

MINUTES 10 DECEMBER 2013



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 10 December 2013, commencing at 6.27pm.

PRESENT: Mayor B MacKenzie; Councillors G. Dingle; S. Dover; K. Jordan; P. Kafer; P. Le Mottee; J. Morello; J. Nell; S. Tucker; General Manager; Acting Corporate Services Group Manager; Facilities and Services Group Manager; Development Services Group Manager and Executive Officer.

357	Councillor Steve Tucker Councillor Ken Jordan
	It was resolved that the apology from Cr Chris Doohan be received and noted.

358	Councillor Paul Le Mottee Councillor John Morello
	It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 26 November 2013 be confirmed.

	Cr Ken Jordan declared a significant non pecuniary conflict of interest in Item 6. The nature of the interest is a friendship.
	Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 3. The nature of the interest is that the Le Mottee Group is undertaking survey work on site. Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 6. The nature of the interest is Cr Le Mottee's home is in the "proximity" of

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	the subject land.
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	The Development Services Group Manager declared a significant non pecuniary conflict of interest in Item 2. The nature of the interest is due to him being a neighbouring resident.
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359	Councillor John Nell Councillor Ken Jordan
	It was resolved that Council Items 2 and 6 be brought forward and dealt with prior to Item1.

Development Services Group Manager left the meeting at 6.28pm prior to Item 2, in Committee of the Whole.

ITEM NO. 2

FILE NO: 16-2013-589-1

**DEVELOPMENT APPLICATION FOR A TELECOMMUNICATIONS TOWER
AT 53A SANDY POINT ROAD & 10A CORRIE PARADE, CORLETTE**

REPORT OF: MATTHEW BROWN – DEVELOPMENT ASSESSMENT AND COMPLIANCE
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2013-589-1, for construction of a Telecommunications Facility at No. 53A Sandy Point Road and 10A Corrie Parade, Corlette subject to the conditions contained in **(ATTACHMENT 3)**.

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MOTION**

360	Councillor John Nell Councillor Ken Jordan
	It was resolved that Council move into Committee of the Whole.

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Nell Councillor Sally Dover
	That Council refuse the Development Application 16-2013-589-1, for construction of a Telecommunications Facility at No. 53A Sandy Point Road and 10A Corrie Parade, Corlette for the following reasons: REASONS FOR REFUSAL Proposed Telecommunications Facility and Improved Access Track Hunter Water Land, (Off Fame Avenue), 10A Corrie Parade, Corlette,

	<p>NSW & Council Land (Lot 36 DP819545).</p> <p>1. ZONE OBJECTIVES: THE PROPOSED DEVELOPMENT IS INCONSISTENT WITH THE APPLICABLE AIMS AND OBJECTIVES OF CLAUSE 29 AND THE 6(A) GENERAL RECREATION 'A' ZONE OF PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000, PARTICULARLY CL.29 (A), (C) AND (E). THUS THE PROPOSAL IS UNSATISFACTORY WITH REGARDS TO S79C(1)(A)(I) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979.</p> <p>Particulars:</p> <ul style="list-style-type: none"> a. The proposed development utilises publicly owned land for purposes other than open space recreation purposes and is inconsistent with cl.29(a). b. The proposal fails to preserve the aesthetics of the land which is visible from foreshore areas as required under cl.29(e) due to the height and scale of the development. The height of the proposal results in a development that shall be observed and experienced from public places including significant tourist routes and attractions. c. The proposal shall result in an unacceptable visual impact as observed from within and adjacent to Corlette to the extent that it does not complement the scale, form and height of the character of the local landscape and buildings. d. The proposed development is not consistent with cl.29(c) and the character of the General Recreation 'A' Zone which is typified by areas of active and passive recreation, including bushland, which are supplemented by services and facilities catering for the users of the reserve. Such services would include amenities blocks and the like. <p>2. CLAUSE 10: THE PROPOSED DEVELOPMENT DOES NOT SATISFY CLAUSE 10 OF PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000. THUS THE PROPOSAL IS UNSATISFACTORY WITH REGARDS TO S79C(1)(A)(I) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979.</p> <p>Particulars:</p> <ul style="list-style-type: none"> a. Clause 10 identifies that the consent authority must not grant consent for development of land unless it is satisfied that the proposed development is consistent with the objectives of the zone in which it is to be carried out. The proposal fails to satisfy cl.29 (a), (c) and (e) as identified within reason for refusal No.1 (above).
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	<p>3. DRAFT LEP: THE PROPOSED DEVELOPMENT IS INCONSISTENT WITH THE APPLICABLE AIMS AND OBJECTIVES OF CLAUSE 29 AND THE SP1 (SPECIAL ACTIVITIES) UNDER THE DRAFT PORT STEPHENS LOCAL ENVIRONMENTAL PLAN (DLEP) 2013. THUS THE PROPOSAL IS UNSATISFACTORY WITH REGARDS TO S79C(1)(A)(I) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979.</p> <p>Particulars:</p> <ul style="list-style-type: none"> a. The subject site is zoned to facilitate the provision of infrastructure provided by Hunter Water Corporation namely being a pumping station. The site has not been zoned to facilitate the proposed Telecommunications Facility. <p>4. Site suitability: The site is unsuitable for the proposed development and is not consistent with the provisions of Section 79c(1)(c) Environmental Planning and Assessment Act 1979.</p> <p>Particulars:</p> <ul style="list-style-type: none"> a. The development is proposed to be located on a visual prominent ridgeline and the applicant has failed to give appropriate consideration to visual amenity requirements for development as prescribed within Port Stephens Foreshore Management Plan 2009. b. The applicant has failed to demonstrate that the proposal has been located and designed so as to be visually integrated with the approaches to Corlette, which include views from the north, south, southeast and west of the subject site. <p>5. Public Interest: The proposed development is not in the public interest and is not consistent with the provisions of Section 79C(1)(e)Environmental Planning and Assessment Act 1979. In particular the proposal fails to:</p> <p>Particulars:</p> <ul style="list-style-type: none"> a. Demonstrate that adequate regard has been given to the future coverage needs of other telecommunications carriers in the Corlette area. b. Provide for broad social and economic benefits that may result from an appropriately designed and located telecommunication facility. c. Provide for the future development and quiet enjoyment of the surrounding Community land. <p>6. Information: Insufficient information has been provided with the application:</p>
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	<p>Particulars:</p> <p>a. The visual impact assessment of the proposal is inadequate having regard to the complexity and value of its setting and fails to accurately convey and assess the likely impacts as it will be observed and experienced by large numbers of viewers including both residents and visitors.</p>
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Peter Kafer, Paul Le Mottee, Ken Jordan, Steve Tucker, Geoff Dingle, John Nell, John Morello and Sally Dover.

Those against the Motion: Nil.

MOTION

Development Services Group Manager left the meeting at 7.18pm prior to Item 2, in the Open Council Meeting.

362	<p>Councillor John Nell Councillor Steve Tucker</p>
	<p>It was resolved that Council refuse the Development Application 16-2013-589-1, for construction of a Telecommunications Facility at No. 53A Sandy Point Road and 10A Corrie Parade, Corlette for the following reasons:</p> <p style="text-align: center;">REASONS FOR REFUSAL</p> <p>Proposed Telecommunications Facility and Improved Access Track Hunter Water Land, (Off Fame Avenue), 10A Corrie Parade, Corlette, NSW & Council Land (Lot 36 DP819545).</p> <p>1. ZONE OBJECTIVES: THE PROPOSED DEVELOPMENT IS INCONSISTENT WITH THE APPLICABLE AIMS AND OBJECTIVES OF CLAUSE 29 AND THE 6(A) GENERAL RECREATION 'A' ZONE OF PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000, PARTICULARLY CL.29 (A), (C) AND (E). THUS THE PROPOSAL IS UNSATISFACTORY WITH REGARDS TO S79C(1)(A)(I) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979.</p> <p>Particulars:</p> <p>a. The proposed development utilises publicly owned land for purposes other than open space recreation purposes and is inconsistent with cl.29(a).</p> <p>b. The proposal fails to preserve the aesthetics of the land</p>

	<p>which is visible from foreshore areas as required under cl.29(e) due to the height and scale of the development. The height of the proposal results in a development that shall be observed and experienced from public places including significant tourist routes and attractions.</p> <p>c. The proposal shall result in an unacceptable visual impact as observed from within and adjacent to Corlette to the extent that it does not complement the scale, form and height of the character of the local landscape and buildings.</p> <p>d. The proposed development is not consistent with cl.29(c) and the character of the General Recreation 'A' Zone which is typified by areas of active and passive recreation, including bushland, which are supplemented by services and facilities catering for the users of the reserve. Such services would include amenities blocks and the like.</p> <p>2. CLAUSE 10: THE PROPOSED DEVELOPMENT DOES NOT SATISFY CLAUSE 10 OF PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000. THUS THE PROPOSAL IS UNSATISFACTORY WITH REGARDS TO S79C(1)(A)(I) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979.</p> <p>Particulars:</p> <p>a. Clause 10 identifies that the consent authority must not grant consent for development of land unless it is satisfied that the proposed development is consistent with the objectives of the zone in which it is to be carried out. The proposal fails to satisfy cl.29 (a), (c) and (e) as identified within reason for refusal No.1 (above).</p> <p>3. DRAFT LEP: THE PROPOSED DEVELOPMENT IS INCONSISTENT WITH THE APPLICABLE AIMS AND OBJECTIVES OF CLAUSE 29 AND THE SP1 (SPECIAL ACTIVITIES) UNDER THE DRAFT PORT STEPHENS LOCAL ENVIRONMENTAL PLAN (DLEP) 2013. THUS THE PROPOSAL IS UNSATISFACTORY WITH REGARDS TO S79C(1)(A)(I) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979.</p> <p>Particulars:</p> <p>a. The subject site is zoned to facilitate the provision of infrastructure provided by Hunter Water Corporation namely being a pumping station. The site has not been zoned to facilitate the proposed Telecommunications Facility.</p> <p>4. Site suitability: The site is unsuitable for the proposed development and is not consistent with the provisions of Section</p>
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	<p>79c(1)(c) Environmental Planning and Assessment Act 1979.</p> <p>Particulars:</p> <ul style="list-style-type: none"> a. The development is proposed to be located on a visual prominent ridgeline and the applicant has failed to give appropriate consideration to visual amenity requirements for development as prescribed within Port Stephens Foreshore Management Plan 2009. b. The applicant has failed to demonstrate that the proposal has been located and designed so as to be visually integrated with the approaches to Corlette, which include views from the north, south, southeast and west of the subject site. <p>5. Public Interest: The proposed development is not in the public interest and is not consistent with the provisions of Section 79C(1)(e) Environmental Planning and Assessment Act 1979. In particular the proposal fails to:</p> <p>Particulars:</p> <ul style="list-style-type: none"> a. Demonstrate that adequate regard has been given to the future coverage needs of other telecommunications carriers in the Corlette area. b. Provide for broad social and economic benefits that may result from an appropriately designed and located telecommunication facility. c. Provide for the future development and quiet enjoyment of the surrounding Community land. <p>6. Information: Insufficient information has been provided with the application:</p> <p>Particulars:</p> <ul style="list-style-type: none"> a. The visual impact assessment of the proposal is inadequate having regard to the complexity and value of its setting and fails to accurately convey and assess the likely impacts as it will be observed and experienced by large numbers of viewers including both residents and visitors.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Peter Kafer, Paul Le Mottee, Ken Jordan, Steve Tucker, Geoff Dingle, John Nell, John Morello and Sally Dover.

Those against the Motion: Nil.

BACKGROUND

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

The development application is for a Telecommunications Facility, incorporating the following works:

- Vegetation removal;
- Construction of 30m Telstra monopole;
- 3 new Telstra panel antennas and 3 antennas to be installed at a later date;
- Equipment shelter to house electrical equipment;
- Upgrade of track over right of carriageway; and
- Provision of electrical power and fibre optic cabling from Fame Avenue.

Key issues associated with the application include:

- Potential impacts on nearby dwellings; and
- Flora and fauna.

The application has been lodged over 53A Sandy Point Road & 10A Corrie Parade, Corlette.

The subject site / location of the telecommunication facility (10A Corrie Parade) is located within the larger Council owned reserve (53A Sandy Point Road). Access to the site is via a right of carriageway over Council reserve land off Fame Avenue, Corlette. Development immediately surrounding the subject site consists of residential dwellings.

A previous Development Application (DA 16-2010-912-1) for a Telecommunications Facility at 53A Sandy Point Road, Corlette was lodged in 2010. This application was withdrawn on the 12 April 2011 at the request of Council in order to obtain the correct owners consent.

This application is for the same facility as previously proposed in the 2010 development application contained entirely on Hunter Water Corporation Land, other than the upgrade of the existing access/right of way which is on Council land. Land owners consent from both Hunter Water Corporation and Council has been obtained for lodgement of the current DA.

The current Development Application was publicly exhibited for a period of 21 days. Council received a petition with 217 signatures, 46 form letters and 23 individual letters, with main issues raised including:

- *Impact of radiation emissions* - In Australia, the EME safety standard is set by the Australian Communications and Media Authority (ACMA). In this case the

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- proposed facility at Corlette is predicted to have a maximum EME value of only 0.088% of this standard.
- *Proximity to residential homes* - The nearest residential property is located some 54m away from the chosen site and is separated by existing natural vegetation.
 - *Wind noise* - There are no moving or vibrating parts on the proposed facility. Strong winds do not result in noise, vibration or whistling from a telecommunications monopole and associated headframe.
 - *Impact on natural bush land* - A flora and fauna assessment was undertaken for the development by a qualified ecological consultant who concluded that the proposal would not have a significant impact on the flora and fauna of the local region. Council's Environmental Officer has also reviewed the assessment, raising no significant issues with the proposal.
 - *Not in keeping with the character of the local area / visual impact* - It is not anticipated that there will be any significant visual impact from the proposed facility. Photomontages submitted within the Statement of Environmental Effects demonstrate existing trees and vegetation will screen the majority of the facility from surrounding residences.
 - *Decrease in property value* - The impact of a development on individual property values is not a matter for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*.
 - *Not in keeping with the public interest (S79C(e))* - The proposed development will improve mobile telephone communications in the community by providing network coverage in an area where coverage is currently considered inadequate. The proposed facility is consistent with all relevant legislation and guidelines.
 - *Inconsistent with objectives of the current and draft zonings* - The proposed facility is consistent with the zone objectives for 6 (a) Recreation under the Port Stephens LEP 2000. The Port Stephens Draft LEP 2013 has zoned the land as SP1 – Special Activities. Given the intended use of the site is for the purposes of infrastructure, the proposal is generally consistent with the objectives of the draft zone. Notwithstanding, as the proposed development is permissible under the current instrument LEP2000 the proposal is acceptable and is able to be determined under the current plan.

Following assessment of the DA, it is considered that any potential impacts on the environment and the surrounding area can be adequately addressed, through conditions of consent. Therefore, the application does not warrant refusal in this instance.

FINANCIAL/RESOURCE IMPLICATIONS

Determination of the development in accordance with the recommendation does not present any significant financial or resource implications for Council.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		

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External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

The development application is consistent with Council's Development Control Plan 2007, subject to determination in accordance with the recommendation. However, there are likely to be risk implications associated with approving the DA due to the level of community objection.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council's decision will be subject to appeal.	Medium	Determine DA as per recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The development is not likely to have any adverse social, economic or environmental impacts on the wider community.

On balance, when considering social, economic and environmental implications, the proposed Telecommunications Facility will provide for improved service and coverage throughout Corlette and supporting the proposal results in a net community benefit.

CONSULTATION

The application was exhibited in accordance with Council policy with a petition of 217 signatures, 46 form letters and 28 individual letters received. These are discussed in the planning assessment (**ATTACHMENT 2**).

During the assessment process, internal referrals to Council's Development Engineering Team and Building Team were undertaken, with these aspects of the assessment concluding in support for the application, subject to conditions of consent.

OPTIONS

- 1) Adopt the recommendation;
- 2) Amend the recommendation;
- 2) Reject the recommendations.

ATTACHMENTS

- 1) Locality Plan;
- 2) Assessment;
- 3) Conditions.

COUNCILLORS ROOM

- 1) Plans - also provided under separate cover;
- 2) Planning Report – by Urbis.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1 LOCALITY PLAN



ATTACHMENT 2

ASSESSMENT

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

THE PROPOSAL

The development application is for a Telecommunications Facility, incorporating the following works:

- Vegetation removal,
- Construction of 30m Telstra monopole,
- 3 new Telstra panel antennas and 3 antennas to be installed at a later date,
- Equipment shelter to house electrical equipment,
- Upgrade of track over right of carriageway, and
- Provision of electrical power and fibre optic cabling from Fame Avenue.

THE APPLICATION

Owner	Port Stephens Council & Hunter Water Corporation
Applicant	Telstra Corporation Limited C/- Urbis Pty Ltd
Detail Submitted	Statement of Environmental Effects Site Plans Deployment Code Checklists EME Report EME Predictive Map Photomontages Flora and Fauna Study Report Bushfire Assessment Report

THE LAND

Property Description	Lot 36 DP 819545 and Lot 2 DP 571224
Address	53A Sandy Point Road and 10A Corrie Parade, Corlette
Area	12.1525 hectares
Dimensions	The site is an irregular shape, extending from Sandy Point Road in the north around The Peninsula (south) to Corrie Parade in the west.

Characteristics

The site is currently vacant and forms part of the larger reserve running from Sandy Point Road, wrapping around to Corrie Parade.

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning

6(a) General Recreation 'A'

Relevant Clauses

Clause 29
Clause 44
Clause 47
Clause 51A

Development Control Plan

Development Control Plan 2007

State Environmental Planning Policies

State Environmental Planning Policy
(Infrastructure) 2007
State Environmental Planning Policy No. 44
– Koala Habitat Protection
State Environmental Planning Policy No. 71
– Coastal Protection

State Environmental Planning Policy (Infrastructure) 2007

Clause 55 of the SEPP reads as follows:

115 Development permitted with consent

(1) Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land.

(3) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Director-General for the purposes of this clause and published in the Gazette

The NSW Department of Planning has also issued the NSW Telecommunications Facilities Guideline Including Broadband. The following principles are set out in this guideline:

1. A telecommunications facility is to be designed and sited to minimise visual impact

Comment: the proposed facility will be located within a public recreation area, which contains scattered vegetation. There are no improvements currently located on the site. Existing vegetation on the site will provide screening of the proposed

development. The facility will be painted green to assist in minimising the visual impact of the development. No significant impact will occur as a result of the proposed development.

2. Telecommunications facilities should be co-located wherever practical

Comment: The following existing facilities are located within the surrounding area: Salamander Bay Shopping Centre, Gan Gan Lookout and the Waste Transfer Centre. Each of these sites has been found too be located too far from the target area, with improvements in these areas making no difference to coverage deficiencies in Corlette. In this instance, co-location is not practicable given coverage would not be achieved.

3. Health standards for exposure to radio emissions will be met

Comment: the national standard provides for a maximum exposure level of 3khz. The EME report submitted with the development application demonstrates that the maximum level of exposure will be 0.088% of the acceptable limit.

4. Minimise disturbance and risk, and maximise compliance

Comment: the subject site is located 26km from the RAAF Williamstown and Newcastle Airport. A condition of any consent shall be applied requiring the tower to be registered with the RAAF.

The development will be wholly located on Hunter Water owned land. Conditions of consent will ensure that adequate erosion and sediment control measures are implemented and maintained for the duration of the works and specify hours of operation. To facilitate the proposed development some vegetation will be required to be removed. The extent of clearing is not considered to be significant nor have a significant impact on flora or fauna within the immediate area.

The application is consistent with the SEPP and principles outlined above.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

State Environmental Planning Policy No.44 – Koala Habitat Protection, aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for Koalas to ensure a permanent free-living population over their present range and reverse the current trend of Koala population decline.

The Port Stephens Comprehensive Koala Plan of Management (CKPoM) was adopted to satisfy the provisions of SEPP 44 within the Local Government Area. The site is mapped as Koala Habitat - 'link over supplementary' within the CKPoM. Performance criteria identified within the Plan requires development to give consideration towards minimising impacts on Koalas and native vegetation within preferred habitats and supportive linking areas.

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Council's Environmental Officer (Natural Resources Section) has provided the following comments:

- *The development footprint is deemed to be 54m² and the exclusion fencing approx 30mts will deter koalas from entering the development.*
- *Tree hollow will be lopped not removed.*
- *Whilst there are no studies done on electromagnetic radiation on koalas we can only speculate and use the human guidelines. The Council reserve is likely to be remnant and a corridor for a highly mobile population and therefore it is unlikely that the electromagnetic radiation will cause harm.*
- *No koala feed trees are to be felled therefore there will be no significant pressure on the koala population in the entire reserve.*
- *The number of trees being removed is small but compensatory planting must be carried out within Council's reserve – offset tree planting condition.*

Appropriate conditions of consent have been provided.

The application is consistent with SEPP 44 and Council's CKPoM.

State Environmental Planning Policy No. 71 – Coastal Protection

This application has been assessed having regard to the aims of the SEPP. It is unlikely that the proposed development will have an adverse impact on achieving the aims of the SEPP. In addition, the application has had regard to the matters for consideration in Clause 8 and is considered to generally comply with the aims of the SEPP and the other matters for consideration under Clause 8.

Port Stephens Local Environmental Plan 2000

Clause 29

Clause 29 contains the zone objections for the 6(a) zone, stating:

(a) to identify publicly owned land and ensure that it is available for open space recreation, and

Comment: development proposed by this application will occupy a small portion of land within the reserve which is owned by Hunter Water Corporation. Development of this site will not significantly restrict the availability of land for private open space within the area.

(b) to provide an open space network to serve the present and future recreational needs of residents and visitors, and

Comment: adequate land will remain to cater for the present and future recreational needs of both residents and visitors.

(c) to permit development associated with, or complementary to, open space, and

Comment: development for the purposes of open space (i.e. play equipment etc) is not proposed as part of this application. However, development proposed by this application will not significantly restrict development in the future for associated/complementary open space uses.

(d) to allow development on foreshores where that development is water related and enhances the recreational use or natural environment of the foreshore, and

Comment: the subject site is not located on the foreshore.

(e) to preserve the aesthetics of land which is prominent and visible to the public along foreshore areas, and

Comment: the subject site is not considered to be prominent and visible along public foreshore, with development primarily screened by existing vegetation.

(f) to reserve privately owned land that is essential for future public open space and to provide for its acquisition by the Council.

Comment: land subject of this application is owned by Hunter Water Corporation and Port Stephens Council. Detail provided by the applicant indicated the portion of the site owned by Hunter Water was transferred by Council to be utilised for infrastructure purposes. The proposed development is considered infrastructure, generally consistent with the purpose for which the land was transferred.

Clause 44

Clause 44 relates to the appearance of land and buildings, stating:

(1) The consent authority may consent to the development of land within view of any waterway or adjacent to any main or arterial road, public reserve or land zoned as open space, only if it takes into consideration the probable aesthetic appearance of the proposed building or work or that land when used for the proposed purpose and viewed from that waterway, main or arterial road, public reserve or land zoned as open space.

(2) The consent authority may consent to development of land on or near any ridgeline visible from a public road only if it is satisfied that the development would not be likely to detract substantially from the visual amenity of the locality.

(3) In determining whether to grant a consent referred to in subclause (1) or (2), the consent authority shall consider the following:

(a) the height and location of any building that will result from carrying out the development,

(b) the reflectivity of materials to be used in carrying out the development,

(c) the likely effect of carrying out the development on the stability of the land,

(d) any bushfire hazard,

(e) whether carrying out the development is essential to the viability of the land concerned,

(f) the likely extent and effect of carrying out the development on vegetation on the land concerned.

Comment: the subject land is zoned for general recreation. It is not anticipated that there will be any significant visual impact from the proposed facility. Photomontages submitted within the Statement of Environmental Effects demonstrate existing trees and vegetation will screen the majority of the facility.

Construction shall utilise non reflective materials, with the tower to be painted in order to blend into the existing surroundings.

The development application contains a bushfire assessment by a suitably qualified bushfire consultant. In line with the RFS Practice Note 1/11 Telecommunications Towers in Bush Fire Prone Areas (Rural Fire Service 2012), a 10m Asset Protection Zone (APZ) will be established and maintained. Conditions of consent will be included ensuring compliance with the recommendations of this report.

Minimal vegetation is required to be removed to facilitate the proposed development, vegetation removal is not considered to result in a significant impact.

Accordingly, the proposal is consistent with Clause 44.

Clause 47

Clause 47 relates to the provision of services, stating:

The consent authority shall not grant its consent to the carrying out of any development on any land unless:

- (a) a water supply and facilities for the removal or disposal of sewage and drainage are available to that land, or*
- (b) arrangements satisfactory to it have been made for the provision of that supply and those facilities.*

Comment: Services, i.e. electricity will be connected to the site. Water and sewer are not required.

Clause 51A

The development site contains Class 5 Acid Sulfate Soils.

Works will not occur within 500m of a higher classification and will not result in lowering of the ground water table.

Port Stephens Development Control Plan 2007

B2.7 Vegetation Management

The proposal involves the removal of 5 Forest Oaks and a small patch of regenerating forest consisting of a smooth barked Apple Blackbutt tree and four

saplings and the lopping of a number of branches on a large Sydney Peppermint Tree to facilitate the construction of the compound and access track. Vegetation removal is not considered to result in a significant impact.

Vegetation around the edge of the reserve consists of denser vegetation, with mature trees to a height of 20-25 metres. This vegetation provides the majority of the visual screening for the site, protecting the scenic and visual amenity of the Reserve and its surroundings.

Clearing for an APZ will require removal of 4 juvenile trees along with low lying shrubs and ground fuel. Vegetation removal for the APZ will not result in a significant impact on the environment.

B2.8 Koala Management

A flora and fauna assessment has been submitted with the application. Council's Environmental Officer (Natural Resources Section) has provided the following comments:

- *The development footprint is deemed to be 54m² and the exclusion fencing approx 30mts will deter koalas from entering the development.*
- *Tree hollow will be lopped not removed.*
- *Whilst there are no studies done on electromagnetic radiation on koalas we can only speculate and use the human guidelines. The Council reserve is likely to be remnant and a corridor for a highly mobile population and therefore it is unlikely that the electromagnetic radiation will cause harm.*
- *No koala feed trees are to be felled therefore there will be no significant pressure on the koala population in the entire reserve.*
- *The number of trees being removed is small but compensatory planting must be carried out within Council's reserve – offset tree planting condition.*

Appropriate conditions of consent have been provided. Council's Natural Resource Section have not raised any significant concerns in relation to the proposed development and the overall assessment has considered that the development will not have any unacceptable ecological impacts.

B3.4 Access Requirements

Council's Development Engineering section have provided the following comments:

The access to the development should be an all-weather sealed or concreted access as it would be with any other development, that being said - Prior to the commencement of any other works on the site the applicant shall construct a min 3m wide concrete or sealed all-weather access from the existing sealed road to the aerial site in accordance with Council's and Australian Standards (max grade 25%).

In accordance with the above, a condition has been included requiring the access achieve a gradient of 25%.

2. Likely Impact of the Development

The likely impacts of the development have been considered elsewhere within this report. It is not considered that the proposed development will result in any significant impacts.

3. Suitability of the Site

The subject site is considered suitable for the development as per the assessment outcomes within this report, including (but not limited to) the following:

- The proposed development is permissible with consent in the 6(a) Zone and is consistent with the objectives of the zone.
- The application is consistent with relevant State Environmental Planning Policies, Section 79C of the Act, the Regulations and the appropriate sections of the DCP.
- The proposed development will not result in any adverse impact on the natural, built, social or economic environments.
- There are no significant natural constraints which should preclude the approval of the proposed development.

4. Submissions

The application was exhibited in accordance with Council policy with a petition of 217 signatures, 46 form letters and 23 individual letters received. The following concerns were raised in the public submissions:

- Impact of radiation emissions upon residents health and safety

Telecommunications facilities emit radiofrequency electromagnetic energy (EME) as “radio waves”. Other radio-wave signals transmitted by communications facilities include TV signals, AM and FM radio signals, taxi service signals, paging network signals, emergency service communications, and police two-way radio.

Telstra relies on the expert advice of national and international health authorities such as the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), and the World Health Organisation (“WHO”) for overall assessments of health and safety impacts. The consensus is that there is no substantiated scientific evidence of adverse health effects from the EME generated by radio frequency technology, including mobile phones and their base stations, that complies with national and international safety guidelines.

In Australia, the EME safety standard is set by the Australian Communications and Media Authority (ACMA), which is the independent regulator of the nation’s telecommunications industry. This standard is taken from ARPANSA and is called the Radio Communications (Electromagnetic Radiation- Human

Exposure) Standard 2003. In this case the proposed facility at Corlette is predicted to have a maximum EME value of only 0.088% of this standard.

- Health issues to residents from electromagnetic energy – negate the use of community land for this purpose

The facility will comply with the Australian Standards in regard to emissions from the proposed facility. Given there is no substantiated scientific evidence of adverse health effects from the EME generated by radio frequency technology, this therefore has no bearing on the use of the land as community land.

- Potential interference of mobile phones with pacemakers, hearing aids and other devices

There is no interference between telecommunications facilities and pacemakers, hearing aids and other devices. This is due to the extremely low level radio signals of these base stations. Interference can only happen if electrical systems are exposed to sufficiently high emissions. In this case the proposed facility at Corlette is predicted to have a maximum EME value of only 0.088% of the acceptable standard.

Potential interference with pacemakers, hearing aid and other devices primarily relates to mobile phone handsets and not the telecommunications facility.

- Proximity to residential homes/Loss of amenity

Telstra examined a number of potential alternative sites including Toboggan Hill and other uncleared areas within the Council Reserve, but these were ruled out for the following reasons;

- Lack of required coverage (Distance, Elevation and Terrain Constraints).
- Environmental and Planning issues;
- Construction and Access issues; and
- Unable to obtain tenure on the land.

The nearest residential property is located some 54m away from the chosen site and is separated by existing natural vegetation. The base station will be well within Australian Standards in regards to EME emissions and is well placed to avoid visual impact to nearby residential properties.

- Wind passing through the antenna creating a whistling noise

There are no moving or vibrating parts on the proposed facility. Strong winds do not result in noise, vibration or whistling from a telecommunications monopole and associated headframe.

- Inability of the proponent to guarantee 100% safety of the community and local fauna

The facility as required will fully comply with the ARPANSA EME Safety standard. EME safety standard in development applications involving Telecommunications facilities was tested and supported in the NSW Land and Environment Court, having particular regard to *Telstra Corporation Limited Vs Hornsby Shire Council (2006) NSWLEC133* which tested the proposition that EME levels will harm the health and safety of residents.

The Land and Environment Court ruled in favour of Telstra, on the basis that the standards set by the ACMA are scientifically proved and robust. The Court stated that Councils should adopt these standards when measuring and determining EME levels, given that it is ACMA that has the responsibility for ensuring exposure limits do not adversely affect the health and amenity of the community.

The Court further stated that it was not appropriate for the Court to set aside or disregard the existing safety standard, nor is it appropriate for the Court to pioneer its own standards. The Court ruled it was appropriate for safety standards to be set by authorities with special expertise, such as ARPANSA.

- Ability to find alternative sites – unwillingness to consider Candidate sites E and F based on cost considerations – two sites achieve mutual aims of community and coverage requirements

After establishing a need for a site, Telstra engages various disciplines to find a suitable location for a telecommunications facility. A general search area is identified in which the site needs to be located in order to achieve the network objectives and from there a search is undertaken.

It is always first practice to look at any existing Telstra sites in the area, as to whether or not they can be configured to alleviate the prevailing network issues, and also co-location options, that is existing infrastructure upon which Telstra can install in the search area. In this case the nearest three sites were not suitable for the following reasons:

- **Salamander Bay Shopping Centre** – This property has an “in building” coverage system, which means it only provides coverage for the shopping centre, via internally located equipment. A Telstra base station located here is too far from Corlette to achieve the network objectives.
- **Gan Gan Hill** – As has been explained, this site has been upgraded and augmented however this is still not enough to provide sufficient coverage and capacity to adequately meet the future demands of Telstra customers in the Corlette area.
- **Waste Transfer Centre, Soldiers Point Road, Salamander Bay** – As mentioned above Telstra is located at this Optus facility and modifications to this site would not achieve the network objectives for

Corlette due to its distance from the target area.

In addition to the above further sites were considered. These were:

- **Hunter Water Corporation Reservoir, 16A Aquatic Close, Nelson Bay, NSW, 2315** - This site would not provide coverage to the northern part of Corlette as transmission would be blocked by the ridgeline at Sandy Point Reserve.
 - **Council Reserve, 28 Sandy Point Road, Corlette, NSW, 2315** – A site in this location would not achieve the coverage objectives, also given its proximity to the foreshore it was considered that it would provide an unacceptable visual impact.
 - **Council Reserve, 117 Wallawa Road, Nelson Bay, NSW, 2315** – This site is located too close to the existing site at Gan Gan Hill which means it would cause overlapping coverage and create new technical problems without addressing the issues driving the demand for a new site in Corlette.
 - **Hardware Store, 29 Sandy Point Road, Corlette, NSW, 2315** – The elevation of this property is too low to provide the level of service required.
 - **Council Reserve, 53A Sandy Point Road (Eastern End), Corlette, NSW, 2315** – This site was not considered suitable as access for construction and maintenance was not feasible and would involve the removal of a significant amount of trees and vegetation. It was also noted that due to the slope of the site stability would not have been achievable. It should also be noted that similar to the previous DA withdrawn in 2010, this community land is designated, “a natural area” therefore Port Stephens Council is not able to grant Telstra a lease for a facility on this land (due to provisions contained within Clause 47b of the *Local Government Act 1993*).
 - **Council Reserve, 53A Sandy Point Road (Southern End), Corlette, NSW, 2315** – There is no natural clearing or access track into this section of the reserve. To construct a facility in this location would require extensive removal of mature trees and vegetation. In addition Port Stephens Council cannot accord with Clause 47b of the *Local Government Act 1993* and therefore Council is prevented from entering into tenure with Telstra on this land.
- Use of Hunter Water Land – not in keeping with initial intent of site and easement

The land is owned by Hunter Water who has rights to utilise the land. Any use of the land requires development consent which must comply with relevant legislation.

In this regard, a Development Application for a telecommunications facility and upgrade of the existing access track has been submitted, which has been assessed on its merits.

- Impact on natural bushland – required tree removal now and into the future

The proposal involves the removal of 5 Forest Oaks and a small patch of regenerating forest consisting of a smooth barked Apple Blackbutt tree and four saplings and the lopping of a number of branches on a large Sydney Peppermint Tree to facilitate the construction of the compound and access track.

It was also recommended in the Bushfire Assessment Report that a further 4 juvenile trees (of less than 40mm in diameter) are to be removed along with low lying shrubs and ground fuel (dead trees and vegetation debris) to facilitate the implementation of a 10m asset protection zone (APZ) around the equipment shelter and monopole.

A flora and fauna assessment was undertaken for the development by a qualified ecological consultant who concluded that the proposal would not have a significant impact on the flora and fauna of the local region. Council's Environmental Officer has also reviewed the assessment, raising no significant issues with the proposal.

Tree and vegetation removal for the proposed APZ is low level vegetation that is not designated as protected habitat or species. No tree removal will be required for any other purposes in the future as once the site and APZ is established the site and APZ need only be maintained.

- Not essential – no significant telecommunications capacity issue

The Corlette area currently receives a large percentage of its coverage from Telstra's existing mobile facility at Gan Gan Hill and to a lesser extent from Telstra's mobile facility at the Council's Waste Transfer Station located at Salamander Bay. Both of these existing Telstra facilities are located some distance away from Corlette and by themselves do not provide an adequate long term mobile coverage solution for the Corlette area.

There have been a number of upgrades to the Telstra mobile facility at Gan Gan Hill since 2007. Telstra has established an additional mobile facility is required to provide adequate levels of coverage and capacity to meet the growing demands of the area.

In choosing a location to best meet its technical requirements and deliver a suitable solution for Corlette, Telstra had to take into consideration the natural hilly topography of the area. The location that has been chosen is close to the geographical centre of town and also represents a natural high point in the area. This location provides the line of sight that is required to allow the mobile signal to reach most areas of Corlette and gives Telstra the opportunity to deliver the best possible service to its customers in the area.

The need for the mobile facility at Corlette has come about because of the

demands placed on the Telstra network by its customers. These demands can be met by a new base station in Corlette.

- Risk of Proliferation of such facilities – other providers wanting to co-locate

The *Mobile Phone Deployment Code and the NSW Telecommunications Facilities including Broadband Guidelines 2010*, state that co-location on an existing facility should always be a carrier's first choice when looking for a new facility. Should the proposed facility be approved, other Carriers would be permitted to co-locate on it, subject to compliance with the various legislation and codes.

- Concreted Pathway and retaining wall significantly impact the walking track and environmental feel/ Service Road for construction and maintenance, creating a safety hazard for people and wildlife

The access track into the Reserve is an existing access track that gives Port Stephens Council, Hunter Water Corporation and the emergency services (such as RFS) access to the land. It is Telstra's intention to upgrade this track so that it provides improved access for all users.

The concreted pathway covers a small portion of the site and is not considered to significantly impact upon the natural environment.

The retaining wall is to be installed to ensure stability of this track and will be constructed out of boulders to give it a natural feel and once installed, will not look out of place in the bushland reserve setting.

This proposed upgrade is in keeping with its surroundings and will be an improvement to the existing access.

- Impact of construction work

The construction work will take approximately 5 weeks. Reasonable and relevant conditions of consent will be imposed in relation to the carrying out of construction works including construction hours.

A further condition of consent will require the submission of a Construction Environmental Management Plan prior to the release of a Construction Certificate.

- Montage created is misleading and was based upon a previous study undertaken in 2010

The currently proposed site is located approximately 10m from the site in Telstra's original application and consists of the same design. The photomontages are a representation only and that the final installation may vary slightly in size, shape and/or colour.

- Impact upon koalas – immediately in and near the proposed site/further pressure on endangered, vulnerable and rare species i.e. Koalas

The site is identified as a supplementary Koala habitat. The proposed facility will not compromise the safe use of the area by Koalas in the short or long term. The trees identified to be removed or lopped are not listed as primary koala food trees. Council's Environmental Officer has reviewed the application concurring with the above.

- Attracting Lightning Strikes

The proposal is designed to be appropriately protected against lightning strikes. The monopole will be earthed by means of an earth electrode or electrode system in close proximity to the structure. Any lightning that strikes the structure will thus be dissipated to earth by the most direct means.

- Visual Impact/Not in keeping with the character of the local area

It is not anticipated that there will be any significant visual impact from the proposed facility. Photomontages submitted within the Statement of Environmental Effects demonstrate existing trees and vegetation will screen the majority of the facility from surrounding residences.

- Decrease in property value

The impact of a development on individual property values is not a matter for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*.

- Not in keeping with the public interest (S79C (e))

The proposed development will improve mobile telephone communications in the community by providing network coverage in an area where coverage is currently considered inadequate. In this case the proposed facility at Corlette is predicted to have a maximum EME value of only 0.088% of the acceptable standard. It is not anticipated that there will be any significant visual impact.

The proposed facility is consistent with all relevant legislation and guidelines. The application is therefore considered appropriate in terms of the public interest.

- Inconsistent with the objectives of the zone – visibility of the subject site from Salamander Bay Beach/Inconsistent with the draft objectives – not in keeping with characteristics of the reserve and intended use for Hunter Water

The proposed facility is consistent with the zone objectives for 6 (a) Recreation under the Port Stephens LEP 2000. Neither the Hunter Water Corporation land nor the access track on Lot 36 DP 819545 is prominent and visible to the public along foreshore areas. The subject land is 1km south of the nearest foreshore.

In specific regard to Salamander Bay Beach, the facility may be visible from this location but this view will be from at least 2kms away, and thus visual impact will be minimised.

The Port Stephens Draft LEP 2013 has zoned the land as SP1 – Special Activities. The land is intended for an infrastructure use by Hunter Water. Hunter Water Corporation does not have any current plans for this site. As landowner Hunter Water Corporation retains its rights to develop the site in the future should it wish to do so. Given the intended use of the site is for the purposes of infrastructure, the proposal is generally consistent with the objectives of the draft zone.

Notwithstanding, as the proposed development is permissible under the current instrument LEP2000 the proposal is acceptable and is able to be determined under the current plan.

- No provision for a defensible area or Asset Protection Zone

The development application contains a bushfire assessment by a suitably qualified bushfire consultant. In line with the RFS Practice Note 1/11 Telecommunications Towers in Bush Fire Prone Areas (Rural Fire Service 2012), a 10m Asset Protection Zone (APZ) will be established and maintained. Conditions of consent will be included ensuring compliance with the recommendations of this report.

- Contrary to section B2.7 Vegetation Management of the DCP – protect vegetation providing scenic and visual amenity and minimise impacts of clearing for bushfire hazard reduction

Vegetation to be removed does not form a significant part of the scenic or visual landscape of the area. None of the trees to be removed are fully mature trees that provide visual screening from the property boundary to the site. Existing vegetation around the edge of the reserve consists of denser vegetation, with mature trees to a height of 20-25 metres. This vegetation provides the majority of the visual screening for the site, protecting the scenic and visual amenity of the Reserve and its surroundings.

The only clearing required for any proposed APZ is 4 juvenile trees (of less than 40mm in diameter) along with low lying shrubs and ground fuel. None of this vegetation removal is protected native vegetation and its removal does not impact upon the environment.

5. Public Interest

Matters pertaining to the public interest have been discussed within this report. The proposed development is considered to be in the public interest. The proposed development will improve mobile telephone communications in the community. The proposed facility is consistent with all relevant legislation and guidelines. The application is therefore considered appropriate in terms of the public interest.

**ATTACHMENT 3
CONDITIONS**

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

1. Development consent is granted for a Telecommunications facility and associated upgrades to the access track.

The development must be carried out in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Plans prepared by: kordia; for Mobile Network Site 255919			
Name of Plan	Drawing Number	Issue	Date
Site Layout – Sheet 1 of 2	S1-1	2	23/05/2012
Site Layout – Sheet 2 of 2	S1-2	1	22/05/2012
Site Elevation	S3	5	13/06/2013
Site Earth Work Detail – Sheet 1 of 10	G6	2	06/06/2012
Site Earth Work Detail – Sheet 2 of 10	G6-1	1	29/05/2012
Site Earth Work Detail – Sheet 3 of 10	G6-2	1	29/05/2012
Site Earth Work Detail – Sheet 4 of 10	G6-3	1	29/05/2012
Site Earth Work Detail – Sheet 5 of 10	G6-4	1	29/05/2012
Site Earth Work Detail – Sheet 6 of 10	G6-5	1	29/05/2012
Site Earth Work Detail – Sheet 7 of 10	G6-6	1	29/05/2012
Site Earth Work Detail – Sheet 8 of 10	G6-7	1	29/05/2012
Site Earth Work Detail – Sheet 9 of 10	G6-8	2	06/06/2012
Site Earth Work Detail – Sheet 10 of 10	G6-9	2	06/06/2012

Document(s) Reference	Dated
Planning Report – Proposed Telecommunications Facility and Improved Access Track	September 2013

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail.

If there is any inconsistency between the plans and documentation referred to above the most recent development shall prevail to the extent of any inconsistency

2. The person having the benefit of the development consent shall comply with any relevant prescribed conditions of development consent under clause 98 of the Environmental Planning and Assessment Regulation. For the purposes of section 80A(11) of the Environmental Planning and Assessment Act, the following conditions are prescribed in relation to a development consent for development that involves and building work:
 - a) The work must be carried out in accordance with the requirements of the Building Code of Australia (National Construction Code).
3. The approved use of the land shall not commence until all relevant conditions of this consent have been complied with and a Final or Interim Occupation Certificate has been issued. Where an Interim Occupation Certificate has been issued, only that part of the building to which the Certificate applies may be occupied or used.
4. The telecommunications facility shall be designed to allow co-location by other telecommunication carriers. Infrastructure must be removed from the tower when it is no longer in use.

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

5. Prior to the commencement of any development or excavation works, the person having the benefit of this consent must appoint a Principal Certifying Authority for the development, pursuant to Section 81A of the *Environmental Planning and Assessment Act 1979*, and advise Council in writing of that appointment. The Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

At least 48 hours prior to the commencement of any development (including demolition, excavation, shoring or underpinning works), a notice of commencement of building work form and appointment of the Principal Certifying Authority form shall be submitted to Council.

6. Prior to the commencement of any development or excavation works, a "KEEP PORT STEPHENS WATERWAYS POLLUTION FREE" sign shall be displayed and be clearly visible from the road frontage for public viewing on the site at the commencement of works and remain in place until completion of the development.

Note: Signs are available from Port Stephens Council.

A site notice shall also be erected on the site prior to any work commencing and shall be displayed throughout the works period.

The site notice must:

- be prominently displayed at the boundaries of the site for the purpose of informing the public that unauthorised entry to the site is not permitted;
- display project details including, but not limited to the details of the builder, Principal Certifying Authority and structural engineer;
- be durable and weatherproof display the approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24 hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice; and
- be mounted at eye level on the perimeter hoardings/fencing and is to state that unauthorised entry to the site is not permitted.

7. Prior to any work commencing on site, sediment and erosion control measures shall be installed along the contour immediately downslope of any future disturbed areas.

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

8. Prior to any construction work commencing, containment of building waste materials shall be provided within the boundaries of the building site, above natural or excavated ground level, by a screened area of silt stop fabric or shade cloth, having minimum dimensions of 2.4 x 2.4 x 1.2 metres high OR equivalent size waste disposal bin.

The enclosure or bin shall be maintained for the term of the construction to the completion of the development. The enclosure or bin shall be regularly cleaned to ensure proper containment of the building wastes generated on the site. Appropriate provision is to be made to prevent wind blown rubbish escaping from the containment.

9. Prior to commencement of work, the free national community service "Dial Before You Dig" shall be contacted on 1100 regarding the location of underground services in order to prevent injury, personal liability and even death. Enquiries should provide the property details and the nearest cross street/road.
10. Prior to the commencement of any works on the site the applicant shall construct a min 3m wide concrete or sealed all-weather access from the existing sealed road to the aerial site in accordance with council's and Australian Standards (having a maximum grade of 25%).
11. Prior to the commencement of any works, a temporary bushland protection fence must be installed along the perimeter of the 'restricted development area' marked in red on the approved plan (Site Layout – Sheet 1 of 2, Issue 2

dated 23/05/2013). The protective fence is to be constructed of star pickets at 2.4 metre spacing connected by four strands of 2mm wire or highly visual barrier/hazard mesh.

12. All native vegetation on the site shall be retained and protected unless it:
- a. has been identified for removal on the approved plans or documentation; or
 - b. has been identified for selective removal by the NSW Rural Fire Service; or
 - c. trees or native vegetation on the site that are in close proximity to the approved buildings (i.e. within 0 to 5 metres of the approved building) may also be removed provided they have not been identified for specific retention in any of the approved plans or documentation; or
 - d. a separate application shall be made to Council for the removal of any other trees or native vegetation. This includes application for the removal of any understorey vegetation or the stripping of ground cover vegetation that is outside those areas approved for construction.

All reasonable measures shall be undertaken to protect all other native vegetation on the site and on adjoining lands from damage during construction. Such measures shall include but not be limited to:

- b. installing exclusion fencing around vegetation that adjoins the construction area to minimise damage to vegetation that is to be retained. Exclusion fencing shall be installed prior to the issue of any Construction Certificate or if no Construction Certificate is necessary, prior to the commencement of works and maintained in good working order for the duration of works.
- c. prohibiting compaction and the placement of fill within 5 metres of trees and native vegetation that are to be retained;
- d. keeping all vehicles, construction materials and refuse within areas approved for buildings, structures, access ways and car parks;
- e. limiting the number of access points;
- f. Salvaging useable trees and shrubs which are felled for re-use, either in log form, or as woodchip mulch for erosion control and/or site rehabilitation. Non-salvageable material such as roots and stumps may only be disposed of at an approved site;
- g. Notifying all contractors, sub-contractors, and personnel of vegetation protection requirements of this condition.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

13. Prior to the issue of the Construction Certificate, where any form of mechanical ventilation equipment or other noise generating plant is proposed as part of the development, the Certifying Authority, shall be satisfied that the operation of an individual piece of equipment or operation of equipment in combination will not exceed more than 5dB(A) above the background level during the day when measured at the site's boundaries and

shall not exceed the background level at night (10.00pm – 6.00am) when measured at the boundary of the site.

Note: A certificate from an appropriately qualified acoustic engineer is to be submitted with the Construction Certificate, certifying that all mechanical ventilation equipment or other noise generating plant in isolation or in combination with other plant will comply with the above requirements.

14. Prior to the issue of the Construction Certificate details are to be provided to the Principal Certifying Authority demonstrating that telecommunications facility has been designed to allow co-location by other telecommunication carriers. Infrastructure must be removed from the tower when it is no longer in use. Details are also to be submitted demonstrating that the monopole as well as any antennas and radio communication dishes shall be painted a suitable colour such as green to blend into the surrounding landscape.
15. Prior to the issue of a Construction Certificate Department of Defence shall be notified of the telecommunications facility. The RAAF Vertical Obstruction Report Form which records the locations and height details of tall structures can be completed by accessing the RAAF AIS web site (www.raafais.gov.au/frame.htm?obstr_form2.htm).

CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES

16. A copy of all approved and certified plans, specifications and documents incorporating conditions of consent and certification (including the Construction Certificate if required for the work) shall be kept on site at all times during the demolition, excavation and construction phases and must be readily available to any officer of Council or the Principal Certifying Authority.
17. The Principal Certifying Authority (PCA) or accredited certifier undertaking each of the inspections must make a record of each inspection in accordance with Clause 162B of the *Environmental Planning and Assessment Regulations 2000* and, if the person is not the PCA, forward a copy to the PCA.

A copy of any compliance certificate issued in respect of the building work and any documents referred to in the certificate must be provided to Council within two (2) days of the certificate being issued.

18. The operating noise level of construction site operations, including machinery, plant and equipment when measured at any affected premises, shall be evaluated and comply with the requirements of the NSW Office of Environment and Heritage publication "Interim Construction Noise Guideline" July 2009.

Construction Time Restrictions

Monday to Friday, 7.00am to 6.00pm.

Saturday, 8.00am to 1.00pm.

No construction work to take place on Sundays or Public Holidays.

When the construction site is in operation the L₁₀ level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.

19. During excavation, demolition and construction phases, no building materials, plant or the like are to be stored on the road or footpath without written approval being obtained from Council beforehand. The pathway shall be kept in a clean, tidy and safe condition during building operations. Council reserves the right, without notice, to rectify any such breach and to charge the cost against the person having the benefit of the development consent/owner/builder, as the case may be.
20. Throughout the course of building or demolition works on the site, toilet facilities shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet shall be installed as follows:

- a. in a sewered area, connect the temporary builder's toilet facility to the Hunter Water Corporation's sewerage system in accordance with such authority's requirements prior to commencing any building work.
 - b. where the connection of the toilet facility to the Hunter Water Corporation's sewer is impractical, an application to approve the use of a chemical closet is to be made to Council accompanied with the appropriate fee for approval. Such approval shall be obtained prior to the issue of a Construction Certificate.
21. Construction site safety fencing and/or hoarding shall be provided in accordance with WorkCover requirements. Such fencing and/or hoarding shall be erected wholly within the property boundary unless prior approval from Council is obtained.

Council approval is required to install hoarding, site fencing or overhead protective structures over or adjoining a public place i.e. a footpath or a Public Reserve. No work shall commence until written approval is obtained.

22. A suitably qualified* and experienced ecological consultant must inspect all native trees that have been approved for removal before they are felled. If there are any threatened species or other fauna species in the tree, work in the vicinity is to cease until the animal has moved from the area. If it is likely that hollows are providing habitat for native species, traps are to be set for

several nights and any native species found must be relocated to an appropriate nearby location.

*Suitably qualified ecologist is someone who fulfils the requirements of the Ecological Consultant Association (ECA).

23. Hollow-bearing trees shall be retained in all areas outside of the 'restricted development area' marked in red (Site Layout – Sheet 1 of 2, Issue 2 dated 23/05/2012). This applies to both living and dead hollow-bearing trees.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

24. Prior to issue of the Occupation Certificate, the Principal Certifying Authority must be satisfied that any damaged public infrastructure (including footpaths, drains, kerb and gutter, and utility services) caused as a result of construction works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub contractors, concrete vehicles) is fully repaired to the satisfaction of Council's Development Engineer and at no cost to Council.
25. Prior to the issue of the Occupation Certificate, the Principal Certifying Authority shall be satisfied that all recommendations listed in the bush fire risk assessment and report below have been complied with:

Document title	Prepared by	Dated
Bushfire Assessment	Ecological Australia	24 May 2013

26. Any native trees removed as a result of the development must be replaced according to the ratio detailed in the table below, or, at Council's discretion the applicant may conduct enhancement works which improve the integrity and viability of habitat and movement corridors on the subject site.

N.B. replacement ratios are higher than 1:1 because of the time lag before the ecological benefits of compensatory plantings are realised.

The location of compensatory plantings will be either:

- a. Where there is sufficient land on the subject site
- b. At Council's discretion at the cost of the applicant, in cases where it is not feasible to plant replacement plantings on site, all or a portion of the replacement trees may be planted on receiving land off the subject site either:
 - i. On Council-owned land; or
 - ii. On some other land approved by Council for use as receiving land

Tree size class (dbhob)	Replacement Ratio (loss:gain)
<100 mm	1:6
100-300 mm	1:8
>300 mm	1:10

27. A Fire Safety Certificate as prescribe by section 174 Environmental Planning and Assessment Regulations 2000, which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of the NSW Rural Fire Service. A copy of the fire safety certificate shall also be forwarded to Council, if Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
28. At least once in every twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning and Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
- (a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - (b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.

CONDITIONS TO BE SATISFIED AT ALL TIMES

29. There shall be no interference with the amenity of the neighbourhood by reason of the emission of any "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*, vibration, smell, fumes, smoke, vapour, steam, soot, ash or dust, or otherwise as a result of the development.
30. A permanent and legible weather proof sign must be publicly displayed near the compound entrance specifying the name and contact details of the operator or site manager.

Within six (6) months of constructing the telecommunication facility, submit an electromagnetic emitting (EME) report to demonstrate that the facility does not exceed the maximum cumulative EME level as specified by the EME Report prepared by Telstra and dated 12 June 2013.

The telecommunication tower shall be marked with a low intensity obstacle red light, placed at the top of the tower, to enhance aircraft flying safety.

ADVICES

31. Prior to the commencement of building work, a Construction Certificate shall be obtained.

Note: If the Construction Certificate is issued by a Principal Certifying Authority that is not Council it will be necessary to lodge the Construction Certificate and other approved documents with Council within two days of such approval. (Clause 142(2) EPA Regulation 2000)

32. The development shall not be occupied or used prior to the issuing of a Final Occupation Certificate or Interim Occupation Certificate by the Principal Certifying Authority. Where an Interim Occupation Certificate has been issued, only that part of the building to which the Certificate applies may be occupied or used.

33. The development application has not been assessed against the provisions of the Building Code of Australia. A Section 96 application under the Environmental Planning & Assessment Act 1979 will be required if design amendments are necessary to comply with the provisions of the Building Code of Australia.

34. The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter

35. Should any Aboriginal relics be discovered then all excavations or disturbance to the area shall cease immediately and the NSW Office of Environment and Heritage, shall be informed in accordance with Section 91 of the *National Parks and Wildlife Act 1974*.

All necessary approvals from the NSW Office of Environment and Heritage shall be obtained and a copy provided to Council prior to works recommencing

36. Should any relics be discovered then all excavations or disturbance to the area shall cease immediately and the Heritage Council of NSW shall be notified in accordance with Section 146 of the *Heritage Act 1977*.

All necessary approvals shall be obtained from the Heritage Council of NSW and copies provided to Council prior to works recommencing

37. Fencing should not compromise the potential for safe movement of koalas across the site. The preferred option for minimising restrictions to safe koala movement is that there be no fencing, however suitable fencing may include:

- a. fences where the bottom of the fence is a minimum of 200mm above ground level that would allow koalas to move underneath;

- b. fences that facilitate easy climbing by koalas; for example, sturdy chain mesh fences, or solid style fences with timber posts on both sides at regular intervals of approximately 20m; or
 - c. open post and rail or post and wire (definitely not barbed wire on the bottom strand)
38. The burning of trees and associated vegetation felled during clearing operations is not permitted. Where possible, vegetation is to be mulched and reused on the site

ITEM NO. 6

FILE NO: PSC2007-02797V2

WALLALONG PLANNING PROPOSAL

REPORT OF: BRUCE PETERSEN – COMMUNITY PLANNING AND ENVIRONMENTAL
SERVICES SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the revised Planning Proposal at **(ATTACHMENT 6)** in respect of the proposed Wallalong Urban Release Area for the purposes of Section 55 [of the EP& A act 1979] for an initial Gateway Determination to establish the strategic merit of the proposal;
- 2) Subject to gateway determination request the proponent to provide additional strategic planning assessment as outlined in the revised planning proposal in relation to:
 - a. Site Context Report;
 - b. Infrastructure Delivery Strategy;
 - c. Housing Delivery Plan;
 - d. Housing Market Analysis;
- 3) Subject to gateway determination and following submission of additional information, undertake consultation with the community and public authorities on the strategic planning assessment;
- 4) The matter be resubmitted back to Council for review and to consider whether to resubmit to the Gateway under section 56(2)b) of the EP& A Act 1979.

ORDINARY COUNCIL MEETING – 10 DECEMBER 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

Cr Paul Le Mottee left the meeting at 6.42pm prior to Item 6, during Committee of the Whole.

Development Services Group Manager returned at 6.42pm at the commencement of Item 6.

	Councillor Geoff Dingle Councillor Peter Kafer
	That Council refuse the Planning Proposal at (ATTACHMENT 6) and not accept the proposal.

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

Those for the Motion: Crs Peter Kafer, Ken Jordan, Geoff Dingle and John Nell.

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Those against the Motion: Mayor Bruce MacKenzie, Crs Steve Tucker, John Morello and Sally Dover.

The motion was lost on the casting vote of the Mayor.

	Councillor Steve Tucker Councillor John Morello
	That the recommendation be adopted.

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

Those for the Motion: Mayor Bruce MacKenzie, Crs Steve Tucker, John Morello, Sally Dover.

Those against the Motion: Crs Peter Kafer, Ken Jordan, Geoff Dingle and John Nell.

The motion was carried on the casting vote of the Mayor.

361	Councillor John Nell Councillor Steve Tucker
	It was resolved that Council move into Open Council to consider Items 2 and 6.

MOTION

	Councillor Geoff Dingle Councillor Peter Kafer
	That Council refuse the Planning Proposal at (ATTACHMENT 6) and not accept the proposal.

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

Those for the Motion: Crs Peter Kafer, Ken Jordan, Geoff Dingle and John Nell.

Those against the Motion: Mayor Bruce MacKenzie, Crs Steve Tucker, John Morello and Sally Dover.

The motion was lost on the casting vote of the Mayor.

RESOLUTION

363	Councillor Bruce MacKenzie Councillor Steve Tucker
	<p>It was resolved that Council:</p> <ol style="list-style-type: none">1. Adopt the revised Planning Proposal at (ATTACHMENT 6) in respect of the proposed Wallalong Urban Release Area for the purposes of Section 55 [of the EP& A act 1979] for an initial Gateway Determination to establish the strategic merit of the proposal;2. Subject to gateway determination request the proponent to provide additional strategic planning assessment as outlined in the revised planning proposal in relation to:<ol style="list-style-type: none">a. Site Context Report;b. Infrastructure Delivery Strategy;c. Housing Delivery Plan;d. Housing Market Analysis;3. Subject to gateway determination and following submission of additional information, undertake consultation with the community and public authorities on the strategic planning assessment;4. The matter be resubmitted back to Council for review and to consider whether to resubmit to the Gateway under section 56(2)b) of the EP& A Act 1979.

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

Those for the Motion: Mayor Bruce MacKenzie, Crs Steve Tucker, John Morello and Sally Dover.

Those against the Motion: Crs Peter Kafer, Ken Jordan, Geoff Dingle and John Nell.

The motion was carried on the casting vote of the Mayor.

BACKGROUND

The purpose of this report is to present a planning proposal to Council for its consideration.

Council has received a request from the Wallalong Landowners Group to prepare a planning proposal to amend the Port Stephens LEP 2000 and or the draft Port Stephens LEP 2013 to establish a 620ha urban release area at Wallalong. The purpose of this report is to present the Wallalong Landowners Group's request and seek Council's decision whether to submit a revised planning proposal as recommended

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

for Gateway Determination from the NSW Department of Planning and Infrastructure to further investigate the strategic planning merit of urban release area at Wallalong.

Title of Planning Proposal:	Wallalong Urban Release Area (WURA)
Proponent:	Wallalong Landowners Group
Date Lodged:	11 October 2013
Subject Land:	Refer to Location Map at (ATTACHMENT 1)
Total Land Area:	620 hectares (potential 3,200 to 3,700 dwellings)
Existing Zoning:	1(a) Rural Agriculture (under LEP 2000) RU1 Primary Production and RU2 Rural Landscape (under Draft LEP 2013)
Proposed Land Uses (as submitted by Proponent):	Refer to Preliminary Concept Plan at (ATTACHMENT 2)
Recommended Zoning:	Refer to Proposed Zoning Maps at (ATTACHMENT 3)

The full copy of the Proponent's summary Urban Design and Planning Report is included at **(ATTACHMENT 4)**.

The Port Stephens Planning Strategy 2011-2036 (page 117) notes that Council resolved in 2009 to support the identification of Wallalong as a new town. The site is not currently identified in the Lower Hunter Regional Strategy, however, is identified in the Port Stephens Planning Strategy as a Category 3 Potential Urban Release Area and subject to the resolution of infrastructure delivery.

The Port Stephens Planning Strategy was adopted by Council in December 2011. Council has not received endorsement of Wallalong as an Urban Release Area by the NSW Department of Planning and Infrastructure.

Due to the regional planning significance of Wallalong as a potential urban area and the proposed State infrastructure requirements, further direction from the NSW Department of Planning on whether they support this proposal through a Gateway Determination is recommended before any more investigations are initiated.

Planning Review

Planning consultants City Plan Services were engaged to undertake an Independent Review of the planning proposal as submitted by the proponent. The City Plan Services review is included at **(ATTACHMENT 5)**. In summary, if consideration of the Planning Proposal is to progress the Independent Review recommends the following two steps:

- 1) Seek an initial Gateway Determination from the NSW Department of Planning and Infrastructure to further investigate the strategic planning merit of the Planning Proposal; and
- 2) Re-submit the Planning Proposal for an updated Gateway Determination so that the matter can be reviewed.

Step 1 – Seek an Initial Gateway Determination

Under Step 1 the Independent Review identifies further information required to demonstrate the strategic merit and justification for the Planning Proposal as follows:

- **Site Context Report:** to identify the role of Wallalong in the Lower Hunter and Port Stephens LGA, including the influence on existing centres and release areas and the implication for the identification of other areas within an infrastructure servicing or community catchment;
- **Infrastructure Delivery Strategy:** to detail the transport and essential local infrastructure required to service the release area, as well as the staging related to development milestones and costing for the infrastructure. Information should be provided on implications of infrastructure provision to this site for other urban development areas in the Lower Hunter, including capacity of networks, capital works programs, funding and financial arrangements;
- **Housing Delivery Plan:** including expected dwelling production and development feasibility assessment (with consideration of other urban development areas in the Lower Hunter);
- **Housing Market Analysis:** to identify the likely market for dwellings in Wallalong, cost of living impacts, and a comparison against other sites in Port Stephens and the Lower Hunter.

Completing the above will clearly establish whether there is strategic planning merit for pursuing the Wallalong Urban Release Area at this time.

This information would be sought after an initial Gateway Determination. The Independent Review (page 12) relevantly states when this information is to be provided:

"It is recommended that this information be prepared and assessed after an initial Gateway Determination, but that the matter be re-submitted to the Gateway under section 56(2)(b) [of the EP & A Act 1979] so that the matter can be reviewed. It is recommended that the proponent be given a 9 month period to demonstrate the strategic planning merit of the proposal and the initial Gateway determination be conditioned accordingly. Consultation with the community and public authorities on the strategic planning assessment should be undertaken and completed within this timeframe."

The request for additional information is consistent with Section 1.3 *How much information should be in a Planning Proposal?* of the Department of Planning and Infrastructure's *A Guide to Preparing Planning Proposal's* (pages 5-6) which notes the following:

"To prevent unnecessary work prior to Gateway stage, specific information nominated as being necessary would not be expected to be completed prior to the submission of the planning proposal. In such circumstances, it would be sufficient to identify what information may be required to demonstrate the proposal's strategic merit or compliance with a relevant statutory consideration such as a section 117 Direction."

Step 2 – Matters to be investigated if strategic planning merit is justified

The Independent Review identifies more detailed planning matters that will require further investigation under Step 2. They are:

- **Site Contamination:** as the land has been used for agricultural purposes and is proposed to be zoned for residential development;
- **River and Stormwater Flooding:** as the land is partly flood prone and Wallalong is isolated from major centres in a range of flood events. It is recommended that there be an assessment of impacts on the residential community from flood isolation and costed recommendations to minimise these effects;
- **Impact on Extractive Resources:** as the site is mapped in the LHRS close to non-coal extractive resources;
- **Flora and Fauna Assessment:** as the site contains remnant native vegetation and potential loss of threatened species, communities or habitats may require offsetting;
- **Aboriginal Heritage Assessment:** as the site has a high likelihood of the presence of archaeological evidence;
- **Impact on Agricultural Land:** as the site is currently zoned for agricultural activities and the loss of agricultural and rural land has not been strategically considered;
- **Community Integration;**
- **Commercial and Employment Land Analysis;**
- **Transport and Access Assessment:** The Independent Review recommends that a third party report be prepared on transport and access issues, including: trip generation, distribution and containment rates; impact on local, sub-regional, regional and State roads (especially capacities at intersections and bridges); strategies to improve public transport services for the area; consideration of active transport (including walking and cycling connections with local and regional networks); consultation with road authorities (including NSW Roads and Maritime Authority, Maitland City Council and Transport NSW).

Undertaking Step 2 relies upon receiving a revised Gateway Determination from the Minister (or Minister's Delegate) that allows the Planning Proposal to proceed for further investigation.

Recommended Planning Proposal

The request to prepare a planning proposal, as submitted, is not recommended. A revised Planning Proposal is recommended with this report (**ATTACHMENT 6**) for forwarding to the NSW Department of Infrastructure and Planning. It identifies additional information and review that is required and is based upon a staged approach. First it seeks to clearly establish the strategic merit of the proposal by requiring the completion of a Site Context Report, Infrastructure Delivery Strategy, Housing Delivery Plan and Housing Market Analysis. This would be followed by more detailed planning matters to be investigated if the broader strategic planning merit is established. The recommended approach is consistent with the Independent Review.

FINANCIAL/RESOURCE IMPLICATIONS

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There are no direct financial implications if Council resolves to adopt the recommendation to forward the Planning Proposal to the Department for a Gateway Determination.

Financial implications resulting from infrastructure delivery to support an urban release area at Wallalong will need to be identified and further considered as part of the ongoing assessment process following a Gateway Determination.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94			Funding (\$) to be determined. Should the Planning Proposal proceed, infrastructure funding through Section 94 will be required.
External Grants	No		
Rezoning Fee	Yes	73,333	Paid stage 1 rezoning fees Stage 2 and 3 fees will apply if the Planning Proposal progresses.
Voluntary Planning Agreement	Yes		Funding (\$) to be determined. The Proponent has indicated a preparedness to enter into Voluntary Planning Agreements for the provision of infrastructure.
Other	No		The Proponent has indicated other sources of funding may be available such as State Infrastructure Contributions, the Hunter Infrastructure Fund, Housing Acceleration Fund and Special Rate Levy. The ability to use these sources of funding needs further investigation.

LEGAL, POLICY AND RISK IMPLICATIONS

Environmental Planning and Assessment Act 1979

The Planning Proposal has been formally requested by the Proponent for consideration by Council under Part 3 of the Environmental Planning and Assessment Act 1979 (the Act). It seeks to amend the Port Stephens Local Environmental Plan 2000 or Draft Port Stephens Local Environmental Plan 2013 (the Planning Proposal will amend whichever plan is in force at the time of adoption). Council has an obligation to consider the request under the Act.

The NSW Department of Planning Gateway Determination process and guidelines provide requirements for making a Planning Proposal.

Council may resolve to initiate a Planning Proposal for Wallalong as the Relevant Planning Authority (RPA). The NSW Minister for Planning and Infrastructure (or a delegate of the Minister) is the responsible authority for making a local environmental plan following a process set out under Part 3 of the Act and relevant regulations and guidelines.

The steps in considering a Planning Proposal and making a relevant plan are set out below:

- 1) The Planning Proposal - the relevant planning authority (Council) is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan;
- 2) Gateway Determination - If Council resolves to adopt the Planning Proposal it will be forwarded to the Minister (or his delegate) of the NSW Department of Infrastructure and Planning to determine whether the Planning Proposal is to proceed. This gateway acts as a checkpoint to ensure the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the Planning Proposal is varied and/or resubmitted back to Gateway for further assessment;
- 3) Community consultation - the Planning Proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing be held;
- 4) Assessment - The relevant planning authority considers public submissions and the proposal is varied as necessary. Parliamentary Counsel then prepares a draft local environmental plan – the legal instrument;
- 5) Decision - With the Minister's (or delegates) approval the plan becomes law and is published on the NSW.

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

Under Section 58 of the Act, the RPA may, at any time, vary its proposal or request the minister not to proceed as a consequence of its consideration of any submission or report during community consultation or for any other reason.

The additional information identified in the revised planning proposal as recommended is consistent with Section 1.3 of the Department of Planning and Infrastructure's A Guide to Preparing Planning Proposal's.

Given the need for additional investigations it is recommended the Planning Proposal be required to be resubmitted back to Council and Gateway under section 56(2)(b) [of the EP & A Act 1979] so that the matter can be reviewed prior to exhibition to determine sufficient justification to continue, amend or not proceed.

LEP 2000 and Draft LEP 2013

The Port Stephens Local Environmental Plan 2000 is currently in force and the replacement Draft Port Stephens Local Environmental Plan 2013 is with the Department of Planning and Infrastructure for final consideration. The Planning Proposal will need to be considered as an amendment to the Draft Port Stephens Local Environmental Plan 2013 if it proceeds. In the interim the Planning Proposal has been prepared to account for both local environmental plans.

Landowners within the WURA

The Planning Proposal was lodged by a group of nine major landowners referred to as the Wallalong Landowners Group (the Proponent). Consultation needs to be undertaken with those landholders whose land is within the proposed WURA, but who are not part of the Wallalong Landowners Group, to determine whether they endorse the inclusion of their land in the Planning Proposal.

At this stage it is recommend that Council seek a Gateway Determination for all of the land that is identified within the Wallalong Urban Release Area under the PSPS, and consult with those landowners not in the Wallalong Landowners Group after a Gateway Determination.

It should be noted that prior to any formal public exhibition Council has already received written objection from the owner of 468 Clarence Town Road (Lot 3 DP 1009098) of the seeking the removal of this lot from the Planning Proposal. This Lot is located on the western edge of the WURA and is shown in **(ATTACHMENT 7)**. Council has the option of excluding this Lot from the Planning Proposal at this time.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the Planning Proposal is not considered by Gateway due to insufficient information.	Medium	Ensure that all planning issues are identified and addressed as part of the Planning Proposal.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social, economic and environmental implications of proceeding with the WURA are addressed in greater detail in the recommended Planning Proposal and other supporting information (including the proposal and supporting information submitted by the Wallalong Landowners Group, and the Independent Review). It is important to note that if the Planning Proposal proceeds to the next stage of investigation additional information on the implications of proceeding will be provided. The Independent Review and recommended Planning Proposal identify the information that needs to be provided and a Gateway Determination will also provide further guidance.

The Planning Proposal has potentially significant social implications if it proceeds. The character of the area will transition from rural/rural residential to urban with the large increase in the number of dwellings (3,200 to 3,700) and population (up to 10,000 people). Many members of the existing community at Wallalong have already expressed their concerns about the Planning Proposal changing the character of the area and a range of other concerns. The community group Voices of Wallalong and Woodville (VOWW) has also been formed.

The Planning Proposal will need to demonstrate the ability to fund infrastructure items (including but not limited to upgrades to the road network). A Delivery Strategy is required to firmly establish infrastructure requirements, identify the timing for its provision and funding mechanisms. This is critical to the delivery of the WURA and a principal planning issue. The economic viability of establishing the WURA is required to be demonstrated following consultation with govt authorities and critical to demonstrating the strategic merit of the proposal.

Wallalong is not within the Watagan-Stockton Green Corridor (p12/13) of the Lower Hunter Regional Strategy nor is it a "Proposed Urban Area" (p12/13), or mapped as regionally significant agricultural land (p32). The large majority of the site is cleared however parts of the site contain significant environmental values. The Preliminary Concept Plan indicates it is likely that environmental issues are able to be managed. The design of the development can be refined through the planning process and there may also be opportunity to provide offsets to compensate for the loss of any biodiversity.

Council commissioned an independent consultant to review the Wallalong Landowners Group Flora and Fauna Assessment. It identifies matters that require further investigation and review that may lead to the alteration of the Planning Proposal; however at this stage the Planning Proposal is sufficient to proceed and further investigation of environmental implications will occur during the planning process.

CONSULTATION

A Gateway Determination will set formal consultation requirements. Recommendations for consultation, including for referral to relevant authorities and for public exhibition, are also included in the Planning Proposal. Consultation with Maitland City Council will be important considering the proximity of Wallalong to Maitland and the potential likelihood that future residents would access services and use infrastructure within that LGA.

It is proposed to prepare a Community Engagement Plan to outline how the public can participate and identify project steps and timelines, opportunities for participation, how the information will be made available, and when decisions will be made. This plan will be developed following a Gateway Determination. A higher standard of community consultation is proposed for this Planning Proposal given that the site is not included in the Lower Hunter Regional Strategy, is for a large urban release area in an existing community, and significant infrastructure upgrades are needed to support the development.

As stated earlier in this report, there is significant public interest in the Planning Proposal from the existing community at Wallalong and Council has already received written objections. If the Planning Proposal progresses there will be a period of formal community consultation to enable the community to make further submissions. A post-exhibition report would be prepared for consideration by Council.

OPTIONS

- 1) **Council forward the planning proposal as submitted requesting Gateway determination.** This is not recommended as the planning review has identified the need for further information and further consultations with Government authorities. This additional information is required to demonstrate the strategic merit of the proposal. This is important having regard for the fact Wallalong is a new release area of regional planning significance and the need to fully establish local and State infrastructure requirements before further consideration is made;
- 2) **Council request additional studies are undertaken before further consideration. Under this option Council would not support the planning proposal as submitted.** Additional information identified by the planning review would need to be undertaken by the Proponents and resubmitted back to Council for further consideration. This is not the preferred option as the purpose of the Gateway is to ensure that a proposal is justified before further studies are done and

resources are allocated to the preparation of a plan. This is particularly relevant under the circumstances as the proposal is of regional planning significance and the Department have not provided formal endorsement of Wallalong as an urban release area as identified in the Port Stephens Planning Strategy. This would also prolong uncertainty regarding the Department's position in relation to Wallalong for both the local community and Proponent;

- 3) **Council nominate additional information to be undertaken as part of the planning proposal and request a Gateway determination to further investigate (Recommended Option).** Under this option the planning proposal as submitted is amended to prescribe the additional investigations and preliminary consultations to be undertaken to demonstrate the strategic merit of the release area. The revised planning proposal demonstrates to the Gateway compliance with the Department's guidelines to prevent unnecessary work prior to Gateway stage-specific information has been nominated that is required. Should a Gateway Determination be made an updated planning proposal or request not to proceed can be re-submitted for further determination by Gateway. This is the recommended option;
- 4) **Council not proceed.** This is not the preferred option as the Port Stephens Planning Strategy identifies the need to further investigate Wallalong as an urban release area and infrastructure requirements.

ATTACHMENTS – All listed below are provided under separate cover.

- 1) Location Map;
- 2) Proponent's Preliminary Concept Plan;
- 3) Recommended Zoning Maps (LEP 2000 and Draft LEP 2013);
- 4) Urban Design and Planning Report (submitted by Proponent);
- 5) Independent Review (City Plan Services);
- 6) Recommended Planning Proposal;
- 7) Map of 468 Clarence Town Road (Lot 3 DP 1009098).

COUNCILLORS ROOM

- 1) Urban Design and Planning Report and supporting documents (submitted by Proponent).

TABLED DOCUMENTS

Nil.

ITEM NO. 1

FILE NO: 16-2013-82-2

PROPOSED DWELLING AT NO. 5 FIGTREE CLOSE, MEDOWIE - SECTION 96 APPLICATION TO MODIFY DEVELOPMENT CONSENT

REPORT OF: MATTHEW BROWN – DEVELOPMENT ASSESSMENT AND COMPLIANCE
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse the Section 96 application (DA 16-2013-82-2) to modify Condition 22 for the following reasons:
 - a) The development does not comply with the requirements of Planning for Bushfire Construction 2006, the Building Code of Australia and Australian Standard AS 3959-2009 – Construction of Buildings in Bushfire Prone Areas;
 - b) The proposal is not supported by the NSW Rural Fire Service;
 - c) The development is inconsistent with the objectives for No 2 (a)-Residential "A" Zone of Councils Local Environmental Plan 2000, namely to ensure that the design of residential areas takes into account environmental constraints including bushfire risk.

Cr Paul Le Mottee returned to the meeting at 7.35pm, following the resolution of Council.

ORDINARY COUNCIL MEETING – 10 DECEMBER 2013**COMMITTEE OF THE WHOLE**

364	Councillor Ken Jordan Councillor Steve Tucker
	It was resolved that Council move into Committee of the Whole.

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Steve Tucker Councillor Ken Jordan
	That Council approve the Section 96 application (DA 16-2013-82-2).

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

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

Those for the Motion: Mayor Bruce MacKenzie; Crs Geoff Dingle; Sally Dover; Ken Jordan; Peter Kafer; Paul Le Mottee; John Morello; John Nell; Steve Tucker.

Those against the Motion: Nil.

AMENDMENT

	Councillor Paul Le Mottee Councillor Geoff Dingle
	That Council: 1) Defer Item 1 to allow for further consultation with the adjoining landowner. 2) Issue an interim occupation certificate. 3) Offer mediation to the relevant parties.

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

Those for the Motion: Crs Paul Le Mottee, Geoff Dingle and Peter Kafer.

Those against the Motion: Mayor Bruce MacKenzie, Crs Ken Jordan, John Morello, Steve Tucker, John Nell and Sally Dover.

The motion on being put was lost.

MOTION

366	Mayor Bruce Mackenzie Councillor Steve Tucker
	It was resolved that Council approve the Section 96 application (DA 16-2013-82-2).

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

Those for the Motion: Mayor Bruce MacKenzie; Crs Geoff Dingle; Sally Dover; Ken Jordan; Peter Kafer; Paul Le Mottee; John Morello; John Nell; Steve Tucker.

Those against the Motion: Nil.

BACKGROUND

This application has been called to Council by Mayor MacKenzie for the following reason "Rural Fire Service (RFS) Requirements".

The purpose of this report is to present an application to modify development consent, DA 16/2012/639/1 to Council for determination (Section 96 of the Environmental Planning and Assessment Act 1979).

The applicants' original proposal involved the provision of a Bushfire Asset Protection Zone (APZ) on the neighbour's property at Number 98 Coachwood Drive, Medowie to both reduce the bushfire risk and enable a more affordable form of dwelling construction. Council issued consent for the construction of a single storey dwelling and provision of the APZ as submitted by the applicant subject to conditions on 10 April 2013.

The dwelling approved under DA 16-2012-639-1 has been constructed and exists on site.

The construction of the dwelling was subject to Condition 22 which requires the practical provision of the APZ and appropriate legal notation on the adjoining property title to ensure ongoing maintenance of the APZ for the life of the new dwellings in perpetuity:

'Condition 22:

Prior to any Occupation Certificate being issued on the dwelling at 5 Figtree Close Medowie an "Asset Protection Zone" (APZ) shall be constructed and maintained at Number 98 Lot: 1 DP: 1019113 Coachwood Drive Medowie as per the Asset Protection Zone Plan and in compliance with Planning for Bushfire Protection 2006. The title of the property at Number 98, Lot: 1 DP: 1019113 Coachwood Drive, Medowie shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition prior to any Occupation Certificates being issued. In regard Council shall be nominated as the sole authority permitted to alter/remove the endorsement.'

With construction largely complete, the required tree and vegetation clearing has also been completed to provide the practical APZ. However, the owners have not been able to negotiate concurrence off the adjoining owner for the appropriate legal notation on the adjoining property title to ensure ongoing maintenance of the APZ for the life of the new dwellings in perpetuity.

Accordingly the applicants effectively want to amend their proposal to remove the need for the legal registration which they are now unable to provide. This is an amendment of the condition 22 to:-

'Amended Draft Condition 22:

Prior to any Occupation Certificate being issued on the dwelling at 5 Figtree Close Medowie an "Asset Protection Zone" (APZ) shall be constructed and maintained at Number 98 Lot: 1 DP: 1019113 Coachwood Drive Medowie as per the Asset Protection Zone Plan and in compliance with Planning for Bushfire Protection 2006.'

Council referred the amended Development Application to the Rural Fire Service (RFS) as per Environmental Planning and Assessment Act 1979 clause 79BA Consultation and Development Consent - Certain Bushfire Prone Land. The RFS have not supported the application and recommended that construction be upgraded to cater for the potential Bushfire Attacked Level (BAL) as if the APZ had not been provided and recommended several conditions. The RFS is unable to recognise the cleared APZ as the maintenance cannot be guaranteed for the perpetuity of the dwelling as the. If the properties in question are on-sold to other parties there could be some confusion over the legal right to maintain the asset protection zone. A copy of the RFS letter is attached **(ATTACHMENT 3)**.

Compliance with the Bush Fire Legislation is a primary issue with this Application as all other standard building and planning requirements for this dwelling can be adhered to.

The lot is subject to bushfire attack, classified as bushfire prone land which is a significant site constraint. Due to the lot configuration, location, size and failure to provide the APZ in perpetuity on the adjoining lot a dwelling construction standard for a Bushfire Attack Level (BAL) - Flame Zone to the northern elevation and all other elevations to be BAL 40 is required.

The RFS have advised that their primary aim was to make sure that people are safe, as the property may be on-sold in the future, and there is an expectation from future purchasers that the product they purchase is safe and complies with the standards at the time. The RFS advised if the dwelling was not built to the current Australian Standard, Council would be inheriting a significant risk. It should be noted that if maintenance of the APZ is carried out, the building construction standard complies.

It is acknowledged that the proposal consists of a set of unusual circumstances of which have been validly raised by the Applicant. The applicant currently has maintained the APZ at 98 Coachwood Drive with the owners consent. Unfortunately the appropriate legal notation on the adjoining property title to ensure ongoing maintenance of the APZ for the life of the new dwellings in perpetuity has not been consented to by the owner. The single storey dwelling is now completed, and Occupation Certificate is not able to be issued until the Condition 22 has been fully complied with.

The issue of concern in removing this condition is the ongoing ability to legally enter the adjacent site to appropriately maintain the required asset protection zone and the reproducible (through contract exchange documents at the time of sale) requirement of maintaining the asset protection zone for subsequent owners. In removing the requirement of the 88B notation the structure requires upgrading to the bushfire attenuation measures to adequately protect the building and its occupants from bushfire attack.

FINANCIAL/RESOURCE IMPLICATIONS

The proposed recommendation provides no foreseeable financial or resource implications for Council.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Under the provisions of 79BA and 79C of the Environmental Planning and Assessment Act Council has the legal capacity to approve the Section 96 application as submitted. Whilst the RFS and assessment staff recommend refusal of the application, ultimately it is a decision for Council.

Although the APZ has been provided, the ongoing maintenance cannot be guaranteed and as such the development will not comply with the requirements of Planning for Bushfire Construction 2006, the Building Code of Australia and Australian Standard AS 3959-2009 or the recommendations of the RFS.

A review of the assessment under the provisions of the EP&A Act coupled with the potential risk indicated in the below table identify a decision contrary to the recommendation presents an unacceptable risk to Council as per Council's risk management matrix. There are unacceptable risks to Council in relation to public safety, Council reputation and legal exposure such that a refusal of the application is the only viable risk treatment.

On 27 November 2012 Council adopted a revised Corporate Risk Management Policy. The Policy includes Councils risk appetite statement that explicitly states:

"Council has no appetite for risks that may compromise the safety and welfare of staff, volunteers, contractors and/or members of the public."

"Council will not accept a risk that has potentially catastrophic consequences, regardless of the likelihood of that risk eventuating."

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council may increase its legal risk by approving development not in accordance with RFS advice and relevant Australian Standards	High	Determining by way of refusal will contribute to reduce the risk	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Whilst empathy is shown towards the Applicant and the situation, the proposal effectively lowers the construction standards the community can reasonably expect to be provided under the provisions of the NSW state policies and the Building Code of Australia and as such the proposed amendment to the original approval is not in the public interest.

CONSULTATION

The application was not required to be notified or otherwise exhibited in accordance with Council Policy being a single storey dwelling and located on No 2 (a) – Residential “A” zoned land.

The RFS were consulted in relation to this application. As referred to elsewhere in this report they do not support the application without appropriate construction measures employed within the building design to satisfactorily offset the bushfire risk.

OPTIONS

- 1) Adopt the recommendations;
- 2) Amend the recommendations;
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Locality Plan;
- 2) Bushfire Asset Protection Zone Plan;
- 3) Rural Fire Service response letter;
- 4) DA Assessment Report.

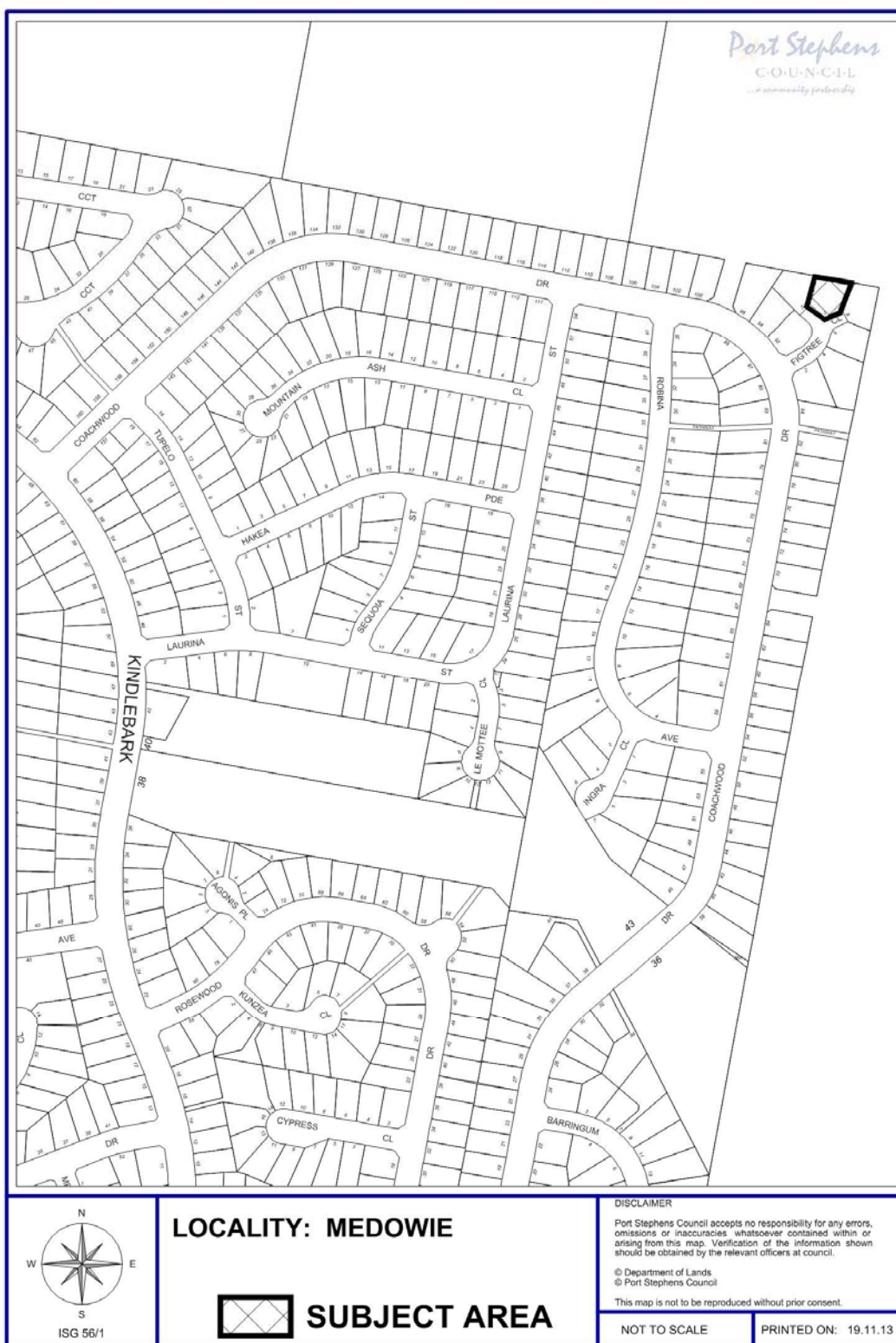
COUNCILLORS ROOM

- 1) Application plans – Also provided under separate cover;
- 2) Copy of unsatisfactory final inspection letter.

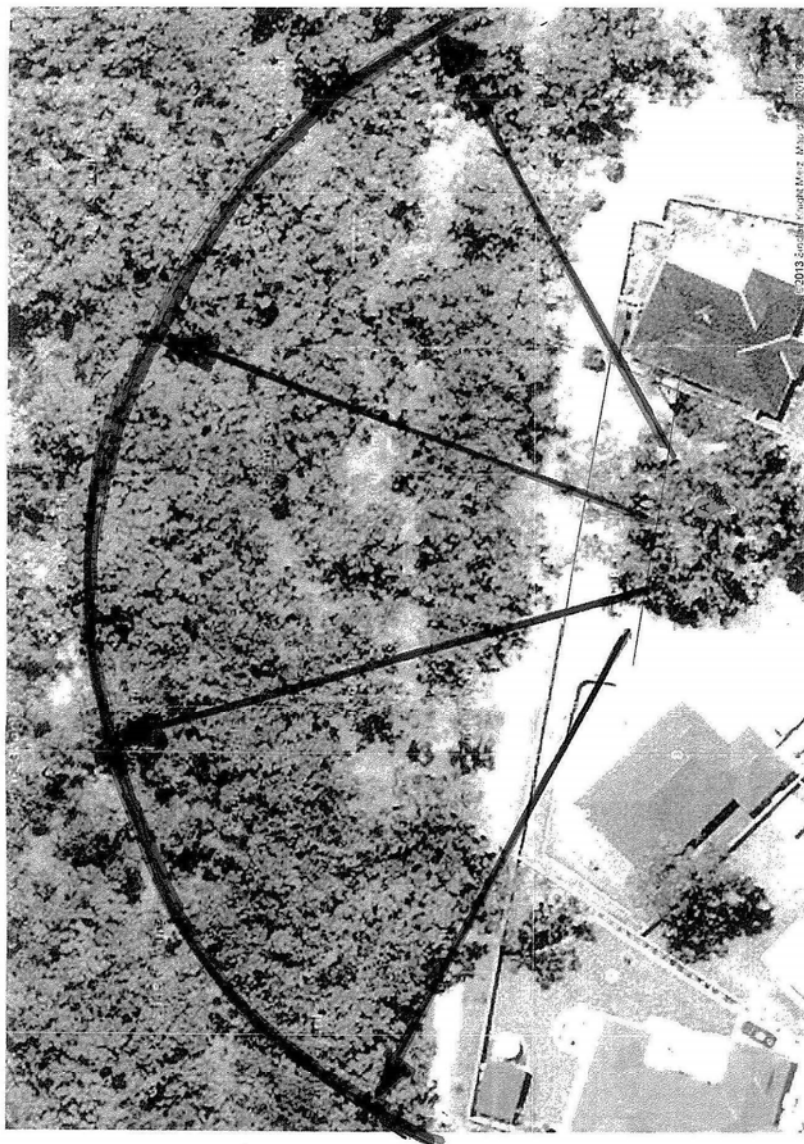
TABLED DOCUMENTS

Nil.

ATTACHMENT 1 LOCALITY PLAN



ATTACHMENT 2
BUSHFIRE ASSET PROTECTION ZONE PLAN



REMOVAL OF 70% OF TREES AT A RADIUS OF 48 M FROM DWELLING POSITIONS ON
S FIVE TREE PLACE, MEDUNIE. 2313

22/13

ATTENTION;
CHRIS WHITE
PORT STEPHENS COUNCIL.

PORT STEPHENS COUNCIL
This plan is subject to Environment Consultant Review

13-82-01

and is subject to confirmation by the relevant authority

PORT STEPHENS COUNCIL
This plan is subject to Environment Consultant Review

13-82-01

and is subject to confirmation by the relevant authority

JARVIS JEANES
SHEPHERD WOODWARD
10 BURNING AV,
MEDUNIE. 2313.
0416377154.

ATTACHMENT 3
RURAL FIRE SERVICE RESPONSE LETTER

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Telephone: 1300 NSW RFS
e-mail: csc@rfs.nsw.gov.au

Headquarters
Locked Bag 17
Granville NSW 2142

Facsimile: 8741 5433



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

Your Ref: 16-2013-82-2
Our Ref: D13/2559
DA13110189572 NL

ATTENTION: Kris White

11 November 2013

Dear Sir/Madam

Land Use Application for 516//1046709 5 Figtree Close Medowie 2318

I refer to your letter dated 25 October 2013 seeking advice regarding bush fire protection for the above Land Use Application in accordance with section 96 of the 'Environmental Planning and Assessment Act 1979'.

The Service provides the following recommended conditions:

Asset Protection Zones

The intent of measures is to provide sufficient space for fire fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants. To achieve this, the following conditions shall apply:

1. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

3. Due to the rear or most distant part of the dwelling being >70 metres from the nearest accessible hydrant, an onsite 5000 litre water supply shall be provided for fire fighting purposes.
4. If an above ground tank is provided it shall be non combustible and fitted with a 65mm storz outlet with a gate or ball valve via a 50mm diameter metal pipe. The tank should (where practicable) be located no closer than 10 metres from the dwelling and no greater than 20 metres. A fire fighting vehicle must be able to gain access to within 4 metres of the water supply.
5. An 'SWS' marker shall be obtained and positioned for ease of identification by brigade personnel and other users of the SWS. In this regard:
 - a) Markers must be fixed in a suitable location so as to be highly visible; and
 - b) Markers should be positioned adjacent to the most appropriate access for the static water supply.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

6. New construction on the northern elevation(s) shall comply with section 9 (BAL FZ) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas'. However, where any material, element of construction or system when tested to the method described in Australian Standard AS1530.8.2 'Methods for fire tests on building materials, components and structures' Part 8.2: 'Tests on elements of construction for buildings exposed to simulated bushfire attack—Large flaming sources', it shall comply with Clause 13.8 of the Standard except that flaming of the specimen is not permitted and there shall be no exposed timber.
7. Window assemblies on the northern elevation(s) shall comply with one of the following:
 - a) Clause 9.5.2 of AS 3959-2009 as modified above;or
 - b) They shall comply with the following:
 - (i) Completely protected by a non-combustible and non perforated bushfire shutter that complies with Section 3.7 of AS3959-2009 excluding parts (e) & (f).
 - (ii) Window frames and hardware shall be metal.
 - (iii) Glazing shall be toughened glass minimum 6mm.
 - (iv) Seals to stiles, head and sills or thresholds shall be manufactured from materials having a flammability index no greater than 5 or from silicone.
 - (v) The openable portion of the window shall be screened internally or externally with screens that comply with Clause 9.5.1A.

8. External Doors and door frames (not including garage doors) on the northern elevation(s) shall comply with one of the following:
- a) Clause 9.5.3 or 9.5.4 of AS 3959-2009 as modified above;
 - or
 - b) They shall comply with the following:
 - (i) Completely protected by a non-combustible and non perforated bushfire shutter that complies with Section 3.7 of AS3959-2009 excluding parts (e) & (f).
 - (ii) Doors shall be non-combustible.
 - (iii) Externally fitted hardware that supports the panel in its function of opening and closing shall be metal.
 - (iv) Where doors incorporate glazing, the glazing shall be toughened glass minimum 6mm.
 - (v) Seals to stiles, head and sills or thresholds shall be manufactured from materials having a flammability index no greater than 5 or from silicone.
 - (vi) Door frames shall be metal.
 - (vii) Doors shall be tight fitting to the doorframe and to an abutting door if applicable.
 - (viii) Weather strips, draught excluders or draught seals shall be installed at the base of side-hung external doors.
9. New construction on the southern, eastern and western elevation(s) shall comply with section 8 (BAL 40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas'.

Landscaping

10. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

General Advice – consent authority to note

The Service recognises that the site is constrained and that the proposed development falls within the Flame Zone. Flame Zone development is high risk development; consequently, in situations such as this, the Service seeks to improve the overall fire safety of the existing development. This requires greater emphasis on construction standards, landscaping, siting, and vegetation management practices to ensure improved levels of protection are afforded to the development, its occupants and fire fighters. The Service has undertaken a merit based assessment of the proposal and provides the above advice in accordance with 'Planning for Bush Fire Protection 2006'.

For any queries regarding this correspondence please contact Nicole Lee on 1300 NSW RFS.

Yours sincerely

Michelle Sreater
A/Team Leader - Development Assessment & Planning

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.

ATTACHMENT 4
DA ASSESSMENT REPORT

THE SITE AND SURROUNDING AREA**THE SITE**

Area	781.4 m2
Dimensions	The allotment is an irregular shape.
Slope	Reasonably flat with slight slope to eastern boundary.
Existing development	Dwelling House is completed including the asset protection zone at 98 Coachwood Dr Medowie.
DP and 88b instrument	N/A
Vegetation	The asset protection zone has been cleared.
Constraints	Bushfire Prone.
Stormwater and drainage	Connected.
Access	Via Street.
Services	Electricity, Sewer and Stormwater.

PROPOSAL

The applicant has submitted a Section 96 under provisions of The Environmental Planning and Assessment Act 1979 to modify condition 22 of Development Consent. The condition is:-

Prior to any Occupation Certificate being issued on the dwelling at 5 Figtree Close Medowie an "Asset Protection Zone" (APZ) shall be constructed and maintained at Number 98 Lot 1 DP 1019113 Coachwood Drive Medowie as per the Asset Protection Zone Plan and in compliance with Planning for Bushfire Protection 2006.

The title of the property at Number 98 Lot 1 DP 1019113 Coachwood Drive Medowie shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition prior to any Occupation Certificates being issued. In this regard Council shall be nominated as the sole authority permitted to alter/remove the endorsement.

The Applicant is proposing to modify the condition to: -

Prior to any Occupation Certificate being issued on the dwelling at 5 Figtree Close Medowie an "Asset Protection Zone" (APZ) shall be constructed and maintained at Number 98 Lot 1 DP 1019113 Coachwood Drive Medowie as per the Asset Protection Zone Plan and in compliance with Planning for Bushfire Protection 2006.

BACKGROUND

Council approved the original Development Application for a Single Storey Dwelling at 5 Figtree Close Medowie under delegated authority with conditions. The site is bushfire affected and the Applicant proposed to use neighbours property as an asset protection zone at 98 Coachwood Drive, to reduce the bushfire rating on the dwelling. The Applicant provided documentation indicating both parties were prepared to enter into an agreement to condition the 88b Instrument of 98 Coachwood Drive.

The dwelling has been constructed with Council undertaking a Final Inspection on 18/10/2013, it revealed Council is unable to issue an Interim and/or Occupation Certificate as the Applicant was unable to comply with condition 22 of Development Consent.

The Applicant informed Council when organising the Final inspection that they were unable to gain concurrence from the owner of 98 Coachwood Drive to condition the 88b instrument to comply with Development Consent. The owner of 98 Coachwood Drive did however give the applicant permission to clear and maintain the asset protection area.

The Applicant lodged Section 96 to modify Development Consent 16-2013-82-2 on the 16th October 2013.

SURROUNDING DEVELOPMENT

There are dwelling houses adjacent and bushland to the rear.

EXTERNAL REFERRALS

Rural Fire Services:

See attached RFS recommendation (dated 11 November 2013)

STATUTORY PROVISIONS

Port Stephens Local Environmental Plan 2000:

Zone No 2 (a)—Residential “A” Zone (e) to ensure that the design of residential areas takes into account environmental constraints including soil erosion, flooding and bushfire risk.

Draft Port Stephens Local Environment Plan 2013.

Zone R2 Low Density Residential 1 Objectives of zone.

POLICY PROVISIONS

Port Stephens Development Control Plan 2007:

Chapter B6 – Single Dwelling, Dual Occupancy Dwellings and Ancillary Structures

3. Objectives

3.4 To ensure that the development design takes into account potential environmental constraints including but not limited to; flora & fauna, koala habitat, acid sulphate soils, soil erosion, flooding, aircraft noise, bushfire risk, slope stability, geotechnical conditions, sea-level rise, tidal inundation, archaeology and heritage context.

BUSHFIRE PRONE LAND

The applicant has submitted a Section 96 (DA 16-2013-82-2) under the provisions of Section 79BA of The Environmental Planning and Assessment Act 1979. The application has been assessed does not comply with:-

The Building Code of Australia.

Planning for Bushfire Protection, 2006,

Australian Standard 3959 2009, and

The owner of 5 Figtree Close had cleared the Asset Protection Zone at 98 Coachwood Drive as per the approved Asset Protection Zone Plan but is unable to comply with condition 22 of Development Consent. These parties were unable form an agreement, the owners at 5 Figtree Close are unable to gain concurrence from 98 Coachwood Drive for the appropriate legal notation on the title. If these properties are on sold, the owners of 5 Figtree Drive Medowie have no legal right to maintain the asset protection zone, therefore the dwelling will not compliant.

The Section 96 Application was referred to the Rural Fire Service for comment, RFS outlined the dwelling shall be constructed to BAL Flame Zone to the northern elevation and BAL 40 to the other elevations. Clearly, this advice would be different if the Applicant was able to comply with condition 22 of Development Consent. The referral from Rural Fire Service is attached (Attachment 4)

SUITABILITY OF THE SITE

The site is considered to be suitable for the proposed dwelling **subject to** the dwelling complying with the original Development Consent. The dwelling has been completed to the point where a Final inspection was undertaken and the only outstanding item was compliance with condition 22 of Development Consent. The Asset Protection Zone has been cleared on 98 Coachwood Drive Medowie but the owner of 5 Figtree Close and 98 Coachwood Drive Medowie are were unable to reach an agreement.

PUBLIC INTEREST

The approval of the application is **not** considered to be in the public interest as the owner does not have legal right to maintain the asset protection zone for the perpetuity of the dwelling house. If the property at 5 Figtree Close and/or 98 Coachwood Drive Medowie is on sold, the new owners may not be aware of the written undertaking for 5 Figtree Close to maintain the asset protection zone or permit the owners to enter the property. Therefore, the development would not comply with the requirements of Planning for Bushfire Construction 2006, the Building Code of Australia and Australian Standard AS 3959-2009.

CONCLUSION

Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development is considered to be **unsatisfactory**. Therefore, it is recommended that the application be refused – refer to the reasons as per the Council report.

RECOMMENDATION

The application has been referred to the Council for determination as it was called to Council by an elected member. Assessing officer's recommendation is contained in the report to Council.

ITEM NO. 3

FILE NO:16-2010-291-5

SECTION 96 MODIFICATION TO DEVELOPMENT APPLICATION FOR SUPERMARKET (WOOLWORTHS) AT NO. 39, 41, 43, 45, AND 47 FERODALE ROAD, MEDOWIE.

REPORT OF: MATTHEW BROWN – DEVELOPMENT ASSESSMENT AND COMPLIANCE
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve the modification to Development Consent 16-2010-291-5 under Section 96 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), subject to the conditions contained in **(ATTACHMENT 3)**;
 - 2) Enter into a Voluntary Planning Agreement (VPA) with Builddev Development Pty Ltd (the developer) in accordance with the terms of the offer proposed in the draft Planning Agreement **(ATTACHMENT 4)** following a public exhibition period (28 days).
-

**ORDINARY COUNCIL MEETING – 10 DECEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION**

Cr Paul Le Mottee, Ken Jordan and John Nell left the meeting at 7.51pm, prior to Item 3, in Committee of the Whole.

Cr John Nell returned to the meeting at 7.53pm, in Committee of the Whole.

	Councillor Geoff Dingle Councillor Steve Tucker
	That the recommendation be adopted.

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

Those for the Motion: Mayor Bruce MacKenzie, Crs Peter Kafer, Steve Tucker, Geoff Dingle, John Nell, John Morello and Sally Dover.

Those against the Motion: Nil.

MOTION

Cr Paul Le Mottee and Ken Jordan left the meeting at 8.16pm, in the Open Council Meeting.

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

	Councillor Geoff Dingle Councillor Peter Kafer
	That Council negotiate a Voluntary Planning Agreement to complete the Sports Club access and carpark (including drainage and services) to the cost of the proposed roundabout with "works in kind" to the value.

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

Those for the Motion: Crs Geoff Dingle and Peter Kafer.

Those against the Motion: Mayor Bruce MacKenzie, Crs Steve Tucker, John Nell, John Morello and Sally Dover.

The motion on being put was lost.

MOTION

367	Mayor Bruce MacKenzie Councillor Steve Tucker
	<p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Approve the modification to Development Consent 16-2010-291-5 under Section 96 of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act), subject to the conditions contained in (ATTACHMENT 3);2) Enter into a Voluntary Planning Agreement (VPA) with Builddev Development Pty Ltd (the developer) in accordance with the terms of the offer proposed in the draft Planning Agreement (ATTACHMENT 4) following a public exhibition period (28 days).

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

Those for the Motion: Mayor Bruce MacKenzie, Crs Steve Tucker, John Nell, John Morello and Sally Dover.

Those against the Motion: Crs Peter Kafer and Geoff Dingle.

BACKGROUND

The purpose of this report is to present to Council for determination a proposal to modify development consent 16-2010-291-4, primarily to include a condition enabling the developer to enter into a Voluntary Planning Agreement (VPA) with Council in lieu of the construction of a single lane roundabout at Ferodale and Peppertree Roads.

The modification is required to be considered by Council as it includes a draft Voluntary Planning Agreement (VPA) that can only be entered into by Council (as the planning authority) and the developer under *s93F in the Environmental Planning and Assessment Act 1979* (EP&A Act).

Condition No.41 – Roundabout at Ferodale Road and Peppertree Road

The section 96 modification seeks to amend condition No.41 of 16-2010-291-4 that requires the construction of a roundabout at Ferodale and Peppertree Roads. The applicant proposes amendments to the condition to enable the developer to enter into a VPA for \$400,000 for the construction of a new road to link Peppertree Road and Medowie Road, in lieu of the roundabout work required by condition No.41.

Ferodale Road is the main street of Medowie and carries significant traffic volumes. Peppertree Road provides access to the existing supermarket and will be the entrance to the approved Woolworths supermarket for both light and heavy vehicles. The intersection is currently functioning with spare capacity at most times. It operates currently as a give-way controlled 'T' intersection with Peppertree Road as the terminating leg. The construction of the roundabout in accordance with condition No. 41 was required at DA stage in order to improve traffic flow, intersection capacity and safety for road users and pedestrians. Further, the Regional Development Committee also recommended that a roundabout be conditioned based on road safety and traffic management considerations.

It is noted that traffic report submitted with the original development application (16-2010-291-1) contained intersection modelling that demonstrated that the Woolworths development would have an acceptable impact on the local road network and hence proposed no improvements to the intersection. Assessment of the traffic report identified that the report contained questionable assumptions; including:

- A 30% discount on the accepted traffic generation rate for the development. Development applications should be assessed on the full potential traffic generation.
- Traffic surveys conducted on a Tuesday and Wednesday. These are not typical peak days for shopping centres which are accepted as being Friday or Saturday

The above assumptions triggered the undertaking of further traffic assessments within the locality. Traffic surveys conducted by Council in late 2012 indicated substantially higher current volumes of existing traffic accessing Peppertree Road than were used in the consultant modelling (traffic report) for the original development application.

Intersection modelling by Council using these higher existing traffic volumes and full traffic generation for the development has indicated a reduced level of service at the Peppertree and Ferodale Road intersection will result from the approved development.

Therefore, the retention of the intersection of Ferodale and Peppertree Roads as a 'T' intersection as proposed under the s 96 modification may result in increased risk of incidents as future traffic volumes increase. In addition this may result in lengthy queues of traffic wanting to turn right out of Peppertree Road on to Ferodale Road at peak times. Thus the roundabout required under condition No.41 has many advantages over an over the retention of the current 'T' intersection in terms of traffic management and road safety.

However, traffic modelling suggests that the intersection of Peppertree and Ferodale Roads will function at an acceptable level of service in the short term, including after the introduction of additional traffic from the Woolworths development, with regard to projected delays and queue lengths. Further, the Medowie Traffic Study (URAP TTW Pty Ltd 2013) has identified the need to construct a roundabout at the intersection of Ferodale and Peppertree Roads as a key traffic strategy to address future development located in Medowie. An analysis of potential growth in Medowie indicates that the hourly traffic volumes at the Peppertree Road intersection will almost triple from current levels in the future, however, this is not expected in the near future. Roundabouts will also be required at the major intersections along Ferodale Road in order for traffic to operate at an acceptable level of service. The placement of a purpose built single lane roundabout (per condition No.41) would not be conducive to future widening if a dual lane roundabout is required in the future.

As such the construction of a second road connection, from Peppertree Road to Medowie Road, is a preferred alternative to the construction of the roundabout (per condition No.41) in the short term. In order to mitigate any potential longer terms risks the second road connection, from Peppertree Road to Medowie Road should be completed as soon as possible, including appropriate intersection controls at the Medowie Road connection.

Condition No. 42 – Associated works including Bus Bay Ferodale Road

The proposal also seeks to amend condition No.42 which requires the construction of a Bus Bay on Ferodale Road, so as these works can be bonded should they not be completed prior to Occupation Certificate so as not to delay the issue of the Occupation Certificate.

In this regard, a Roads Act application has been approved for the construction of the roundabout which also incorporated the inclusion of a bus stop. If Council resolved to support the modification of condition No.41, the functionality of the bus stop will be changed as a result of the geometric layout and proximity to the intersection. The current bus stop design has been configured in relation to a roundabout opposed to a give-way controlled 'T' intersection.

If Council support the proposal, then amendments to condition No.42 would be appropriate. However, further consideration would need to be given to the bus bay location as the proposed location is in conflict with an already approved driveway access to an adjoining commercial development.

Should Council resolve to support a VPA to the value of \$400,000 which does not include the construction of the bus bay for which the location will need to be determined at a later date and to be included in Councils Works Program.

Amendments to condition No.42 are detailed in the conditions contained in **(ATTACHMENT 3)** and address this matter.

Condition No. 46 – Dedication of Road Reserve

The s 96 modification seeks to amend condition No.109 to alter the timing of the dedication of the road widening from 'prior to commencing the road works' until 'prior to issue of an Occupation Certificate'.

This requirement was due to the Peppertree Road parking and footpath widening works being located partly within the current road reserve and partly within the current private land. Legislatively this scenario will require a Roads Act approval for the road reserve and a construction certificate for the private land. The dedication prior to works is the preferred option to streamline the construction approval process so that one approval is needed.

Condition No. 53 – Works as Executed Plans

Minor amendments to Condition No.53 relating to the submission of a works-as-executed plan for works within the existing and proposed road reserve shall result should Council support the proposed amendments to condition No.41, 42, 46 and 109. Given the requirement to construct the majority of the road items are still considered necessary there is no reason to change this condition (See condition No.109 for details).

Condition No. 109 –Bonding of Road Act works after Occupation Certificate.

The applicant proposes to amended condition No.109 to allow bonding of outstanding road works which may occur to allow the Occupation Certificate to be issued without works being completed. The works required as part of the Roads Act approval includes:

- Road widening within Peppertree Road,
- Amend the current pedestrian refuge in Peppertree Road and construct a new refuge to current standards, including kerb ramps and footpath connections,
- Amended regulatory signage and line marking,
- Intersection treatment,
- Pedestrian pathways,

The bus lay-by is identified as the only work that is considered appropriate for bonding given the intersection, widening and other items are all deemed necessary prior to trading to the public. A recommended amended condition to address this matter is provided at **(ATTACHMENT 3)**.

Planning Agreement (draft VPA)

A draft VPA has been prepared on behalf of Council by Lindsay Taylor Lawyers (Attachment 4). It is proposed that the draft VPA will be entered into by the developer (Builddev Development Pty Ltd) and Port Stephens Council. The draft VPA provides for the costs associated with the administration of the VPA to be borne by the developer (preparation, finalising, execution and enforcement) as well as a monetary contribution of \$400,000 to be paid to Council prior to Occupation Certificate.

The VPA cannot be entered into by Council until it has been placed on public exhibition for a period not less than 28 days.

Section 93 EP&A Act permits a consent authority to require a planning agreement to be entered into as a condition of development consent providing it is consistent with the terms of the offer made by the applicant in relation to the development application. Therefore, to secure this offer from the applicant, a new condition is required to be included in the modified consent as follows:

Proposed Condition No.41

The applicant is required to enter into the Voluntary Planning Agreement (VPA) requiring the applicant contribute \$400,000 to be applied to the construction of a new road that links Peppertree Road and Medowie Road prior to this issue of the Occupation Certificate.

If the VPA is not finalised before the applicant requires the Occupation Certificate for the development, the applicant may provide to Council the \$400,000 required by the VPA to be held in trust subject to the VPA being finalised. In these circumstances, this condition is taken to be satisfied and cannot be used as a reason not to issue the Occupation Certificate.

Pursuant to section 80A(1) of the EP&A Act, the planning agreement that relates to the development application the subject of this consent must be entered into before the issue of an Occupation Certificate.

In accepting the monetary contribution in lieu of the construction of a roundabout per condition No.41 it is recognised that there is a net community benefit along with benefits to Council as an organisation, including:

- A likely increase in land value of Council's 795 Medowie Rd, Lot 240 DP1027965 attributing to the opening up of the access into the property allowing for future development.

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

- Address of community's concerns that a single lane roundabout should be placed on hold and a future dual lane roundabout or an alternative solution be planned for.
- Allowing forward planning of road reserve adjustments to allow for the required dual lane roundabout required to cater for future population growth and development in Medowie.
- Gaining of a financial contribution for the upgrading works of the northern leg of Peppertree Road on to Medowie Road.

It is difficult to place a monetary value against some of these items hence a judgement decision is required for the best outcome for the community. It should be noted that the developer's pre-commencement quantity survey estimates for the roundabout are less than the \$400,000 offer.

Key Issues

In summary the key issues relevant to the proposal include;

- Entering into a VPA between Council and the developer in lieu of the construction of a single lane roundabout per condition No.41;
- The potential short-term impacts to the local road network specifically the intersection of Peppertree and Ferodale Roads.

FINANCIAL/RESOURCE IMPLICATIONS

Should Council refuse the section 96 modification the applicant may appeal to the Land and Environment Court. Defending Council's determination would have financial implications.

Should Council refuse the section 96 modification Council would bear the complete cost of the upgrading works to the northern leg of Peppertree Road on to Medowie Road. These works have an estimated cost of \$690,000, the VPA results in Council being able to complete the upgrading sooner than anticipated.

Should Council refuse the section 96 modification Council will bare the cost of the required demolition of the single lane roundabout to facilitate the construction of a dual lane roundabout in the future. The associated demolition works would add to the cost of providing the dual lane roundabout at the Ferodale and Peppertree Road intersection as identified within the Medowie Traffic Study (URAP TTW Pty Ltd 2013).

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		To be placed in Council's capital budget – modification allows for Council to commence in the near future.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The section 96 modification is not inconsistent with Council Policy.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that should the modification be approved without publicly exhibiting the VPA prior to the determination the decision will be challenged in the Land and Environment Court.	Low	Approve section 96 modification	Yes
There is a risk that Council's reputation may be impacted by allowing a developer to avoid a previous road safety condition of consent.	High	Construction of a second access to Medowie Road from Peppertree Road will reduce the volume of traffic entering and exiting Peppertree Road via the Ferodale Road intersection. Also place design for pedestrian access at the intersection. This in turn will reduce the crash risk posed by this development.	No – within capital budget. Approval of the s 96 and VPA will enable works to progress.
There is a risk that road safety will be compromised by allowing operation of a second major supermarket in Peppertree Road without sufficient consideration of the short term (bonding) and interim	Medium	Construction of a second access to Medowie Road from Peppertree Road will address the intersection capacity concerns in the short-term. The secondary access road would be required prior to occupation.	No

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

(pre link connection) traffic requirements.			
There is a risk that construction of a secondary access road to Peppertree Road will introduce new intersection conflicts	Medium	Ensure that acceptable intersection treatments are included with the construction of a secondary access road and/or council monitor the intersection safety and make minor or major upgrades as necessary.	No - within capital budget. Approval of the s 96 and VPA will enable works to progress.
There is a risk that construction of the secondary access onto Medowie Road will not occur within a reasonable timeframe and traffic safety may be impacted on over time	Medium	Council accept the risk and plan to construct the second road as soon as practicable.	No - within capital budget. Approval of the s 96 and VPA will enable works to progress.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

- Higher risk less performing intersection at Ferodale Road and Peppertree Road until such time that the northern leg of Peppertree Road is connected to Medowie Road.
- Construction of the single lane roundabout (per condition No.41) is not consistent with the orderly and economic development of land as Council has identified a dual lane roundabout is required to cater for future population of Medowie. The construction of the dual lane roundabout would require the complete demolition of the single lane roundabout to be constructed under condition No.41, which results in a lost of unrennewable resources, time and cost.
- The contribution of \$400,000 by the developer under the VPA reduces the cost expenditure of Council for the identified link road to the northern leg of Peppertree Road.

CONSULTATION

In accordance with Council policy the s 96 modification was not exhibited. The VPA provided in **(ATTACHMENT 4)** will require exhibition at a later date for a period of 28 days.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan;
- 2) Assessment;
- 3) Amended Conditions of Consent;
- 4) Voluntary Planning Agreement (VPA).

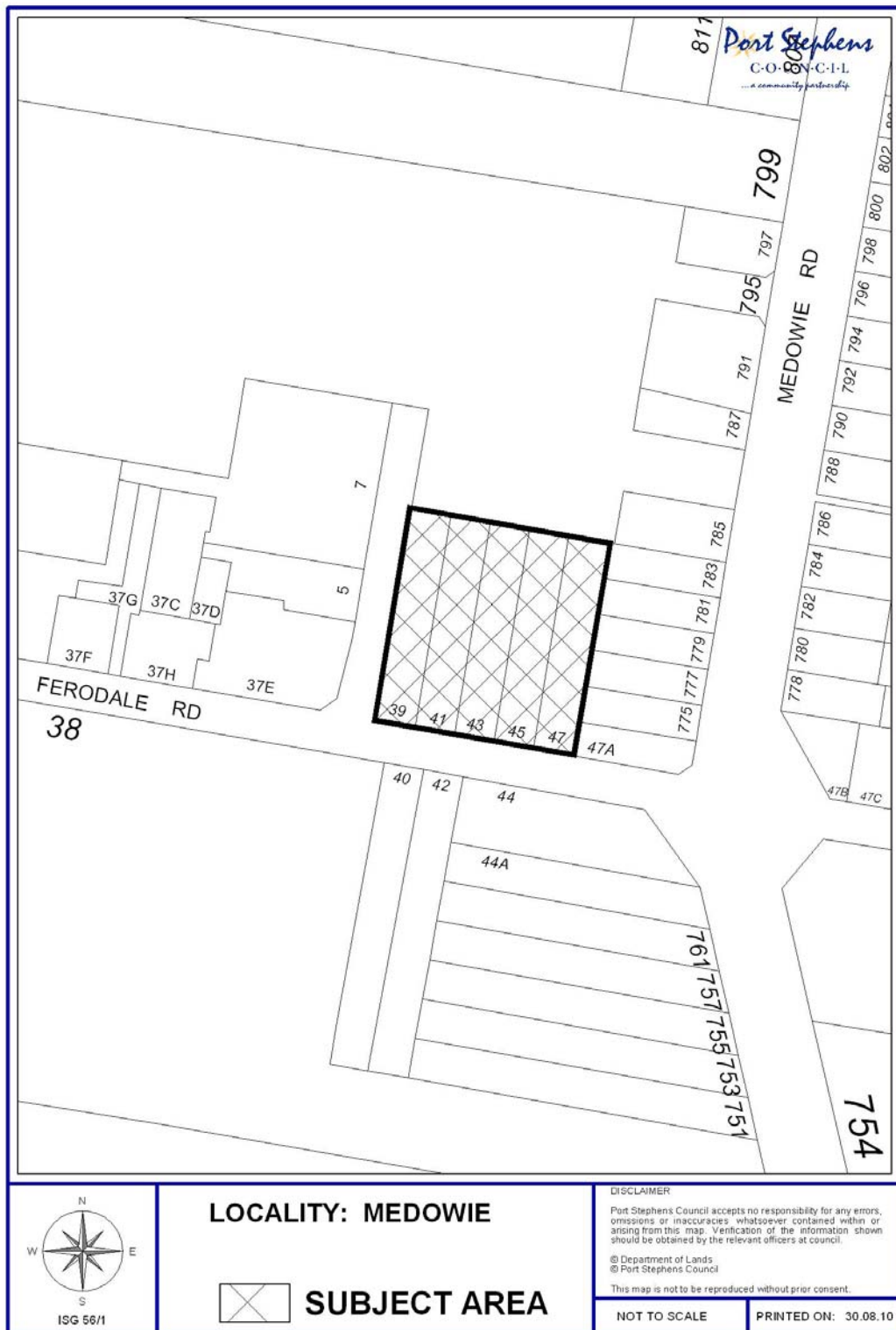
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



**ATTACHMENT 2
ASSESSMENT**

The s96 modification 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.

Site Description:

The subject site is legally described as Lots: 7, 8, 9, 10 and 11 DP:19101 and is known as No.39, 41,43, 45 and 47 Ferodale Road Medowie, and has a frontage of 107.6 metres to Peppertree Road and 100.6 metres to Ferodale Road. The site has a total area of 10887m².

The site is zoned 3(a) Business General Zone, having been rezoned from 2(a) Residential on 2 March 2011. Determination 16-2010-291-1 granted development consent for commercial premises, namely a Woolworths Supermarket and Woolworths Liquor Store, having a gross floor area of 3,865m² and associated car park. The application was approved by Council at its meeting 29 April 2011. Three (3) s 96 modification applications have subsequently been approved by Council staff relating to minor amendments to the Woolworths supermarket as approved, including relocation of the liquor outlet, internal changes, amendments to location and height of plant equipment.

Site Constraints:

The site is constrained by; Bush Fire Prone Land (buffer and vegetation category 2), Acid Sulfate Soils (Level 5), Koala Habitat (Preferred Habitat Linking Area over Marginal Habitat, Preferred Habitat Linking Area over cleared land, Preferred Habitat Buffer over cleared land), Hunter Water Corporation Special Area (Grahamstown Dam).

Impacts of the proposed development with regard to site constraints were assessed under the original development application (16-2010-291-1).

The s.96 Modification Proposal:

Delete Condition No.41 which states:

Provide a mountable roundabout at the intersection of Peppertree Road and Ferodale Road sufficient to accommodate the required design vehicle. Adjust all infrastructure and marking markings and signage including pedestrian facilities to accommodate the traffic network. Medians shall be raised concrete and configured to provide traffic calming and deflection to the requirements of council. Shoulder widening on the southern side of Peppertree Road shall be provided as necessary to accommodate these requirements.

Replace with condition as follows:

The applicant is required to enter into the Voluntary Planning Agreement (VPA) requiring the applicant contribute \$400,000 to be applied to the construction of a new road that links Peppertree Road and Medowie Road prior to this issue of the Occupation Certificate.

If the VPA is not finalised before the applicant requires the Occupation Certificate for the development, the applicant may provide to Council the \$400,000 required by the VPA to be held in trust subject to the VPA being finalised. In these circumstances, this condition is taken to be satisfied and cannot be used a reason not to issue the Occupation Certificate.

Amend Condition No.42 which states

An indented Bus Bay shall be constructed on Ferodale Road in accordance with concept plan number PSC2005-3994/011 dated 19-10-2010 by Port Stephens Council. Connections and adjustment to the shared path shall be provided as necessary and comply with council's requirement for accessible bus stops. Details shall be approved by the roads authority as part of the roads act approval.

Amended Condition No.42:

All works relating to line marking signage and road infrastructure shown on concept plan prepared by MPC R01 Issue 9, 10 October 2013. Any connections and adjustments to the shared path shall be provided as necessary and comply with Council's requirement for accessible bus stops. Details shall be approved by the road authority as part of the *Roads Act* approval.

Amend Condition No.46 which states:

The road reserve in Peppertree Road shall be widened in accordance with the voluntary planning agreement concept plan between Council and Builddev. The road reserve shall be dedicated at no cost to council prior to commencement of works within the Peppertree Road – road reserve

Amended Condition No.46:

The road reserve in Peppertree Road shall be widened in accordance with the voluntary planning agreement concept plan between Council and Builddev. The road reserve shall be dedicated at no cost to council prior to issue of Occupation Certificate.

Amend Condition No.53 which states:

Works-As-Executed plans shall be prepared by a suitably qualified person detailing all roads and drainage works in accordance with Council's Design and Construction Specifications, policies and standards for works within the existing and proposed Road reserves. This shall be submitted to, and accepted by the Roads Authority,

prior to issue of any occupation certificate. Justification: Ensures that the development is consistent to what was approved, without significant deviations from the approved plans.

Amended Condition No.53:

Works-As-Executed plans shall be prepared by a suitably qualified person detailing all roads and drainage works in accordance with Council's Design and Construction Specifications, policies and standards for works within the existing and proposed Road reserves. This shall be submitted to, and accepted by the Roads Authority, prior to issue of any Occupation Certificate, or in the event that there are works that are not completed when the Occupation Certificate is required by the applicant; these works may be bonded in accordance with Council's bonding policy.

Amend Condition No.109 which states:

All civil engineering works associated with the Roads Act Approval shall be carried out to the satisfaction of Council (with a letter of practical completion issued) prior to issue of any Occupation Certificate. All works associated with the Roads Act Approval shall be at no cost to Council.

Amended Condition No.109

All civil engineering works associated with the Roads Act Approval shall be carried out to the satisfaction of Council (with a letter of practical completion issued) prior to issue of any Occupation Certificate, or in the event these works are not completed when the Occupation Certificate is required by the applicant; these works may be bonded in accordance with Council's bonding policy. All works associated with the Roads Act Approval shall be at no cost to Council.

CONSULTATION – COMMUNITY

In accordance with Council's Notification Policy, adjoining neighbours were not notified of the s 96 modification application.

STATUTORY PROVISIONS

Environmental Planning and Assessment Act 1979 (EP&A Act)

Section 96 –

Section 96 of the EP&A Act requires that prior to determination of a modification to consent one must be satisfied that the proposal is of minimal environmental impact and that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted.

The proposal seeks to modify development consent 16-2010-291-1, and has been considered against the provisions of s 96 below:

- The proposed modification results in amendments to conditions of consent that do not affect the commercial development as approved on-site.
- The works relate to external road works only.
- The built form, landscaping and on-site infrastructure works are not amended. All elements of the design as submitted by the applicant under 16-2010-291-1 remain unchanged.
- The intentions of the original conditions of consent and the approved plans are satisfied by the modification as proposed. Arguably, the modification results in a better long term outcome for the site and surrounding locality.

For the reasons stated above the proposed modifications are satisfactory with regards to the substantially the same test as prescribed under s 96 EP&A Act.

State Environmental Planning Policies (SEPP)

The proposed modification does not result in any inconsistencies in relation to the SEPPs affecting the site. Given the nature of the proposal the modifications did not result in the requirement for further detailed assessment under applicable SEPPs. The development's compliance with applicable SEPPs was addressed within the original assessment under 16-2010-291-1.

Port Stephens Local Environmental Plan 2000 (PSLEP 2000)

The proposed modification is not inconsistent with either the zone objectives or relevant clauses within PLEP2000. Given the nature of the proposal the modifications do not result in the requirement for further detailed assessment under PLEP2000. The development's compliance with PSLEP2000 was addressed within the original assessment under 16-2010-291-1.

Draft Port Stephens Local Environmental Plan 2013 (DPSLEP 2013)

The proposed modification is not inconsistent with the provisions of DLEP2013. Given the nature of the proposal the modification did not result in the requirement for further detailed assessment under DLEP2013. The DPSLEP2013 whilst imminent and certain has not been gazetted and the provisions of PSLEP2000 prevail.

Port Stephens Development Control Plan 2007 (PSDCP2007)

The proposed modification does not result in any inconsistencies with regard to PSDCP2007. Given the nature of the proposal the modification did not result in the requirement for further detailed assessment under DCP2007. The development's compliance with PSDCP2007 was addressed within the original assessment under 16-2010-291-1.

INTERNAL REFERRALS

Engineering

The modification was referred to Council's Development Engineering Section for assessment. Development Engineering raised no objection to the proposal subject to conditions of consent provided in Attachment 3.

EXTERNAL REFERRALS

Nil

Section 94 Contribution

Section 94 Contributions have been levied under the original development consent 16-2010-291-1 and remain unchanged under the proposed modification.

Likely Impact of the Development

The development as proposed is not considered to result in any adverse environmental impacts given Council intends to construct the secondary access to Medowie Road and Peppertree Road. Entering into the VPA enables the construction of the link road sooner than anticipated. The amendments reflect the current traffic planning for the Medowie Town Centre and will result in a better utilisation of resources to achieve the preferred outcome (namely a link road to Peppertree and Medowie Road and dual lane roundabout located at the intersection of Peppertree and Ferndale Roads).

Suitability of the Site

The proposed modifications are suitable on this site.

Public Interest

The proposed modification is considered to be in the public interest.

Conclusion

It is recommended that the modification to 16-2010-291-5 be approved subject to the attached conditions provided in Attachment 3.

**ATTACHMENT 3
CONDITIONS OF CONSENT (AMENDED CONDITIONS ONLY)**

Delete Condition No.41 and replace with:

The applicant is required to enter into the Voluntary Planning Agreement (VPA) requiring the applicant contribute \$400,000 to be applied to the construction of a new road that links Peppertree Road and Medowie Road prior to this issue of the Occupation Certificate.

If the VPA is not finalised before the applicant requires the Occupation Certificate for the development, the applicant may provide to Council the \$400,000 required by the VPA to be held on trust subject to the VPA being finalised. In these circumstances, this condition is taken to be satisfied and cannot be used a reason not to issue the Occupation Certificate.

Amend Condition No.42 as follows:

All works relating to line marking, signage and road shall be constructed on Ferodale Road and Peppertree Road. Connections and adjustments to the shared path shall be provided and comply with council's requirement for accessible bus stops. Details shall be approved by the road authority as part of the *Roads Act* approval.

Amend Condition No.46 as follows:

The road reserve in Peppertree Road shall be widened in accordance with the (rezoning) voluntary planning agreement concept plan between Council and Buildev, and the splay corner on Peppertree Road and Ferodale as seen on plan prepared by MPC 09-210R01 Issue 8, and stamped as Roads Act Approval dated 24/10/2013. The road reserve shall be dedicated at no cost to council prior to issue of Occupation Certificate and prior to commencement of road works.

Amend Condition No.53 as follows:

Works-As-Executed plans shall be prepared by a suitably qualified person detailing all roads and drainage works in accordance with Council's Design and Construction Specifications, policies and standards for works within the existing and proposed Road reserves. This shall be submitted to, and accepted by the Roads Authority, prior to issue of any Occupation Certificate or in the event that the roads authority agrees to bond individual items of construction, those individual items will provide the works-as-executed drawing as per the agreement contained within the bonding agreement; any agreed works will be bonded in accordance with council's bonding policy.

Amend Condition No.109 as follows:

All civil engineering works associated with the Roads Act Approval shall be carried out to the satisfaction of Council (with a letter of practical completion issued) prior to issue of any Occupation Certificate, or in the event that the roads authority agrees to bond individual items of construction, those individual items will be deemed to be completed in regards to the issuing of an occupation certificate. The delivery timing of bonded items will be in accordance with the bonding agreement and in accordance with council's bonding policy. All works associated with the Roads Act Approval shall be at no cost to Council.

ATTACHMENT 4
VOLUNTARY PLANNING AGREEMENT



Deed

**Pepper Tree Road
Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Port Stephens Council
BD NSW Project BD075 Pty Ltd**

Date:

© Lindsay Taylor Lawyers

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Pepper Tree Road Planning Agreement
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Pepper Tree Road Planning Agreement

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Pepper Tree Road Planning Agreement

Summary Sheet

Council:

Name: Port Stephens Council
Address: 116 Adelaide Street, Raymond Terrace NSW 2324
Telephone: (02) 4980 0255 [Drafting Note. Please confirm]
Facsimile: (02) 4987 3612 [Drafting Note. Please confirm]
Email: John.Maretich@portstephens.nsw.gov.au
Representative: John Maretich

Developer:

Name: BD NSW Project BD075 Pty Ltd
Address: PO Box 826 Newcastle NSW 2300
Telephone: [Insert Details]
Facsimile: [Insert Details]
Email: CraigMcGaffin@builddev.com.au [Drafting Note. Please confirm]
Representative: Craig McGaffin [Drafting Note. Please confirm]

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9 and Schedule 1.

Application of s94, s94A and s94EF of the Act:

See clause 8.

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Security:

See Part 4.

Registration:

See clause 16.

Restriction on dealings:

See clause 17.

Dispute Resolution:

See Part 3.

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Port Stephens Council
BD NSW Project BD075 Pty Ltd



Pepper Tree Road Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Port Stephens Council ABN 16 744 377 876 of 116 Adelaide Street (Old Pacific Highway), Raymond Terrace NSW 2324 (**Council**)

and

BD NSW Project BD075 Pty Ltd ACN 141187948 of PO Box 826 Newcastle NSW 2300 (**Developer**)

Background

- A The Developer is the owner of the Land.
- B Development Consent No.16-2010-291-4 has been granted by the Council to the Development.
- C The Developer has lodged the Modification Application with the Council to modify condition 41 of Development Consent No.16-2010-291-4 to remove the requirement to construct a mountable roundabout at the corner of Ferodale Road and Peppertree Road.
- D The Developer proposes to provide the Development Contributions in accordance with this Deed in connection with the Modification Application.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under

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the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Development means the construction of a Woolworths Supermarket on the Land, the subject of Development Consent No.16-2010-291-4 as modified in accordance with the Modification Application.

Development Consent means the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means Lots 7, 8, 9, 10 and 11 in DP19101 otherwise known as 39, 41, 43, 45 and 47 Ferodale Road, Medowie NSW 2310.

Modification Application means the application under s96 of the Act to modify condition 41 of Development Consent No.16-2010-291-4 to remove the requirement to construct a mountable roundabout at the corner of Ferodale Road and Peppertree Road.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
 - 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

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Port Stephens Council
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- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

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4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s94, s94A and s94EF of the Act to the Development

- 8.1 This Deed does not exclude the application of s94, s94A or s94EF of the Act to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to pay monetary Development Contributions in the amount of \$300,000.00 to the Council for the purposes of the Council constructing a road that links Peppertree Road and Medowie Road in accordance with this Deed.
- 9.2 The monetary Development Contributions referred to in clause 9.1 are to be paid on the date this Deed takes effect.
- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

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10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

Part 3 – Dispute Resolution

11 Dispute resolution – expert determination

- 11.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 11.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 11.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 11.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 11.3 If a notice is given under clause 11.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 11.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 11.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 11.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 11.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

12 Dispute Resolution - mediation

- 12.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 11 applies.
- 12.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 12.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law

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Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.

- 12.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 12.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

13 Security

- 13.1 Notwithstanding any other provision in this Deed, no Occupation Certificate for the Development is to be issued unless and until the monetary Development Contributions required to be paid under this Deed have been paid.

14 Breach of obligations

- 14.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 14.1.1 specifying the nature and extent of the breach,
 - 14.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 14.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 14.2 If the Developer fails to fully comply with a notice referred to in clause 14.1, the Council may, without further notice to the Developer, remedy the Developer's breach.
- 14.3 Any costs incurred by the Council in remedying a breach in accordance with clause 14.2 may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 14.4 For the purpose of clause 14.3, the Council's costs of remedying a breach the subject of a notice given under clause 14.1 include, but are not limited to:

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- 14.4.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 14.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 14.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 14.5 Nothing in this clause 14 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

15 Enforcement in a court of competent jurisdiction

- 15.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 15.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 15.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 15.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

16 Registration of this Agreement

- 16.1 The Parties agree not to register this Deed for the purposes of s93H(1) of the Act.

17 Restriction on dealings

- 17.1 The Developer is not to:
 - 17.1.1 sell or transfer the Land, or
 - 17.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 17.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 17.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or

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novatee, is reasonably capable of performing its obligations under this Deed, and

17.1.5 the Developer is not in breach of this Deed, and

17.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

Part 6 – Indemnities & Insurance

18 Risk

18.1 The Developer performs this Deed at its own risk and its own cost.

19 Release

19.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

20 Indemnity

20.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

Part 7 – Other Provisions

21 Review of Deed

21.1 The Parties agree to review this Deed if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.

21.2 For the purposes of clause 21.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

21.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 21.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

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- 21.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 21.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 21.1 (but not 21.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

22 Notices

- 22.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 22.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
- 22.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 22.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 22.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 22.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 22.3.1 delivered, when it is left at the relevant address,
- 22.3.2 sent by post, 2 business days after it is posted,
- 22.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
- 22.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 22.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

23 Approvals and Consent

- 23.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 23.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

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24 Costs

- 24.1 The Developer is to pay the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 24.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

25 Entire Deed

- 25.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 25.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

26 Further Acts

- 26.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

27 Governing Law and Jurisdiction

- 27.1 This Deed is governed by the law of New South Wales.
- 27.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 27.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

28 Joint and Individual Liability and Benefits

- 28.1 Except as otherwise set out in this Deed:
 - 28.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 28.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

29 No Fetter

- 29.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without

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limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

30 Illegality

- 30.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

31 Severability

- 31.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 31.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

32 Amendment

- 32.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

33 Waiver

- 33.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 33.2 A waiver by a Party is only effective if it is in writing.
- 33.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

34 GST

- 34.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 34.2 Subject to clause 34.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 34.3 Clause 34.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 34.4 No additional amount shall be payable by the Council under clause 34.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 34.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
 - 34.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
 - 34.5.2 that any amounts payable by the Parties in accordance with clause 34.2 (as limited by clause 34.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 34.6 No payment of any amount pursuant to this clause 34, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 34.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 34.8 This clause continues to apply after expiration or termination of this Deed.

35 Explanatory Note

- 35.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 35.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

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Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of the Developer in accordance with s127(1) of the
Corporations Act (Cth) 2001

Name/Position

Name/Position

Pepper Tree Road Planning Agreement
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Appendix

(Clause 35)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Port Stephens Council ABN 16 744 377 876 of 116 Adelaide Street (Old Pacific Highway), Raymond Terrace NSW 2324 (**Council**)

BD NSW Project BD075 Pty Ltd ACN 141187948 of PO Box 826 Newcastle NSW 2300 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

Lots 7, 8, 9, 10 and 11 in DP19101 otherwise known as 39, 41, 43, 45 and 47 Ferodale Road, Medowie NSW 2310

Description of Proposed Development

Construction of a Woolworths Supermarket the subject of the Development Consent No.16.2010-291-4 as modified in accordance with the Modification Application.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

PSC_PSC00413_005.DOCX

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**Pepper Tree Road Planning Agreement
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Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to secure the provision of monetary Development Contributions for the purpose of providing a public road between Peppertree Road and Medowie Road.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the Environmental Planning and Assessment Act 1979 (Act). The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the Development on the Land by the Developer,
- imposes obligations on the Developer to make monetary Development Contributions,
- does not exclude the application of s94 and s94A of the Act to the Development,
- does not exclude the application of s94EF of the Act to the Development,
- is not to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Land or assigning, or novating an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the Land to which the Agreement applies,
- encourages the provision and co-ordination of community services and facilities, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

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The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii), (v) and 5(c) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively,
- providing a means that allows the wider community to make submissions to the Council in relation to the Agreement.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

The contribution towards a road that links Peppertree Road and Medowie Road is generally consistent with the Medowie Planning Strategy adopted by Council on 24 March 2009, but not listed in the current Capital Works Program [Drafting Note: To be confirmed]

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Yes, the Draft Planning Agreement specifies that monetary Development Contributions must be paid before an occupation certificate is issued.

ITEM NO. 4

FILE NO: PSC2013-00406

REVOKE POLICY – COMPANION ANIMALS MANAGEMENT

REPORT OF: MATTHEW BROWN – DEVELOPMENT ASSESSMENT AND COMPLIANCE
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

1. Revoke the current Companion Animals Management Plan adopted on 4 October 2005 Minute Number 305.
-

**ORDINARY COUNCIL MEETING – 10 DECEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor John Nell Councillor John Morello
	That the recommendation be adopted.

MOTION

368	Mayor Bruce MacKenzie Councillor Steve Tucker
	It was resolved that Council revoke the current Companion Animals Management Plan adopted on 4 October 2005 Minute Number 305.

BACKGROUND

The purpose of this report is to forward to Council a report to revoke the Companion Animals Management policy.

Council has a program of systematically reviewing and updating its existing policies.

Within the Development Services Group the aim is to review all existing policies with the view to revoke, amend or substantially update where required. This is a staged approach and the subject of this report includes one (1) policy recommended to be revoked.

The current policy – Companion Animals Management Plan (CAMP) was originally adopted in December 1998 and was last updated on 12 September 2005. The previous policy is provided in **(ATTACHMENT 1)**.

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

The CAMP was originally prepared by the Councils Companion Animals Advisory Committee which was formed in 1996 to consider local companion animal issues in consultation with the community.

Since its last update the policy has become out-dated. The CAMP identified key issues and established priorities and actions for Council and the Committee to address. In effect, the CAMP was more of an action plan than a Council Policy.

A policy in this regard is therefore no longer warranted, nor appropriate in the context of our policy framework. What is needed is an organisational Management Directive and Guide for the Management of Companion Animals to ensure there are clear internal objectives, processes or procedures for the management of companion animals in the Port Stephens Local Government Area for Council staff.

A large portion of the current document will be used in the development of a Guide for the Management of Companion Animals given its continued relevance to Council's Ranger staff.

FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseen financial or resource implications as a consequence of the proposed recommendation.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

There are no foreseeable legal, policy or risk implications resulting from the proposed recommendation.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that out of date policies may lead to poor judgment and inconsistent decision making.	High	Revoke the current policy and replace with Management Directive and Guide for internal use.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There is a community expectation that as part of its vision "A great lifestyle in a treasured environment" Council will recognise the importance of Companion Animal Management to the community, the environment people and animals. Council will continue to use available and reasonable resources in education and enforcement strategies to encourage responsible pet ownership. Council officers will continue to approach Companion Animals Management in a manner that fosters cooperation and acceptance from the community.

The recommended approach aims to minimise potential environmental impacts of companion animal ownership, particularly in terms of water pollution, noise pollution and predation on native fauna. This will be achieved by consistent reinforcement and education by Council staff and reminding pet owners of their continuing responsibilities.

CONSULTATION

Consultation has been undertaken with the Ranger Team with regard to the proposed directions and recommendation.

OPTIONS

- 1) Resolve to retain the existing policy;
- 2) Resolve to amend the existing policy;
- 3) Resolve to revoke the existing policy.

ATTACHMENTS – All listed below are provided under separate cover.

- 1) Companion Animals Management Plan – (ie existing policy).

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 5

FILE NO: PSC2010-04980

**PLANNING PROPOSAL - 2 KINGFISHER CLOSE & 507 MEDOWIE ROAD
MEDOWIE**

REPORT OF: BRUCE PETERSEN – COMMUNITY PLANNING AND ENVIRONMENTAL
SERVICES SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal (**ATTACHMENT 1**) to amend the Port Stephens Local Environmental Plan 2000 or equivalent zones under the Draft Port Stephens Local Environmental Plan 2013 to:
 - a. Rezone part Lot 412 in DP 1063902 from 1(c1) and 1(c2) Rural Small Holdings to part 2(a) General Residential/R2 Low Density Residential;
 - b. Rezone part Lot 413 in DP 1063902 from 1(c1) and 1(c2) Rural Small Holdings to part 2(a) General Residential/R2 Low Density Residential and 1(c5) Rural Small Holdings/R5 Large Lot Residential;
 - c. Reduce the minimum lot size for part Lots 412 and 413 in DP 1063902 from 20ha and 2ha to 500sqm and 2,000sqm respectively;
- 2) Seek a revised Gateway Determination from the Department of Planning and Infrastructure replacing the proposed zones 3(a) Business General and 6(a) General Recreation with 2(a) Residential;
- 3) On receiving the revised Gateway Determination, request that Parliamentary Counsel make the Planning Proposal under section 59(1) of the Environmental Planning & Assessment Act 1979.

**ORDINARY COUNCIL MEETING – 10 DECEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Geoff Dingle Councillor Peter Kafer
	That the recommendation be adopted.

Cr Paul Le Mottee and Ken Jordan returned at 8.07pm during Item 5, in Committee of the Whole.

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

Those for the Motion: Mayor Bruce MacKenzie, Crs Peter Kafer, Paul Le Mottee, Ken Jordan, Steve Tucker, Geoff Dingle, John Nell, John Morello and Sally Dover.

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Those against the Motion: Nil.

MOTION

Cr Paul Le Mottee and Ken Jordan returned at 8.26pm during Item 5, in the Open Council Meeting.

369	<p>Mayor Bruce MacKenzie Councillor Steve Tucker</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Adopt the Planning Proposal (ATTACHMENT 1) to amend the Port Stephens Local Environmental Plan 2000 or equivalent zones under the Draft Port Stephens Local Environmental Plan 2013 to:<ol style="list-style-type: none">a. Rezone part Lot 412 in DP 1063902 from 1(c1) and 1(c2) Rural Small Holdings to part 2(a) General Residential/R2 Low Density Residential;b. Rezone part Lot 413 in DP 1063902 from 1(c1) and 1(c2) Rural Small Holdings to part 2(a) General Residential/R2 Low Density Residential and 1(c5) Rural Small Holdings/R5 Large Lot Residential;c. Reduce the minimum lot size for part Lots 412 and 413 in DP 1063902 from 20ha and 2ha to 500sqm and 2,000sqm respectively;2) Seek a revised Gateway Determination from the Department of Planning and Infrastructure replacing the proposed zones 3(a) Business General and 6(a) General Recreation with 2(a) Residential; and3) On receiving the revised Gateway Determination, request that Parliamentary Counsel make the Planning Proposal under section 59(1) of the Environmental Planning & Assessment Act 1979.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Peter Kafer, Paul Le Mottee, Ken Jordan, Steve Tucker, Geoff Dingle, John Nell, John Morello and Sally Dover.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to consider submissions received during the public exhibition of the above listed Planning Proposal and present a revised planning proposal to Council for their consideration. The exhibited planning proposal was generally consistent with the Medowie Strategy as follows:

Subject land:	Part of Lots 412 and 413 in DP 1063902
Address:	2 Kingfisher Close and 507 Medowie Rd, Medowie
Current Zoning:	1(c1) and 1(c2) Rural Small Holdings
Current Minimum Lot Size:	20ha and 2ha
Proposed Zoning:	2(a) Residential, 1(c5) Rural Small Holdings, 3(a) Business General and 6(a) General Recreation
Proposed Minimum Lot Size:	500m ² and 2,000m ²
Subject Site Area:	10.2ha

This Report proposes to replace zones 3(a) Business General and 6(a) General Recreation with 2(a) Residential. The justification for this proposal is detailed in this Report.

FINANCIAL/RESOURCE IMPLICATIONS

The proponent has paid the relevant rezoning fees in line with the Council's Fees and Charges Policy. A future Development Application will be required to provide relevant infrastructure contributions and/or direct works.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	28,998 25,566	Stage 1 fees – Paid 11 FEB 08 Stage 2 fees – Paid 26 FEB 13
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The Environmental Planning & Assessment Act 1979 details the legislative process for the making of a Local Environmental Plan. This Planning Proposal has followed this process as detailed below.

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Environmental Planning & Assessment Act 1979	Date	Comment
s54 Relevant Planning Authority	5 AUG 10	
s55 Planning Proposal	8 MAR 11	Council Meeting
s56 Gateway Determination	28 OCT 11	
1 NOV 12 – Port Stephens Local Environmental Plan 2013 becomes a Draft		
s57 Community Consultation	26 SEP 13	28 days exhibition period
s58 Vary Proposal or Not Proceed	10 DEC 13	Council Meeting
s59 Making of Plan by Minister	TBA	

Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy identifies Medowie as an urban release area. The boundaries of this urban release area are defined by the Medowie Strategy Structure Plan, which has identified part of the subject site as suitable for urban intensification.

Port Stephens Planning Strategy

The Port Stephens Planning Strategy is the over-arching strategic planning document that guides strategic land-use within the Port Stephens Local Government Area. The Strategy adopts the Medowie Strategy as a town with the potential to yield 2,704 residential dwellings over the next 20 to 25 years.

Medowie Strategy

The Medowie Strategy was adopted by Council in March 2009 and provides a framework for considering rezoning requests in the area. The subject site is identified as the South Street Neighbourhood Structure Plan within the Medowie Strategy.

The exhibited Planning Proposal was generally consistent with this Structure Plan by proposing rural residential, residential, public recreation and commercial zones. The revised Planning Proposal (**ATTACHMENT 1**) seeks to amend the proposed commercial and recreation zoning with residential zoning.

Revised Planning Proposal

The details of the revised planning proposal (**ATTACHMENT 1**) are:

Subject land:	Part of Lots 412 and 413 in DP 1063902
Address:	2 Kingfisher Close and 507 Medowie Rd, Medowie
Current Zoning:	1(c1) and 1(c2) Rural Small Holdings
Current Minimum Lot Size:	20ha and 2ha
Proposed Zoning:	2(a) Residential and 1(c5) Rural Small Holdings
Proposed Minimum Lot Size:	500m ² and 2,000m ²
Subject Site Area:	10.2ha

Commercial Land

The proposed 6,600sqm of commercial land will be replaced with a residential zoning. This is given that this commercial land has the potential to undermine the role of the town centre. This commercial component is considered to be a remnant of the 2008 planning proposal that also included the Pacific Dunes site. The proponent has agreed with this approach.

The Port Stephens Commercial and Industrial Lands Study 2009 estimated a floor space demand of 9,434sqm in 2031 for the Medowie Town Centre. The proposed 6,600sqm at this South Street Neighbourhood Centre could potentially undermine the role of the town centre and therefore would demonstrate inconsistencies with the Draft State Environmental Planning Policy (Competition) 2010.

The commercial needs of future South Street Neighbourhood residents will be provided by the Medowie Town Centre and the permissibility of neighbourhood shops, child care centres and health consulting rooms within the proposed R2 Low Density Residential zone.

Public Recreation

The proposed 2,100sqm of public recreation zoning will be replaced with residential zoning. The 2,100sqm for recreation purposes was part of the original planning proposal submitted in conjunction with Pacific Dunes in 2008.

After further internal consultation it is understood that Council has no strategic intention for this space. It's positioning on the edge of the subdivision is not reflective of sound open space planning principles, such as centrality and passive surveillance.

Road Network

The Medowie Strategy includes an adopted street hierarchy. The role of the street hierarchy is to inform road layouts to ensure efficient and safe traffic movements. The upcoming Medowie Strategy Review will take into consideration issues raised during the public exhibition period regarding this street hierarchy, such as the proposed connection to Kingfisher Close.

The Roads and Maritime Services require a site specific Traffic Impact Assessment as part of a future Development Application. This would incorporate the identified need

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

for four leg dual-lane round-a-bout at the intersection of Medowie Road and South Street for primary access to the subject site.

Medowie Strategy Review

Since the adoption of the Medowie Strategy in 2009 a number of issues have been identified that have the potential to impact on the delivery of the structure plan. These issues have related to fragmented land ownership, flood/drainage, vegetation, traffic and amendments under the Draft Port Stephens Local Environmental Plan 2013.

At its 27 August 2013 meeting, Council resolved to form a consultative committee to assist in the review of the Medowie Strategy. The proposed changes to the revised planning proposal and submissions made during the public exhibition period will assist in this proposed review of the Medowie Strategy.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that commercial land will undermine the role of the Medowie Town Centre	Medium	Remove the commercial zoning and allow the market to determine the location of neighbourhood shops.	Yes
There is a risk that connectivity is lost by a road connection not being provided at Kingfisher Close.	Low	Assess the need for a connection to Kingfisher Close as part of the current Medowie Strategy Review	Yes
There is a risk that excess public recreation space is provided resulting in ongoing maintenance costs.	Low	Remove the exhibited public open space from the planning proposal.	Yes.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Flora and Fauna

The site is identified in the Watagan to Stock Green Corridor under the Lower Hunter Regional Strategy, which was confirmed by the Office of Environment and Heritage. A Seven Part Test on Threatened Flora and Fauna illustrated how the Planning Proposal is restricted to the cleared part of the site used for rural residential purposes and will not have any significant environmental impacts.

The site will maintain adequate buffer distances to the identified coastal wetlands. A Construction Management Plan will be required as part of a future Development Application to reduce impacts on these wetlands during construction.

Compliance with Planning for Bushfire Protection will be achieved at the Development Application stage. The proponent has completed a preliminary bushfire risk assessment. This compliance should ensure the provision of a perimeter road and multiple connections to/from the site.

Flooding and Drainage

The Site is located above the RL 8.1m AHD and compiles with the Medowie Interim Flood and Drainage Strategy.

Hunter Water Corporation has requested that the development demonstrates neutral or beneficial effect on water quality. This could be demonstrated at the time of a future Development Application. This approach by Hunter Water to require neutral or beneficial effect on water quality should be considered as part of the Medowie Strategy Review.

CONSULTATION

The Planning Proposal was exhibited for 28 days. A total of nine submissions were received, six from State Government Agencies and three from the community.

The revised planning proposal has addressed concerns raised through these submissions by seeking to forward those Medowie Strategy matters to the Medowie Consultative Panel of the Medowie Strategy Review. Furthermore, matters relating to built-form, such as street hierarchy and bushfire will be addressed through a future Development Application. A summary of these submissions and a planning response has been provided in a table (**ATTACHMENT 2**).

Any future Development Application should address those matters raised by State Government Agencies during the public exhibition period.

OPTIONS

- 1) Support the attached planning proposal and forward to the Department of Planning & Infrastructure requesting a revised Gateway Determination;
- 2) Council resolves to not support the planning proposal and notifies the proponent and Department that the matter should not proceed. This option has the potential to adversely impact on the supply of housing within Port Stephens.

ATTACHMENTS – All listed below are provided under separate cover.

- 1) Planning Proposal – 10 December 2013;
- 2) Summary of Public Exhibition Submissions.

COUNCILLORS ROOM

- 1) Port Stephens Local Environmental Plan 2000;
- 2) Draft Port Stephens Local Environmental Plan 2013;
- 3) Lower Hunter Regional Strategy;
- 4) Port Stephens Planning Strategy;
- 5) Medowie Strategy.

TABLED DOCUMENTS

Nil.

ITEM NO. 7**FILE NO: T18-2013****TENDER FOR SUPPLY OF LINEN FOR BEACHSIDE HOLIDAY PARKS**

REPORT OF: CARMEL FOSTER – PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Reject the tender for the supply of linen submitted;
 - 2) In accordance with Clause 178 (3) (b) of the Local Government (General) Regulations 2005, call fresh tenders for linen services.
-

**ORDINARY COUNCIL MEETING – 10 DECEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor John Nell Councillor Peter Kafer
	That the recommendation be adopted.

MOTION

370	Mayor Bruce MacKenzie Councillor Steve Tucker
	It was resolved that Council: <ol style="list-style-type: none">1) Reject the tender for the supply of linen submitted;2) In accordance with Clause 178 (3) (b) of the Local Government (General) Regulations 2005, call fresh tenders for linen services.

BACKGROUND

The purpose of this report is ensure Beachside Holiday Parks has access to best value services for the supply of linen to the four Holiday Parks. The holiday parks rely on the supply of cost effective services to ensure the contribution to Council from non-rate revenue is optimised.

As part of Council's normal tender process advertisements were placed in the Newcastle Herald on 22 September 2013 and Sydney Morning Herald on 24 September 2013 inviting prospective suppliers to submit a tender by 15 October 2013. Council received only one tender and therefore it is not possible to complete a market comparison and confirm that this tender represents value for the business. It is

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

preferable for a second call for tender submissions be undertaken to ensure an appropriate market assessment can be completed.

FINANCIAL/RESOURCE IMPLICATIONS

The cost of this service is directly related to Holiday Park cabin service frequency which is driven by occupancy, number of guests and the length of stay. The higher the demand the more linen is used which in turn drives up the expense for this service. The expense is more than offset by the income derived from selling the accommodation.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	150,000	The cost is offset by revenue.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to comply with the Local Government Act 1993 and the associated Regulations. The recommendation is to reject all tenders and call for fresh tenders, in accordance with Clause 178 (3) (b) of the Local Government (General) Regulations 2005. This will allow the current tender process to be finalised and Council staff to commence calling for fresh tenders.

Accepting the current tender submission without having an adequate market comparison provides a risk that the cost may not be competitive and therefore should be retested to provide some level of scrutiny.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that no additional submissions will be received.	Low	Follow the tender process and ensure that linen service providers are advised of the invitation to tender.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The report has no sustainability implications.

CONSULTATION

- 1) Procurement & Contracts staff;
- 2) Corporate Services Group Manager;
- 3) Commercial Business Manager;
- 4) Business Support Coordinator;
- 5) Holiday Park Managers.

OPTIONS

Nil.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 8

FILE NO: PSC2012-01622

**NSW DEPARTMENT OF PREMIER AND CABINET, LOCAL
INFRASTRUCTURE RENEWAL SCHEME****REPORT OF: JOHN MARETICH – CIVIL ASSETS SECTION MANAGER**
GROUP: FACILITIES AND SERVICES**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the Local Infrastructure Renewal Scheme interest subsidy of 3% against a \$2Million loan, as offered by the Department of Local Government to Port Stephens Council, for an accelerated road repair program.

ORDINARY COUNCIL MEETING – 10 DECEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Morello Councillor John Nell
	That the recommendation be adopted.

MOTION

371	Mayor Bruce MacKenzie Councillor Steve Tucker
	It was resolved that Council endorse the Local Infrastructure Renewal Scheme interest subsidy of 3% against a \$2Million loan, as offered by the Department of Local Government to Port Stephens Council, for an accelerated road repair program.

BACKGROUND

The purpose of this report is to gain acceptance of the Local Infrastructure Renewal Scheme Round 2. This is an interest subsidy funding that Council has been offered through the NSW Department of Premier and Cabinet. Council's application requested that the 3% interest subsidy be used against a \$2Million loan for an accelerated road repair program. It is proposed that \$1Million would be allocated to road reseals and \$1Million be allocated to road rehabilitation programs. The roads to benefit from this funding will be accelerated projects from the following years works program.

This subsidy aims to provide an incentive for Councils to make better use of borrowed money to fast-track investment in infrastructure backlogs. Council's Plan Strategic Direction, Section 16.1.1 – "Reduce the infrastructure backlog on all Council Assets", sets the funding principals for asset renewal. Councils current budget falls short of the required funds required to sustainably maintain our asset network. This loan with interest subsidy will provide a small portion of the required funds needed to prolonging the life of road assets.

FINANCIAL/RESOURCE IMPLICATIONS

Council's Asset Management plan and good road maintenance practice requires resealing of 10% of the network each year, that is we should reseal every road every 10 years so sealed surface does not exceed its design life. Once this seal exceeds its design life it allows rainwater and moisture into the road pavement resulting in road pavement failure which can only be repaired through heavy patching or rehabilitation works. Councils existing recurrent budget for reseals is only \$600,000 which is approximately 1.5% of the network. This is 8.5% short of the above mentioned 10% target. With the additional \$1 Million injected into the reseal program last year through the first round of Local Infrastructure Renewal Scheme, Council was able to achieve 7.63% of the network. This is still short of the above mentioned 10% target, but a substantial increase from the typical annual program. It is proposed Round 2 of the Local Infrastructure Renewal Scheme will produce a similar percentage around the 7% of the network.

Additional to reseals, to sustain our road network our Asset Management plan and good road maintenance practice requires that 3.3% of all the roads are rehabilitated each year, that is, we rehabilitate each road every 30 years. Last year with the available Council funding of \$1.5 Million we were only able to rehabilitate 0.68% of the total network. This annual shortfall in roadworks will continually increase our road asset backlog. However the \$1 Million injection into the road rehabilitation program from the Local Infrastructure Renewal Scheme loan subsidy, will reduce the backlog increase for this year and rehabilitate approximately 1.2% of the road network.

The savings that are on offer to Council through this 3% interest subsidy on \$2 Million over 10 years is \$334,571. There are also additional savings in undertaking the reseal/rehabilitation works now rather than in the future based on rising labour and material costs. Industry literature shows that for every dollar spent on a road pavement early on in the road pavement life, can result in a saving of up to \$40 over the life of the road pavement.

Repayments for this loan will be funded from the Council operating surplus that is projected in the long term financial plan.

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	334,571	Interest savings over 10 years subsidised through this scheme.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	Yes	2Million	\$2Million loan to be repaid from predicted surplus.

LEGAL, POLICY AND RISK IMPLICATIONS

All legal, policy and risk implications are detailed below:

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Councils road asset continues to be under maintained if this funding is not approved leading to continuing to increase the financial backlog each year.	Medium	Adopt recommendation to use the Local Infrastructure Renewal Scheme to fund the increase in the road reseal and rehabilitation programs.	Yes
There is a Financial Risk that repayments can not be made leading to Council defaulting on loan.	Low	Repayments can be funded from Councils operating surplus.	Yes
There is a risk that the Interest Rates will rise leading to the increased interest that would need to be paid as part of the loan.	Low	Taking into account the LIRS subsidy, the interest variation on a \$2 million loan is a small figure and can be accommodated within the existing Council surplus.	Yes
There is a risk that the contractors required to do these works are not professional leading to poor workmanship and poor surface quality.	Low	Contractor from Preferred list	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications.

Increasing the road rehabilitation and reseal program will increase the size of the road network that is considered “smooth” by the road user. Smooth roads increases road users experience such as feeling safe while driving and “ride” satisfaction. Smooth roads also reduce road users vehicle costs such as fuel consumption and wear and tear that typically increase with “rough” roads. Wear and tear typically include tyre and suspension damage, mechanical damage, and well as undercarriage and paint damage.

It should be noted that the safety benefits gained by increasing driver ride satisfaction may be reduced with a small percentage of drivers increasing their driving speed on a smooth road.

CONSULTATION

Consultation was undertaken with Council's financial institution in relation to repayment modelling should this loan and subsidy be approved.

NSW Governments Treasury Corporation have assessed Council's financial status and granted approval for the loan subsidy.

OPTIONS

Nil.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 9**FILE NO: PSC2013-00734****FAMILY DAY CARE PARENT LEVY FEE INCREASE**

REPORT OF: STEVEN BERNASCONI – COMMUNITY SERVICES SECTION MANAGER
GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Place on public exhibition for a period of 28 days proposed changes to the Family Day Care Parent Levy from \$0.80 per hour per child to \$0.89 per hour per child and if no submissions are received during the exhibition period the new fee is to be effective from 13 January 2014.
-

ORDINARY COUNCIL MEETING – 10 DECEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION

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

MOTION

372	Mayor Bruce MacKenzie Councillor Steve Tucker
	It was resolved that Council place on public exhibition for a period of 28 days proposed changes to the Family Day Care Parent Levy from \$0.80 per hour per child to \$0.89 per hour per child and if no submissions are received during the exhibition period the new fee is to be effective from 13 January 2014.

BACKGROUND

The purpose of this report is to recommend the public exhibition of an amended fee for the Family Day Care Parent Levy. The proposed fee change is from \$0.80 per hour per child to \$0.89 per hour per child.

Family Day Care is linked to the Community Strategic Plan through the Delivery program 4.1.1.5 – "Plan and provide access to services for children through the Family Day Care Unit."

The Family Day Care Unit operates under the "Education and Care Services National Regulations". From 1 January 2014 this regulation reduces the number of pre-school

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aged children who may be cared for by each home based Educator. The existing maximum of five (5) children will be lowered to four (4).

This regulation change has the potential to reduce the hours of care provided and thereby reduce the income derived by the Family Day Care Unit in the form of the Parent Levy by between 12% and up to 20%. The recommended increase in the Parent Levy is intended to maintain the income of the Family Day Care Unit at the existing budgeted level for 2013-14 and thereby maintain the budgeted ratepayer subsidy to Family Day Care.

FINANCIAL/RESOURCE IMPLICATIONS

The fees and charges received for the Family Day Care Unit cover the costs of service operation and a portion of Corporate Overheads.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	17,200	The amount income from Parent Levy that will be recovered should the recommendation be adopted and the fee commenced. This amount is also the potential loss should the increase in the fee not be adopted.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Adopting the recommendation complies with the requirements of the Local Government Act 1993 relating to the setting of fees and charges.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that failure to increase the fee will result in an increase ratepayer subsidy to Family Day Care in 2013-14 resulting in an unsustainable business	Medium	Adopt the recommendation.	Yes

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model.			
There is a risk that families may seek alternative care in response to the fee increase which may result in loss of business sustainability.	Low	Adopt the recommendation because benchmarking with neighbouring services indicates that the recommended Parent Levy is market competitive.	Yes
There is a risk that increasing the Parent Levy may be seen as unreasonable by working families resulting in reputation damage.	Low	Adopt the recommendation in the knowledge that Educators and families of Family Day Care are well aware of the Regulatory changes on 1 January 2014 and the likely cost increases to provide quality family day care as a result of these changes.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommendation will provide the opportunity for the public to consider the proposed fee increase and its implications for ensuring the financial sustainability of Family Day Care in the region.

Adopting the recommendation will also ensure that any ratepayer subsidy for Family Day Care is reduced to agreed levels thus freeing up ratepayer funds for other services.

An increase in Family Day Care Parent Levy from will result in families paying more for their child care. This increase will range from \$0.63 per week per child for families using seven hours of care to a maximum of \$4.50 per week per child for families using 50 hours of care. The Commonwealth Government Department of Education provides a subsidy to families which will reduce the full impact of the recommended increase.

There are no environmental implications of adopting the recommendation.

CONSULTATION

- 1) Extensive consultation has taken place with Family Day Care Educators in the form of surveys in June and October 2013 to assess the likely impact of the regulatory change on the hours of care they will be able to deliver from 1 January 2014.
- 2) Educators and parents have been informed throughout 2013 through emails and at Family Day Care Scheme meetings that a fee increase would be recommended if the regulation was implemented.

OPTIONS

- 1) Accept the recommendation;
- 2) Amend the recommendation;
- 3) Reject the recommendation and accept that there will be a greater draw on Port Stephens ratepayer funds to offset the cost of providing Family Day Care services.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 10

FILE NO: PSC2011-00109

LEASE OF COMMUNITY HALL (PART LOT 1, DP 745784) 1A KANGAROO STREET RAYMOND TERRACE (FORMER GIRLS GUIDES HALL)

REPORT OF: STEVEN BERNASCONI – COMMUNITY SERVICES SECTION MANAGER
GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Authorise the Mayor and General Manager to sign and affix the Seal of Council to the lease documentation for the initial term and any subsequent term for the community hall at 1a Kangaroo Street Raymond Terrace (Part Lot 1 DP 754754).
-

**ORDINARY COUNCIL MEETING – 10 DECEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Paul Le Mottee Councillor Ken Jordan
	That the recommendation be adopted.

MOTION

373	Mayor Bruce MacKenzie Councillor Steve Tucker
	It was resolved that Council authorise the Mayor and General Manager to sign and affix the Seal of Council to the lease documentation for the initial term and any subsequent term for the community hall at 1a Kangaroo Street Raymond Terrace (Part Lot 1 DP 754754).

BACKGROUND

The purpose of this report is to confirm procedures for the signing and affixing of the Seal of Council to a lease document for the occupation of a community hall (former Girl Guides Hall) at 1a Kangaroo Street Raymond Terrace (Part Lot 1, DP 745784).

The recommendation aligns with the Operational Plan 2013/14 item 8.1.1.3 which stated that Council will "provide areas of Council managed land for community based and commercial leisure operators".

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

Council is the owner of the land which the community hall formerly known as the "Raymond Terrace Girl Guides Hall" is located on. The hall had been not used for some years by the former tenant and in 2013 a process was undertaken to call for expressions of interest to find a suitable new tenant. The result of that process was that the Raymond Terrace Neighbourhood Centre was successful in obtaining the lease for the site.

The Raymond Terrace Neighbourhood Centre was in need of a property to operate from since the tenancy arrangements they had with a private land owner expired during the year. In order to assist this group with this situation a short term licence agreement has been entered into with the Raymond Terrace Neighbourhood Centre which has enabled the tenant to commence occupation of the site until the lease documentation process is completed. The tenant commenced occupation of the site in October 2013. They have subsequently received corporate sponsorship for the extension of the building to include a roofed deck area. Associated works have since commenced under an approved Development Application / Construction Certificate.

FINANCIAL/RESOURCE IMPLICATIONS

The provisions of the lease ensure that there are no changes to the terms and obligations of the two parties and thus no financial impacts on Council from variations mid term.

In having a valid and enforceable lease Council is protected and Council is also able to reinvest proceeds from the agreement to the provision of asset management of the building that may otherwise require funding from general revenue.

The rental amount payable for the site was calculated using the Community Leasing Policy process and resulted in an annual figure of \$3,300 indexed to rise annually. The tenant has agreed to this amount.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	3,300	Annual rent income from the lease agreement.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

In accordance with the provisions of the Conveyancing Act, leases in excess of three years total duration, including the option period, are to be registered upon the title of the land to which they apply. Accordingly, if the lease is to be registered the common seal must be affixed upon signing under Clause 400, Local Government (General Regulation) 2005.

The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.

Councils Property Services Section is preparing the lease documentation in consultation with Harris Wheeler Lawyers. There are no legal impediments for proceeding with a lease of this site.

The recommendations comply with the requirements of Council's Community Leasing Policy.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that without a suitable tenant and regular occupancy the facility may become idle and potentially become a haven for anti social behaviour, illegal activity and property damage.	High	Adopt the recommendation	Yes
There is a risk that without an enforceable lease in place Council may not be able to ensure compliant use of a community owner facility resulting in safety, financial and reputation damage.	Medium	Adopt the recommendation	Yes
There is a risk that without an enforceable lease in place Council cannot collect rental income for the site resulting in greater draw on general revenue for	Medium	Adopt the recommendation	Yes

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013
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the maintenance of the facility.			
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SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommendation ensures that a local community based not for profit organisation is able to continue to operate from a safe, convenient and affordable facility.

There are no environmental or economic implications from adopting the recommendation.

CONSULTATION

Regular discussions have been held with the tenant during the year with an exchange of letters being signed by the tenant on 28 August 2013 confirming the intention to proceed with the short term licence and five year lease.

Internally consultation has been held with the Contracts and Services Coordinator, Property Services Section and Social Planning Team.

OPTIONS

Nil.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 11

FILE NO: PSC2010-03194

AUDIT COMMITTEE CHARTER

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Nominate two (2) Councillors as members of the Audit Committee;
 - 2) Endorse the Audit Committee Charter.
-

**ORDINARY COUNCIL MEETING – 10 DECEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Mayor Bruce MacKenzie Councillor Paul Le Mottee
	That Council: <ol style="list-style-type: none">1) Nominate Crs Ken Jordan and John Morello as members of the Audit Committee;2) Endorse the Audit Committee Charter.

MOTION

374	Mayor Bruce MacKenzie Councillor Steve Tucker
	It was resolved that Council: <ol style="list-style-type: none">1) Nominate Crs Ken Jordan and John Morello as members of the Audit Committee;2) Endorse the Audit Committee Charter.

BACKGROUND

The purpose of this report is to provide the reviewed Audit Committee Charter to Council for adoption.

The Audit Committee (Committee) reviews its Charter annually and reports the amendments to Council. The Committee are not seeking to amend the Charter this year.

The Committee sought clarification at its last meeting with respect to the composition of the Committee. It was noted by the Committee that Council at its

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

meeting on 24 September 2013, appointed a third Councillor to the Committee, being Cr Chris Doohan.

In line with the Division of Local Government Guidelines, the number of Councillors on the Committee should not be greater than that of the number of independent committee members. The Committee currently comprises two (2) independent members and three (3) Councillors (Crs Jordan, Kafer and Doohan). Council is requested to nominate two (2) Councillors as members of the Audit Committee.

FINANCIAL/RESOURCE IMPLICATIONS

There are no direct costs associated with the adoption of the Audit Committee Charter.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council are not complying with the Division of Local Government Guidelines with three (3) Councillors appointed to the Committee	High	Adopt the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Audit Committee Charter provides the community with an understanding of the framework in which the Committee operates. It provides the community with the confidence that Council's process and procedures are being examined independent to Council in a legal framework.

CONSULTATION

- 1) Audit Committee.

OPTIONS

- 1) Adopt the recommendation.

ATTACHMENTS

- 1) Audit Committee Charter.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

AUDIT COMMITTEE CHARTER

Adopted by Council on 9 February 2010
(Amended by Council on 19 October 2010)
(Amended by Council on 13 September 2011)
(Amended by Council on 20 December 2011)
(Amended by Council on 9 October 2012)


C·O·U·N·C·I·L

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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 355C 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); and
- 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 (excluding the Mayor) and two external independent members.

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

3.1 ELECTED MEMBER OF COUNCIL

The elected member of Council (excluding 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 the 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.
- 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.
- 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

- Note the external auditor's scope and approach, including any reliance on internal auditor activity.
- 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; and
- 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; and
- the approved Internal Audit Plan of work for the previous financial year showing the current status of each audit.

6. 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: 9 February 2010
Amended:	Port Stephens Council Meeting	Date: 19 October 2010
Reviewed:	Audit Committee meeting	Date: 4 August 2011
Amended:	Port Stephens Council Meeting	Date: 13 September 2011
Amended:	Port Stephens Council Meeting	Date: 20 December 2011
Amended:	Port Stephens Council Meeting	Date: 9 October 2012

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

ITEM NO. 12

FILE NO: 1190-001

REQUEST FOR FINANCIAL ASSISTANCE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-
 - a) Rapid Response – Cr Steve Tucker – Central Ward Funds – Tanilba Bay Public School – Donation towards Annual Presentation Day - \$200;
 - b) Rapid Response – Cr Sally Dover – East Ward Funds – Rotary Club of Nelson Bay – Donation towards Christmas Party for needy children 21 Dec 2013 - \$500;
 - c) Rapid Response – Cr John Morello – East Ward Funds – Corlette Hall Parks & Reserves – Donation towards installation of tap/bubbler adjacent to BBQ at Roy Wood Reserve - \$500;
 - d) Rapid Response – Mayor Bruce Mackenzie – Mayor Funds – Alexander Park Dressage Club – Donation towards the riding for the disabled - \$300;
 - e) Rapid Response – Cr Ken Jordan – West Ward Funds – Hinton RLFC – Donation towards providing floor covering for the grand stand floor - \$471.98.
-

**ORDINARY COUNCIL MEETING – 10 DECEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Sally Dover Councillor Ken Jordan
	That the recommendation be adopted.

MOTION

375	Mayor Bruce MacKenzie Councillor Steve Tucker
	It was resolved that Council: <ol style="list-style-type: none">1) Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-<ol style="list-style-type: none">a) Rapid Response – Cr Steve Tucker – Central Ward Funds –

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

	<p>Tanilba Bay Public School – Donation towards Annual Presentation Day - \$200;</p> <p>b) Rapid Response – Cr Sally Dover – East Ward Funds – Rotary Club of Nelson Bay – Donation towards Christmas Party for needy children 21 Dec 2013 - \$500;</p> <p>c) Rapid Response – Cr John Morello – East Ward Funds – Corlette Hall Parks & Reserves – Donation towards installation of tap/bubbler adjacent to BBQ at Roy Wood Reserve - \$500;</p> <p>d) Rapid Response – Mayor Bruce Mackenzie – Mayor Funds – Alexander Park Dressage Club – Donation towards the riding for the disabled - \$300.</p> <p>e) Rapid Response – Cr Ken Jordan – West Ward Funds – Hinton RLFC – Donation towards providing floor covering for the grand stand floor - \$471.98.</p>
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The purpose of this report is to determine and, where required, authorise payment of financial assistance to recipients judged by Councillors as deserving of public funding. The Financial Assistance Policy gives Councillors a wide discretion to either grant or to refuse any requests.

The new Financial Assistance Policy provides the community and Councillors with a number of options when seeking financial assistance from Council. Those options being:

1. Mayoral Funds
2. Rapid Response
3. Community Financial Assistance Grants – (bi-annually)
4. Community Capacity Building

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act. This would mean that the financial assistance would need to be included in the Management Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

The requests for financial assistance are shown below is provide through Mayoral Funds, Rapid Response or Community Capacity Building:-

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013**MAYORAL FUND – Bruce MacKenzie**

ALEXANDER PARK DRESSAGE CLUB	DONATION TOWARDS THE RIDING FOR THE DISABLED	\$300
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CENTRAL WARD – Councillors Dingle, Doohan & Tucker

TANILBA BAY PUBLIC SCHOOL	DONATION TOWARDS ANNUAL PRESENTATION DAY.	\$200
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WEST WARD – Councillors Jordan, LeMottee, Kafer

HINTON RLFC	DONATION TOWARDS PROVIDING FLOOR COVERING FOR THE GRAND STAND FLOOR	\$471.98
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EAST WARD – Councillors Dover, Morello & Nell

ROTARY CLUB OF NELSON BAY	DONATION TOWARDS CHRISTMAS PARTY FOR NEEDY CHILDREN 21 DEC 2013.	\$500
CORLETTE HALL PARKS & RESERVES	DONATION TOWARDS INSTALLATION OF TAP/BUBBLES ADJACENT TO BBQ AT ROY WOOD RESERVE	\$500

FINANCIAL/RESOURCE IMPLICATIONS

Council Ward, Minor Works and Mayoral Funds are the funding source for all financial assistance.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	1971.98	Mayoral Funds \$300 and Ward funds \$1671.98
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

To qualify for assistance under Section 356(1) of the Local Government Act, 1993, the purpose must assist the Council in the exercise of its functions. Functions under the Act include the provision of community, culture, health, sport and recreation services and facilities.

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function which it, the Council, would otherwise undertake;

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

- b) the funding will directly benefit the community of Port Stephens;
- c) applicants do not act for private gain.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council may set a precedent when allocating funds to the community and an expectation that funds will always be available.	Low	Adopt the recommendation	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

- 1) Mayor;
- 2) Councillors;
- 3) Port Stephens Community.

OPTIONS

- 1) Adopt the recommendation;
- 2) Vary the dollar amount before granting each or any request;
- 3) Decline to fund all the requests.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 13

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 10 December 2013.

No:	Report Title
1	ANNUAL FINANCIAL STATEMENTS
2	SISTER CITIES CONFERENCE 2013
3	PETITION FROM RESIDENTS OF MEREDITH CLOSE, RAYMOND TERRACE HAZARDOUS CONDITION OF VACANT LAND

ORDINARY COUNCIL MEETING –10 DECEMBER 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Steve Tucker Councillor John Morello
	That the recommendation be adopted.

365	Councillor Steve Tucker Councillor John Morello
	It was resolved that Council move out Committee of the Whole.

MOTION

376	Mayor Bruce MacKenzie Councillor Steve Tucker
	It was resolved that Council receives and notes the Information Papers listed below being presented to Council on 10 December 2013.

INFORMATION PAPERS



INFORMATION ITEM NO. 1

ANNUAL FINANCIAL STATEMENTS

REPORT OF: TIM HAZELL – FINANCIAL SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES GROUP

FILE: PSC2007-0151

BACKGROUND

The purpose of this report is to advise Council that in accordance with Section 420 of the Local Government Act, public notice was given on Council's 2012-2013 audited financial reports inviting submissions. Submissions closed on Wednesday 4 December 2013, being seven (7) days after the Council meeting where the annual financial statements were adopted.

There were no submissions received from the public in relation to the 2012-2013 Annual Financial Statements.

ATTACHMENTS

Nil.

INFORMATION ITEM NO. 2

SISTER CITIES CONFERENCE 2013

REPORT OF: MAYOR BRUCE MACKENZIE
GROUP: MAYOR'S OFFICE

FILE: PSC2010-05523

BACKGROUND

The purpose of this report is to provide Council with a brief overview of the Sister Cities Conference 2013, I attended as Mayor of Port Stephens. I was accompanied by a youth delegate from the area, Miss Patricia Martin and the Chairman of the Port Stephens Sister Cities Committee, Mr Nigel Dique.

The theme of the conference was "Uncover Your Potential". The conference was held on 10-13 November 2013 at Broken Hill.

The conference was attended by approximately 80 attendees which includes 16 who attended the Youth Leadership Conference which was held in tandem at a separate location.

There was a strong emphasis on shared values and the value of sharing with Sister Cities being a real human "connection". The Sister Cities relationships are many and varied, from Australian domestic connections to international relationships.

The topics covered were:

- Strategic Planning;
- International Forum;
- Social Media;
- Fundraising and corporate partnerships; and
- Grants and goodwill.

A number of case studies and workshops were also conducted.

The Sister Cities Australia Award was won by Bunbury, Western Australia. Bunbury will also be the host of the 2014 National Conference.

This conference is a showcase of the importance of international relationships and the benefits to Australia.

ATTACHMENTS

Nil.

INFORMATION ITEM NO. 3

PETITION FROM RESIDENTS OF MEREDITH CLOSE RAYMOND TERRACE
HAZARDOUS CONDITION OF VACANT LAND

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

FILE: PSC2012-00746

BACKGROUND

The purpose of this report is to advise Councillors that a Petition has been received from the residents of Meredith Crescent Raymond Terrace for Port Stephens Council to give urgent consideration to the hazardous condition of vacant land directly adjoining the rear of property and dwellings along Meredith Crescent.

The residents request that Port Stephens Council investigate their concerns and use its powers to have appropriate action taken to alleviate the hazardous situation.

"We the undersigned residents of Meredith Crescent Raymond Terrace petition Port Stephens Council to give urgent consideration to the hazardous condition of vacant land directly adjoining the rear of property and dwellings along Meredith Crescent.

For some time now residents have been concerned at the lack of attention and maintenance given to this vacant land which has become over-grown with noxious lantana bush and heavy undergrowth creating a dangerous fire and health hazard.

The parcel of land belong to Port Stephens Council has become a dumping ground for refuse and other matter such as stolen, dumped and burned out motor vehicles. We strongly request as a matter of urgency that prompt action be taken to remove accumulated rubbish and garbage from this council owned land and future access be prevented. This will result in a safer, healthier and visually improved environment for all concerned as well as helping to reduce the risk and intensity of any fires that may occur.

The parcel of land previously belonging to a sandmining company and now owned by a private Sydney owner has also been neglected and allowed to become overgrown with noxious weeds and large pine trees. These pine trees were introduced to the area in top soil used by the former owners some thirty years ago to reduce a dust nuisance created by their operation on the land. Over the years these trees have grown to a size and density that now present a potentially catastrophic fire hazard. Because of their proximity to the rear of properties in Meredith Crescent, in weather conditions similar to those occurring during the most recent fires close to this area there is a serious risk

that houses not only Meredith Crescent but further into the urban area could be damaged or destroyed. The situation is not unlike the one that resulted in a huge loss of homes by fire in Canberra several years ago.

We the undersigned earnestly request that Port Stephens Council investigate our concerns and use its powers to have appropriate action taken to alleviate the hazardous situation."

The petition contains 50 signatures

ATTACHMENTS

- 1) Petition - Vacant Land Improvement;
- 2) Locality Map.

ATTACHMENT 1

Vacant Land Improvement

27th November 2013

The General Manager

Port Stephens Council

Dear Sir,

We the undersigned residents of Meredith Crescent Raymond Terrace petition Port Stephens Council to give urgent consideration to the hazardous condition of vacant land directly adjoining the rear of property and dwellings along Meredith Crescent.

For some time now residents have been concerned at the lack of attention and maintenance given to this vacant land which has become over-grown with noxious lantana bush and heavy undergrowth creating a dangerous fire and health hazard.

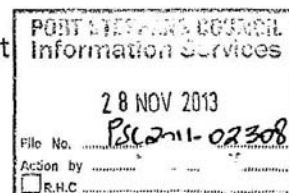
The parcel of land belonging to Port Stephens Council has become a dumping ground for refuse and other matter such as stolen, dumped and burned out motor vehicles. We strongly request as a matter of urgency that prompt action be taken to remove accumulated rubbish and garbage from this council owned land and future access be prevented. This will result in a safer, healthier and visually improved environment for all concerned as well as helping to reduce the risk and intensity of any fires that may occur.

The parcel of land previously belonging to a sandmining company and now owned by a private Sydney owner has also been neglected and allowed to become overgrown with noxious weeds and large pine trees. These pine trees were introduced to the area in top soil used by the former owners some thirty years ago to reduce a dust nuisance created by their operations on the land. Over the years these trees have grown to a size and density that now present a potentially catastrophic fire hazard. Because of their proximity to the rear of properties in Meredith Crescent, in weather conditions similar to those occurring during the most recent fires close to this area there is a serious risk that houses not only in Meredith Crescent but further into the urban area could be damaged or destroyed. The situation is not unlike the one that resulted in huge loss of homes by fire in Canberra several years ago.

We the undersigned earnestly request that Port Stephens Council investigate our concerns and use its powers to have appropriate action taken to alleviate the hazardous situation.

Resident Contact:

Raymond Terrace 2324



ATTACHMENT 2



Note
Land marked in yellow = Council owned
Not marked in yellow = private property

GENERAL MANAGER'S REPORT

**PETER GESLING
GENERAL MANAGER**

ITEM NO. 1

FILE NO: PSC2013-03007

REQUESTS FOR ASSISTANCE – LEGAL COSTS – MID-WESTERN REGIONAL COUNCIL

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolve to contribute \$5,270.54 to assist Mid-Western Regional Council with legal costs it incurred in a recent Land and Environment Court appeal regarding categorisation of land as mining for rating purposes.

**ORDINARY COUNCIL MEETING –10 DECEMBER 2013
MOTION**

377	Councillor Steve Tucker Councillor John Nell
	It was resolved that Council contribute \$5,270.54 to assist Mid-Western Regional Council with legal costs it incurred in a recent Land and Environment Court appeal regarding categorisation of land as mining for rating purposes.

BACKGROUND

The purpose of this report is to seek Councillor support for a financial contribution to Mid-Western Regional Council (**MRC**) to assist with off-setting costs it incurred in a recent appeal by Peabody Pastoral Holdings Pty Limited in the Land and Environment Court (**LEC**) regarding categorisation of land as mining for rating purposes.

Council has received the request for contribution from Local Government NSW (**LG NSW**) on behalf of MRC. Council's contribution has been calculated as \$5,270.54 in accordance with the usual formula used by LG NSW to calculate contributions.

In essence, the LEC confirmed MRC had erred in law in re-categorising residential or farmland rateable land as "mining". The Council's triggers to consider a re-categorisation of a piece of land as mining included the grant of an exploration licence, mining lease and development consent.

The Court held it was unreasonable for the Council to hold the following alone as sufficient to constitute a change in the use of land to re-categorise rates to mining:

- noise affectation of parcels of land by a mine
- change in ownership of noise-affected land purchased by the miner
- the purpose of the miner's purchase of the noise affected land being under a development consent land acquisition obligation, and
- the miner holding land for a mining purpose, where it was not used for a mining purpose

Peabody's appeal was upheld and MRC was ordered to pay the Peabody's costs.

Council's Requests for Assistance – Legal Costs policy states that requests from LG NSW for financial assistance for legal costs incurred by other Councils will only be granted if the issues arising from and/or the outcomes of legal proceedings involving those Councils directly benefit the Port Stephens Local Government area. Although the matter is not of direct relevance to this Council as there are no coal or metalliferous mines in the Port Stephens local government area, LG NSW has agreed this matter is of great importance to all councils in that mining (including coal seam gas mining) is a major issue for local government.

On this basis, and given MRC is a fellow member of Hunter Councils, it is recommended that Council agree to provide assistance by payment of the amount calculated as this Council's contribution.

FINANCIAL/RESOURCE IMPLICATIONS

Council has from time to time provided assistance to other Councils to help defray the cost of legal proceedings the result of which may impact local government across NSW. Council has called on such assistance in the past by way of seeking support from LG NSW for contributions from other Councils.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	5,270.54	To be paid from the Legal Services budget
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Although this particular matter is not of direct relevance to this Council, categorisation of mining rating may be an issue for Council in future. The matter has provided clarification for local government in NSW in relation to such categorisation.

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that, should Council decline to provide this contribution, it may not receive reciprocal support if needed in future	Medium	Show support by resolving to contribute the amount requested	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Councils need to ensure rates revenue is protected to the full extent possible under relevant legislative provisions. Rating matters pertaining to mining are important to local government in NSW, particularly in view of the possibility of coal seam gas mining in future.

CONSULTATION

- 1) Legal Services Manager;
- 2) Financial Services Section Manager;
- 3) Accounting and Revenue Co-ordinator.

OPTIONS

- 1) Adopt the recommendation;
- 2) Adopt the recommendation as amended;
- 3) Refuse to support the recommendation.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217

FEES FOR COMMUNITY EVENTS

COUNCILLOR: PETER KAFER

THAT COUNCIL:

- 1) Call upon the General Manager to prepare a report to Council for consideration of a category for waiving fees for community and not for profit groups when holding community events on Council land.

BACKGROUND REPORT OF: ROSS SMART – ECONOMIC DEVELOPMENT & COMMUNICATIONS SECTION MANAGER

ORDINARY COUNCIL MEETING –10 DECEMBER 2013 MOTION

378	Councillor Peter Kafer Councillor Steve Tucker It was resolved that Council call upon the General Manager to prepare a report to Council for consideration of a category for waiving fees for community and not for profit groups when holding community events on Council land.
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BACKGROUND

Currently, all events which take place on Council owned or managed land are reviewed and approved by staff from Council's Visitor Information and Events team. Each application is assessed via the new Event Approval Process and relevant fees applied. As Councillors would be aware, staff are unable to waive site hire fees. However significant discussions have taken place over the past year with regard to the best way to license events run by community or not for profit groups and administration fees for 2014/15 have been set specifically to ensure the financial burden on these groups is kept to a minimum. A reduced administration fee of \$55.00 per event will be applied to each event run by community or not for profit groups in 2014/15 (down 63% on 2013/14) in addition to any applicable site hire fees, despite this nominal amount falling some way short of the average cost of the activity in terms of staff time.

The term 'Community and not for profit' can be problematic as it can be applied to a broad cross section of organisations, bodies and individuals. In 2013, this cohort has

MINUTES FOR ORDINARY COUNCIL – 10 DECEMBER 2013

been responsible for 45% of the event applications received by Council. Revenue from these events to date is \$46,998.00, and of course this income is in turn reinvested into assets or the human resource required to maintain them.

The challenge is to find a balance between encouraging and supporting those community events that are worthy of funding support as opposed to those that seek to gain financial advantage from their not for profit or community status at the expense of Council's time and administrative services.

The General Manager presented Council with two (2) Awards received by Council.

- Council won bronze in the NSW Tourism Awards for Tourist and Caravan Parks for Halifax Holiday Park.
- Council was a finalist in the Australian HR Institute Awards for 2013 for Workplace Relations.

There being no further business the meeting closed at 8.34pm.

I certify that pages 1 to 167 of the Ordinary Minutes of Council 10 December 2013 were confirmed by Council at its meeting held on 10 February 2014.

.....
Bruce MacKenzie
MAYOR