISION 3 KERBING AND GUTTERING ETC BY ROADS AUTHORITIES

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

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

IMPLEMENTATION RESPONSIBILITY

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

ITEM NO. 15 FILE NO: PSC 2005-02962

POLICY FOR CHARGING ADJOINING OWNERS A CONTRIBUTION TOWARDS THE COST OF FOOTPATH/CYCLEWAY CONSTRUCTION

REPORT OF: MICK LOOMES - ENGINEERING SERVICES MANAGER

GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

1) Revokes the current policy "Contribution to Works for Kerb and Gutter Construction & Footpath paving/cycleway Construction File number E5255-000 & E5075-000 Adopted 18/07/2000 Minute Number 360 (Attachment 3).

2) Adopts the amended draft policy "Contributions to Works Footpath/Cycleway Construction 2010" (Attachment 2).

.....

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Ken Jordan Councillor Shirley O'Brien	That the recommendation be adopted.
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The recommendation on being put was lost.

ORDINARY MEETING - 09 FEBRUARY 2010

		It was resolved that Council:
020	Councillor Ken Jordan Councillor Bruce MacKenzie	1) Revokes the current policy "Contribution to Works for Kerb and Gutter Construction & Footpath paving/cycleway Construction File number E5255-000 & E5075-000 Adopted 18/07/2000 Minute Number 360
		(Attachment 3). 2) Adopts the amended draft policy "Contributions to Works Footpath/Cycleway Construction 2010" (Attachment 2).

Cr Daniel Maher left the meeting at 8.53pm and returned to the meeting at 8.56pm during Item 15.

MATTER ARISING

021	Councillor Glenys Francis Councillor Ken Jordan	It was resolved that the policy state that if ratepayers elect to pay by instalments that the method of payment be by Direct Debit
		only.

Councillor Frank Ward called for a division.

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

Those against the Motion: Crs Glenys Franci, s Daniel Maher, Geoff Dingle, John Nell and Frank Ward.

BACKGROUND

The purpose of this report is to present Council with the results from the 28 day public exhibition of the draft Policy for charging adjoining owners a contribution towards the cost of footpath/cycleway construction.

On 25 August 2009 Council, in a Notice of Motion resolved to cease charging property owners for the installation of footpaths on the Council owned verge areas.

On 22 September 2009 a Rescission Motion was put to Council's ordinary Council meeting which was successful, and a further report was called for.

On 20 October 2009 a further report was put to Council which separated the two areas of contributions to works, being kerb & gutter, and footpath/cycleway paving into two policies. Council resolved to place the draft policy "Contributions to Works Footpath/Cycleway Construction" on public exhibition for 28 days. This was done over November 2009.

Forty four submissions were received following the exhibition period, details as follows:

a) Supporting the Policy

No submissions of support were received

b) Opposing the Policy

Forty three submissions opposing the policy were received for one or more of the following reasons:

Council rates should cover the cost of all footpaths & cycleways

Home owners were suffering financial hardship and had many economic constraints

The footpaths were not actually on their property Property owners should be able to accept or veto footpath proposals Adjoining councils like Newcastle do not ask for contributions to works Additional maintenance required to trim edges

c) Proposing Alternative methods of payment

One submission was received from Council's Financial Services section which outlines repayment terms and conditions, as well as adding a reference to Council's Debt recovery and Hardship Policy. These additions are considered reasonable as they define areas of the policy previously open to discretion, and offers alternatives not previously mentioned. These have been added into the current draft policy to become the amended draft policy "Contributions to Works Footpath/Cycleway Construction 2010" (see Attachment 2)

Of the forty three submissions received opposing the draft policy,

Twenty submissions were of a common or "form letter" which was distributed through parts of Raymond Terrace. Some of the these property owners will be affected in the future as Council implements its Forward Works Plan over the next few years

Five submissions were received from property owners who have had footpath constructed adjacent to their property in the last 12 months or so.

Five submissions were received from property owners who have been advised that footpath paving is scheduled for their street soon.

The remaining submissions were from interested landowners in various parts of the local government area.

Since 20 October 2009 new footpaths have been constructed in Rigney St, Shoal Bay as well as in Lloyd George Grove and Clemenceau Crescent, Tanilba Bay as part of the President Poincare Parade capital works project currently underway.

More footpaths and cycleways in Corlette, Medowie, Nelson Bay, Tanilba Bay and Anna Bay are scheduled for construction over the next six months.

Since this issue came to Council's attention in the middle of 2009, many landowners who have been issued with invoices for contributions to footpath works in a number of streets with newly constructed footpaths are withholding contributions whilst Council considers this issue.

FINANCIAL/RESOURCE IMPLICATIONS

Council still has a number of footpath/cycleway projects to complete in the 2009/2010 transport capital works program. As outlined in the 20 October Council Report, over \$116,000 worth of contributions to works are forecasted to be collected, provided this draft policy is adopted.

Should Council decide to <u>discontinue</u> seeking contributions towards footpath and cycleway construction, it will need to either increase its deficit or review its current works program and reduce the number of projects it can undertake. In addition, it will need to decide the date on which the change in policy is to be implemented.

LEGAL, POLICY AND RISK IMPLICATIONS

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

New paths form part of Council's subdivision Code and are routinely built by developers as part of necessary community infrastructure. However, many older areas do not contain constructed paths. With new subdivisions built nearby Council is left in a position to create new paths to link the new subdivisions through existing areas to amenities or facilities. This affects residents along the proposed footpath/cycleway with an average contribution for paving recently estimated to be around \$1,250 per property.

CONSULTATION

The policy titled "Contribution to Works for Footpath Paving & Cycleway Construction" was put on public exhibition from the 29 October to 27 November 2009. Forty four submissions were received.

OPTIONS

1) The recommendation, which is to revoke the current policy "Contribution to Works for Kerb & Gutter Construction & Footpath Paving/Cycleway Construction" and adopt the <u>amended</u> draft Policy "Contribution to Works for Footpath Paving & Cycleway Construction 2010" (Attachment 2)

Or

2) Revoke the current policy "Contribution to Works for Kerb & Gutter Construction & Footpath Paving/Cycleway Construction" and adopt the draft policy "Contribution to Works for Footpath Paving & Cycleway Construction" as was originally placed on public exhibition without change (Attachment 1)

Or

3) Discontinue the policy of seeking contributions to works for either: footpath/cycleway from а set date, being

1 July 2009 - Start of the 2009/10 Financial Year or

- 25 August 2009 The date when the Notice of was put to the ordinary council meeting or
- 20 October 2009 The date on which Council resolved to place the draft policy on public exhibition or
- 9 February 2010 Today's date

Another Option

ATTACHMENTS

- 1) Draft Policy "Contribution to Works for Footpath Paving & Cycleway Construction" as put on public exhibition over November 2009
- 2) Amended draft Policy "Contribution to Works for Footpath Paving & Cycleway Construction 2010" as recommended in the submission by the Financial Services Manager with altered repayment terms and conditions and deferred payment options
- 3) Current Policy "Contribution to Works for Kerb & Gutter Construction & Footpath Paving/Cycleway Construction"

COUNCILLORS ROOM

1) Submissions are available for viewing in the Councillors Room.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



POLICY

Adopted: Minute No: Amended: Minute No:

FILE NO: PSC2009-02962

TITLE: CONTRIBUTION TO WORKS FOR FOOTPATH PAVING & CYCLEWAY

CONSTRUCTION

BACKGROUND

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

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

This new draft policy has been prepared to separate out the "footpath and cycleway" component of the previous policy adopted on 18/07/00 which was for contributions to both footpath paving and kerb and gutter. This new draft policy

deals only with contributions towards footpaths and cycleways. It has been prepared to ensure that Council is able to apply a contribution criteria and costing structure that is easily understood and ensures equity and consistency in its application with respect to contributions by adjoining owners towards the cost of footpath paving/cycleway construction.

OBJECTIVE

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

PRINCIPLES

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

POLICY STATEMENT

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

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

ASSESSING THE APPLICATION BASED ON LAND ZONING

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

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

BOUNDARY LOCATION & CALCULATIONS OF CONSTRUCTION COSTS

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

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

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

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

RELATED POLICIES

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

RELEVANT LEGISLATIVE PROVISIONS

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

SECTION 217 OF THE ROADS ACT 1993

DIVISION 3 KERBING AND GUTTERING ETC BY ROADS AUTHORITIES 217 Roads authority may recover cost of paving, kerbing and guttering footways

- (3) The owner of land adjoining a public road is liable to contribute to the cost incurred by a roads authority in constructing or paving any kerb, gutter or footway along the side of the public road adjacent to the land.
- (4) The amount of the contribution is to be such amount (not more than half of the cost) as the roads authority may determine...[except as provided by \$217].

IMPLEMENTATION RESPONSIBILITY

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

REVIEW DATE

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

ATTACHMENT 2

Port Stephens C·O·U·N·C·I·L POLICY

Adopted: Minute No:

FILE NO: PSC2009-02962

TITLE: CONTRIBUTION TO WORKS FOR FOOTPATH PAVING & CYCLEWAY CONSTRUCTION

BACKGROUND

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

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

<u>Changes</u>

Insert- 2010

Insert- Responsible Officer: Design & Project Development Engineer

Move point to bottom of list

This new draft policy has been prepared to separate out the "footpath and cycleway" component of the previous policy adopted on 18/07/00 which was for contributions to both footpath paving and kerb and gutter. This new draft policy deals only with contributions towards footpaths and cycleways. It has been prepared to ensure that Council is able to apply a contribution criteria and costing structure that is easily understood and ensures equity and consistency in its application with respect to contributions by adjoining owners towards the cost of footpath paving/cycleway construction.

OBJECTIVE

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

PRINCIPLES

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

POLICY STATEMENT

Maximum fees are to be reviewed annually and must be approved by Council.

Changes

Delete- new draft

Delete- new draft

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

ASSESSING THE APPLICATION BASED ON LAND ZONING

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

List of land zones where a contribution *is applicable* for footpath/cycleway construction:

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

Changes

Delete- paragraph **Insert-** (Insert changes at end of document)

Insert - In the absence of a fortnightly repayment arranged as above, contributions are payable in full within 30 days from issue of Council's invoice

Delete- kerb and gutter and/or

Insert- Aged Pensioners who satisfy the eligibility criteria may make application to defer any contribution towards footpath paving & cycleway construction under Council's Debt Recovery & Hardship Policy.

BOUNDARY LOCATION & CALCULATIONS OF CONSTRUCTION COSTS

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

7. Front boundaries 50.0% of the average construction cost

8. Corner Lots - Side & Front boundaries average construction cost

33.3% of the

9. Rear boundaries

25.0% of the

average construction cost

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

Insert- 2.4m

Delete- 2.5m

Changes

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

RELATED POLICIES

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

RELEVANT LEGISLATIVE PROVISIONS

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

Changes

Section 217 of the Roads Act 1993 Division 3 Kerbing and guttering etc by roads authorities

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

(1) The owner of land adjoining a public road is liable to contribute to the cost

incurred by a roads authority in constructing or paving any kerb, gutter or

footway along the side of the public road adjacent to the land.

(2) The amount of the contribution is to be such amount (not more than half of

the cost) as the roads authority may determine...[except as provided by \$217].

IMPLEMENTATION RESPONSIBILITY

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

REVIEW DATE

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

Insert- After implementation, this policy will be reviewed every two years.

Changes

> Contributions may be repaid over a period of time provided payments are made fortnightly in accordance with the following schedule:

Non Pensioners

CONTRIBUTION AMOUNT =<\$500 >\$500 TO \$1,000 >\$1,000

(\$)

TIME TO PAY UP TO 12 UP TO 2 YEARS UP TO 4 YEARS

MONTHS

MINIMUM FORTNIGHTLY \$20 \$20 \$20

REPAYMENTS

Pensioners

CONTRIBUTION AMOUNT =<\$500 >\$500 TO \$1,000 >\$1,000

(\$)

Post Stephens
C.O.U.N.C.I.L

POLICY

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

FILE NO: E5255-000 & E5075-000

TITLE: CONTRIBUTION TO WORKS FOR KERB & GUTTER CONSTRUCTION &

FOOTPATH PAVING/CYCLEWAY CONSTRUCTION

BACKGROUND

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

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OBJECTIVE

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

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

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

PRINCIPLES

- 11. That the contribution structure be fair and equitable and accepted by the general community.
- 12. The Council when constructing new kerb and gutter or footpath/cycleway, for the community within a public road, will require a contribution from those adjoining property owners that benefit directly from these facilities.
- 13. That Council makes every endeavour to notify the property owners affected prior to commencing the work and provides details of work to be carried out and approximate amount of contribution to be paid. In exceptional circumstances when Council is unable to notify property owners prior to works and of costs, the owners are still liable to pay the contribution. That this policy detail all of the different situations and that contributions are consistently applied, to prevent any exceptions occurring.
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- Special Urban 5(g).

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

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BOUNDARY LOCATION & CALCULATIONS OF CONSTRUCTION COSTS.

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

10.	Front boundaries	50.0% of the average construction co	st

11. Corner Lots - Side & Front

boundaries 33.3% of the average construction cost

12. Rear boundaries 25.0% of the average construction cost

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

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

RELATED POLICIES

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

REVIEW DATE

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

RELEVANT LEGISLATIVE PROVISIONS

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

SECTION 217 OF THE ROADS ACT 1993 DIVISION 3 KERBING AND GUTTERING ETC BY ROADS AUTHORITIES

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

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

IMPLEMENTATION RESPONSIBILITY

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

ITEM NO. 16 FILE NO: PSC2009-00476

MAYORAL CHAIN

REPORT OF: TONY WICKHAM - EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

.....

RECOMMENDATION IS THAT COUNCIL:

1) Consider the development and production of a Mayoral Chain.

.....

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

	Councillor Steve Tucker Councillor John Nell	That Council proceed with the design and purchase of a Mayoral Chain in accordance with the report.	
		accordance with the report.	

ORDINARY MEETING - 09 FEBRUARY 2010

022	Councillor Glenys Francis Councillor John Nell	It was resolved that the recommendation be adopted.

BACKGROUND

The purpose of this report is to provide Council with guidelines for the design and development of an insignia for the Office of the Mayor.

Council at its meeting on 24 February 2009, resolved to design guidelines for a Mayoral Insignia of Office.

Discussions have been held with a firm specialising in the production of ceremonial chains and also with Council's Graphic Designer to ensure all aspects of the final design are considered.

Should Council resolve to design and purchase a Mayoral Chain it is proposed that Newcastle University be approach seeking interest from final year Arts and/or Graphic Design students in submitting a draft design for the Mayoral Chain. The conditions of submitting a design would be that the there is no cost to Council and the copyright of any design would become Council's. The benefit for the students would be that their works would be showcased in the local area, with the winner having their work produced into the insignia for the Mayoral Chain.

The design would be required to be representative of the past, present and future of Port Stephens Local Government area. It would also be required to showcase the heritage and cultural of the area, both the past and present and to demonstrate the connection of all parts of the community and the environment.

Once the draft designs have been submitted Council may then wish to consider a number of options in the selection of a final design for production. Potential these could be:-

- A competition between the Port Stephens schools and/or;
- A community wide competition.

FINANCIAL/RESOURCE IMPLICATIONS

Should Council resolve to proceed with the development and production of a Mayoral Chain the costs would be in the vicinity of \$2,000 to \$4,000, depending upon the type of metal used.

LEGAL, POLICY AND RISK IMPLICATIONS

There is no legal requirement for Council to have a Mayoral Chain. However it would be deemed appropriate for a Mayoral Chain to be purchased for ceremonial occasions.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

Mayoral Chain suppliers Publications Coordinator

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 17

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 09 February 2010.

No:	Report Title	Page:
1	ABORIGINAL STRATEGIC COMMITTEE	254
2	BUDDY UP YOUR MENTORING PROGRAMM	258
3	DEVELOPMENT APPLICATION FOR FOUR (4) LOT SUBDIVISION AT	259
	NO. 364 SIX MILE ROAD, EAGLETON	
4	CASH AND INVESTMENTS HELD AT 30 NOVEMBER 2009	262
5	CASH AND INVESTMENTS HELD AT 31 DECEMBER 2009	266
6	ACCESS TO INFORMATION -SECTION 12 LOCAL GOVERNMENT	
	ACT 1993	271

CONFIDENTIAL INFORMATION PAPERS

DEVELOPMENT APPLICATION FOR FOUR (4) LOT SUBDIVISION AT NO 364 SIX MILE ROAD, EAGLETON

COUNCIL COMMITTEE MEETING – 09 FEBRUARY 2010 RECOMMENDATION:

Councillor Glenys Francis Councillor Steve Tucker	 That the recommendation be adopted to include item 1 to 6.
	 That the confidential information paper be dealt with in conjunction with Item 1 of the business paper.

ORDINARY MEETING - 09 FEBRUARY 2010

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

COUNCIL COMMITTEE INFORMATION PAPERS



ABORIGINAL STRATEGIC COMMITTEE

.....

REPORT OF: PAUL PROCTER - ACTING MANAGER INTEGRATED PLANNING

GROUP: SUSTAINABLE PLANNING

FILE: PSC2005-0629

BACKGROUND

The purpose of this report is to present to Council the minutes of the Aboriginal Strategic Committee meeting with Worimi Local Aboriginal Land Council on 1 December 2009.

The Aboriginal Strategic Committee is aligned with the following social and cultural directions stated in Council Plan 2009 – 2013: -

SOCIAL RESPONSIBILITY - DIRECTIONAL STATEMENT

COUNCIL WILL PRESERVE AND STRENGTHEN THE FABRIC OF THE COMMUNITY, BUILDING ON COMMUNITY STRENGTHS BY:

- SUPPORTING AND PROVIDING OPPORTUNITIES TO ENHANCE INDIVIDUAL AND COMMUNITY WELL-BEING AND WELFARE;
- PROVIDING OPPORTUNITIES FOR PEOPLE TO PARTICIPATE IN COMMUNITY DECISION-MAKING.

CULTURAL RESPONSIBILITY - DIRECTIONAL STATEMENT

COUNCIL WILL ASSIST TO INSPIRE A SENSE OF PRIDE AND PLACE AS WELL AS ENHANCING QUALITY OF LIFE

AND DEFINING LOCAL IDENTITY BY:

- PROVIDING AND SUPPORTING OPPORTUNITIES FOR THE EXPRESSION OF COMMUNITY VALUES:
- PROMOTING THE CELEBRATION OF NATURAL HERITAGE, NATIONAL DAYS OF SIGNIFICANCE AND LOCAL

INDIGENOUS CULTURE;

• PROVIDING THE CATALYST FOR THE REALISATION OF VALUES, SPIRIT, VITALITY AND EXPRESSION

THROUGH CULTURAL ACTIVITIES;

ATTACHMENTS

1) Minutes of Aboriginal Strategic Committee meeting with Worimi LALC on 1 December 2009.

ATTACHMENT 1



Aboriginal Strategic Committee Meeting with Worimi Local **Aboriginal Land Council**







Minutes of meeting held on 1 December 2009 at Murrook Cultural & Leisure Centre

Chair: Cr Peter Kafer Minute taker: Paul Procter

Present:

Cr Peter Kafer Cr Sally Dover Cr Shirley O'Brien Mike Trigar Cliff Johnson Paul Procter

Andrew Smith Elaine Larkins

Guest:

Chloe Beevers

Apologies:

Cr Bruce MacKenzie Peter Gesling Jason Linnane Val Merrick Jamie Tarrant Grace Kinsella

Meeting opened at 1:20pm

Port Stephens Council Port Stephens Council

Worimi Local Aboriginal Land Council Worimi Local Aboriginal Land Council

Port Stephens Council

Port Stephens Council Port Stephens Council Port Stephens Council

Worimi Local Aboriginal Land Council Worimi Local Aboriginal Land Council Worimi Local Aboriginal Land Council

1. WELCOME TO COUNTRY

Elaine Larkins welcomed people on behalf of the Traditional Owners.

2. DECLARATION OF CONFLICTS OF INTEREST

Nil

3. MINUTES OF PREVIOUS MEETING

The minutes of previous meeting held 6 October 2009 were adopted.

4. BUSINESS ARISING FROM PREVIOUS MINUTES

The following items of business arising from the meeting held on 6 October 2009 were discussed:

Item 1: ABORIGINAL PROJECT FUND UPDATE

At ordinary meeting of Council on 13 October 2009 Council endorsed the Committee's recommendations on the allocation of available Aboriginal Project Funds. Funded applicants have been notified and their grant payments are being processed.

Item 2: KATTANG LANGUAGE PROMOTION

WLALC are running workshops in the Kattang language with participants receiving a Certification 1 level accreditation. This accreditation will be a pre-requisite for more advanced language training to be held in the future.

Item 3: BOAT REQUEST

Council's Social Planning Co-ordinator has approached the Marine Parks Authority in regard to opportunities to seek funding towards the purchase of a boat for WLALC. Unfortuanately they have no funds available for this purpose.

5. PROPOSED DEVELOPMENT OF AN ACTIVE RECREATION COMPLEX AT ANNA BAY

Council's Recreation Services Section is currently running a competition to design an outdoor recreation complex at Anna Bay.

6. COUNCIL'S CULTURAL PLANNING UPDATE

Council's Community Planner - Cultural Development gave an overview of Council's new cultural planning framework.

Reference was also made to Council's new Strategic Culture Committee which will be established in early 2010. Council's Community Planner – Cultural Development expressed a desire to have WLALC represented on this committee. WLALC CEO Andrew Smith nominated to be WLALC representative. Nomination seconded by Cr Kafer.

7. NAIDOC WEEK 2010

The ASC discussed next year's NAIDOC Week celebrations and need to market more widely to the broader community. WLALC expressed a desire to run celebrations again at Murrook, with possibility of week long celebrations commencing at Karuah and finishing at Raymond Terrace. This is subject to feed back from KLALC.

ACTION: 1. PLANNING TO START IN EARLY 2010.

8. GENERAL BUSINESS

8.1 2010 Meeting Schedule:

Tabled and noted.

9. DETAILS OF NEXT MEETING

Tuesday 2 March 2010 at 1pm at Murrook.

Meeting closed 2:20pm

'BUDDY UP' YOUTH MENTORING PROGRAM

.....

REPORT OF: PAUL PROCTER - ACTING MANAGER INTEGRATED PLANNING

GROUP: SUSTAINABLE PLANNING

FILE: PSC2005-0888

BACKGROUND

The purpose of this report is to inform Council of an innovative new project which will see Council partnering with Hunter River and Irrawang High Schools under the Beacon Foundation Buddy Up youth mentoring program.

Buddy Up will be incorporated into Council's existing Mentors@Work Program which commenced in 2005. Both of these 'preventative' programs are designed to target high school children who are experiencing attendance, career and/or behavioural issues and who are contemplating 'dropping out' of school.

Council employees who volunteer as a 'buddy' (mentor) for this program will participate in a half day of training and then work in a one-on-one relationship with a potential early school leaver for approximately one and a half hours each week (on a given day and time) over a period of four weeks. They will provide support and guide them to investigate career opportunities in their field of interest so that they are able to gain a real picture of their options when they leave school. They will also help students improve their job-seeking skills and discover ways in which they can achieve their goals.

Each buddy will encourage their student to take on a positive pathway whether it is in further education, training or full-time employment. They will assist the student in the following areas:

- Resume writing
- Job interview skills
- Careers-based website exploration
- Goals and career objectives

The training and mentoring sessions will be held at Council's Administration Building. At the completion of the program the buddy will help their student to arrange a week of work experience or a day of 'work shadowing' based on their interests.

Expressions of interest have been requested from interested Council staff who will need the approval of their supervisor before they apply. Training for the program will take place on April 20th 2010, and the program will commence on April 20th 2010.

ATTACHMENTS

Nil

DEVELOPMENT APPLICATION FOR FOUR (4) LOT SUBDIVISION AT NO. 364 SIX MILE ROAD, EAGLETON

.....

REPORT OF: KEN SOLMAN - ACTING MANAGER, DEVELOPMENT & BUILDING

GROUP: SUSTAINABLE DEVELOPMENT

FILE: 16-2009-105-1

BACKGROUND

The purpose of this report is to provide further information to Councillors in relation to a Development Application for four (4) Lot Subdivision at No. 364 Six Mile Road, Eagleton, in relation to flooding issues.

The above mentioned development application was considered by Council on 8 December 2009. It was resolved:

'That the matter be deferred to allow for further information to be provided with respect to:

- 1) Inform the Council as to the legal status of the roads relevant to this application.
- 2) Information relating to the incidence of flooding history of the site.'

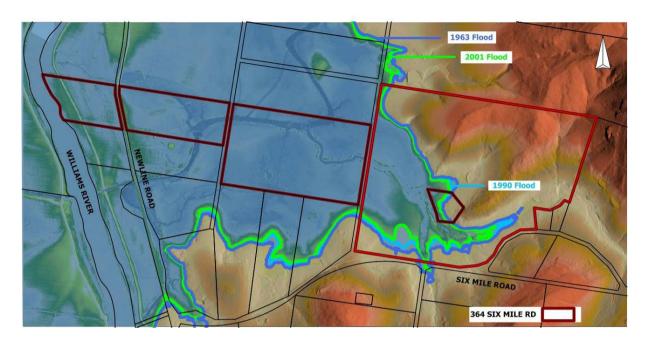
Road Status Issue

In relation to the legal status of the roads relevant to this application, a Confidential Supplementary Paper provided under separate cover contains the legal advice obtained from Harris Wheeler Lawyers dated 12 August 2009.

Flooding History of the Site

Council does not hold records of flooding specifically related to this site. The information provided in the figure below has been interpolated from historical records ascertained from residents and gauging stations within that stretch of river adjacent to the site. This information has been extracted from the Williams River Flood Study (BMT WBM June 2009). Coloured copies of this information will be provided to Councillors under separate cover.

HISTORICAL FLOOD EXTENTS 364 SIX MILE RD EAGLETON



The flood events as shown on map above include:-

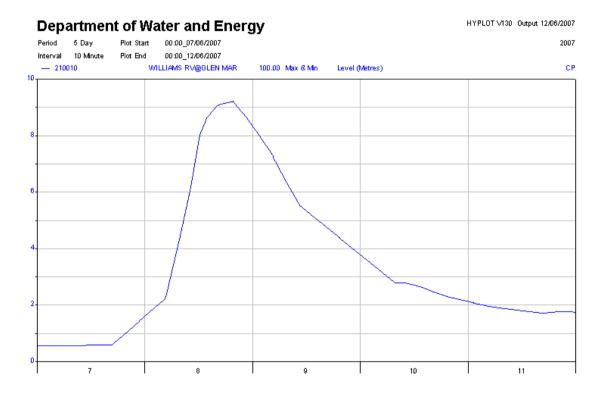
1963: 10% AEP1990: 15% AEP2001: < 20% AEP

• 2007: < 20% AEP

The only other information available is the below extract from an aerial movie picture which was taken approximately three days after the peak of the 2007 flood on the Williams River.



Noting that the above photo was taken three days after the peak of the flood, the following plot of the river gauge at Glen Martin is provided. This gauge is several kilometres upstream of the site shows a substantial drop of over 7 metres in river height between the peak flood level on 8 June 2007 and the later photo date, 11 June 2007.



CASH AND INVESTMENTS HELD AT 30 NOVEMBER 2009

.....

REPORT OF: DAMIEN JENKINS - FINANCIAL SERVICES MANAGER

GROUP: COMMERCIAL SERVICES

FILE: PSC2006-6531

BACKGROUND

The purpose of this report is to present Council's schedule of Cash and Investments Held at 30 November 2009.

ATTACHMENTS

- 1) Cash and Investments Held at 30 November 2009
- 2) Monthly Cash and Investments Balance December 2008 November 2009
- 3) Monthly Australian Term Deposit Index December 2008 November 2009

ATTACHMENT 1

		C	ASH & INVE	STMENTS HELD A	AS AT 30 NO	VEMBER 2	2009			
INVESTED	INV.	CURRENT	MATURITY	AMOUNT	% of Total	Current Int	Market	Market	Market	Current
WITH	TYPE	RATING	DATE	INVESTED	Portfolio	Rate	Value	Value	Value	Mark to Market
							September	October	November	Exposure
GRANGE SECURITIES										
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	NR	20-Mar-12	1,000,000.00	4.00%	4.78%	\$732,100.00	\$772,500.00	\$780,440.00	-\$219,560.00
NEXUS BONDS LTD "TOPAZ AA-"	Floating Rate CDO		23-Jun-15	412,500.00	1.65%	0.00%	\$231,412.50	\$231,412.50	\$231,412.50	-\$181,087.50
HERALD LTD "QUARTZ AA"	Floating Rate CDO	B+	20-Dec-10	450,000.00	1.80%	4.78%	\$317,565.00	\$315,990.00	\$336,240.00	-\$113,760.00
STARTS CAYMAN LTD "BLUE GUM AA-"	Floating Rate CDO	NR	22-Jun-13	1,000,000.00	4.00%	4.68%	\$10,500.00	\$0.00	\$0.00	-\$1,000,000.00
HELIUM CAPITAL LTD "ESPERANCE AA+" *	Floating Rate CDO	NR	20-Mar-13	1,000,000.00	4.00%	0.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
HOME BUILDING SOCIETY	pating Rate Sub Del	ot	25-Jul-11	500,000.00	2.00%	4.93%	\$436,290.00	\$436,290.00	\$441,355.00	-\$58,645.00
DEUTSCHE BANK CAPITAL GUARANTEED YIELD CURVE NOTE	Vallo Na	ND	40.0 . 44	500 000 00	0.000/	0.400/	\$ 500,550,00	# 505 000 00	# 405.050.00	04.050.00
	Yield Curve Note	NR	18-Oct-11	500,000.00	2.00%	6.18%	\$536,550.00	\$535,900.00	\$495,050.00	-\$4,950.00
GRANGE SECURITIES "KAKADU AA" GRANGE SECURITIES "COOLANGATTA AA" *	Floating Rate CDO	NR NR	20-Mar-14	1,000,000.00	4.00% 4.00%	4.28% 0.00%	\$311,700.00 \$0.00	\$257,500.00 \$0.00	\$252,100.00 \$0.00	-\$747,900.00
TOTAL GRANGE SECURITIES	Floating Rate CDO	NK	20-Sep-14	1,000,000.00	27.42%	0.00%	*	*	*	-\$1,000,000.00
ABN AMRO MORGANS				\$6,862,500.00	21.42%		\$2,576,117.50	\$2,549,592.50	\$2,536,597.50	(\$4,325,902.50)
ABN AMRO MORGANS GLOBAL PROTECTED PROPERTY NOTES VII	Name and a Limited Made		47.0 44	¢1 000 000 00	4.000/	0.000/	\$000,000,00	070 400 00	£070.400.00	£400,000,00
	roperty Linked Note		17-Sep-11	\$1,000,000.00	4.00%	0.00%	\$868,000.00	\$870,100.00	\$870,100.00	-\$129,900.00
TOTAL ABN AMRO MORGANS				\$1,000,000.00	4.00%		\$868,000.00	\$870,100.00	\$870,100.00	(\$129,900.00)
ANZ INVESTMENTS ECHO FUNDING PTY LTD SERIES 16 "3 PILLARS										
AA-"	Floating Rate CDO	CCC-	6-Apr-10	\$500,000.00	2.00%	4.79%	\$423,650.00	\$417,350.00	\$396,350.00	-\$103,650.00
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	В	30-Dec-11	\$1.000.000.00	4.00%	0.00%	\$691.000.00	\$682.300.00	\$664.900.00	-\$335,100.00
ANZ ZERO COUPON BOND	Zero Coupon Bond	AA	1-Jun-17	\$1,000,000.00	4.07%	0.00%	\$608,690.43	\$599,163.11	\$595,590.35	-\$422,286.63
TOTAL ANZ INVESTMENTS	Zero Coupon Bona	741	1-5411-17	\$2,517,876.98	10.06%	0.0070	\$1,723,340.43	\$1,698,813.11	\$1,656,840.35	(\$861,036.63)
RIM SECURITIES				\$2,517,670.90	10.0076		Ψ1,720,040.40	Ψ1,030,013.11	ψ1,000,0 4 0.00	(4001,000.00)
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO		29-Jul-13	\$2,000,000.00	7.99%	0.00%	\$1,000,000.00	\$1,000,000.00	\$990,000.00	-\$1,010,000.00
ELDERS RURAL BANK (2011)	pating Rate CDO	\	8-Oct-11	\$2,000,000.00	4.00%	4.11%	\$1,000,000.00	\$1,000,000.00	\$929,524.00	-\$1,010,000.00 -\$70,476.00
TOTAL RIM SECURITIES	Dating Nate Sub Del).	6-OCI-11	\$3,000,000.00 \$3,000,000.00		4.1176		. ,	\$1,919,524.00	. ,
				\$3,000,000.00	11.99%		\$1,910,185.00	\$1,921,159.00	\$1,919,524.00	(\$1,080,476.00)
WESTPAC INVESTMENT BANK			07.440	4500 000 00	0.000/	E 440/	0.470.005.00	0.474.405.00	# 4 7 0 000 00	404 070 00
HOME BUILDING SOCIETY (2010)	pating Rate Sub Del		27-Apr-10	\$500,000.00	2.00%	5.11%	\$470,205.00	\$474,185.00	\$478,330.00	-\$21,670.00
MACKAY PERMANENT BUILDING SOCIETY	pating Rate Sub Del	Ot	20-Nov-11	\$500,000.00	2.00%	5.12%	\$476,735.00	\$477,600.00	\$478,345.00	-\$21,655.00
TOTAL WESTPAC INV. BANK				\$1,000,000.00	4.00%		\$946,940.00	\$951,785.00	\$956,675.00	(\$43,325.00)
CURVE SECURITIES										
MYSTATE FINANCIAL CREDIT UNION	Term Deposit		21-Dec-09	\$1,000,000.00	4.00%	4.60%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
SAVINGS AND LOANS CREDIT UNION	Term Deposit						\$2,000,000.00			\$0.00
TOTAL CURVE SECURITIES				\$1,000,000.00	4.00%		\$3,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
LONGREACH CAPITAL MARKETS										
LONGREACH SERIES 16 PROPERTY LINKED NOT	E'roperty Linked Not	AA	7-Mar-12	\$500,000.00	2.00%	0.00%	\$425,980.00	\$422,220.00	\$432,000.00	-\$68,000.00
LONGREACH SERIES 19 GLOBAL PROPERTY LINKED NOTE)roporty Linked N-+-		7 Con 10	¢E00 000 00	2.000/	0.000/	\$400,000,00	\$408,250.00	\$275 O75 OO	¢124 025 00
	roperty Linked Note		7-Sep-12	\$500,000.00	2.00%	0.00%	\$409,800.00	·,	\$375,975.00	-\$124,025.00
TOTAL LONGREACH CAPITAL				\$1,000,000.00	4.00%		\$835,780.00	\$830,470.00	\$807,975.00	(\$192,025.00)

ATTACHMENT 1

COMMONWEALTH BANK									
EQUITY LINKED DEPOSIT	Equity Linked Note	20-Sep-11	\$500,000.00	2.00%	3.00%	\$480,050.00	\$478,650.00	\$481,750.00	-\$18,250.00
EQUITY LINKED DEPOSIT GI100	Equity Linked Note	03-Aug-10	\$500,000.00	2.00%	3.00%	\$505,350.00	\$506,200.00	\$501,400.00	\$1,400.00
EQUITY LINKED DEPOSIT ELN SERIES 2	Equity Linked Note	05-Nov-12	\$500,000.00	2.00%	3.00%	\$462,650.00	\$461,050.00	\$466,550.00	-\$33,450.00
BENDIGO BANK SUBORDINATED DEBT	pating Rate Sub Debt	09-Nov-12	\$500,000.00	2.00%	5.20%	\$478,345.00	\$478,650.00	\$476,780.00	-\$23,220.00
BANK OF QUEENSLAND	Term Deposit	12-Aug-10	\$1,000,000.00	4.00%	4.80%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
BANK OF QUEENSLAND BOND	Bond	16-Mar-12	\$1,000,000.00	4.00%	5.35%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
TOTAL COMMONWEALTH BANK			\$4,000,000.00	15.98%		\$3,926,395.00	\$3,924,550.00	\$3,926,480.00	(\$73,520.00)
IIG SECURITIES									
REDIT SUISSE PRINCIPAL PROTECTED NO									
AQUADUCT AA-	ncipal Protected Note	21-Jun-10	\$1,000,000.00	4.00%	0.00%	\$960,100.00	\$961,100.00	\$965,500.00	-\$34,500.00
TELSTRA LINKED DEPOSIT NOTE	ncipal Protected Note	30-Nov-14	\$500,000.00	2.00%	5.03%	\$422,600.00	\$423,050.00	\$429,000.00	-\$71,000.00
TOTAL FIIG SECURITIES			\$1,500,000.00	5.99%		\$1,382,700.00	\$1,384,150.00	\$1,394,500.00	(\$105,500.00)
ALLIED IRISH BANKS									
AIB TERM DEPOSIT						\$1,000,000.00	\$1,000,000.00		\$0.00
AIB TERM DEPOSIT						1,000,000.00			\$0.00
AIB TERM DEPOSIT		06-Jan-10	1,000,000.00	4.00%	5.15%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
TOTAL ALLIED IRISH BANK			\$1,000,000.00	4.00%		\$3,000,000.00	\$2,000,000.00	\$1,000,000.00	\$0.00
MAITLAND MUTUAL									
MAITLAND MUTUAL SUB DEBT	pating Rate Sub Debt	30-Jun-13	500,000.00	2.00%	4.88%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
MAITLAND MUTUAL TERM DEPOSIT	Term Deposit	23-Nov-09	568,076.60	2.27%	4.92%	568,076.60	568,076.60	568,076.60	\$0.00
MAITLAND MUTUAL SUB DEBT	pating Rate Sub Debt	31-Dec-14	500,000.00	2.00%	4.88%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
TOTAL M'LAND MUTUAL			\$1,568,076.60	6.27%		\$1,568,076.60	\$1,568,076.60	\$1,568,076.60	\$0.00
TOTAL INVESTMENTS			\$24,448,453.58	97.69%		\$21,737,534.53	\$18,698,696.21	\$17,636,768.45	(\$6,811,685.13)
AVERAGE RATE OF RETURN ON INVESTMEN	ITS				2.87%				
CASH AT BANK			\$579,126.20	2.31%	3.45%	\$4,801,314.09	\$579,126.20	\$579,126.20	\$0.00
AVERAGE RATE OF RETURN ON INVESTMEN	ITS + CASH				2.89%				
TOTAL CASH & INVESTMENTS			\$25,027,579.78	100.00%		\$26,538,848.62	\$19,277,822.41	\$18,215,894.65	(\$6,811,685.13)
BBSW FOR PREVIOUS 3 MONTHS			T T		3.74%				

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

CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER

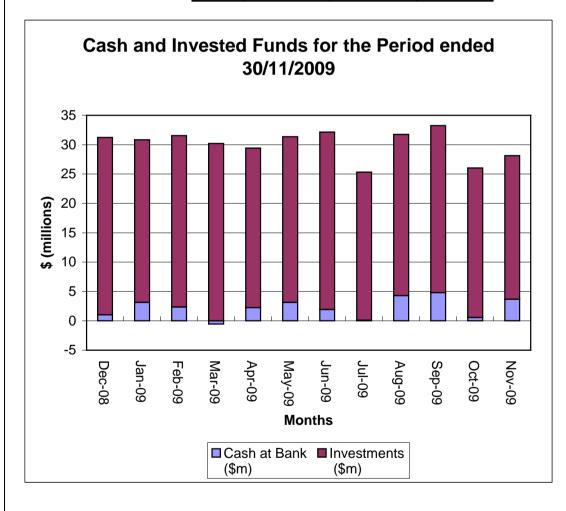
P GESLING

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

ATTACHMENT 2

Cash and Investments Held

Date	Cash at Bank (\$m)	Investments (\$m)	Total Funds (\$m)
Dec-08	1.031	30.179	31.210
Jan-09	3.147	27.683	30.830
Feb-09	2.364	29.187	31.551
Mar-09	- 0.531	30.187	29.656
Apr-09	2.234	27.187	29.421
May-09	3.160	28.193	31.353
Jun-09	1.947	30.193	32.140
Jul-09	0.127	25.193	25.320
Aug-09	4.298	27.448	31.747
Sep-09	4.801	28.448	33.250
Oct-09	0.579	25.448	26.028
Nov-09	3.691	24.448	28.140



CASH AND INVESTMENTS HELD AT 31 DECEMBER 2009

REPORT OF: DAMIEN JENKINS - FINANCIAL SERVICES MANAGER

GROUP: COMMERCIAL SERVICES

FILE: PSC2006-6531

BACKGROUND

The purpose of this report is to present Council's schedule of Cash and Investments Held at 31 December 2009.

ATTACHMENTS

- 1) Cash and Investments Held at 31 December 2009
- 2) Monthly Cash and Investments Balance January 2009 December 2009
- 3) Monthly Australian Term Deposit Index January 2009 December 2009

ATTACHMENT 1

			CASH & IN	IVESTMENTS HELD	DAS AT 31	DECEMBER	2009			
INVESTED WITH	INV. TYPE	CURRENT RATING	MATURITY DATE	AMOUNT INVESTED	% of Total Portfolio	Current Int Rate	Market Value October	Market Value November	Market Value December	Current Mark to Market Exposure
GRANGE SECURITIES MAGNOLIA FINANCE LTD 2005-14 "FLINDERS										
MAGNOLIA FINANCE LTD 2005-14 FLINDERS AA"	Floating Rate CDO	NR	20-Mar-12	1,000,000.00	4.04%	5.02%	\$772,500.00	\$780,440.00	\$788,770.00	-\$211,230.00
NEXUS BONDS LTD "TOPAZ AA-"	Floating Rate CDO		23-Jun-15	412,500.00	1.67%	0.00%	\$231,412.50	\$231,412.50	\$231,412.50	-\$181,087.50
HERALD LTD "QUARTZ AA"	Floating Rate CDO	CCC-	20-Dec-10	450,000.00	1.82%	5.52%	\$315,990.00	\$336,240.00	\$373,770.00	-\$76,230.00
STARTS CAYMAN LTD "BLUE GUM AA-"	Floating Rate CDO	NR	22-Jun-13	1,000,000.00	4.04%	5.49%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
HELIUM CAPITAL LTD "ESPERANCE AA+" *	Floating Rate CDO	NR	20-Mar-13	1,000,000.00	4.04%	0.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
HOME BUILDING SOCIETY DEUTSCHE BANK CAPITAL GUARANTEED	loating Rate Sub Debt		25-Jul-11	500,000.00	2.02%	4.93%	\$436,290.00	\$441,355.00	\$444,105.00	-\$55,895.00
YIELD CURVE NOTE	Yield Curve Note	NR	18-Oct-11	500,000.00	2.02%	6.18%	\$535,900.00	\$495,050.00	\$508,600.00	\$8,600.00
GRANGE SECURITIES "KAKADU AA"	Floating Rate CDO	CCC	20-Mar-14	1,000,000.00	4.04%	5.07%	\$257,500.00	\$252,100.00	\$319,300.00	-\$680,700.00
GRANGE SECURITIES "COOLANGATTA AA" *	Floating Rate CDO	NR	20-Sep-14	1,000,000.00	4.04%	0.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
TOTAL GRANGE SECURITIES				\$6,862,500.00	27.75%		\$2,549,592.50	\$2,536,597.50	\$2,665,957.50	(\$4,196,542.50)
ABN AMRO MORGANS										
GLOBAL PROTECTED PROPERTY NOTES VII	Property Linked Note		17-Sep-11	\$1,000,000.00	4.04%	0.00%	\$870,100.00	\$870,100.00	\$882,800.00	-\$117,200.00
TOTAL ABN AMRO MORGANS	· ·		·	\$1,000,000.00	4.04%		\$870,100.00	\$870,100.00	\$882,800.00	(\$117,200.00)
ANZ INVESTMENTS							·		·	
ECHO FUNDING PTY LTD SERIES 16 "3 PILLARS	S									
\ A-"	Floating Rate CDO	CCC-	6-Apr-10	\$500,000.00	2.02%	4.79%	\$417,350.00	\$396,350.00	\$424,500.00	-\$75,500.00
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	В	20 Dog 11	\$1,000,000.00	4.04%	0.00%	\$682,300.00	\$664,900.00	\$712.900.00	-\$287.100.00
ANZ ZERO COUPON BOND	Zero Coupon Bond	AA		\$1,000,000.00 \$1,017,876.98	4.04%	0.00%	\$599,163.11	\$595,590.35	\$581,553.83	-\$436,323.15
TOTAL ANZ INVESTMENTS	Zero Coupon Bona		1-5411-17	\$2.517.876.98	10.18%	0.0078	\$1,698,813.11	\$1,656,840.35	\$1,718,953.83	(\$798,923.15)
RIM SECURITIES				Ψ2,017,070.00	10.1076		ψ1,030,010.11	ψ1,000,040.00	¥1,710,300.00	(ψ790,923.13)
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO		20. lul-13	\$2.000.000.00	8.09%	0.00%	\$1.000.000.00	\$990.000.00	\$1.060.000.00	-\$940.000.00
ELDERS RURAL BANK (2011)	loating Rate Sub Debt			\$1,000,000.00	4.04%	4.11%	\$921.159.00	\$929.524.00	\$936,434.00	-\$63,566.00
TOTAL RIM SECURITIES	loating reace out best		0-001-11	\$3.000.000.00	12.13%	4.1170	\$1.921.159.00	\$1.919.524.00	\$1.996.434.00	(\$1,003,566.00)
WESTPAC INVESTMENT BANK				70,000,000	,.		Ţ.,,,	41,010,021100	4 1,000,10 1100	(+1,000,000,000,000,000,000,000,000,000,0
HOME BUILDING SOCIETY (2010)	loating Rate Sub Debt		27-Apr-10	\$500.000.00	2.02%	5.11%	\$474,185.00	\$478,330.00	\$483,190.00	-\$16,810.00
MACKAY PERMANENT BUILDING SOCIETY	loating Rate Sub Debt			\$500.000.00	2.02%	5.12%	\$477,600.00	\$478,345.00	\$479,210.00	-\$20,790.00
TOTAL WESTPAC INV. BANK				\$1,000,000.00	4.04%		\$951,785.00	\$956,675.00	\$962,400.00	(\$37,600.00)
CURVE SECURITIES								. ,		, , , ,
MYSTATE FINANCIAL CREDIT UNION	Term Deposit		21-Dec-09		0.00%		\$1,000,000.00	\$1,000,000.00		\$0.00
TOTAL CURVE SECURITIES				\$0.00	0.00%		\$1,000,000.00	\$1,000,000.00	\$0.00	\$0.00

ATTACHMENT 1

LONGREACH CAPITAL MARKETS									
LONGREACH SERIES 16 PROPERTY LINKED LONGREACH SERIES 19 GLOBAL PROPERT		7-Mar-12	\$500,000.00	2.02%	0.00%	\$422,220.00	\$432,000.00	\$433,950.00	-\$66,050.00
LINKED NOTE	Property Linked Note A+	7-Sep-12	\$500,000.00	2.02%	0.00%	\$408,250.00	\$375,975.00	\$413,500.00	-\$86,500.00
TOTAL LONGREACH CAPITAL	,		\$1,000,000.00	4.04%		\$830,470.00	\$807,975.00	\$847,450.00	(\$152,550.00)
COMMONWEALTH BANK									
EQUITY LINKED DEPOSIT	Equity Linked Note	20-Sep-11	\$500,000.00	2.02%	3.00%	\$478,650.00	\$481,750.00	\$481,750.00	-\$18,250.00
EQUITY LINKED DEPOSIT GI100	Equity Linked Note	03-Aug-10	\$500,000.00	2.02%	3.00%	\$506,200.00	\$501,400.00	\$501,400.00	\$1,400.00
EQUITY LINKED DEPOSIT ELN SERIES 2	Equity Linked Note	05-Nov-12	\$500,000.00	2.02%	3.00%	\$461,050.00	\$466,550.00	\$466,550.00	-\$33,450.00
BENDIGO BANK SUBORDINATED DEBT	loating Rate Sub Debt	09-Nov-12	\$500,000.00	2.02%	5.20%	\$478,650.00	\$476,780.00	\$476,780.00	-\$23,220.00
BANK OF QUEENSLAND	Term Deposit	12-Aug-10	\$1,000,000.00	4.04%	4.80%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
BANK OF QUEENSLAND BOND	Bond	16-Mar-12	\$1,000,000.00	4.04%	5.35%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
TOTAL COMMONWEALTH BANK			\$4,000,000.00	16.17%		\$3,924,550.00	\$3,926,480.00	\$3,926,480.00	(\$73,520.00)
FIIG SECURITIES									
CREDIT SUISSE PRINCIPAL PROTECTED NO									
AQUADUCT AA-	rincipal Protected Note		\$1,000,000.00	4.04%	0.00%	\$961,100.00	\$965,500.00	\$968,700.00	-\$31,300.00
TELSTRA LINKED DEPOSIT NOTE	rincipal Protected Note		\$500,000.00	2.02%	5.03%	\$423,050.00	\$429,000.00	\$455,750.00	-\$44,250.00
TOTAL FIIG SECURITIES			\$1,500,000.00	6.06%		\$1,384,150.00	\$1,394,500.00	\$1,424,450.00	(\$75,550.00)
ALLIED IRISH BANKS						0.4 000 000 00			00.00
AIB TERM DEPOSIT		00 1 40	4 000 000 00	4.040/	E 450/	\$1,000,000.00	64 000 000 00	£4 000 000 00	\$0.00
AIB TERM DEPOSIT			1,000,000.00	4.04%	5.15%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
TOTAL ALLIED IRISH BANK			\$1,000,000.00	4.04%		\$2,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
MAITLAND MUTUAL	7	00 1 40	500 000 00	0.000/	F 700/	4 500 000 00	# 500 000 00	# 500.000.00	00.00
MAITLAND MUTUAL SUB DEBT	loating Rate Sub Debt		500,000.00	2.02%	5.78%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
MAITLAND MUTUAL TERM DEPOSIT	Term Deposit		574,519.99	2.32%	4.92%	568,076.60	568,076.60	574,519.99	\$0.00
MAITLAND MUTUAL SUB DEBT	loating Rate Sub Debt		500,000.00	2.02%	5.78%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
TOTAL M'LAND MUTUAL			\$1,574,519.99	6.37%		\$1,568,076.60	\$1,568,076.60	\$1,574,519.99	\$0.00
TOTAL INVESTMENTS			\$23,454,896.97	94.84%		\$18,698,696.21	\$17,636,768.45	\$16,999,445.32	(\$6,455,451.65)
AVERAGE RATE OF RETURN ON INVESTME	ENTS				2.93%				
CASH AT BANK			\$1,277,251.32	5.16%	3.70%	\$579,126.20	\$3,691,443.06	\$1,277,251.32	\$0.00
AVERAGE RATE OF RETURN ON INVESTME	NTS + CASH				2.97%				
TOTAL CASH & INVESTMENTS			\$24,732,148.29	100.00%		\$19,277,822.41	\$21,328,211.51	\$18,276,696.64	(\$6,455,451.65)
BBSW FOR PREVIOUS 3 MONTHS					3.97%				

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

CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER

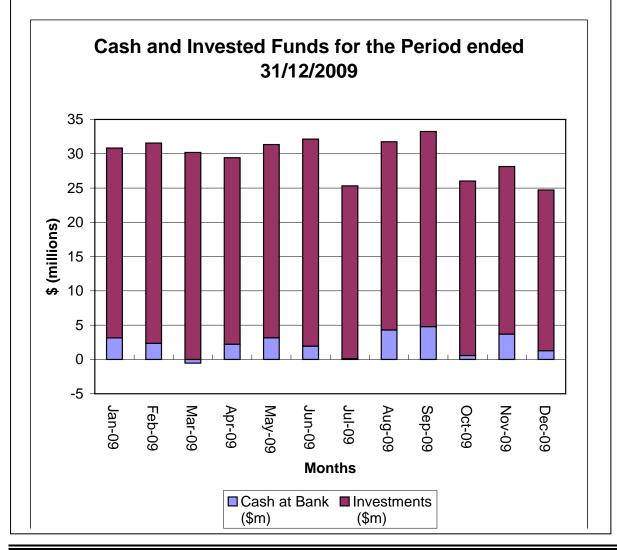
P GESLING

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

ATTACHMENT 2

Cash and Investments Held

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Nov-09	3.691	24.448	28.140
Dec-09	1.277	23.448	24.726

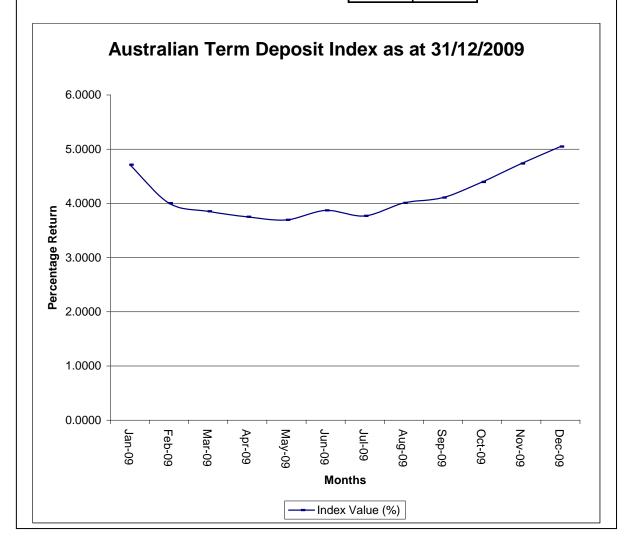


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ATTACHMENT 2

Australian Term Deposit Accumulation Index

	Index Value
Date	(%)
Jan-09	4.7113
Feb-09	4.0024
Mar-09	3.8542
Apr-09	3.7513
May-09	3.6960
Jun-09	3.8699
Jul-09	3.7701
Aug-09	4.0082
Sep-09	4.1080
Oct-09	4.3946
Nov-09	4.7356
Dec-09	5.0488



ACCESS TO INFORMATION – SECTION 12 LOCAL GOVERNMENT ACT 1993

.....

REPORT OF: TONY WICKHAM - EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

FILE: PSC2008-3083

BACKGROUND

The purpose of this report is to advise Council and make public the reasons for not granting access to documents/information under Section 12A, *Local Government Act 1993.*

In accordance with Section 12A (1), *Local Government Act 1993*, the General Manager or any member of staff who decides that access should not be given to a document or other information to the public or a councillor, is required to provide Council with written reasons for the restriction. Sub-section 12A (2) requires that the reason must be publicly available.

The requests shown in **ATTACHMENT 1** to this report are those that are made in writing and determined by Council's Executive Officer for 2009/10 during the October to December 2009 period.

A total of 12 applications received, 9 with full access granted, 2 with restrictions and 1 request which Council did not hold the information as shown below.

Total received for the year to October 2009 is 12 applications.

ATTACHMENT 1 provides Council with the details of the request and the reasons why access was not fully granted. The names of applicants have not been provided as this would be a breach of the *Privacy & Personal Information Protection Act 1998*. Further details may be available should Councillors require it.

In addition to these figures there were no applications were received under the Freedom of Information Act for the period of October to December 2009. Total received for the year to December 2009 is 3 applications.

ATTACHMENTS

1) Listing of requests under Section 12 of the Local Government Act 1993.

ATTACHMENT 1 <u>LISTING OF REQUESTS UNDER SECTION 12 OF THE LOCAL GOVERNMENT ACT 1993</u>

No.	File No.	Information requested	Determination
1	PSC2009-08023	Seeking development application information	Part released due to Copyright
	PSC2009-08310	Seeking development application information	Part released due to Copyright
2	PSC2009-09675	Seeking development application information	Not held by Council

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 MEETING - 09 FEBRUARY 2010

024	Councillor Ken Jordan Councillor Daniel Maher	It was resolved that Council move into Confidential Session.
025	Councillor Ken Jordan Councillor Daniel Maher	It was resolved that Council move out of Confidential Session.

There being no further business the meeting closed at 9.18pm.

PORT STEPHENS COUNCIL 273

I certify that pages 1 to 274 of the Open Ordinary Minutes of Council 9 February 2010 and the pages 275 to 293 of the Confidential Ordinary Minutes of Council 9 February 2010 were confirmed by Council at its meeting held on 23 February 2010.
Cr Bruce MacKenzie MAYOR