

Minutes 12 JULY 2011



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 12 July 2011, commencing at 5.35pm.

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

231	Councillor Ken Jordan Councillor Peter Kafer	It was resolved that the apology from Crs R Westbury and C De Lyall be received and noted.
232	Councillor Ken Jordan Councillor Shirley O'Brien	Resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 28 th June 2011 be confirmed.
		No declaration of interests were received.

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SUBJECT

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COUNCIL COMMITTEE RECOMMENDATIONS

ITEM NO. 1**FILE NO: PSC2005-1530****AMENDMENT TO COUNCIL'S DEVELOPMENT CONTROL PLAN 2007 TO INCLUDE INDEPENDENT ACCESS AUDITS FOR RELEVANT DEVELOPMENT PROPOSALS****REPORT OF: BRUCE PETERSEN – MANAGER, ENVIRONMENTAL AND DEVELOPMENT PLANNING****GROUP: SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

- 1) Amend the Port Stephens Development Control Plan 2007 to include Independent Access Audits for relevant development proposals in accordance with **Attachment 1** of this report.

COUNCIL COMMITTEE MEETING – 5 JULY 2011**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor John Nell	That the recommendation be adopted with an amendment to include "shopping centres" in Access Table in Attachment 1.
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In accordance with Section 375A of the Local Government Act, a division is required for this item.

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

Those against the motion: Nil.

ORDINARY COUNCIL MEETING – 12 JULY 2011**RESOLUTION:**

233	Councillor Ken Jordan Councillor Bruce MacKenzie	It was resolved that the recommendation be adopted including the Supplementary Information.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to recommend that Council endorse the requirement of Independent Access Audits into the Port Stephens Development Control Plan 2007. This will make it a requirement for development applications (DA) to include an independent access audit for relevant development proposals at the time of lodging their development application.

Seniors and people with disabilities are participating more actively in the community. Therefore the design of buildings and public spaces needs to consider users with a diversity of abilities. In 1992, the Commonwealth Government passed the Disability Discrimination Act makes it unlawful to discriminate against a person on the grounds of disability in the following areas; access to premises, public places & clubs, housing & accommodation, employment & education, provision of goods, services & facilities.

The Disability Discrimination Act, Building Code of Australia and the Access to Premises Standards provide the legislative and planning framework for disabled access. Despite these mandatory requirements Council from time to time receives development applications for large scale developments (eg; shopping centres) which fail to satisfactorily address disabled access. In some cases this adversely impact on DA processing times places additional costs on the applicants in cases where revisions to plans and designs are required. As part of good customer service telling an applicant up front is less likely to cause difficulties later.

Other Lower Hunter Councils are specifying in their respective Development Control Plans requirements for developers to provide an independent access audit for large scale development proposals at the time of lodging their DA. Port Stephens Council is the only Hunter Council that does not include disability access in its Development Control Plan. This proposed amendment will bring Council in line with neighbouring Councils.

Council resolved at ordinary meeting 12 October 2010 to place the amendment to Council's Development Control Plan 2007 – Independent Access Audits on public exhibition.

Consequently the draft amendment was placed on exhibition for 28 days with notices advertised in the Examiner and placed on Council's website. Copies were also placed at both Council libraries and at Council's Customer service.

A Council workshop was attended by internal staff to discuss responses and submissions. Slight amendments were made on **Attachment 1** to incorporate the newly endorsed Premises Standards which commenced in May 2011.

FINANCIAL/RESOURCE IMPLICATIONS

The financial implications for Council will be the same as any other builder when building or upgrading its facilities as per the Australian Standards and the building Code in relation to access.

LEGAL, POLICY AND RISK IMPLICATIONS

Disability Discrimination Act (1992). The objects of this Act are:

- (a) *to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:*
 - (i) *work, accommodation, education, access to premises, clubs and sport*
 - (ii) *the provision of goods, facilities, services and land*
 - (iii) *existing laws*
 - (iv) *the administration of Commonwealth laws and programs*
- (b) *to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community.*
- (c) *to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.*

The Development Control Plan gives Council officers the discretion based on merits of their circumstances to consider the case put forward by the applicant. It also addresses the need for the applicant to consider the impacts of not implementing these requirements. If Council ignores these disability access requirements in our assessment then Council may be considered contributory liable if the case goes to court.

Councils' Disabled Access Policy 2003 specifies the following policy statement: -

- *Councils' Development Control Plan (Commercial & Industrial) will be amended to require an access audit to be provided with certain development proposals*

An Access Audit demonstrates how the design of a development meets the Australian Standards AS1428, Premises Standards 2010 and the Building Code of Australia to ensure access for all people regardless of their abilities. The audit shall include but is not restricted to matters such as parking, paths of travel, doorways, change in levels, sanitary facilities & circulation spaces. The audit also needs to address specific considerations relevant to the type of development. The provision of the access audit ensures that consideration is given to the potential impact of each proposal as it relates to its site, its users and the community. The intent of the Audit is to provide a clear indication of the requirements for large scale

development applications and not increase DA processing times. Large scale development includes shopping centres, tourist facilities, medical centres and hotels etc.

When a person determines to do works/lodge a Development Application they need to define those works according to the definitions within the Local Environmental Plan. The categories in the table (**Attachment 1**) reflect those definitions so there are no ambiguities for Council's planners or applicants. The table is defined into categories based on minor/major works being those that will need to be more closely considered in the BCA. This flags the need for the applicant to consider disability access as part of their development proposal. The table also defines those applicants who do/ do not need to submit a report. Minor works do not require a report. Public spaces still require consideration of the Australian Standards in their design.

SUSTAINABILITY IMPLICATIONS

Includes environmental, social and economic implications

The strengthening of Council's planning and assessment framework will contribute to the creation of an accessible community in accordance with the Disability Discrimination Act 1992 and Council's Disabled Access Policy 2003 which specifies the following objective:

This policy will:

- provide a statement of Council's commitment to an accessible community.
- ensure the right of people with disability to participate fully in all aspects of life is recognised and accommodated
- make the provision of physical access to the highest possible standard an essential consideration in all planning processes. This provision has previously applied to works requiring a Development Application but will be extended to non DA work such as open spaces, repair and maintenance of Council assets etc.

CONSULTATION

The proposed amendment to Council's Development Control Plan 2007 has been developed in consultation with relevant Council Officers.

Under clause 18-2 of the Environmental Planning and Assessment Regulation 2000, Council must publicly exhibit the submission for 28 days. The public exhibition period was conducted from 10 February 2011 to 10 March 2011.

OPTIONS

- 1) Adopt the recommendation.
- 2) Reject the recommendation and call for a further report.
- 3) Amend the recommendation.

ATTACHMENTS

- 1) Amendment "Disability access" Port Stephens Council Development Control Plan 2007

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

AMENDMENT "DISABILITY ACCESS" PORT STEPHENS COUNCIL DEVELOPMENT CONTROL PLAN 2007

Disability Access

As seniors and people with disabilities are participating more actively in the community, the design of buildings and public spaces needs to consider users with a diversity of abilities. In 1992, the Commonwealth Government passed the Disability Discrimination Act. This Act makes it unlawful to discriminate against a person on the grounds of disability in the following areas of life; access to premises, public places & clubs, housing & accommodation, employment & education, provision of goods, services & facilities. Where required an access audit aims to ensure that consideration is given to the potential impact of each proposal as it relates to its site, its users and the community.

Recommended sources:

Human Rights Commission www.hreoc.gov.au

Adaptable Housing www.anuhd.org.au

PRINCIPLES

P1 To ensure non-discriminatory access is provided to and within developments from adjoining roads and pedestrian paths, so that it represents a sound balance with economic viability.

P2 To ensure that alterations, additions, change of use & new development is accessible and useable by all in accordance with the Disability Discrimination Act.

P3 To provide a level of service for people with disabilities for those land uses & activities used by the public in accordance with the Premises Standards and AS1428 where applicable.

P4 To ensure the equitable supply of public parking facilities for use by people with disabilities and seniors.

DEVELOPMENT CONTROLS

C1 Council requires that an Access Audit, prepared by an accredited access consultant, be lodged for development as categorised in the Access Table - Category 2.

Development proposals are categorised as:

Category 1 – An Access Audit is not required. However, all new building work must comply with the Building Code of Australia and the disability standards. Where buildings undergo renovation or change of use Council will determine to extent of any upgrade works required through the development application process. For disability access advice in the pre-lodgement stage you may contact Council's Community Planner- Ageing & Disability or speak to the duty building surveyor.

Category 2 – An Access Audit by an accredited consultant is required prior to lodgement of your application. This category applies to relevant developments that have the potential for significant impact on the surrounding environment and its users.

To find a consultant, refer to: www.access.asn.au or the Building Professionals Board website www.bpb.nsw.gov.au

NOTE– As part of the Statement of Environmental Effects submitted with any development application, consideration of access must be given to all publicly accessible development. Council reserves the right to request an access audit (functionality statement) as it determines appropriate to a particular proposal regardless of development type or value. An Access Audit shall demonstrate how the design of a development meets the Australian Standards AS1428 & the Building Code of Australia to ensure access for all people regardless of their abilities. The audit may include but is not restricted to matters such as parking, paths of travel, doorways, and changes in levels, sanitary facilities & circulation spaces. The audit also needs to address specific considerations relevant to the type of development.

Access table Development Type	Category	
	1	2
Home Based Child Care, Family Day Care Home		
Home Employment		
Bed & Breakfast establishment, Boarding House		
Small Scale Rural Subdivision, Animal establishments		
Exhibition Home		
Shop		
Airport		
Bus station, Brothel		
Child Care Centre, Club, Community Facility		
Educational establishment, Entertainment venue		
Hotel, Hospital, Health Care Professional, Health Consulting Rooms		
Institution		
Marina, Medical Centre, Mortuary, Market or festival		
Place of Assembly, Place of Public Worship, Public Entertainment		
Recreation Facility, Restaurant,		
Service Station, Tourist Facility		
Veterinary Hospital, Warehouse		
All urban land release subdivisions greater than 25 lots.		
Housing for seniors or people with disabilities		

ITEM NO. 2**FILE NO: PSC2010-05510****MAKING OF RATES AND CHARGES 2011/2012****REPORT OF: DAMIEN JENKINS - FINANCIAL SERVICES MANAGER****GROUP: COMMERCIAL SERVICES**

RECOMMENDATION IS THAT COUNCIL:

- 1) Make rates and charges for 2011/2012 in accordance with **ATTACHMENT 1**.
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COUNCIL COMMITTEE MEETING – 5 JULY 2011**RECOMMENDATION:**

	Councillor John Nell Councillor Shirley O'Brien	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 12 JULY 2011**RESOLUTION:**

234	Councillor John Nell Councillor Glenys Francis	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to make rates and charges for 2011/2012. Council is required to make its rates and charges by resolution and issue rate notices before 1 August each year. The rates and charges included in the recommendation are those included in the Integrated Strategic Plans 2011/2012 adjusted for the latest supplementary valuations received from the NSW Valuer General and notional income adjustments related to non-rateable properties.

Council is required to calculate rates for 2011/2012 using the 1 July 2010 base date valuations provided by the NSW Valuer General.

FINANCIAL/RESOURCE IMPLICATIONS

The Independent Pricing and Regulatory Tribunal (IPART) has announced a general rate variation of 2.8% for New South Wales Councils for 2011/2012.

In determining the 2.8% rate peg, IPART advises it took into consideration the 3.0% increase in the Local Government Cost Index, developed by IPART, and subtracted a 0.2% productivity adjustment.

Council is required to post rate notices before 1 August 2011 so that they are properly served in time for the first rate instalment due date of 31 August 2011. If Council does not make rates and charges and serve notices before 1 August 2011 then the due date for the first rate instalment is extended until 30 November 2011 which would adversely impact on Council's cash flow and investment income. It would also impact on all ratepayers who would have both instalments 1 and 2 due on the same date.

At the time of writing this report the Minister for Local Government has not yet set the maximum interest rate to be applied to overdue rates and charges during 2011/2012.

LEGAL, POLICY AND RISK IMPLICATIONS

Council must obtain IPART approval to exceed the ratepegging limit.

In accordance with Council's Debt Recovery and Hardship Policy, limited financial assistance will be provided to ratepayers suffering substantial hardship as a consequence of calculating rates using the latest land values. It is proposed that assistance only be made available where the ordinary rates for a rate assessment have increased by more than 11.5% over 2010/2011 ordinary rates. This equates to 6.9% of rate assessments.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Rate income is necessary for Council to deliver the services outlined in the Integrated Strategic Plans 2011/2012.

Council has budgeted \$10,000 for rates financial hardship assistance in 2011/2012.

CONSULTATION

The appropriate co-ordination and corporate consultation has taken place. The rating and charging proposals were placed on public exhibition in the Integrated Strategic Plans 2011/2012.

OPTIONS

- 1) Accept the recommendation;
- 2) Reject the recommendation;
- 3) Amend the recommendation.

ATTACHMENTS

- 1) Proposed rates and charges.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

- 1) Make ordinary rates in accordance with the following schedule for 2011/2012 using 2010 land values.

Rate Type	Rate Name	Land Category Rate Applies to	Ad Valorem Rate cents in \$	Base Amount \$	% of Yield from Base Amount
Ordinary	Residential	Residential	0.2836	309.00	35%
Ordinary	Farmland	Farmland	0.2836	309.00	20%
Ordinary	Business	Business	0.6215	1,290.00	35%
Ordinary	Mining	Mining	0.6215	nil	

- 2) Levy on behalf of Hunter-Central Rivers Catchment Management Authority a catchment contribution at the rate determined by the Authority for 2011/2012 on all rateable land with a land value of \$300 or more in the defined benefit area. The defined benefit area for the catchment contribution is shown on the Hunter Central Rivers Catchment Contribution Area Map.
- 3) Fix the interest rate to apply to overdue rates and charges in 2011/2012 at the maximum rate as determined by the Minister for Local Government.
- 4) Set at 11.5% for 2011/2012 the percentage ordinary rate increase required for ratepayer eligibility to apply for relief from hardship resulting from the 2010 general revaluation of Port Stephens referred to in the Debt Recovery and Hardship Policy.
- 5) Make the following annual Domestic Waste Management Charges and Waste Management Charges for 2011/2012. All rateable assessments that are undeveloped (ie have no buildings erected upon them) will be levied either a Domestic Waste Management Charge or a Waste Management Charge. All developed rateable assessments (ie have a building/s erected upon them) will be levied either a Domestic Waste Management Service Charge or a Waste Management Service Charge in addition to the Domestic Waste Management Charge/Waste Management Charge

ATTACHMENT 1

Charge Type	Charge Code	Charge Name	Land Category Charge Applies to	Amount of Charge
Domestic Waste Management (section 496 Local Government Act, 1993)	6-63	Domestic Waste Management Charge	All rateable land categorised as Residential except land that is levied a S.496 Domestic Waste Management Service Charge (7-73).	\$60.00 per assessment
Waste Management Charge (section 501 Local Government Act, 1993)	6-64	Waste Management Charge	All rateable land categorised as Mining or Business. All rateable land categorised as Farmland except land that is levied a S.501 Additional Farm Waste Management Charge (6-65). All rateable land categorised as Residential except land that is levied a S.496 Domestic Waste Management Charge (6-63). All non-rateable land that uses the Domestic Waste Management Service.	\$60.00 per assessment
Waste Management Charge (section 501 Local Government Act, 1993)	6-65	Additional Farm Waste Management Charge	All rateable land categorised as Farmland where more than one assessment is held in the same ownership and those assessments are operated as a single farming entity, then the Waste Management Charge (6-64) is to be levied on the first assessment and this Additional Farm Waste Management Charge (6-65) is to be levied on the second and subsequent assessments.	\$1.00 per assessment
Domestic Waste Management (section 496 Local Government Act, 1993)	7-73	Domestic Waste Management Service Charge	All developed rateable land categorised as Residential or Farmland, whether occupied or unoccupied. All non-rateable land that uses the Domestic Waste Management Service	\$308.00 per dual 240 litre bin service

MINUTES FOR ORDINARY MEETING – 12 JULY 2011

Charge Type	Charge Code	Charge Name	Land Category Charge Applies to	Amount of Charge
Waste Management Charge (section 501 Local Government Act, 1993)	7-74	Waste Management Service Charge	All developed rateable land categorised as Mining or Business, whether occupied or unoccupied.	\$308.00 per dual 240 litre bin service
Waste Management Charge (section 501 Local Government Act, 1993)	3-74	Waste Service Charge – Additional Red Bin	All rateable land categorised as Farmland, Residential, Mining or Business where the ratepayer requests provision of the additional service. All non-rateable land where provision of the additional service is requested.	\$205.00 per additional waste (red lid) bin
Waste Management Charge (section 501 Local Government Act, 1993)	4-74	Waste Service Charge – Additional Yellow Bin	All rateable land categorised as Farmland, Residential, Mining or Business where the ratepayer requests provision of the additional service. All non-rateable land where provision of the additional service is requested.	\$105.00 per additional recycling (yellow lid) bin

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217

ALLOCATION OF CENTRAL WARD FUNDS

COUNCILLOR: TUCKER, O'BRIEN, MACKENZIE, DINGLE

THAT COUNCIL:

- 1) Allocate funds to Central Ward as a result of the Sandvik land sale profit which will be directed to the projects listed in **Attachment 1**;
- 2) The administration and allocation of funding is to be done in consultation with the Ward Councillors.

ORDINARY COUNCIL MEETING – 12 JULY 2011

235	Councillor Steve Tucker Councillor Bruce MacKenzie	It was resolved that the Notice of Motion be adopted with amendments to ATTACHMENT 1 replacing Anna Bay Sports & Recreation Club with Anna Bay Sports Complex and Lemon Tree Passage – Old School Centre with Lemon Tree Passage – Library.
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BACKGROUND REPORT OF: PETER AVIS – ACTING FACILITIES AND SERVICES GROUP MANAGER

BACKGROUND

Conversations about forward work proposals with Central Ward Councillors and Facilities and Services staff about future proposed works that have not been funded in the Capital Works have occurred. The focus of the discussions has been about sustaining Council's existing assets.

Projects will need to be placed on exhibition for 28 days in accordance with the Division of Local Government Guidelines if they are not in the Delivery Program of the Community Strategic Plan.

ATTACHMENT 1

Central Ward Project Fund -2011

Project Expenditure

Anna Bay

Anna Bay Cycleway	\$50,000.00
Anna Bay Sports and Recreation Club	\$25,000.00
Anna Bay Hall	\$1,000.00
Birubi Surf Club	\$1,000.00

Medowie

Medowie Sports and Recreation Club	\$55,000.00
Cycleway section from Ferodale Road to Campvale drain to access Yulong Oval eastern side including handrails on Campvale Drain east side	\$40,000.00
Footpath link between Tallowood Drive and Kindlebark Cycleway on the south side of Tallowood retention basin	\$20,000.00
Campvale drainage levy bank for protection of residents in Kirrang Drive	\$35,000.00
Medowie Community Pre-School multi-functional area	\$17,500.00
Medowie Tennis Club – drainage and resurfacing of court surface	\$17,500.00

Salt Ash

Salt Ash Equestrian Centre	\$100,000.00
Salt Ash Equestrian Centre – yards	\$10,000.00

Tilligerry

Lemon Tree Passage – Henderson Park	\$77,000.00
Tilligerry Mens Shed	\$22,000.00
Mallabula Sports Fields - Ovals	\$15,000.00
Tanilba, Mallabulla & LTP Parks and Reserves	\$15,000.00
Mallabulla Wharf – Park Furniture	\$3,000.00
Lemon Tree Passage – Old School Centre	\$2,000.00
Tilligerry Legacy – Laptop	\$1,000.00

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217

TREE PRESERVATION ORDER POLICY

COUNCILLOR: MACKENZIE, KAER, TUCKER

THAT COUNCIL:

- 1) Amend the Tree Preservation Order Policy to state that any ratepayer in a residential area who has concerns for their safety as a result of falling tree limbs or in relation to a tree which they deem to be dangerous be given approval to remove the tree at their expense.
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ORDINARY COUNCIL MEETING – 12 JULY 2011

236	Councillor Bruce MacKenzie Councillor Peter Kaer	It was resolved that Council: <ol style="list-style-type: none">1. Amend the Tree Preservation Order Policy to state that any ratepayer in a residential area who has concerns for their safety as a result of falling tree limbs or in relation to a tree which they deem to be dangerous be given approval to remove the tree at their expense.2. Residents in rural residential areas who maintain that trees are dangerous and if big enough to fall on the house be given the same as in residential areas, that means the rest of their property is subject to existing laws.
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The Motion on being put was carried.

AMENDMENT

	Councillor John Nell Councillor Glenys Francis	That Council defer the Notice of Motion to allow for a review of the Tree Preservation Order Policy.
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The amendment on being put was lost.

MINUTES FOR ORDINARY MEETING – 12 JULY 2011
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MATTER ARISING

237	Councillor Ken Jordan Councillor Glenys Francis	It was resolved that Council call for a 2 way conversation with Councillors to discuss the Tree Preservation Order Policy and the Native Vegetation Act.
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There being no further business the meeting closed at 6.27pm.

I certify that pages 1 to 21 of the Open Ordinary Minutes of Council 12 July 2011 confirmed by Council at its meeting held on 26 July 2011.

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Cr Bob Westbury
MAYOR