

## MINUTES 13 AUGUST 2013



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 13 August 2013, commencing at 5.46pm.

PRESENT: Mayor B MacKenzie; Councillors G. Dingle; C. Doohan; S. Dover; P. Kafer; P. Le Mottee; S. Tucker; General Manager; Corporate Services Group Manager; Facilities and Services Group Manager; Development Services Group Manager and Executive Officer.

207	<b>Councillor Steve Tucker</b> <b>Councillor Sally Dover</b>
	It was resolved that apologies from Cr Ken Jordan, Cr John Morello & Cr John Nell be received and noted.
208	<b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b>
	It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 23 July 2013 be confirmed.
	Cr Paul Le Mottee declared a pecuniary interest in Item 1. The nature of the interest being his company has undertaken survey work for the applicant. Cr Paul Le Mottee declared a pecuniary interest in Item 11. The nature of the interest being the Fees and Charges relate to current clients of his company. Cr Chris Doohan declared a significant non-pecuniary interest in Item 14. The nature of the interest being Cr Doohan is a member of the club

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	and the owner of a property on the estate.
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# COUNCIL REPORTS

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

Cr Sally Dover moved and seconded by Chris Doohan, that Item 3 be dealt with prior to Item 1 in Committee of the Whole.

Council considered the Items in the following order in Open Council – Item 2, 4, 3, 1 and 11. All other items were adopted in a "block" vote.

ITEM NO. 1

FILE NO: 16-2012-380-1

### DEVELOPMENT APPLICATION FOR USE OF STORAGE SHED AT NO. 77 KINDLEBARK DRIVE MEDOWIE

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

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#### RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2012-380-1 for the ongoing use of a storage shed at 77 Kindlebark Drive, Medowie, subject to the conditions contained in **(ATTACHMENT 3)**.
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#### ORDINARY COUNCIL MEETING – 13 AUGUST 2013 MOTION

	<b>Councillor Chris Doohan</b> <b>Councillor Paul Le Mottee</b>
209	It was resolved that Council move into Committee of the Whole.

#### COMMITTEE OF THE WHOLE RECOMMENDATION

Cr Paul Le Mottee left the meeting at 6.08pm prior to Item 1, in Committee of the Whole.

	<b>Councillor Geoff Dingle</b> <b>Councillor Peter Kafer</b>
	<p>That Council reject the Development Application 16-2012-380-1 for the ongoing use of a storage shed at 77 Kindlebark Drive, Medowie, for the following reasons:</p> <ol style="list-style-type: none"><li>1. The impact of rainwater from the subject property onto the neighbouring property; and</li><li>2. The applicant has not provided information required under the</li></ol>

<b>MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013</b>
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Development Control Plan (DCP).
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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: Crs Peter Kafer and Geoff Dingle.

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

	<b>Mayor Bruce MacKenzie</b> <b>Councillor Chris Doohan</b>
	That Council approve Development Application 16-2012-380-1 for the ongoing use of a storage shed at 77 Kindlebark Drive, Medowie, subject to the conditions contained in <b>(ATTACHMENT 3)</b> .

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 Sally Dover, Chris Doohan and Steve Tucker.

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

Cr Paul Le Mottee returned to the meeting at 6.27pm, in Committee of the Whole.

#### **MOTION**

Cr Paul Le Mottee left the meeting at 7.42pm prior to Item 1, in Open Council.

	<b>Councillor Geoff Dingle</b> <b>Councillor Peter Kafer</b>
	That Council reject the Development Application 16-2012-380-1 for the ongoing use of a storage shed at 77 Kindlebark Drive, Medowie, for the following reasons:  <ol style="list-style-type: none"><li>1. The impact of rainwater from the subject property onto the neighbouring property; and</li><li>2. The applicant has not provided information required under the Development Control Plan (DCP).</li></ol>

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

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 and Geoff Dingle.

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

The motion was lost.

### MOTION

211	<b>Mayor Bruce MacKenzie</b> <b>Councillor Chris Doohan</b>
	It was resolved that Council approve Development Application 16-2012-380-1 for the ongoing use of a storage shed at 77 Kindlebark Drive, Medowie, subject to the conditions contained in <b>(ATTACHMENT 3)</b> .

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

Those for the Motion: Crs Bruce MacKenzie, Crs Sally Dover, Chris Doohan and Steve Tucker.

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

### BACKGROUND

The purpose of this report is to present a Development Application (DA) to Council for determination.

Council at the 11 June 2013 meeting resolved that Council defer (item 1) to allow for a site inspection.

The site inspection meeting was scheduled and completed on 11/7/2013. Accordingly it is now appropriate for Council to determine the application.

After the undertaking of the onsite meeting both parties were approached in regards to organising a meeting between the objector and the applicant in the interests of mediation however, an amicable arrangement could not be found and the meeting did not proceed.

Cr Dingle has called the application to Council for the for the following reason;

*"The development fails to meet Council's Development Control Plan. It encroaches the neighbour's property the guttering extending over the neighbours property fence line.*



*The gap between the neighbours fence at 79 Kindlebark Dr and 77 is too small for any form of access to keep clear of litter and potential vermin and ultimately will rot the fence sheeting, this is evidenced by litter build up which has already commenced. The length of the shed precludes use of blowers etc. to remove litter.*

*The overflow from heavy downpours is directed from the shed roof into 79 Kindlebark and creates localised flooding and erosion problems.*

*The conditions applied to the application are inadequate to deal with both access to maintain between the fence and shed and even if guttering is attached to stormwater, drainage overflow will continue to be directed into 79 Kindlebark Dr.*

*Existing carport/ pergola guttering is inadequately supported and maintained, evidence that the applicant will potentially not meet the conditions of consent.*

*Evidence of steps are taken to duplicate this construction at the front of the home at 77 Kindlebark Dr is of serious concern in managing building compliance in Port Stephens."*

The application is for the ongoing use of an existing storage shed at the above mentioned location. As the shed has been constructed without prior development consent and/or construction certificate this application is for the ongoing use only. Development consent and/or a construction certificate for unauthorised building work cannot be granted retrospectively. It should be noted that the unauthorised construction is not a planning consideration or a factor that will influence the development assessment.

From a compliance perspective, it is normal practice for Council to defer compliance action on matters where there is no significant safety or environmental issues and a development application is lodged that will potentially resolve the matter.

With any compliance investigation and determining what are the appropriate steps the NSW Ombudsman's Office and Councils compliance policy recommends considering the following;

- Is the breach of any legislation inconsequential or technical with low scale or minimal outcome on the ground?
- What is the effect or Impact of the Breach? Is there significant public safety, health or environmental issues?
- Would consent have been given regardless if it was sought?
- Rectification via orders or consent conditions - can problems be easily rectified?

When considering the above compliance principles it was the determination of staff that the issues can be resolved and reasonably mitigated via conditions of development consent.

## Issues

The existing storage shed is effectively a continuation of the existing carport to give a combined roofline of approximately 16 metres long (10m for the existing carport and 6m for the newly built shed) and setback from the property side boundary 140mm.

The surveyors plan submitted by the applicant indicates that the wall of the storage shed is located 140mm from the side boundary with the roof gutter is on the property boundary. Council's current policy, DCP2007, B6, 6.2 indicates that on residential properties ancillary structures such as garages and sheds should be located a minimum of 900mm from the side boundary. Where an applicant's request varies from these controls, the development is assessed against the objectives contained in Section 3 of DCP2007, B6.

Of particular consideration are clauses 3.1, 3.2 and 3.7; these clauses relate to privacy, amenity, solar access, local context both built and natural, streetscape and stormwater.

- 3.1 To ensure residential development has adequate levels of privacy, solar access, open space, visual amenity and services,*
- 3.2 To ensure development responds to both its natural and built context, and is of a scale that relates well to local context and streetscape,*
- 3.7 To ensure that development does not adversely alter the quality, quantity or distribution of stormwater flows leaving the site, and to minimise or eliminate point or diffuse source pollution.*

Privacy and local amenity impacts of the shed as constructed, and its ongoing use, have not been made significantly worse by the development and are deemed acceptable.

Solar access is not considered to be adversely altered significantly due to the location of the structure being to the south-east of the complainant's property. Council's DCP2007 addresses solar access as adequate where 2 hours of sunlight is achieved to private open spaces. The adjacent property will achieve significantly more than minimum solar access to their private open space.

The streetscape is not significantly adversely altered from this development nor is the natural environment.

Accordingly, whilst the storage shed has been constructed closer to the boundary (setback of 140mm) than the DCP development standard (setback of 900mm) the application has been tested against these objectives on merit and conditional consent is recommended.

The stormwater at present in its unfinished state presents a problem, however with appropriate connection of stormwater in accordance with the proposed consent condition and resultant rectification works, it can be resolved satisfactorily.

The storage shed has a roof length of 6m and has walls at an eave height less than 1m above the height of the boundary fence which mostly screened from the main viewing area of the back yard of the adjoining premises by vegetation. This is considered a reasonable and acceptable impact in the residential context.

Ongoing maintenance of the gap between the existing boundary fence and the existing structure is difficult and of concern such that a condition of consent has been applied which requires the area between the shed and the boundary fence to be maintained in perpetuity in a manner to prevent debris build up and remove any harbourage for pests and vermin.

The applicant should have received consent prior to the erection of the structure and this has complicated Council's decision on the issue of use, caused concern for the adjoining residents and poor quality development application. However, in reference to the objectives of DCP2007 it can be reasonably argued that the development would have received the relevant consent should it have been originally sought.

### **FINANCIAL/RESOURCE IMPLICATIONS**

There are minimal financial / resource implications relating to this development application.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes	Yes	Existing staff allocation to determine development applications
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

### **LEGAL, POLICY AND RISK IMPLICATIONS**

The development application, whilst not meeting the minimum development control standards for side boundary setbacks of 900mm, has been tested against and is consistent with the objectives of the Council's Policy DCP2007, B6, Section 3. (refer to assessment report).

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that the adjoining owner may take action through the Land and Environment Court should the	Low	Approve the DA in accordance with the staff recommendation	yes

**MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013**

development be approved			
There is a risk that the applicant may take action in the Land and Environment Court should the development not be approved	Low	Approve the DA is accordance with the staff recommendation	yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The objection contends that social impacts may occur due to a decision to approve the ongoing use of this structure. The adjoining owner believes that the development constitutes a significant adverse impact on his amenity. It is considered that local amenity impacts of the shed as constructed, and its ongoing use, have not been made worse by the development and are acceptable.

Equally a decision contrary to the recommendation could have a similar negative impact on the applicant given the minor nature of the development. In addition to this it is anticipated that the applicant would bear the cost of demolition or relocation.

**CONSULTATION**

In accordance with DCP 2007-Section A1.9 (Councils Notification Policy), the adjoining neighbour was notified. In response, one (1) submission was received opposing the development.

The issues raised in the objection submission include:

- The proximity of the structure to the boundary causing potential areas for the collection of litter and vermin;
- The disposal of stormwater from the structure;
- Overshadowing and solar access;
- The unauthorised entering onto the adjoining premises to undertake the work and removal of fence sections to enable work to be carried out; and
- Work without prior consent.

In addressing these items raised the first two (2) items are dealt with via consent conditions.

Overshadowing and solar access are not considered to be of a significance that would be fatal to the ability to issue a consent.

The unauthorised entering onto the adjoining premises is not a consideration of this assessment and constitutes a civil matter.

Work without consent has been discussed in the assessment criteria of this report. The applicant has submitted a Building Certificate Application. Determination of the Building Certificate is deferred pending receipt of a Identification Survey Plan and Councils decision on the ongoing use of the structure.

The application has been referred to the Development Assessment Panel (DAP) for review. The panel concurred with the recommendation for approval.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Locality Plan;
- 2) Assessment;
- 3) Proposed conditions of consent.

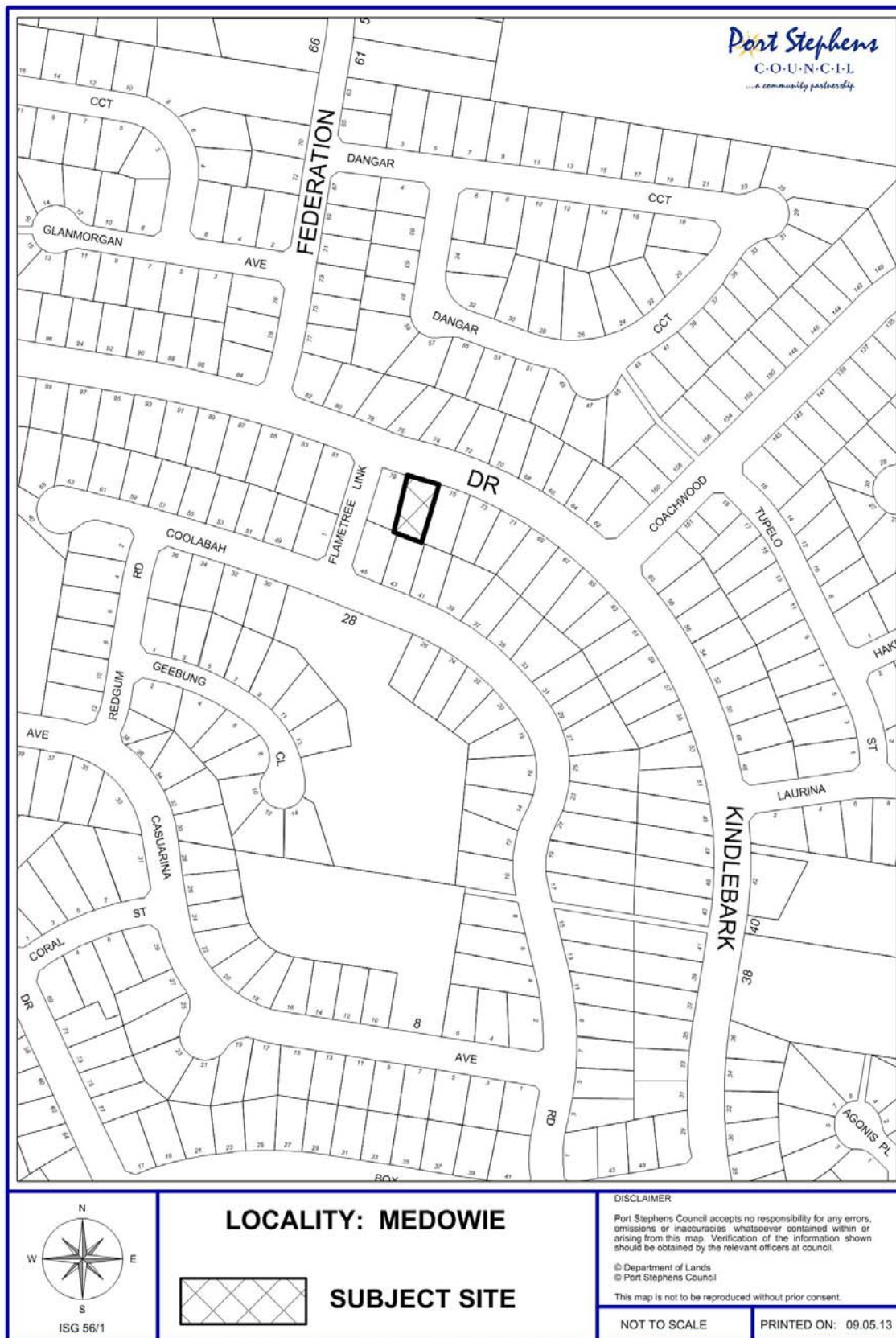
### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1  
LOCALITY PLAN



**ATTACHMENT 2  
ASSESSMENT**

**Site Description:**

The development site is located at 77 Kindlebark Drive Medowie. The site is consistent with development on sites located within the immediate vicinity and consists of a single story dwelling and associated ancillary structures.

**Site Constraints:**

The site has no significant development constraints

**Surrounding Development:**

The development site is located within a residential area consisting mainly of single storey dwellings and ancillary structures.

**Consultation – Community**

In accordance with DCP 2007-Section A1.9 (Councils Notification Policy), the adjoining neighbour was notified. In response, one (1) submission was received opposing the development.

The issues raised in the submission include;

- The proximity of the structure to the boundary causing potential areas for the collection of litter and vermin.
- The disposal of stormwater from the structure.
- Overshadowing and solar access.
- The entering onto 79 Kindlebark to undertake the work and removal of fence sections to enable work to be carried out.
- Work without prior consent.

In addressing these items raised the first two (2) items are dealt with via consent conditions.

Overshadowing and solar access are not considered to be of significant issue and addressed in detail in the assessment criteria section of this report.

Item four (4) is not a consideration of this assessment and constitutes a civil matter.

Work without consent has been discussed in the assessment criteria of this report. The applicant has submitted a Building Certificate Application. Approval of the Building Certificate is pending receipt of a Identification Survey Plan and Councils decision on the ongoing use of the structure.

**Internal Referrals**

The application has been referred to the Development Assessment Panel (DAP) for review. The panel concurred with the recommendation for approval.

**Assessment criteria**

Council became aware of potentially unauthorised work that had occurred on 77 Kindlebark Drive Medowie. Councils Compliance Section attended the site and entered discussion with the owner at 77 Kindlebark Dr regarding the works. The owner of 77 Kindlebark Dr lodged an application for use of the shed and a Building Certificate application for the shed.

In response to the applications and the unauthorised works the applicant had been requested in accordance with standard procedure to address the circumstances that occurred to arrive at the unauthorised works.

In response to this request the applicant claimed that there was a dilapidated structure in place and they were renewing it. In reviewing the past consents relating to the property, a carport at the front of the shed was given consent although at a size contrary to that evident on site. The applicant claimed the carport was of the current size on their purchase of the property in approximately 2006. Councils GIS maps dating from approximately 2006 show that the carport is on site and of a similar size to that currently existing; it does not however show any other structures to the south.

In considering the application for the use of the shed and the resulting suitability of the development for the site it is considered that the minimal size of the structure of 20.7m<sup>2</sup> in area, the height of 2.5m to the eave and 3.2m overall height being very close to exempt development criteria that these factors present minor negative impact.

The side boundary setback of significantly less than the development control standard of 900mm minimum presents as the main point of consideration. The wall of the structure is approximately 140mm from the boundary fence (as per Surveyors Report). Impacts of the structure being located in close proximity to the boundary have been largely considered by determining the shadow cast from the structure, visual amenity, stormwater disposal and other provisions of ability to maintain the area between the boundary and the structure.

Due to the location of the shed to the south east of the adjoining premises it is determined that the shadow cast from the shed would be almost non-existent aside from very early morning sun. The visual amenity was considered by observing the sight line of the shed from the direction of the complainant's property; the structure is mostly screened from view by fence lines and vegetation.

The stormwater and ongoing maintenance issues have been reinforced by way of proposed consent conditions.



**ATTACHMENT 3  
PROPOSED CONDITIONS OF CONSENT**

1. Development consent is granted for the use only of the storage shed at Lot 39 DP: 730472; 77 Kindlebark Drive Medowie.
2. Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.
3. The development application has not been assessed against the provisions of the Building Code of Australia.
4. 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.
5. The stormwater disposal system on the structure is to be completed and connected to the existing stormwater system. All stormwater flows from the structure are to be captured and dealt with wholly within the development site.
6. The area between the shed and the boundary fence shall be maintained in perpetuity in a manner to prevent debris build up and remove any harbourage for pests and vermin.

ITEM NO. 2

FILE NO: 16-2012-715-1

**DEVELOPMENT APPLICATION FOR CRUSHER, SCREEN AND  
RELOCATION OF MACHINERY SHED/OFFICE AT NO. 176 WINSTON RD  
EAGLETON**

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

GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

Refuse Development Application 16-2012-715-1 for the following reasons:

- 1) The development is proposed as being ancillary to an unauthorised activity on the land and the development is not suitable for the subject site.
- 

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Paul Le Mottee Councillor Chris Doohan</b>
	<p>That Council:</p> <ol style="list-style-type: none"><li>1. Refuse the development application 16-2012-715-1 for Crusher, Screen and Relocation of Machinery Shed/Office at No 176 Winston Road, Eagleton.</li><li>2. Invite the applicant to lodge a new development application for a Quarry on the subject property.</li><li>3. Continue to act in accordance with the current Compliance Policy.</li></ol>

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 Paul Le Mottee, Chris Doohan, Steve Tucker and Sally Dover.

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

## AMENDMENT

	<b>Councillor Peter Kafer</b> <b>Councillor Geoff Dingle</b>
	<p>That Council refuse Development Application 16-2012-715-1 for the following reasons:</p> <p>1) The development is proposed as being ancillary to an unauthorised activity on the land and the development is not suitable for the subject site.</p>

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 and Geoff Dingle.

Those against the Motion: Mayor Bruce MacKenzie, Paul Le Mottee, Steve Tucker, Chris Doohan and Sally Dover.

## MOTION

	<b>Councillor Geoff Dingle</b> <b>Councillor Peter Kafer</b>
	<p>That Council refuse Development Application 16-2012-715-1 and proceed to issue a Notice of Intent to cease operation activity due to noise, dust and lack of erosion controls.</p>

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 and Geoff Dingle.

Those against the Motion: Mayor Bruce MacKenzie, Paul Le Mottee, Steve Tucker, Chris Doohan and Sally Dover.

## AMENDMENT

<b>212</b>	<b>Councillor Steve Tucker</b> <b>Councillor Chris Doohan</b>
	<p>It was resolved that Council:</p> <p>1. Refuse the development application 16-2012-715-1 for Crusher, Screen and Relocation of Machinery Shed/Office at No 176 Winston Road, Eagleton.</p>

	<ol style="list-style-type: none"><li>2. Invite the applicant to lodge a new development application for a Quarry on the subject property.</li><li>3. Continue to act in accordance with the current Compliance Policy.</li></ol>
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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 Paul Le Mottee, Chris Doohan, Steve Tucker and Sally Dover.

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

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

#### **Division for the Motion**

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 Paul Le Mottee, Chris Doohan, Steve Tucker and Sally Dover.

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

#### **BACKGROUND**

Council considered the development application (16-2012-715-1) at it Ordinary Meetings of 11 and 25 June 2013 and resolved the following;

It was resolved that Council:

1. *Defer the development application for a crusher, screen and relocation of machinery shed/office at No. 176 Winston Road, Eagleton; and*
2. *Direct the Mayor and General Manager to seek a second legal opinion on the matter.*

This second legal opinion has now been obtained from Senior Counsel whose advice concurs with Council's initial legal advice in that the original development consent has lapsed.

For Councillors background the previous Council report on this matter is included below.

## Previous Council Report

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

Development Application (DA) 16-2012-715-1 seeks approval to use a crusher and screen in conjunction with the existing quarry currently operating from the subject site. Whilst the subject of this report and recommendation relates solely to the development application under consideration, the various compliance issues are explained in this report for the benefit of Council.

Following consideration of legal advice received by Council on 4 October 2012, Council staff are of the opinion that the existing quarry does not have a current/valid development consent. Accordingly, the proposal as submitted, for a crusher and screen that relies on an unauthorised activity, the recommendation of this report is for refusal.

Council staff raised concern regarding the validity of the approvals for the quarry with the applicant on 14 January 2013. At the time of drafting this report, there has been no request to include the quarry operation as part of this DA. Arguably, as a quarry operation relies on winning of product and can also involve processing via crushing and screening, Council approving this proposal, by default indicates a level of support for the existing operation onsite.

On 15 March 1978, Council approved the use of the subject land for an Extractive Industry – Gravel Removal (DA 413/77), following receipt of a letter on 24 February 1978 advising that the applicant would need *"permission to extract material for five years after which time the quarry would be restored with top soil, leaving a level building area and the block in general, unharmed for rural use."* It is considered that the information submitted to Council describing the development forms part of the consent, which therefore lapsed on 15 March 1983. The 1978 consent was limited to seven (7) conditions and did not refer to plans and documents submitted by the applicant.

In 1994, Council also approved the use of a screen (DA 226/94) for a period limited to two years, which lapsed in 1996.

More recently, from at least April 2005 Council has fielded complaints from residents on Winston Road relating to excessive noise alleged to being generated by the quarry operation.

On 22 April 2013 Council received a petition from residents of the area requesting that Council serve notice on the quarry operator requiring that all operations cease. The reasons cited are based on environmental and amenity issues. The petition was signed by 19 people from 10 properties in the nearby area (Seven (7) properties on Winston Road and Three (3) on Six Mile Road).

From 2007 to present staff have investigated various allegations that the quarry was generating offensive noise and dust which was affecting residents in the area. It was

also alleged that a crusher was being used on site. On one (1) occasion the operator has confirmed that a crusher was being used.

During the initial investigations it was found that Council was sourcing products from the quarry. Once it was confirmed that a crusher was in operation, contrary to the conditions of development consent, Council immediately ceased using the quarry product.

One of the conditions of development consent specifically prohibited the use of a crusher on site and the operator was requested to cease the use of that machine to avoid enforcement action from Council.

In 2011, additional complaints were received by occupants of a dwelling in close proximity to the quarry alleging that the crusher was in operation at the site. Noise and dust levels had increased and were impacting on the amenity, during rain periods sediment from the quarry would run across their land and into nearby watercourses.

Surveillance of the site was escalated and over a period between May 2011 and September 2012, three Penalty Infringement Notices (PINs) were issued to the operator for the use of the crusher. It was agreed by the operator they did not have development consent to operate a crusher, hence a development application was lodged for this use.

In September 2012, it was found that additional earthworks were being undertaken at the site. When the operator was questioned about the earthworks it was stated that they intended to move the extraction area further along the property, as they maintain the quarry approval does not limit the extraction and that quarrying is approved from the entire site. Staff advised of Council's position and advised that this is not consistent with the 1978 approval. Legal advice on the quarry extension was requested and a response was furnished to Council from our legal representatives, advising that, in their opinion, the quarry consent had lapsed five years from when it was approved in 1978. This is because the documentation provided by the applicant (additional information for DA 413/77 prior to approval) specified a timeframe of five years as the required timeframe to extract the material on site. The Document also identified an area of land and quantity of material to be extracted.

The recent legal advice differs to the legal advice obtained from a different legal firm in 1987 where they advised that the consent did not limit the development to 5 years. Council's records provide no indication as to why Council requested the 1987 legal advice but since that time, and until the most recent legal advice, staff have advised the quarry operator in writing and verbally that the quarry consent remained valid. Whilst advice provided is typically based on the information at the time and relevant point in time, this inconsistency or differing legal opinion conveyed to the owner/operator is of critical importance.

In March 2012, a development application to use a crusher and relocate a machinery shed (DA 161/12) was lodged as local development (the same DA in essence to what is being considered by Council via this report). This DA was later

withdrawn, however as the application was found to be designated development as the site is within 250 metres of a dwelling on an adjoining property and the quantity proposed to be screened exceeds 30,000 tonnes.

In November 2012, a designated development application (requiring an Environmental Impact Statement) to use a crusher/ screen and relocate a machinery shed (DA 715/12) was received by Council.

In January 2013 Council wrote to the quarry operator and the applicant for the DA 715/12 and advised that Council had determined that the quarry consent had lapsed and that quarry operations should cease and the applicant should consider withdrawing the application as it relied on the existence of a current/valid quarry consent.

The quarry operator's solicitor responded to Council's advice and invited Council to initiate Class 4 action in the Land and Environment Court as they believed the quarry consent was still valid.

In February 2013, following an allegation relating to a water pollution event, Council staff attended an adjoining site and observed that discoloured water was flowing from the quarry site onto adjoining land. The following day Council staff entered the quarry to investigate, using powers of entry under the Protection of the Environment Operations Act 1997, section 196. Due to the extension to the quarry working area and arboreal screen construction, overland flow of water containing sediment was being channelled onto the adjoining land. The sediment and erosion control measures in place were not adequate to prevent sediment runoff. Due to the inadequate measures it was intended that a Prevention Notice be issued to address future potential pollution issues. The notice was issued on 12 April 2013 and the cause of the delay was due to negotiations with the owner and advisors regarding the lapsing of consent.

In March 2013 a meeting was held at Council with the quarry operator, their legal advisor and planning consultant. The meeting was to discuss the various stakeholders' positions around the legal status of the quarry operation. The quarry operators solicitor was invited to submit the legal authorities they relied upon to show the consent remained valid. The following week an open invitation was extended to all Councillors to discuss the outcomes from this meeting.

A response from the quarry operator's solicitor received on 9 April 2013 (dated 8 April 2013) was reviewed by Council's legal advisors who confirmed the opinion that the quarry consent had lapsed as nothing had been produced on behalf of the quarry operator to cause that opinion to be reviewed.

In April 2013, another water pollution event was reported and this time water samples were taken and sent for analysis at Hunter Water Corporation (which has a suitably qualified NATA laboratory). At the time of the site inspection it was observed that material was being extracted from the new/expanded (unauthorised) quarry area. The results of the analysis are provided in the following table.

Results	Sample	Sample	Sample
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**MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013**

	PSC030413/1 (Location 1)	PSC030413/2 (Location 2)	PSC030413/3 (Location 3)
<b>Total Suspended Solids (mg/L)</b>	1990	2320	2360
<b>Turbidity (NTU)</b>	3500	3300	1400

The results of the analysis prompted Council to issue a Prevention Notice requiring that polluted water with more than 50 mg/L of Total Suspended Solids be prevented from leaving the site.

The Notice was appealed by the quarry operator and a directions hearing was set down for 27 May 2013. The notice has since been rescinded to allow further negotiations with the quarry operator to take place and to allow the appeal to be withdrawn.

### **Issues**

There are legal issues with approving this DA in its current form. Without reliance on the existing quarry operation, storage of crushing and screening plant on site would be defined as a "depot" under *Port Stephens Local Environmental Plan 2000*, which is prohibited. Additionally, the DA has not yet been publicly exhibited, which is required by the Designated Development provisions in the Act. Any consent issued in this circumstance would likely be considered unlawful or "ultra vires" based on the legal advice furnished to Council.

The matter was discussed at an Executive Leadership Team (ELT) meeting on 8 May 2013, whereby it was determined to proceed to issue a Notice of Intent / Order to cease the unauthorised activity, based on the lack of any current approvals and resulting environmental impacts such as noise, dust and erosion and sediment control. The matter was again discussed at ELT on 15 May 2013, and given the interrelationships between this development application and the compliance history and the timing of the impending Council report on the Development Application, it was thought any compliance action should be consistent with Council's position on the development application and the notice was subsequently deferred.

Council's investigations and enforcement actions have been in response to significant community concern, including receipt of complaints since April 2005 and a petition from 10 nearby properties on 22 April 2013.

Council has not advertised this development application as until the Councillor call up was received, Council's approach based on legal advice was that the Application could not be processed. Although this DA has not been placed on public exhibition, residents who have either lodged complaints about the quarry or objected to DA 16-2012-161-1 (for crusher and screen on the site but was withdrawn on 13 November 2012) have been contacted by Council staff and advised of the matter going to Council. This will provide them with the opportunity, as with the Applicant, to play a role in the DA process before Council.



A detailed assessment of the application pursuant to section 79C of the *Environmental Planning and Assessment Act 1979*, has not been undertaken to date due to the status of the existing quarry operation. It is noted that the proposed crusher and screen are considered to be Designated Development under the *Environmental Planning & Assessment Regulations*, as the site is within 250m of dwellings on adjoining properties, and the quantity proposed to be screened (65,000 tonnes) exceeds the 30,000 tonne threshold.

The site is zoned 1(a) Rural Agriculture) under *Port Stephens Local Environmental Plan 2000*, which permits "extractive industries" subject to development consent. The permissibility of "extractive industries" will not change under draft LEP 2013.

Following a brief review of the documentation submitted with this DA, it is considered that key concerns with the proposed crusher and screen would be additional noise impacts and a possible reduction in air quality, which may unreasonably reduce the amenity of existing residences along Winston Road.

#### Residents Concerns

The locality in which the quarry is situated consists of lots zoned 1(a) Rural Agriculture. The settlement of the land and the use of the lots (excluding the quarry) is more consistent with that of rural residential and is zoned RU2 Rural Landscape in the Draft LEP.

Residents in the area have raised concerns over many years regarding the noise and dust generated by the quarry by both its activity on site and off, including the number of truck movements along Winston Road and 6 Mile Road. Staff have investigated the concerns raised with the view that, until more recently, the quarry has development consent to operate.

The quarry operator has also undertaken works to extract material in a new area of the site which has already caused a pollution event with inadequately controlled sediment runoff. The new working area is not within the area of the original quarry footprint and can be seen by at least one neighbour where previously they were contained within an excavated area/face of the site.

### Environmental Impact

The two incidents investigated this year regarding sediment runoff from the site did show that the new area for quarrying of the subject site does not have sufficient controls in place to protect adjoining properties and downstream waterways from sediment laden stormwater. Without implementing additional control measures to prevent sediment runoff it is very likely that further pollution events will occur during heavy or constant rain. In meetings with the Applicant/Owner they have indicated they are willing to take steps to control such sediment and erosion run off.

The Prevention Notice issued by Council requiring works to control sediment runoff has been challenged by the operator and a Land and Environment Court Directions Hearing is scheduled for 27 May 2013. This has since been revoked to allow further negotiations with the quarry owner.

### Civil Claim by Quarry Operator

The quarry operator claims it has a case against Council, alleging Council provided information to it (prior to its purchase of the site in 1994) that the quarry consent was valid. Council has no information verifying this allegation.

A development application was lodged by the current operator and consent granted to allow the use of a gravel screen at the site in 1994. The application relied on the existence of current consent to quarry.

The operator also claims it has been financially disadvantaged since Council ceased purchasing its quarry and has alluded it will seek damages in the future. Whilst the possible civil claim aspects are not a planning consideration pursuant to section 79C of the *Environmental Planning and Assessment Act 1979*, such information is provided to Councillors for background and context.

These are not matters that should influence Council's determination of the current Development Application.

## **FINANCIAL/RESOURCE IMPLICATIONS**

Refusal of the DA in accordance with the staff recommendation is likely to have financial and/or resource implications for Council. The applicant can appeal the determination of Council in the Land and Environment Court. Any appeal by the applicant is likely to be a combination of both the DA and ongoing/previous compliance matters.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	Yes	Council has a budget allocation for legal services
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

Approving the development application is not consistent with legal advice obtained by Council. A refusal of the DA as per the staff recommendation still may have significant legal, policy or risk implications.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that refusal of the DA may be subject to a LEC appeal by the applicant and also to a possible claim in damages by the operator.	High	Determine the DA in accordance with the recommendation and legal advice.	Yes
There is a risk that approval of the DA may be subject to a LEC appeal by a third party (an objector).	High	Determine the DA in accordance with the recommendation and legal advice.	Yes

Council may recall that it adopted a revised Corporate Risk Management Policy on 27 November 2012. The policy includes Council's 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."

A review of the assessment report and the legal advice presented outlines that a decision contrary to the recommendation presents an unacceptable risk to Council as per Council's standard risk management matrix. This unacceptable risk relates to Council approving a development application that is ultra vires. In this instance, a refusal of the application is the only viable or comprehensive risk treatment.

### **Other Risks**

- Due to the history and interpretation of the status of the development consent, there is scope for Council to be criticised for the varying positions/interpretations at points in time. The understanding by staff that the consent remained valid was conveyed to the quarry operator verbally and in writing; it was also passed on to some of the complainants over the years.
- The fact that Council has in the past sourced product from the quarry may also be brought into question and a point of criticism. These different roles of Council have been kept distinctly separate.
- Council has been accused of harassment due to its investigation into both the quarry operation and pollution incidents. Council only entered the property when/where it was legally entitled to do so and was responding to the legitimate concerns raised by the public.
- Financial risks are present in terms of a civil claim possibly being commenced by the quarry operator for misinformation about the status of the quarry consent being current at the time of purchase in 1994.
- The cost of proceedings in the Land and Environment Court is high and there is a risk that Council may not prove its case and be liable for the defendant's assessed and agreed costs.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Determination of the DA in accordance with the recommendation (refusal) is unlikely to have a significant social, economic or environmental impact on the wider community.

The current issues associated with the quarry operation and environmental management are determined to have environmental implications.

### **CONSULTATION**

The application has not been publicly exhibited to date. The proposal is considered to be Designated Development and must be publicly exhibited for a period of 30 days. Council did not commence public exhibition as it is of the view the DA relies on an invalid / expired DA and so cannot be progressed.

To ensure transparent and equitable decision making, the applicant and those residents who have previously lodged complaints or submissions regarding the quarry have been notified that the matter is being reported to Council.

### **OPTIONS**

- 1) Refuse the DA as per the Recommendation;

- 2) Defer the matter pending the applicant addressing the outstanding quarry use issue (possibly amending or submitted a new DA for the quarry use) and a full assessment being undertaken of the proposal;
- 3) Approve the DA as submitted, however the application has not been exhibited as required, no assessment of the s.79C matters has been made and based on Council's legal advice that the consent to quarry has lapsed, such an approval would be ultra vires and void or voidable.

#### **ATTACHMENTS**

- 1) Locality Plan.

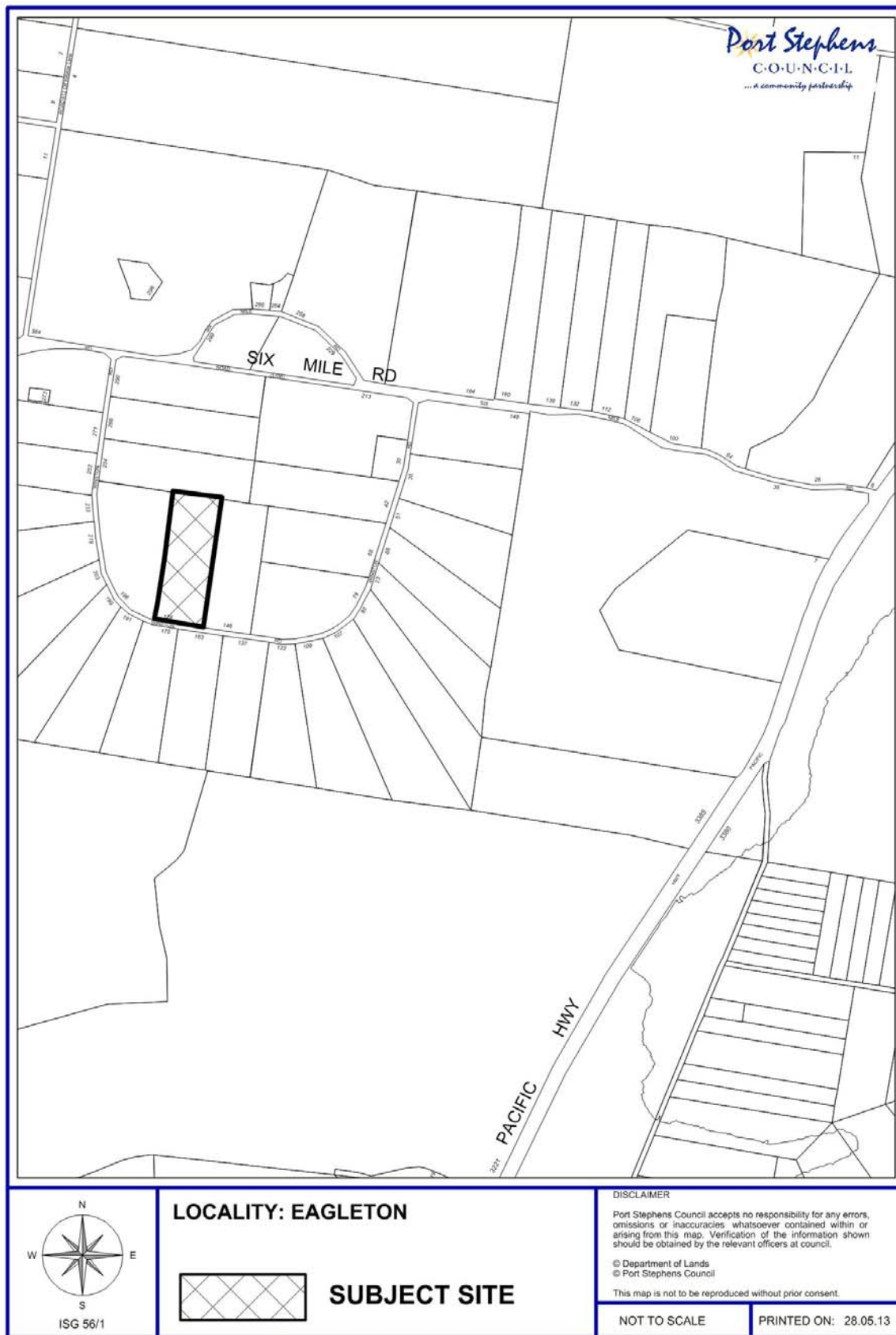
#### **COUNCILLORS ROOM**

Nil.

#### **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1  
LOCALITY PLAN



Item 3 was dealt with prior to Item 1.

**ITEM NO. 3**

**FILE NO: 16-2013-187-1**

**DEVELOPMENT APPLICATION FOR CHANGE OF USE TO BROTHEL AT  
NO. 1/336 SOLDIERS POINT ROAD, SALAMANDER BAY**

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

**GROUP: DEVELOPMENT SERVICES**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application for the change of use to brothel at No. 1/336 Soldiers Point Road, Salamander Bay subject to the conditions contained in **(ATTACHMENT 3)**.
- 

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Sally Dover Councillor Steve Tucker</b>
	<p>That Council refuse the development application for a brothel at No. 1/336 Soldiers Point Road, Salamander Bay, for the following reason:</p> <ol style="list-style-type: none"><li>1. The draft Local Environmental Plan (LEP) prohibits the proposed use.</li><li>2. Prevents the proper and orderly use of the subject land as detailed in the current and future LEP.</li><li>3. Use of the common property not adequately considered.</li></ol>

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 Paul Le Mottee, Chris Doohan  
Steve Tucker and Sally Dover.

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

**MOTION**

<b>213</b>	<b>Councillor Bruce MacKenzie</b> <b>Councillor Paul Le Mottee</b>
	<p>It was resolved that Council refuse the development application for a brothel at No. 1/336 Soldiers Point Road, Salamander Bay, for the following reasons:</p> <ol style="list-style-type: none"><li>1. The draft Local Environmental Plan (LEP) prohibits the proposed use.</li><li>2. Prevents the proper and orderly use of the subject land as detailed in the current and future LEP.</li><li>3. Use of the common property not adequately considered.</li></ol>

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 Paul Le Mottee, Chris Doohan, Steve Tucker and Sally Dover.

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

**BACKGROUND**

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

This Development Application (DA) seeks approval for a change of use to a Brothel. The proposal relates to part of an existing industrial unit 1 at 336 Soldiers Point Road, Salamander Bay, and includes an internal fit-out. The proposed hours of operation are 10am till 12am (midnight), Sunday to Thursday and 10am to 3am, Friday and Saturday.

The DA has been publicly exhibited, and Council has received strong community objection in the form of 25 submissions and petitions with 454 signatures. Key concerns relate to the nature of the activity and the potential for social impacts.

The staff assessment is required to consider "social impacts" under Section 79C of the *Environmental Planning & Assessment Act 1979*, however this is restricted to the planning merit of this individual proposal rather than any consideration of the moral or ethical concerns regarding brothels in general. Brothels are a legal activity in NSW and permissible on the subject site under Local Environmental Plan 2000.



Following assessment of the DA, it is considered that the proposal is consistent with the location and design requirements of Section B13 – Brothels in Development Control Plan 2007, the Land & Environment Court planning principles for location of brothels, and can satisfy NSW Health Guidelines and Safer By Design recommendations from the NSW Police.

Although the proposal satisfies the current applicable requirements, Council's assessment has identified that the development would be prohibited under Draft Local Environment Plan 2013, as the site would be zoned B5 Business Development. Due to the current and draft requirements conflicting with each other, the current LEP requirements have more legal weight in this instance. It was also identified that the site is within close proximity (250m) of a residential area (opposite the site on Soldiers Point Road) and sports grounds (rear of the site), and one of the industrial units on the site is known to be used by a motorcycle club. These concerns are also noted in the advice from the NSW Police.

The NSW Police have identified the proposed Brothel as a Low Crime Risk and given there is no evidence linking to existing motorcycle club and proposed brothel, concerns relating to the relationship of the Brothel to the motorcycle club do not provide sufficient grounds for refusing the DA in this instance. It is also considered that the sites proximity to residential areas and the sport grounds are unlikely to have an unreasonable impact, given the development will not be visible from the street nor located in an area regularly used by pedestrians (particularly children).

The staff assessment concludes that reasonable action has been taken to minimise potential for adverse social impacts from the proposed Brothel, and is recommended for approval subject to conditions. The conditions will include requirements for strict compliance with the Safer By Design recommendations from the NSW Police, NSW Health and Workcover guidelines.

It is noted that Council has received a letter on 17 July 2013 from the owners of the other 4 industrial units within the subject site, raising concern regarding security of the complex and potential for tenants to vacate premises, which would have an adverse economic impact. These additional concerns do not raise any issues not previously considered by Council's Section 79C assessment. Owners consent has been provided with the DA from both the unit owner and strata manager (CSTM Strata Group). The owners consent is signed, dated and affixed with the Strata Common Seal on the DA Form. Despite some property owners objecting to the issue of Strata Owners Consent it is the view of Council Staff valid owners consent has been provided, in accordance with legislative requirements.

The potential for security and economic impacts has been identified, but it is considered that reasonable measures can be implemented and do not warrant refusal of the application in this instance. It is important to note that consideration of the moral and ethical concerns relating to brothels in general is outside the scope of Council's planning assessment.

## FINANCIAL/RESOURCE IMPLICATIONS

Any decision could potentially be challenged in the Land & Environment Court, which would have financial cost implications for Council. In this case it appears that the likelihood of an appeal is higher than normal, based on anecdotal advice provided to Council.

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

## LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with the relevant provisions of Council's Local Environmental Plan 2000 and Chapter B13 Brothels of Development Control Plan 2007, and does not present any policy implications. However, there is a risk in this instance that any decision may be challenged in the Land & Environment Court. Risk associated with determining the Development Application can be minimised by adopting the recommendation.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk with any determination of an appeal of the decision.	Low	Adopting the recommendation and approving the application subject to conditions.	Yes
There is a risk that the proposed activity may result in a social impact.	Medium	Adopting the recommendation and approving the application subject to conditions, including safer by design requirements.	Yes

## SUSTAINABILITY IMPLICATIONS

The proposal is unlikely to have any direct or significant environmental or economic impacts. However, there is concern regarding the potential for social impacts, particularly as a result of perception of brothels generally.

Section 79C requires consideration of social impacts, however brothels are a legal activity permissible on the subject site and consideration of moral or ethical concerns regarding brothels in general is outside the scope of Council's assessment.

Potential social impacts arising from the specific location and design of the development have been considered as part of Council's planning assessment, and is considered in this instance that the proposal reasonably satisfies the relevant requirements.

## **CONSULTATION**

The application was publicly exhibited in accordance with Council policy. Council received 25 submissions and petitions with 454 signatures, raising particular concern with the nature of the proposed development and potential social impact. The submissions are discussed in **(ATTACHMENT 2)**.

## **OPTIONS**

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

## **ATTACHMENTS**

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

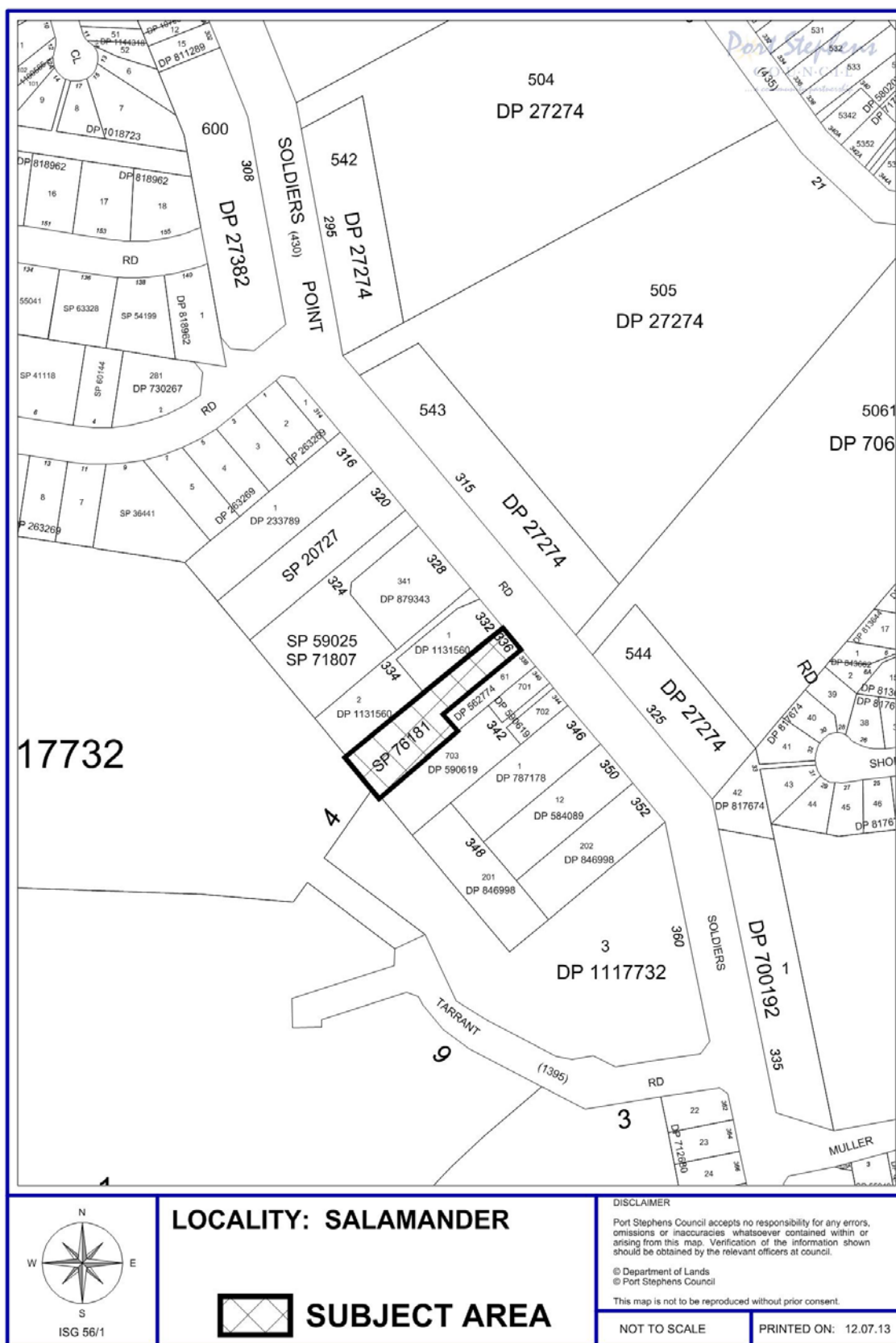
## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1  
LOCALITY PLAN



116 Adelaide Street, Raymond Terrace NSW 2324 Phone: (02) 49800255 Fax: (02) 49873612 Email: council@portstephens.nsw.gov.au

## ATTACHMENT 2 ASSESSMENT

### 1. APPLICATION DETAILS

Application No.	16-2013-187-1
Property Address	1/336 Soldiers Point Rd, Salamander Bay
Lot and DP	Lot 1 SP 76181
Description of Development	Change of use to Brothel
Applicant	Mrs Q Fen Ji
Date Lodged	8 April 2013
Present Use	Personal storage
Zoning	4(a) Industrial
Key Issues	Social impact
Submissions	25 submissions and petitions with 454 signatures
Integrated Development	No
Recommendation	Approve

### 2. THE PROPOSAL

Consent is sought for a change of use to Brothel and associated fit-out works.

The proposed operating hours are:

Sunday to Thursday - 10am to 12am (midnight)  
Friday, Saturday - 10am to 3am

### 3. THE SITE AND SURROUNDING AREA

The DA relates to Lot 1 in SP 76181, which contains a single storey industrial building (currently used for personal storage) and an allocation of 8 parking spaces. The proposed activity will be located in the NE side of the industrial building.

SP 76181 consists of 4 industrial buildings. Based on the information available to Council, Unit 2 is used as an industrial workshop, Unit 3 is used as storage/club house by a motorcycle club and Unit 4 is used by Jayco.

Area	SP 76181 has approx area of 2,900m <sup>2</sup>
Dimensions	Site is 120m deep and 30m wide. Area of industrial building in Lot 1 is 340m <sup>2</sup> . Development will use area of 134.38m <sup>2</sup> (10.18m x 13.2m).1
Slope	Site is flat
Existing Development	SP 76181 contains 4 industrial buildings.
DP and 88B Instrument	Allocates 8 spaces to Lot 1. No other relevant restrictions or easements.
Vegetation	No vegetation to be removed.

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

Constraints	Bushfire, Flood, Class 3 Acid Sulphate Soils
Stormwater & Drainage	No change to existing
Access	Existing access off Soldiers Point Road
Services	Available to site

### 4. HISTORY

The DA was lodged on 8 April 2013. There is no relevant site or DA history.

It is noted that Council has received allegations that the proposed Brothel is linked to a "massage parlour" that operated in the Cinema Complex at Nelson Bay during December 2012. That activity ceased trading over the Christmas period following investigations by Council as a result of allegations that it was operating as a brothel.

Council has no evidence linking the unauthorised "massage parlour" activity to the current development proposal.

### 5. CONSULTATION – COMMUNITY

The Development Application has been publicly exhibited in accordance with Council's Notification Policy, which in addition to the standard requirements specifies that all dwellings and community facilities (or similar) within 400m are notified.

Council received 25 submissions and petitions with 454 signatures objecting to the proposed development.

The issues raised in the submissions have been listed below, and have been considered as part of the Section 79C assessment. It is considered that the issues raised in the submissions do not warrant refusal of the application in this instance.

- Nature of the proposed development and potential for social impacts

The majority of submissions raised strong concern with the nature of the proposed development and potential for a range of associated social impacts including increased criminal activity, particularly relating to sex crimes and child prostitution, exploitation of women and health issues (STIs etc).

**Comment:** Brothels are identified in NSW as a legal activity, and is permissible on the site under Local Environmental Plan 2000. Section 79C requires consideration of social impacts, however this is restricted to the planning merit of the proposal, rather than any moral or ethical concerns with brothels generally.

The particular social impacts of this proposal, particularly as a result of the location and design of the proposal, have been considered as part of Council's assessment. Following assessment of the DA against the controls in DCP 2007, the Land & Environment Court (LEC) planning principles and comments from NSW Police, it is considered that reasonable measures have been taken to minimise potential for adverse social impacts.

The development has also been assessed by Council's Environmental Health Section, and it is considered that the development can comply with the NSW Health and Workcover Guidelines, which have been imposed as a condition of consent. The development will also have to register with Council for inspections to ensure these requirements are met.

- Suitability of site and proximity to conflicting land uses

The majority of submissions raised strong concerns with the location of the proposed development, particularly with regard to its proximity to residences, shopping centre, sports ground, and Hunter Retirement Village.

**Comment:** The proposed location provides reasonable setbacks to the nearby residences, and is unlikely to impact people using the sports grounds or shopping centre as there is no direct line of sight. The proposed location is consistent with the controls in DCP 2007 and the LEC planning principles relating to locations of brothels, and is unlikely to have an unreasonable impact in this instance.

- Visual/amenity impact

The majority of submissions raised concern about potential impacts on people passing the site and the general amenity of the area.

**Comment:** The proposal will be located in an existing industrial unit located to the rear of the site, and will not be clearly visible from the road. Any potential impacts on general amenity are likely to be a result of perceptions of brothels in general, rather than any particular aspect of this development. While the perception of adverse impacts on the community is a concern, it is not considered sufficient grounds to justify refusal of the application.

- Impact on nearby businesses

A number of submissions raised concern about potential impact on existing businesses on the site and adjoining properties, particularly economic impacts resulting from customers avoiding the site.

**Comment:** The proposal is unlikely to have any direct adverse economic impacts on the local community, however there is the possibility that there may be some impact resulting from perception of brothels in general. It is considered that all reasonable measures have been taken with the location and design of the development (either proposed or through conditions of consent) to minimise the potential impact on people around the site.

- Impact on tourism

The majority of submissions raised concern that the proposed development would have a negative impact on tourism.

**Comment:** The proposed development is located in an industrial area and would not be clearly visible from the street. It is considered unlikely that it will have any impact of sufficient scale to impact tourism in Port Stephens.

- Parking

Submissions raised concern about the adequacy of parking.

**Comment:** The subject industrial unit is allocated 8 spaces under SP 76181, which complies with the requirements of DCP 2007 and is considered to be sufficient for the expected parking demand.

- Property devaluation

Submissions raised concern about the impact of property prices in general in the Salamander Bay and Soldiers Point areas.

**Comment:** The proposed development is located in an existing industrial area and will not be visible from the street. The proposal is unlikely to have direct amenity impacts on any residences, and unlikely to influence property prices in the area.

- Precedent

Submissions raised concern that approval of this development would set an undesirable precedent.

**Comment:** The determination of this application is unlikely to set any precedent for similar types of applications. Each application would be subject to a Section 79C assessment, including consideration of the requirements of Council's Local Environmental Plan, Development Control Plan and other relevant environmental planning instruments and referral to the NSW Police. Further, DCP 2007 has controls aimed at limiting the number of brothels in a particular area.

## 6. INTERNAL REFERRALS

### 6.1 Environmental Health

The DA has been reviewed by Council's Environmental Health Officer, who has not raised any objections to the proposal subject to recommended conditions requiring the development to comply with applicable Workcover and NSW Health guidelines and to be listed on Council's business register for inspections.



## **6.2 Building**

No objections subject to standard conditions.

## **6.3 Community Planning**

Recommended that a Crime Risk and Social Impact Assessment be provided for the development and that any management/mitigation measures be included as requirements of the consent. This recommendation has been included in the draft conditions.

## **7. EXTERNAL REFERRALS**

### **7.1 NSW Police**

The DA was referred to the NSW Police as per Council's standard protocol. The NSW Police provided comment on 12 June 2013.

The NSW Police raised concern that *"associated circumstantial information obtained suggests that the proposed use of this site will have a negative impact on the Local Community"*, and included advice that one of the industrial units in DP 76181 is used by a motorcycle club.

However, the NSW Police identified the development as a Low Crime Risk after considering Safer By Design principles including consideration of crime likelihood, consequence, distributions of reported crime, socio economic conditions, situational hazards and crime opportunity.

## **8. STATUTORY PROVISIONS**

### **8.1 Port Stephens Local Environmental Plan 2000 (LEP 2000)**

The site is zoned 4(a) General Industrial.

#### Clause 23- Industrial Zonings

Brothels are permissible in the zone and it is considered that the proposal is consistent with the relevant zone objectives, particularly (c) and (g), which relate to ensuring adequate buffers to urban areas and maintaining amenity of industrial areas, respectively.

#### Clause 38 – Development on Flood Prone Land

The development involves change of use and fit-out of an existing industrial unit, and will not increase risk to life or property from flooding.

#### Clause 44 – Appearance of land and buildings

The proposed use and works to the existing industrial unit are unlikely to have any significant visual impact when viewed from the road, sports ground/recycling centre or any nearby watercourse.

#### Clause 47 – Services

The existing industrial unit has necessary services available.

#### Clause 51A – Acid Sulphate Soils

The site is mapped as Class 3 on the map, however the development will not involve any excavation and does not trigger the need for further investigation under this clause.

### **8.3 State Environmental Planning Policy 71 – Coastal Protection**

The site is within the coastal zone, however the development is considered to be consistent with the matters for consideration in Clause 8.

### **8.4 Draft Port Stephens Local Environmental Plan 2013 (DLEP 2013)**

The site will be zoned B5 Business Development under DLEP 2013, and brothels would be defined as "sex services premises". Under the Land Use Table, sex services premises would be prohibited on the site. Given the differences between the draft and current LEPs in this instance, the requirements of current LEP 2000 is considered to have more legal weight.

Any proposal for sex services premises would also be subject to Clause 7.12.

#### Clause 7.12 – Location of sex services premises

Requires Council to consider the proximity of any sex services premises to any residential land or community facility, and whether the development adjoins, or can be seen from, any area that is regularly frequented by children.

#### *Comment*

In this instance the development is not directly adjacent to any residential areas, but is in close proximity (225m) to the Hunter Retirement Village and dwellings on Shores Close. The development backs onto the Salamander Bay Recycling Facility, which shares access with the adjoining sportsgrounds, which is frequented by children.

In noting this, the development satisfies the setback requirements in Section B13 of the DCP and entry to the premises is not clearly visible from the sportsground and is located along a section of Soldiers Point Road unlikely to be regularly used by pedestrians to the sportsgrounds.

## **9. POLICY PROVISIONS**

### **9.1 Draft Port Stephens Local Environmental Plan 2013 (DLEP 2013)**

The development has been assessed against the relevant provisions of DCP 2007, as detailed below. Following consideration of the proposal, it is considered that the DA is compliant with the relevant requirements of DCP 2007.

#### Section B3 – Parking & Traffic

Council's DCP does not specify a parking rate for the proposed activity. Due to the activity involving customers coming to the site and no information regarding whether the business will be run by appointment, it is considered that application of the "shop" parking rate is reasonable in this instance.

The DA proposes 4 rooms, and the applicant has advised that there will not be any more than 12 people at the premises at any one time.

Based on the application of the shop parking rate (1 space per 20m<sup>2</sup>) and warehouse to the remainder of the industrial unit (1 space per 200m<sup>2</sup>), the industrial unit would require 7.73 spaces (6.7 for brothel, 1.03 for warehouse).

The unit has 8 spaces allocated to it under the strata plan and complies with this requirement, and will have sufficient parking for the likely demand of the development.

#### Section B13 – Brothels

##### ▪ Location

DCP 2007 requires Brothels to be located a minimum of 150m from the entry to any dwelling on residentially zoned land, and 200m from the entrance to any community facility or similar.

The proposed brothel will be located 225m from the entry to the nearest dwelling and the Hunter Retirement Village, and there are no known community facilities or similar within 200m of the site.

The development complies with the location requirements of Section B13.

##### ▪ Scale and Character

<b>Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Complies</b>
B13.C4	Max of 5 rooms	4 rooms	Yes
B13.C5	Services only provided in areas indicated on plan.	Can be conditioned.	Yes
B13.C6	Building must be sympathetic to existing character and comply	Fit-out works are minor, and do not impact character of industrial	Yes

**MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013**

	with development controls.	units compliance with DCP controls.	
B13.C7	Entrance must be discrete and max signage 1.2m x 0.6m.	Size of sign can be conditioned.	Yes
B13.C8	No neon/flashing signs.	No neon flashing signs proposed.	Yes
B13.C9	Provision of an internal waiting/reception area.	Reception/waiting area proposed.	Yes

**10. SECTION 94 CONTRIBUTIONS**

The proposed works involve a minor fit out of an industrial unit and do not trigger the need for Section 94A contributions.

**11. LIKELY IMPACTS****11.1 Built Environment**Adjoining Properties and Amenity

The proposed brothel will be contained within an existing industrial building, which is located at the rear of the site, and is unlikely to have any visual or noise impacts on surrounding properties. The proposal also provides a reception and waiting area, which reduces the potential for loitering in the car park area. The existing amenity of the industrial site is unlikely to be significantly impacted by the proposal.

Streetscape

The existing streetscape is characterised by large industrial buildings of various age, with no significant landscaping along the street frontage. The subject industrial unit is not clearly visible from the street and is unlikely to have any visual impact on the streetscape.

Views

The subject industrial unit is not clearly visible from the street, adjoining industrial properties or the nearby residential area and sports grounds.

**11.2 Access and Traffic**

As mentioned in Section 9 of this report, the development provides sufficient parking (8 spaces) and the likely traffic generation is not likely to have any impact on the existing traffic conditions along Soldiers Point Road.

### 11.3 Natural Environment

The development is not likely to have any impact on the natural environment.

### 11.4 Social and Economic Impacts

#### Social Impacts

It is important to note that while the potential for adverse social or economic impacts are of particular concern for this DA, brothels are a legal activity and permissible in the zone. Consideration of the appropriateness or impacts of brothels generally is outside the scope of this Section 79C assessment.

The factors most likely to determine the potential social impacts of this particular development are location and design of the proposed brothel. Guidance on the appropriate locations for brothels is provided by the setback requirements in Section B13 in Council's Development Control Plan 2007, and the Land & Environment Court (LEC) planning principles for location of brothels, both of which are aimed at ensuring that development does not pose an unacceptable social or amenity impacts. In addition, comments have been provided from the NSW Police regarding Safer By Design aspects.

As mentioned in Section 9 of this report, the proposed location satisfies the setback requirements in Section B13 of Development Control Plan 2007. Consideration of the LEC planning principles is provided below:

1. *Brothels should be located to minimise adverse physical impact, such as noise disturbance and overlooking. In this aspect they are no different from other land uses.*

Comment: The proposal is unlikely to have any noise impact on adjoining properties, and does not provide any opportunity for views between the development and the nearby residential area or sports fields. It is also noted that the development is not clearly visible from Soldiers Point Road.

2. *There is no evidence that brothels in general are associated with crime or drug use. Where crime or drugs are in contention in relation to a particular brothel application, this should be supported by evidence.*

Council does not have any evidence to indicate that the proposal is associated with any crime or drug activity. However, Council has been advised that a unit in SP 76181 is used as storage and a clubhouse by a motorcycle club. While this is of a concern, the NSW Police have advised that the development presents a Low Crime Risk and it is considered unreasonable to refuse the DA based on the activities of adjoining land use.

3. *Brothels should not adjoin areas that are zoned residential, or be clearly visible from them. Visibility is sometimes a function of distance, but not always.*

The site is in close proximity (225m) to a residential area, despite not being directly adjacent to it. However, the subject industrial building is not visible from any dwelling within the nearby residential area or while driving along Soldiers Point Road.

4. *Brothels should not adjoin, or be clearly visible from schools, educational institutions for young people or places where children and adolescents regularly gather. This does not mean, however, that brothels should be excluded from every street on which children may walk.*

The site backs onto the Salamander Bay Recycling Centre, which shares access with the nearby sports fields. The subject industrial building is not clearly visible from the sports fields, and children are unlikely to regularly walk pass the site.

5. *The relationship of brothels to places of worship (which are likely to attract people who are offended by brothels) is a sensitive one. The existence of a brothel should not be clearly visible from places where worshippers regularly gather.*

There is no known places of public worship near the subject site.

6. *There is no need to exclude brothels from every stop on a public transport route. However, it would not be appropriate to locate a brothel next to a bus stop regularly used by school buses.*

Although bus services are likely to pass the site, there are no known bus stops (for either regular services or school children) near the site.

7. *Where a brothel is proposed in proximity to several others, it should be considered in the context that a concentration is likely to change the character of the street or area. In some cases this may be consistent with the desired future character, in others not.*

There are no known brothels near the proposed development.

8. *The access to brothels should be discreet and discourage clients gathering or waiting on the street. Apart from areas where brothels, sex shop and strip clubs predominate, signage should be restricted to the address and telephone number.*

The development will have access to a parking area at the rear of the site, and a waiting area within the premises to avoid loitering. Conditions can be imposed regarding signage content.

While the proximity to residential areas and sports grounds and the existing motorcycle club storage and club house are a concern, the location is generally consistent with the LEC planning principles and DCP setback requirements, and is considered acceptable in this instance.

With regard to design, the recommendations of the Safer By Design assessment from the NSW Police, which includes operational measures and requirements for lighting and CCTV, can be satisfied through imposing conditions consent.

It is considered that reasonable action has been taken to minimise the potential for adverse social impacts.

#### Economic

Although the proposed brothel is unlikely to have any direct economic impact on the wider community, public submissions noted that customers may be less likely to frequent other businesses on the site or adjoining properties as a result of the development.

While any adverse economic impact on existing businesses is a concern, it is considered unreasonable to refuse the application on this basis as any such impact would arise from concerns relating to brothels in general rather than any specific impacts from this proposed development.

#### **12. SUITABILITY OF THE SITE**

As mentioned previously in this report, the assessment has identified that the site is suitable for the proposed development.

#### **13. PUBLIC INTEREST**

The approval of the application is unlikely to impact the wider public interest.

#### **14. CONCLUSION**

Following assessment of the proposal under the provisions of section 79C of the Environmental Planning and Assessment Act 1979, it is considered that the development is permissible, complies with the relevant requirements in applicable environmental planning instruments and is unlikely to generate impacts of a scale or nature that would warrant refusal of the application. Therefore, it is recommended that the application be approved.

#### **17. RECOMMENDATION**

That the consent authority, grant development consent to Development Application No. 16-2013-187-1, subject to the attached recommended conditions.

ATTACHMENT 3  
CONDITIONS

STANDARD CONDITIONS

1. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
2. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.

PLANNING

3. The brothel subject of this consent is restricted to a maximum of 4 rooms, with no sex services provided outside those rooms, and hours of operation must be restricted to the following:  
  
Sunday to Thursday – 10am to 12am (midnight)  
Friday and Saturday – 10am to 3am
4. This consent does not authorise any signage. Further development consent will be required from Council for any signage, unless it satisfies exempt development provisions. No flashing or illuminated signage is permitted.

SAFER BY DESIGN

5. The reception area shown on the plans shall incorporate a clearly defined waiting area. Details are to be submitted to Council **prior to the issue of a Construction Certificate**.
6. Car parking areas are to be well lit and covered by CCTV. Details are to be submitted to Council **prior to the issue of a Construction Certificate**.
7. The entry to the premises shall utilise CCTV and intercom services, with a remote door controlled from reception. Details are to be submitted to Council **prior to the issue of a Construction Certificate**.
8. Street numbering and business identification signage shall be provided at the entrance, of the site and building to avoid accidental entry into adjoining premises. All signage is to be devoid of any sexually explicit images, language or objects. Details are to be submitted to Council **prior to the issue of a Construction Certificate**.



9. The reception desk shall be provided with access to a private/staff room (eg kitchen) for staff safety. Details are to be submitted to Council **prior to the issue of a Construction Certificate**.
10. Each service room must have an intercom and duress alarm connected to the reception desk. Client pathways to and from waiting rooms should be clearly identified. A staff member should be supervising reception at all times (monitoring CCTV monitors, intercoms and duress alarms).
11. CCTV signage must be clearly displayed to ensure all clients are aware of the presence of CCTV.
12. A Crime Risk and Social Impact Assessment assessing areas of risk from the development shall be submitted to Council. Any recommendations of the report must be implemented **prior to the issue of any Occupation Certificate**.
13. Certification is to be provided to Council that the requirements of this consent have been satisfied **prior to the issue of any Occupation Certificate**.

#### **ENVIRONMENTAL HEALTH**

14. The development must contact Council's Environmental Health section to be placed on the inspections register prior to any commencement.
15. The development must be designed in accordance with:
  - (i) The WorkCover NSW *Health and Safety Guidelines for Brothels in NSW 2001*;
  - (ii) The NSW *Communicable Diseases Health and Safety Guidelines for Sex on Premises Venues* issued by NSW Department of Health in 2002;

#### **BUILDING**

16. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
17. Where there are no sanitary facilities currently onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete.
18. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.
19. A fire safety certificate as prescribed by Section 174 Environmental Planning & 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 New South Wales Fire Brigades. A copy of fire safety certificate needs to 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.

20. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
  - a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
  - b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.
21. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced.
22. Amended construction drawings are to be provided which clearly show the construction and fitout of the proposed works to comply with the disability access standard AS 1428.1 in particular provide amended details for door opening widths, external ramp access, ramp access to internal accessible WC, and the toilet for disabled persons. The amended drawings are required **prior to issue of the construction certificate.**
23. The premises are required to be provided with exit signs and portable fire extinguishers in accordance with the fire safety schedule which will be attached to the construction certificate
24. The hall leading to the alternate exit must be at least 1 metre clear width.
25. Details of ventilation to the new rooms to comply with part F 4.5 of the Building Code of Australia Vol 1 are to be provided prior to issue of the construction certificate.

ITEM NO. 4

FILE NO: 16-2011-507-2

**SECTION 96 MODIFICATION INVOLVING THE DELETION AND MODIFICATION OF BUSHFIRE CONSTRUCTION REQUIREMENTS FOR PROPOSED DWELLING AT NO. 144 ROCKY POINT ROAD FINGAL BAY**

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

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**RECOMMENDATION IS THAT COUNCIL:**

Refuse the Section 96 development application (DA 16-2011-507-2) for the building design modification to reduce the extent of bushfire construction requirements and deletion of bushfire condition 21 of development consent (DA 16-2011-507-1) for the construction of a single storey dwelling dated 21 September 2011 at Lot 9 DP 730087, 144 Rocky Point Road, Fingal Bay for the following reasons:

- 1) The proposed modifications do not, to the degree necessary, reduce the risk of ignition from a bushfire, for the potential for ignition caused by burning embers, radiant heat or flame generated by a bushfire; and intensity of the bushfire attack on the proposed building;
- 2) The proposal is not supported by the NSW Rural Fire Service;
- 3) The development is inconsistent with the provisions of clause 16 (2)(e), Residential Zoning 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; and
- 4) 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.

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**ORDINARY COUNCIL MEETING – 13 AUGUST 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Mayor Bruce MacKenzie Councillor Steve Tucker</b>
	That Council approve the Section 96 application with the deletion of condition 21 of the consent.

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

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

Those for the Motion: Mayor Bruce MacKenzie, Crs Paul Le Mottee, Chris Doohan, Steve Tucker and Sally Dover.

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

### MOTION

	<b>Councillor Peter Kafer</b> <b>Councillor Geoff Dingle</b>
	<p>That Council refuse the Section 96 development application (DA 16-2011-507-2) for the building design modification to reduce the extent of bushfire construction requirements and deletion of bushfire condition 21 of development consent (DA 16-2011-507-1) for the construction of a single storey dwelling dated 21 September 2011 at Lot 9 DP 730087, 144 Rocky Point Road, Fingal Bay for the following reasons:</p> <ol style="list-style-type: none"><li>1) The proposed modifications do not, to the degree necessary, reduce the risk of ignition from a bushfire, for the potential for ignition caused by burning embers, radiant heat or flame generated by a bushfire; and intensity of the bushfire attack on the proposed building;</li><li>2) The proposal is not supported by the NSW Rural Fire Service;</li><li>3) The development is inconsistent with the provisions of clause 16 (2)(e), Residential Zoning 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; and</li><li>4) 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.</li></ol>

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 and Geoff Dingle.

Those against the Motion: Mayor Bruce MacKenzie, Crs Paul Le Mottee, Chris Doohan, Steve Tucker and Sally Dover.

<b>214</b>	<b>Mayor Bruce MacKenzie</b> <b>Councillor Steve Tucker</b>
	It was resolved that Council approve the Section 96 application with the deletion of condition 21 of the consent.

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 Paul Le Mottee, Chris Doohan, Steve Tucker and Sally Dover.

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

## **BACKGROUND**

This application was called to Council by Mayor MacKenzie "as the Rural Fire Service conditions are not realistic for the location". As a result of Councils 24 July 2012 Ordinary Meeting, the motion was passed to refuse the Section 96 Application. Refer to **(ATTACHMENT 1)** for the Council report and **(ATTACHMENT 2)** for the Council resolution of 24 July 2012.

A rescission motion was lodged by Councillor Tucker and Councillor Jordan at Council's meeting of 25 September 2012. It was resolved that Council rescind its decision at the Ordinary Council Meeting of 24 July 2012, namely the Section 96 Modification involving the deletion and modification of a bushfire construction requirements for the proposed dwelling at number 144 Rocky Point Road, Fingal Bay. Refer to **(ATTACHMENT 3)** for this Council resolution.

To fulfil the resolution of Council, a meeting was held with the Mayor, the NSW Rural Fire Service (RFS) and Council Officers on 20 November 2012.

This report outlines Council officer's assessment and recommendation following this meeting and subsequent recommendations of the RFS.

The RFS advised that ultimately its Council's decision, however they were unwilling to change their view and would continue to not support the proposal. The RFS confirmed that two separate and independent officers have reviewed the site and their current position is maintained. The site is flame zone and should be developed according to the current Australian Standard. This is based on extensive policy and science with the intent of reducing the risk to life and property.

The RFS also mentioned 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.

Subsequent to this meeting with the RFS, they submitted further correspondence to Council, dated 27 November 2012, that stated;

*"It is my view, that in the event of the consent authority failing to incorporate the NSW RFS recommendations into the development consent, the liability exemptions provided to local government under Section 733 of the Local Government Act 1993, may be null and void as it could be proven that Council did not act in good faith.*

*Additionally, it is important that Port Stephens Council understands that in a circumstance where the NSW RFS is aware of blatant disregard for essential fire safety provisions, which may result in increased risk to the owner / occupier and emergency service personnel, the Department of Planning who is responsible for the legislation will be advised.*

*In closing, it concerns me greatly that a person moving into a recently constructed home located in a bush fire prone area has every right to assume that it has been constructed to the current Australian Standard. A failure on the part of Council to ensure this occurring will, in my opinion, leave Council open to possible litigation, as well as setting an unwelcome precedent".*

It is acknowledged that the proposal consists of a set of unusual circumstances of which have been validly raised by the Applicant. For example, the allotment is essentially an infill site and the last undeveloped block in the estate, where nearby structures are already built to a lesser standard. The application has unfortunately been disadvantaged by the timing of changing legislation at a point in time, whereby the costs of construction to comply with the current standards place an added burden on the construction. Whilst this information is appreciated and provided for Councillors information to form a balanced view, it does not negate Council's role as the planning authority to correctly apply the legislation at a point in time.

Following on from Council's Ordinary meeting dated the 12 February 2013 the Committee Of The Whole Recommendation was that Council:

1. *Defer the report to allow for consultation with the NSW State Government;*
2. *Write to the NSW State Government ( Office of Environment & Heritage) and request provision of an Asset Protection Zone on the rear of all properties along Rocky Point Road, Fingal Bay within 3 months or Council will undertake the work."*

Council wrote to the State Government as required by the Resolution and a subsequent meeting was organised on the 2 April 2013 and attended by the Mayor, Councillors, Council staff, National Parks & Wildlife Service, Crown Lands, The Rural Fire Service (RFS), and the property owner.

Responses were received by both NSW Government departments, **(ATTACHMENTS 11 AND 12)**. The Office of Environment & Heritage (NSW National Parks & Wildlife Service) in summary advised: **(ATTACHMENT 11)**

"The APZ for the subject proposal should not extend into national park or rely on actions being undertaken by NPWS. It is therefore recommended that Council consult with NSW Rural Fire Service about investigating alternative bushfire protection measures.

From the foregoing, and having considered the matter in detail, please be advised that NPWS will oppose the establishment of an APZ for this development proposal on the National Park."

The Trade & Investment Crown Lands written response dated the 10 July 2013, advised the following: **(ATTACHMENT 12)**

*"In accordance with Planning for Bushfire Protection, it is the developer's responsibility to meet the construction standards required for bush fire prone land without imposing mitigation works on their neighbours land. In particular, see Section 3.3 Exceptional circumstances for APZs – (b) APZs on adjoining lands, which states: Neither the RFS nor a council has the power to impose an APZ on an adjoining landowner.*

*Further to this statement, it also notes that easements are not appropriate in National Parks. Crown Lands have been working towards transferring the subject land to National Parks control, and requires that the land is left unencumbered."*

## **FINANCIAL/RESOURCE IMPLICATIONS**

Should the Council decision be a refusal in accordance with the recommendation, the Applicant may choose to complete the building as per the original DA approval which is compliant with the relevant construction standards for the bushfire prone site; however the development costs will be increased. The Applicant also has the option to appeal Council's decision in the Land and Environment Court; defending such would have financial implications for Council.

Should the Council decision be to approve the application contrary to the recommendation, consideration should be given to the impacts on the locality and Councils ability to service the community in a financially/socially responsible manner. In the worst case scenario, the Council may need to be represented at a Coronial enquiry/court should a significant bushfire result in damage to the local community, death of occupants and/or damages to the proposed building, adjoining or adjacent buildings. It is also important to note the associated risk exists for the life of the building not just the current applicant / owner / tenant.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Existing staff & legal budget allocations.
Reserve Funds	No		
Section 94	No		

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

As the proposal is not 'integrated development' Council has the legal capacity to approve the application as submitted by the Applicant. Whilst the RFS strongly object to the approval of the application, the RFS acknowledge that ultimately it is a decision for Council.

The development application is inconsistent with the objectives of the Residential 2(a) zoning within the Port Stephens Local Environmental Plan 2007. The development also does not comply with the requirements of Planning for Bushfire Construction 2006, the Building Code of Australia and Australian Standard AS 3959-2009. Along with these proposed policy departures, should Council endorse such, significant risk may be incurred by Council.

Council may recall that it adopted a revised Corporate Risk Management Policy on 27 November 2012. The policy includes Council's 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."*

A review of the assessment report, the Applicant's submission and the RFS advice, details that a decision contrary to the recommendation presents an unacceptable risk to Council as per Council's standard risk management matrix. These unacceptable risks relate to Council and the local community in respect to public safety, Council reputation and legal exposure. In this instance, a refusal of the application is the only viable or comprehensive risk treatment.

The RFS state in their correspondence that a decision contrary to their advice may waiver the good faith provisions in the *Local Government Act 1993* and suggest Council seeks its own legal advice. This could result in individuals being personally accountable / responsible for any subsequent implications resulting from the decision. Further, discussions with Council's Corporate Risk Unit confirmed that it is likely Council's insurers may not cover Council should a decision be made contrary to State Government agency advice (the RFS who are the recognised experts in their field) and relevant standards etc.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may increase its legal risk by approving	High	Determining by way of Refusal will contribute to reduce the risk.	Yes



development not in accordance with RFS advice and relevant Australian Standards			
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**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There may be potential adverse social, economic and environmental impact given the proposal does not adequately address the bushfire safety threat in the building construction design.

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 is not in the public interest.

Should the Section 96 Modification be approved there may be a possible economic benefit for the existing/current landowner, in particular that they will be able to construct their dwelling in a cost effective manner. However this is largely offset by the possible adverse impacts on adjoining properties and the wider community, including future owners who would rightly expect that a dwelling approved and constructed in 2013 would incorporate the appropriate bushfire construction requirements of the legislation at the time.

**CONSULTATION**

The application was not required to be notified or otherwise exhibited in accordance with Council policy being a single storey dwelling.

The RFS were consulted extensively in relation to this application. As referred to elsewhere in this report they do not support the application.

**OPTIONS**

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

**ATTACHMENTS** – All listed below are provided under separate cover.

- 1) 10/7/12 Council report;
- 2) 24/7/12 Council resolution;
- 3) 25/9/12 Rescission motion resolution;
- 4) Locality Plan;
- 5) Aerial photograph locality plan;
- 6) Section 96 Application and Applicant's submission letter;
- 7) The Assessment officers' assessment report;
- 8) Extracts from the existing approval including the RFS letter dated 12/9/2012, the Parker Scanlon Bushfire Assessment Report dated 16/7/2010 (Amended 18/8/2011), and the approved site plan DA 16/2011/507/01;
- 9) Rural Fire Service referral letter dated 19/6/2012;
- 10) RFS letter dated 27/11/12;
- 11) Office of Environment & Heritage (NSW National Parks & Wildlife Service) response letter, contact Andrew Bond;
- 12) Trade & Investment (Crown Lands) response letter dated 10 July 2013.

**COUNCILLORS ROOM**

- 1) Copy of the existing approved plans.

**TABLED DOCUMENTS**

Nil.

ITEM NO. 5

FILE NO: PSC2013-00406

**REVOKE POLICY – MANAGEMENT OF ABANDONED SHOPPING TROLLEYS****REPORT OF: MATTHEW BROWN – DEVELOPMENT ASSESSMENT AND COMPLIANCE  
SECTION MANAGER****GROUP: DEVELOPMENT SERVICES**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Revoke the current policy "Management of Abandoned Shopping Trolleys" adopted 18 October 2005, Minute No. 306.
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**ORDINARY COUNCIL MEETING – 13 AUGUST 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Sally Dover Councillor Paul Le Mottee</b>
	That the recommendation be adopted.

**MOTION**

<b>215</b>	<b>Councillor Sally Dover Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to forward to Council a report to firstly revoke the current policy and secondly recommended adoption of a Management Directive in its place.

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.

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

The current policy – Management of Abandoned Shopping Trolleys was originally adopted on 18 October 2005. This original policy is provided in **(ATTACHMENT 1)**.

A policy in this regard is no longer warranted. A Management Directive is considered more appropriate than a Council Policy, as the details within are an internal process to ensure the management of abandoned shopping trolleys to assist with the prompt collection and return of shopping trolleys to their owners rather than an issue Council is required to make a public policy decision on.

Operationally, there is sufficient scope in the Management Directive to manage the issue of abandoned shopping trolleys within Port Stephens Local Government Area.

### FINANCIAL/RESOURCE IMPLICATIONS

There are minimal direct financial / resource implications.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Policy update & implementation within existing budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

There are positive legal, policy and risk implications in reviewing existing policies and determining the appropriateness of policy or in this instance a Management Directive is considered more appropriate to assist in facilitating more accurate and robust decision making.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk of making poor decisions as a result of outdated policy	High	Repeal current policy and replace with Management Directive for internal use.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Council accepts that the provision of shopping trolleys to customers is essential and that some customers may utilise trolleys to convey goods for some distance beyond central business districts. Shopping trolleys will invariably be abandoned notwithstanding the type of management system in place. This policy does not aim to prohibit the use of shopping trolleys for this purpose but aims to provide procedures for both Council and retailers to deal with abandoned trolleys.

There are no perceived social implications related to this policy.

There are no perceived economic implications associated with this policy.

Retailers are encouraged, not required, to implement retrieval systems which may exceed current practices eg coin return mechanisms.

Council enforcement resources implications are not expected to increase as a result of this policy.

The policy is aimed at minimising potential environmental impacts of abandoned shopping trolleys by formalising retailers and Councils responsibilities.

## **CONSULTATION**

Consultation has been undertaken with the Ranger Team which directly implement this policy within the Section.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Policy - Management of Abandoned Shopping Trolleys (original policy).

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1



Adopted:18/10/05  
Minute No:306  
Amended:  
Minute No:

FILE NO: 9480-001

TITLE: MANAGEMENT OF ABANDONED SHOPPING TROLLEYS

RESPONSIBLE OFFICER: PAUL MINETT

## BACKGROUND

This policy has been prepared to assist Council in managing situations where shopping trolleys are abandoned in public places and to build relationships with retailers which facilitate the prompt collection and return of abandoned trolleys to their owners.

The Community is concerned over abandoned shopping trolleys due to:

- Visual impact in public places.
- Environmental hazards when dumped on land, waterways and reserves.
- Safety hazards to pedestrians and motorists.
- Potential use as tools for vandalism.

## OBJECTIVE

- 1) To provide a procedure for Council staff in dealing with abandoned shopping trolleys.
- 2) To build relationships with retailers which assist in the prompt collection and return of shopping trolleys to their owners.

## PRINCIPLES

- 1) Where possible, shopping trolleys should remain on the premises which own them.
- 2) The trolley owner should develop management programs to ensure that abandoned shopping trolleys are collected promptly
- 3) Council will enter into contract agreements with retailers which outline the responsibilities of both parties when dealing with abandoned shopping trolleys.

- 4) Council will encourage retailers to implement “built in” systems that encourage the return of trolleys or the confinement of trolleys to the owners premises.
- 5) Council will impound trolleys following the procedures under the Impounding Act 1993 where the terms of contract agreements have not been met.

**POLICY STATEMENT**

- 1) Council will enter into an agreement contract with all commercial premises that provide shopping trolleys to customers. The Agreement contract is in Appendix A of this policy.
- 2) The agreement specifies the responsibilities of both the retailer and Council in relation to the management of abandoned trolleys.
- 3) Generally, Council officers will notify the trolley owner of the location of abandoned trolleys which pose a risk or nuisance and require collection of the trolley within **1 hour** of notification. Abandoned trolleys which do not, in the Council officers opinion, pose a risk or nuisance will be required to be collected within **24 hours** of the time of notification.
- 4) Council shall notify the trolley owner using the form provided in Appendix 2. This form may be hand delivered, faxed or posted at the Council officers discretion.
- 5) The trolleys of retailers who have utilised a coin return mechanism or similar incentive system or who have installed other “built in” trolley management systems will be returned to their owners without impounding or charge of a fee.
- 6) “Built in” systems include-
  - Coin/token operated systems with refund.
  - Trolleys with wheel locks activated by a radio signal or magnetic strip.
  - Cattle grids at carpark entrances and exits.
  - Radio signal transmitters on trolleys.
  - Any other system which demonstrates a commitment to contain trolleys to the owners premises.
- 7) Where trolleys are not removed within the time period stipulated in the Notice, they will be impounded under the provisions of Section 15 of the Impounding Act and transported to holding areas at Council’s Works Depots.
- 8) Owners of impounded trolleys will be notified of the impounding of the item and the arrangements to be made to release the item.
- 9) Impounded trolleys will be released by Council in accordance with the provisions of the Impounding Act and the payment of all impounding fees as set in Councils schedule of fees and charges.
- 10) Where trolleys are not released from the pound, they will be kept for a minimum of 28 days they will be sold or otherwise disposed of.

## **RELATED POLICIES**

Nil.

## **SUSTAINABILITY IMPLICATIONS**

Council accepts that the provision of shopping trolleys to customers is essential and that some customers may utilise trolleys to convey goods for some distance beyond central business districts. Shopping trolleys will invariably be abandoned notwithstanding the type of management system in place.

This policy does not aim to prohibit the use of shopping trolleys for this purpose but aims to provide procedures for both Council and retailers to deal with abandoned trolleys.

There are no perceived Social implications related to this policy.

There are no perceived economic implications associated with this policy.

Retailers are encouraged, not required, to implement retrieval systems which may exceed current practices eg coin return mechanisms.

Council enforcement resources implications are not expected to increase as a result of this policy.

The policy is aimed at minimising potential environmental impacts of abandoned shopping trolleys by formalising retailers and Councils responsibilities.

## **RELEVANT LEGISLATIVE PROVISIONS**

- Abandoned shopping trolleys may be impounded by Council under Section 15 of the Impounding Act 1993.
- Council must follow the procedures of the Impounding Act relating to impounding, storage, notification of owner , release and the charging of impounding fees.
- A person who abandons a shopping trolley in a public place is guilty of an offence under Section 32 of the Impounding Act.

## **IMPLEMENTATION RESPONSIBILITY**

Environmental Services

## **REVIEW DATE**

3 years from adoption



**APPENDIX 1**

**Contract between retailer and Council**

This contract is made on.....(date) between Port Stephens Council and ..... (retailer) of .....(address)

It remains in force unless repealed by either party, by written advice to the other party. This contract does not rule out other legal rights and responsibilities of the signatories.

**Under the terms of this contract, the retailer agrees to:**

- Ensure that all trolleys are easily identifiable by Council officers.
- Ensure that trolleys reported as posing risk or nuisance are collected immediately on notification (and have been removed within 1 hour).
- Ensure that all other trolleys reported are collected within the time limit set by Council, specifically 24 hours or as advised by Council notice.
- Inform customers (through clearly visible signage and other means) that trolleys should not be removed from premises or abandoned, and that penalties apply for the dumping of trolleys outside the retail outlet complex.
- Provide suitable, well signed trolley bays to exit points to retail outlets or complexes.
- Provide to Council, on request, an up to date map showing usual trolley collection routes and schedules.
- Provide contact details for an employee responsible for arranging trolley collection, including an after hours number  
specifically..... ph.....fax .....email .....

**Under the terms of this contract the Council agrees to:**

- Nominate an officer/s to be responsible for liaison with stores regarding trolley management, specifically.....ph.....fax.....email.....
- Encourage all Council personnel who become aware of unattended trolleys in risky or unusual locations to inform a designated Council officer/s of the ownership, time, date and location of the trolley as soon as possible; the designated Council officer/s will record the ownership, time, date and location of the trolley reported and take or authorise action as necessary.
- Make a reasonable attempt/s to contact the retailer representative prior to taking actions such as impounding or return for fee.
- Following notification to the retailer representative, provide the retailer with an opportunity to collect their trolley, within the timeframes specified within this contract. Trolleys belonging to retailers utilising coin return mechanisms or similar trolley return incentives or other "built in" systems designed to confine trolleys to the owners premises, will be returned to the premises without fee or penalty.
- Assist the retailer in the delivery of education campaigns alerting the public regarding the need to avoid trolley abandonment and penalties which may apply.
- Where suitable evidence is available, take enforcement action against persons responsible for abandoning trolleys in public places.

Signed.....(the retailer)

Signed.....(the Council)

**APPENDIX 2**  
**ABANDONED SHOPPING TROLLEY NOTICE**

**This Notice Requires your action/response**  
**Failure to Act may result in a fee being imposed**

Served on.....(Name of retailer)

This day.....(Date).....am/pm (time)

A Shopping Trolley owned by your Company has been abandoned at the following location

.....

.....(precise location)

The trolley is (tick one):

- ☐ Still in the location where abandoned.
- ☐ Still in the location where abandoned and is considered to be a risk to public safety and/or property.
- ☐ Has been moved by Council staff as it was considered to be a risk to public safety and/or property. It is now located at:  
.....
- ☐ Has been impounded by Council and can be collected from Council's Depot at.....between the hours of 8.30am and 4.00pm. A fee applies for retrieval of impounded goods. Note that unclaimed goods will be sold or disposed of after 28 days.
- ☐ Has been returned to your premises
- ☐ An impounding notice will be sent to your business within seven days.

**In accordance with you agreement / contract, you are required to do the following:**

- ☐ Recover the trolley as a matter of urgency before.....m/pm on.....(date)
- ☐ Recover the trolley before the next working day ie by.....am/pm on ..... (date)

Please contact Council's Rangers on 49800255 if you wish to discuss this matter.

Authorised officer.....

ITEM NO. 6

FILE NO: PSC2013-00406

**REVIEW POLICY – DOG NOISE STRATEGY (2004)**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the draft Dog Noise Strategy (2013) (**ATTACHMENT 2**);
  - 2) Place on public exhibition for a period of 28 days;
  - 3) Should no submissions be received, revoke the existing policy Dog Noise Strategy (2004) (**ATTACHMENT 1**) and adopt the draft policy Dog Noise Strategy (2013).
- 

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Paul Le Mottee</b> <b>Councillor Sally Dover</b>
	That the recommendation be adopted.

**MOTION**

<b>216</b>	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to forward a report to Council to firstly repeal the current policy and secondly adopt an amended policy in its place.

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 repeal, amend or substantially update where required. The subject of this report includes one (1) policy recommended to be repealed and an amended policy to be adopted in its place.

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

The current policy - Dog Noise Strategy, was first adopted by Council on 3 June 1997 and was most recently amended on 19 October 2004. The original policy is provided as **(ATTACHMENT 1)**.

The policy sets out to provide Council operational staff with an improved cost effective method of dealing with noise complaints in relation to barking dogs as well as enabling a sufficient amount of evidence to be obtained in dog noise control matters.

The amended policy – Dog Noise Strategy (2013) is recommended for adoption and is provided as **(ATTACHMENT 2)**. In respect of content the document is largely the same however the way complaints are dealt with by Council staff has been revised and the way complaint non compliance and subsequent enforcement is escalated has also been refined. Specifically, the policy directs that if three (3) additional seven (7) day noise diaries are not provided by Council when requested, the complainant will be referred to the Community Justice Centre. In addition, the use of Prevention Notices and Court Attendance Notices have been incorporated into the policy to enable further enforcement escalation alternatives.

The amended policy keeps Ports Stephens Council in line with how other peer Council's manage dog noise nuisances and demonstrates a consistent and transparent approach to the community.

### FINANCIAL/RESOURCE IMPLICATIONS

There are minimal direct financial / resource implications.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Policy update & implementation within existing budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

There are positive legal, policy and risk implications in reviewing existing policies and determining the appropriateness and relevance of a policy.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk of making poor decisions as a result of outdated policy	High	Repeal current policy and replace with amended policy.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are minimal direct sustainability implications. The policy enables an efficient, transparent and cost effective method of resolving dog noise complaints.

**CONSULTATION**

Consultation has been undertaken with Team Leader Rangers and operational staff which directly implement this policy within the Section.

**OPTIONS**

- 1) Resolve to retain the existing policy;
- 2) Resolve to repeal the existing policy and adopt to replace it with the amended policy.

**ATTACHMENTS**

- 1) Dog Noise Strategy (original policy);
- 2) Dog Noise Strategy (2013) (amended policy).

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**

Dog Noise Strategy (original policy)



Adopted: 3/6/97

Minute No: 1083

Amended/Re-adopted: 30/01/2001

Minute No:016

Amended: 19/10/2004

Minute No:375

**FILE NO: S9480-023**

**TITLE: DOG NOISE STRATEGY**

**BACKGROUND**

Council first adopted the Dog Noise Strategy on 3/6/97 ( min 1083).  
The strategy remains unchanged.

**OBJECTIVE**

1. To provide an efficient and cost effective method of dealing with noise complaints relating to barking dogs.
2. To enable a sufficient level of information and evidence to be obtained in Noise control issues.

**PRINCIPLES**

1. Council will act to resolve dog noise problems having regard to legislative requirements.
2. Persons who lodge complaints about barking dogs must provide a level of information to support the complaint and enable efficient investigation
3. Persons who make complaints shall be willing to provide evidence and appear as a witness if necessary

## **POLICY STATEMENT**

1. Complainants will be requested to complete and sign a Dog Noise Nuisance complaint Form. The form requires certain information and undertakings eg willingness to appear as witness in Court and assistance in assessment.  
The necessity to complete the form will assist in reducing vexatious complaints.
2. A seven (7) day diary needs to be completed giving times and duration of barking.
3. Three (3) sets of the diary are sent with a recommendation that the complainant arrange for other affected persons to complete them.
4. On the return of the diaries, Council staff will visit the dog owner to discuss the matter.
5. The dog owner will be given seven (7) days to consider a course of action.
6. After the expiry of the seven (7) days Council staff will take the following action-
  - a) If the owner is co-operative – defer action and contact the complainant after thirty (30) days to see if the problem still exists.
  - Or
  - b) If the dog owner is unco-operative , issue a Nuisance Order under The Companion Animals Act.
7. Further 7 day diaries may be required to be completed by the complainant in Order to secure additional evidence to support the Nuisance Order.
8. After receiving the additional completed diaries, a decision will be made, having consideration to Councils legal procedures policy as to further action.
9. Options in the matter include –
  - a) Proceed by Summons to enforce the Nuisance Order
  - b) Issue Infringement Notice
10. The above procedure may be repeated until the noise problem is resolved.

## **RELATED POLICIES**

The Dog Noise Strategy is referred to in Councils Local Companion Animals Management Plan.

**REVIEW DATE**

12 months from adoption

**RELEVANT LEGISLATIVE PROVISIONS**

Companion Animals Act - Nuisance Orders

**IMPLEMENTATION RESPONSIBILITY**

Rangers  
Environmental Health Officers



**ATTACHMENT 2**

Dog Noise Strategy (2013) (Amended Policy)



**POLICY**

Adopted:  
Minute No:  
Amended:  
Minute No:

**FILE NO:** PSC2013-00406

**TITLE:** DOG NOISE STRATEGY 2013

**RESPONSIBLE OFFICER:** MARC GOODALL

**BACKGROUND**

Council first adopted the Dog Noise Strategy on 3/6/97.

**OBJECTIVE**

1. To provide an efficient and cost effective method of dealing with noise complaints relating to barking dogs.
2. To enable a sufficient level of information and evidence to be obtained in dog noise control issues.

**PRINCIPLES**

1. Council will act to resolve dog noise problems having regard to legislative requirements.
2. Persons who lodge complaints about barking dogs must provide a level of information to support the complaint and enable efficient investigation.
3. Persons who make complaints shall be willing to provide evidence and appear as a witness if necessary.

**Changes**

**Delete:** "The strategy remains unchanged"

## POLICY STATEMENT

1. Prior to the matter being investigated complainants will be requested to complete and sign a Dog Noise Nuisance complaint Form. The form requires certain information and undertakings such as; willingness to appear as witness in Court and assistance in assessment.

Completion of the complaint form will assist in reducing vexatious complaints.

2. A seven (7) day diary needs to be completed by the complainant giving times and duration of barking.
3. On the return of the seven (7) day diary, Council staff will visit the dog owner to discuss the matter and seek a commitment to cause the barking to cease.
4. The dog owner will be given seven (7) days to consider a course of action.
5. After the expiry of the seven (7) days Council staff will take the following action-
  - a) if the owner is co-operative – defer action and contact the complainant after thirty (30) days to see if the problem still exists.
  - Or
  - b) If the dog owner is unco-operative , issue a Nuisance Order under *The Companion Animals Act 1998*.

## Changes

**1) Insert:** "Prior to the matter being investigated

**1) Delete:** "The necessity to complete the form will assist in reducing vexatious complaints"

**Insert:** "Completion of the complaint form will assist in reducing vexatious complaints".

**3) Delete:** "Three (3) sets of the diary are sent with a recommendation that the complainant arrange for other affected persons to complete them".

**Insert:**  
"On the return of the seven (7) day diary, Council staff will visit the dog owner to discuss the matter and seek a commitment to cause the barking to cease".

**4) Delete:** "On return of the diaries, Council staff will visit the dog owner to discuss the matter".

**Insert:** " The dog owner will be given seven (7) days to consider a course of action".

**5) Delete:** "The dog owner will be given seven (7) days to consider a course of action:"

**Insert:** " After the expiry of the seven (7) days Council staff will take the following action-  
a) if the owner is co-operative – defer action and contact the complainant after thirty (30) days to see if the problem still exists.  
Or  
b) If the dog owner is unco-operative , issue a Nuisance Order under *The Companion Animals Act 1998*.

6. In response to the dog owner being uncooperative three (3) additional seven (7) day diaries may be provided to the complainant. The additional diaries are to be completed in Order to secure additional evidence to support the Nuisance Order.

Three (3) copies of the diary are sent with a recommendation that the complainant arrange for other affected persons to complete them. If the additional diaries cannot be obtained the complainant will be referred to the Community Justice Centre.

7. Should additional completed diaries be received, a decision will be made, having consideration to Council's legal procedures policy as to further action.

8. Options in the matter include;

- a) Issue Penalty Infringement Notice
- b) Issue second Penalty Infringement Notice

Alternatively, where the above enforcement options do not achieve compliance the matter may be escalated under the *Protection of the Environment Operations Act 1997* by way of a Prevention Notice.

9. If the matter is not resolved following the above process Council may issue a Court Attendance Notice.

#### Changes

**6) Delete:** "After the expiry of the seven (7) days Council staff will take the following action-  
a) if the owner is co-operative – deter action and contact the complainant after thirty (30) days to see if the problem still exists.

Or

b) If the dog owner is unco-operative, issue a Nuisance Order under The *Companion Animals Act*"

**Insert:** "In response to the dog owner being uncooperative three (3) additional seven (7) day diaries may be provided to the complainant. The additional diaries are to be completed in Order to secure additional evidence to support the Nuisance Order.

Three (3) copies of the diary are sent with a recommendation that the complainant arrange for other affected persons to complete them. If the additional diaries cannot be obtained the complainant will be referred to the Community Justice Centre".

**7) Delete:** "Further 7 day diaries may be required to be completed by the complainant in order to secure additional evidence to support the Nuisance Order".

**Insert:**  
"Should additional completed diaries be received, a decision will be made, having consideration to Council's legal procedures policy as to further action".

**8) Delete:** "After receiving the additional completed diaries, a decision will be made, having consideration to Council's legal procedures policy as to further action".

**Insert:** "Options in the matter include;  
a) Issue Penalty Infringement Notice  
b) Issue second Penalty Infringement Notice

Alternatively, where the above enforcement options do not achieve compliance the matter may be escalated under the *Protection of the Environment Operations Act 1997* by way of a Prevention Notice."

**9) Delete:** "Options in the matter include –  
a) Proceed to Summons to enforce the Nuisance Order b) Issue infringement Notice

**Insert:** "If the matter is not resolved following the above process Council may issue a Court Attendance Notice".

**10) Delete:** "The above procedure may be repeated until the noise problem is resolved".

#### RELATED POLICIES

The Dog Noise Strategy is referred to in Council's Local Companion Animals Management Plan.

Council's Local Orders Policy has provisions for the keeping of Animals on Private Property

#### REVIEW DATE

1 July 2016

#### RELEVANT LEGISLATIVE PROVISIONS

Companion Animals Act 1998 - Nuisance Orders

Protection of the Environment Operations Act 1997

Prevention Notice  
Noise Abatement Order

#### IMPLEMENTATION RESPONSIBILITY

Environmental Health and Compliance.

#### Changes

**Insert:** "Council's Local Orders Policy has provisions for the keeping of Animals on Private Property"

**Insert:** "1 July 2016"

**Insert:** "Protection of the Environment Operations Act 1997

Prevention Notice  
Noise Abatement Order"

**Delete:** "Rangers Environmental Health Officers"

**Insert:** " Environmental Health and Compliance"

ITEM NO. 7

FILE NO: S9100-023

## REVIEW OF COUNCIL POLICY – PLANNING MATTERS TO BE REPORTED TO COUNCIL

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

### RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the amended policy titled - Development Applications to be reported to Council (2013) (**ATTACHMENT 2**);
- 2) Place on public exhibition for a period of 28 days;
- 3) Should no submissions be received revoke the existing Planning Matters to be Reported to Council (2002) (**ATTACHMENT 1**) and adopt the amended policy Development Applications to be Reported to Council (2013).

### ORDINARY COUNCIL MEETING – 13 AUGUST 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Chris Doohan Councillor Paul Le Mottee
	That the recommendation be adopted.

### MOTION

217	Councillor Sally Dover Councillor Chris Doohan
	It was resolved that the recommendation be adopted.

### BACKGROUND

The purpose of this report is to forward to Council an amended policy for adoption.

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 updated.

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

The current policy – Planning Matters to be reported to Council was originally adopted on 26 February, 2002. This original policy is provided in **(ATTACHMENT 1)**. The purpose of this policy was to advise how Councillors can "call up" a DA for Council consideration.

The policy has been amended and is now titled – Development Applications to be reported to Council. This amended policy is provided in **(ATTACHMENT 2)**.

There has been minimal change to the policy, as the current balance of Development Applications determined under delegation vs Council is working effectively. The changes relate to updated references and policy names etc, with the intent of the policy remaining the same. The policy also reinforces / provides further clarity around when a DA can be 'called up'. This is after all the required information has been submitted (of which the Applicant is willing to provide) and the full development assessment has been completed.

The policy continues with the aspect that one (1) Councillor can 'call up' a DA.

The policy is read in conjunction with existing staff delegations, handed down from the General Manager. When a Development Application is 'called up' to Council, it removes the staff delegations for that particular development application.

### FINANCIAL/RESOURCE IMPLICATIONS

There are minimal direct financial / resource implications.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Policy update & implementation within existing budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

There are positive legal, policy and risk implications in reviewing existing policies and determining the appropriateness of policy, to assist in facilitating more accurate and robust decision making.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk of making poor decisions as a result of outdated policy	High	Review current policy.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are minimal direct sustainability implications. The policy enables the effective determination of development applications on a merits basis considering all respective legislation.

**CONSULTATION**

Consultation has been undertaken with relevant Co-ordinators within both the Development Assessment and Building Assessment Teams which directly implement this policy within the Section.

**OPTIONS**

- 1) Resolve to retain the existing policy;
- 2) Resolve to adopt the amended policy;
- 2) Resolve to revoke the policy.

**ATTACHMENTS**

- 1) Planning Matters to be reported to Council (ie. original policy);
- 2) Development Applications to be reported to Council.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ATTACHMENT 1

CURRENT POLICY



Adopted: 26/02/2002  
Minute No:048  
Amended:  
Minute No:

FILE NO: S9100-023

RESPONSIBLE OFFICER: PAUL DOUGLASS

TITLE: PLANNING MATTERS TO BE REPORTED TO COUNCIL

**BACKGROUND**

Planning decisions are made daily on a wide range of matters utilising delegated authority. This policy is aimed at ensuring that Councillors are made aware of these decisions and where appropriate given prior notice of proposed decisions.

**OBJECTIVE**

To ensure that Councillors are provided with the opportunity for input into planning matters prior to decisions being finalised.

**PRINCIPLES**

- 1) The use of delegated authority provides an opportunity for effective and timely decision making; however, it is appropriate that Council is informed of the exercise of delegated authority.
- 2) Given the scope of planning decisions it is appropriate that staff are able to judge those matters which should be reported to Council.
- 3) The delegations are drafted such that a Councillor may request that the delegation not be exercised and a matter be reported to Council. This ensures Councillors are aware of development applications received and, on occasion, of planning recommendations prior to decisions, as well as proposed actions on policy matters such as Local Environmental Plans.



## **POLICY STATEMENT**

Council shall be informed with regard to planning matters in the following ways:-

1. Minutes of Development Assessment Panel meetings are provided to all Councillors, this provides Councillors with a list of development applications received and determined.
2. At any time prior to determination a Councillor may request that a development application be reported to Council. In this instance the application will be reported following completion of assessment.
3. Where considered appropriate by the Development and Building Manager Councillors will be advised of recommendations prior to determination of development applications under delegated authority. This would either be through the Development Assessment Panel minutes, the Development and Building Managers weekly report or through a specific memo.
4. All matters of planning policy will be advised to Council. This would be through either reports to Council or memos to Councillors on the use or intended use of delegated authority.
5. The Manager Sustainable Planning may report any planning matter to Council.

## **RELATED POLICIES**

The relevant planning matters referred to above are as follows:

- Development Applications
- Modifications to Development Applications
- Local Environmental Plans
- Development Control Plans
- Section 94 Contributions Plans

## **REVIEW DATE**

4 Years

## **RELEVANT LEGISLATIVE PROVISIONS**

Environmental Planning and Assessment Act, 1979 (as amended)

## **IMPLEMENTATION RESPONSIBILITY**

Sustainable Planning Group

ATTACHMENT 2

UPDATED POLICY



POLICY

Adopted: 26/02/2002

Minute No: 048

Amended:

Minute No:

**FILE NO:** PSC2013-00406

**TITLE:** DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL

**RESPONSIBLE OFFICER:** MATTHEW BROWN - MANAGER  
DEVELOPMENT ASSESSMENT & COMPLIANCE

**BACKGROUND**

The majority of development applications (DA's) are determined by Council's assessment officers, utilising delegated authority and may require review or concurrence from the Development Assessment Panel (DAP). This policy is aimed at ensuring that Councillors are aware of how they can access information on the receipt and determination of DA's.

**OBJECTIVE**

- 1) To ensure that Councillors are provided with the opportunity for input into the determination of DA's prior to decisions being finalised and determinations granted.

**PRINCIPLES**

- 1) The use of delegated authority provides an opportunity for effective and timely decision making; however, it is appropriate that Council is informed of the exercise of delegated authority.
- 2) Given the scope of planning decisions, it is appropriate that delegated assessment staff, are able to use their discretion and judgement for those matters which should be reported to Council.

- 3) The delegations are drafted such that a Councillor may request the staff delegation be withdrawn and a DA be reported to Council for determination. In this instance a Councillor completes the DA Call Up Form.

## **POLICY STATEMENT**

Council shall be informed with regard to planning matters in the following way:-

- 1) All current DA's lodged are publicly available and listed on the Council website via the DA Tracker.
- 2) A report is generated weekly of all new DA's lodged and circulated weekly via email to all Councillors and other relevant internal staff.
- 3) At any time prior to determination of a DA, a Councillor may request that the application be reported to Council for determination. A report will be forwarded to Council once all the required information is submitted and once a full assessment has been completed pursuant to section 79C *Environmental Planning and Assessment Act 1979*. However, the Applicant has the ability to advise they are not providing any further information and request Council make a determination.
- 4) Determination of DA's under delegated authority, are in accordance with set procedures. The procedures for determination include Single Officer Determinations (SODs), DAP review or DAP concurrence.
- 5) The Group Manager, Development Services and/or Manager, Development Assessment & Compliance, at their discretion may report any DA to Council for determination.

## **RELATED POLICIES**

The relevant planning matters referred to above are as follows:-

- 1) Sustainability Review – End to End Process
- 2) Application Determination Policy
- 3) Development Control Plan

## **SUSTAINABILITY IMPLICATIONS**

### **SOCIAL IMPLICATIONS**

Positive social implications are likely through providing a clear policy framework for reporting development applications to Council.

### **ECONOMIC IMPLICATIONS**

Nil.

### **ENVIRONMENTAL IMPLICATIONS**

Nil.

**RELEVANT LEGISLATIVE PROVISIONS**

- 1) Environmental Planning & Assessment Act 1979
- 2) Environmental Planning & Assessment Regulations 2000
- 3) Port Stephens Local Environmental Plan

**IMPLEMENTATION RESPONSIBILITY**

- 1) Development Assessment & Compliance

**PROCESS OWNER**

- 1) Development Services Group

**REVIEW DATE**

- 1) Bi-Annually

ITEM NO. 8

FILE NO: S9100-023

## REVOKE POLICY – SMOKE FREE OUTDOOR AREAS POLICY

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

### RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the amended policy titled – Smoke Free Outdoor Areas Policy (2013) **(ATTACHMENT 2)**;
- 2) Place on public exhibition for a period of 28 days;
- 3) Should no submissions be received revoke the existing Smoke Free Outdoor Areas Policy (2008) **(ATTACHMENT 1)** and adopt the amended Smoke Free Outdoor Areas Policy (2013).

### ORDINARY COUNCIL MEETING – 13 AUGUST 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Chris Doohan Councillor Steve Tucker
	That the recommendation be adopted.

### MOTION

218	Councillor Sally Dover Councillor Chris Doohan
	It was resolved that the recommendation be adopted.

### BACKGROUND

The purpose of this report is to forward a report to Council to firstly revoke the current policy and secondly adopt an amended policy in its place.

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. The subject of this report includes one (1) policy recommended to be repealed and an amended policy to be adopted in its place.

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

The current Smoke Free Outdoor Areas Policy was adopted by Council on 16 December 2008. The original policy is provided in **(ATTACHMENT 1)**.

The policy sets out to demonstrate Council's leadership in terms of improving and protecting the health and wellbeing of the community as well as raising awareness of the issues associated with smoking by banning smoking in public outdoor areas.

The amended Smoke Free Outdoor Areas Policy is recommended for adoption and is provided in **(ATTACHMENT 2)**. In respect of content there are several changes resulting from recent amendments to the *Smoke Free Environment Act 2000* that increase the number of public outdoor areas where smoking is banned.

The additional banned areas included in the amendments to the Act include children's equipment in outdoor public spaces, swimming pool complexes, spectator areas at sports grounds or events, taxi ranks, bus stops, ferry wharves and access points to all public buildings. Environmental Health Officers employed by NSW Health are the only officers authorised to carry out enforcement under the Act, however the Policy is enforceable by Council Rangers via S632 of Local Government Act 1993 within Council managed parks and reserves. Education is seen as an important part of the implementation of this policy and accordingly Rangers have been directed to warn members of the public who breach the legislation and provide an opportunity to comply before enforcement is carried out.

The new changes to the legislation seek to restrict smoking in numerous public places that are not owned or managed by Council. This aligns well with Councils "No Smoking on Managed Council Land" Management Directive which applies to Council managed land only.

### FINANCIAL/RESOURCE IMPLICATIONS

There are minimal direct financial / resource implications.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Policy update & implementation within existing budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

There are positive legal, policy and risk implications in reviewing existing policies and determining the appropriateness and relevance of a policy.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk of making poor decisions as a result of outdated policy	High	Repeal current policy and replace with amended policy.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There is increasing evidence of the serious and life threatening health impacts of passive smoking on people in outdoor areas. Children are most vulnerable to the effects of passive smoking on respiratory illness and asthma. Evidence shows that risks can be considerable reduced through the implementation of smoking bans in outdoor areas. In addition, evidence shows that smoking bans support smokers who are trying to quit as well as reduce their overall cigarette consumption.

Associated with the littering of cigarette butts, smoking bans have proven to reduce clean-up costs. In relation to the health implications of passive smoking, smoking bans will ultimately reduce costs and demands of health care.

Cigarette butts are not biodegradable and take up to five years to break down. They are also the most common form of litter. Smoking bans have proven to reduce these negative effects to the environment.

## **CONSULTATION**

Consultation has been undertaken with Environmental Health and Compliance Team, peer Councils and the author of the original policy (Bruce Petersen).

## **OPTIONS**

- 1) Resolve to retain the existing policy;
- 2) Resolve to repeal the existing policy and adopt to replace it with the amended policy.

## **ATTACHMENTS**

- 1) Smoke Free Outdoor Areas Policy (original policy);
- 2) Smoke Free Outdoor Areas Policy (amended policy).

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**

Smoke Free Outdoor Areas Policy (original policy)



**POLICY**

Adopted: 16/12/2008

Minute No: 388

Amended:

Minute No:

**FILE NO: PSC2007-2094**

**TITLE: SMOKE FREE OUTDOOR AREAS POLICY**

**REPORT OF BRUCE PETERSEN – MANAGER, ENVIRONMENTAL SERVICES**

**BACKGROUND**

There is substantial evidence linking exposure to second hand smoke with a range of serious and life threatening health impacts including heart disease, cancer, asthma and other respiratory problems. Children exposed to secondhand smoke are most vulnerable, and at increased risk of asthma, sudden infant death syndrome, acute respiratory infections and ear problems.

Smoking in enclosed public places in NSW is regulated by the NSW Smoke-Free Environment Act 2000. In July 2007 the Act was amended to prohibit smoking all enclosed public places for example in State and Federal offices, shopping centres, hospitals, schools, childcare settings and entertainment venues, as well as the transport sector.

Under the NSW Local Government Act 1993, Councils have the power to legislate in their own jurisdictions to protect their local communities from the effects of second-hand smoke.

**OBJECTIVE**

The objectives of this Policy are to:

- Improve the health and amenity of the community by banning smoking in public outdoor areas;
- Raise community awareness of the issues associated with smoking;
- Provide community leadership in taking measures to protect the health and social wellbeing of the community.



## **PRINCIPLES**

- 1) The Policy applies to:
  - The initiation of a process of education and awareness within the community about the impact of smoking on others in public places.
  - The banning of smoking in public places including children's playground areas, playing fields, sporting grounds and sporting facilities, alfresco dining areas, beaches, bushland, parks, reserves and Council owned buildings.

## **POLICY STATEMENT**

This policy prohibits

### **Immediately:**

1. Smoking within 10 metres of all children's play areas under Council's care.
2. Smoking within the confines of all Council workplace buildings, vehicles and plant. This includes any area under the roofline of the building.

### **by 1<sup>st</sup> July 2009**

2. Smoking on all playing fields, leisure centres, sporting grounds and sporting facilities (ie: including the entire area within the boundaries of those sites)

### **By 1<sup>st</sup> January 2010**

1. Within alfresco dining areas on public land where Council has conditioned such approvals to occupy the land.
2. On all beaches, bushland, parks and reserves.

## **RELATED POLICIES**

Port Stephens Council Management Directive 2000 "Smoke Free Workplace"  
NSW Local Government Act 1993 (S632)

## **SUSTAINABILITY IMPLICATIONS**

The Smoke Free Outdoor Areas Policy recognises that Council has an obligation to promote public health outcomes where Council provides assets and services intended to be of benefit to children and other members of the community. It also recognises that Council has a commitment to improve the natural environment and the amenity of the local area by reducing the amount of cigarette butt litter found in outdoor spaces.

## **SOCIAL IMPLICATIONS**

There is increasing evidence of the serious and life threatening health impacts of passive smoking on people in outdoor areas. Children are most vulnerable

to the effects of passive smoking on respiratory illness and asthma. Evidence shows that risks can be considerably reduced through the implementation of smoking bans in outdoor areas. In addition, evidence shows that smoking bans support smokers who are trying to quit as well as reduce their overall cigarette consumption.

### **ECONOMIC IMPLICATIONS**

Associated with the littering of cigarette butts, smoking bans have proven to reduce clean-up costs. In relation to the health implications of passive smoking, smoking bans will ultimately reduce costs and demands of health care.

### **ENVIRONMENTAL IMPLICATIONS**

Cigarette butts are not biodegradable and take up to five years to break down. They are also the most common form of litter. Smoking bans have proven to reduce these negative effects to the environment.

### **RELEVANT LEGISLATIVE PROVISIONS**

*NSW Local Government Act 1993.*

*NSW Smoke-Free Environment Act 2000.*

### **ENFORCEMENT OF THE BAN:**

In implementing council's Smoke-free Outdoor Areas policy a program of community education and awareness will be undertaken.

Enforcement of this policy will be by signage, positive persuasion and self-policing through the community.

Suitable signage, including the installation of new signage as well as the appendage of internationally recognised "no smoking" symbols to existing signage.

### **IMPLEMENTATION RESPONSIBILITY**

All staff

### **REVIEW DATE**

December 2012

ATTACHMENT 2

Smoke Free Outdoor Areas Policy (amended policy)



POLICY

Adopted:  
Minute No:  
Amended:  
Minute No:

FILE NO: PSC2007-2094

TITLE: SMOKE FREE OUTDOOR AREAS POLICY

RESPONSIBLE OFFICER: MARC GOODALL

BACKGROUND

There is substantial evidence linking exposure to second hand smoke with a range of serious and life threatening health impacts including heart disease, cancer, asthma and other respiratory problems. Children exposed to second hand smoke are most vulnerable, and at increased risk of asthma, sudden infant death syndrome, acute respiratory infections and ear problems.

Smoking in enclosed public places in NSW is regulated by the NSW Smoke- Free Environment Act 2000. In July 2007 the Act was amended to prohibit smoking all enclosed public places for example in State and Federal offices, shopping centres, hospitals, schools, childcare settings and entertainment venues, as well as the transport sector. In January 2013 the Act was further amended to increase the public outdoor areas where smoking is banned.

Under the NSW Local Government Act 1993, Councils have the power to legislate in their own jurisdictions to protect their local communities from the effects of second-hand smoke.

Changes

**Insert:** " In January 2013 the Act was further amended to increase the public outdoor areas where smoking is banned".

## OBJECTIVE

- 1) Improve and protect the health and amenity of the community by banning smoking in public outdoor areas;
- 2) Raise community awareness of the health and social impacts associated with smoking in public outdoor areas;
- 3) Provide community leadership in taking measures to protect the health and social wellbeing of the community and protecting the environment; and
- 4) Providing a rationale and framework for the management of smoking in public outdoor areas.

## PRINCIPLES

The Policy acknowledges that;

- 1) That passive smoking has identifiable and quantifiable health risks;
- 2) Children are most vulnerable to the effects of passive smoking on respiratory illness (Cancer Council; NHMRC);
- 3) Council is obliged to promote public health outcomes where an asset or service is provided and intended to be a benefit to children and other community members;
- 4) Research on the public health impacts of smoking in open space areas is complex, and that some impacts of smoking in outdoor areas are not directly related to the inhalation of smoke. Indirect health impacts can result from children playing with and swallowing cigarette butts that have been discarded.

### Changes

**Delete:** "issues"

**Insert:** "health and social impacts" & "in public outdoor areas".

**Insert:** "and protecting the environment; and"

**Insert:** "Providing a rationale and framework for the management of smoking in public outdoor areas".

**Delete:** "1) The Policy applies to:

The initiation of a process of education and awareness within the community about the impact of smoking on others in public places.

&

The banning of smoking in public places including children's playground areas, playing fields, sporting grounds and sporting facilities, alfresco dining areas, beaches, bushland, parks, reserves and Council owned buildings.

**Insert:** "The Policy acknowledges that;

That passive smoking has identifiable and quantifiable health risks;

Children are most vulnerable to the effects of passive smoking on respiratory illness (Cancer Council; NHMRC);

Council is obliged to promote public health outcomes where an asset or service is provided and intended to be a benefit to children and other community members;

- 1) Research on the public health impacts of smoking in open space areas is complex, and that some impacts of smoking in outdoor areas are not directly related to the inhalation of smoke. Indirect health impacts can result from children playing with and swallowing cigarette butts that have been discarded.

## POLICY STATEMENT

This policy prohibits:

1. Smoking within 10 metres of all children's play areas under Council's care.
2. Smoking within the confines of all Council workplace buildings, vehicles and plant. This includes any area under the roofline of the building.
3. Smoking on all playing fields, leisure centres, sporting grounds and sporting facilities (ie: including the entire area within the boundaries of those sites).
4. Within alfresco dining areas on public land where Council has conditioned such approvals to occupy the land.
5. On all beaches, bushland, parks and reserves.
6. Within 10 metres of children's play equipment in outdoor public spaces.
7. Swimming Pool complexes.
8. Spectator areas at sports grounds or other recreational areas during organised sporting events.
9. Within 4 metres of a pedestrian access point to a public building, bus stops, taxi ranks, ferry wharves; and
10. From 6 July 2015, in commercial outdoor dining areas.

## RELATED POLICIES

Port Stephens Council Management Directive 2000 "Smoke Free Workplace" NSW Local Government Act 1993 (S632)

## SUSTAINABILITY IMPLICATIONS

The Smoke Free Outdoor Areas Policy recognises that Council has an obligation to promote public health outcomes where Council provides assets and services intended to be of benefit to children and other members of the community. It also recognises that Council has a commitment to improve the natural environment and the

### Changes

#### Insert:

" Within 10 metres of children's play equipment in outdoor public spaces.

Swimming Pool complexes.

Spectator areas at sports grounds or other recreational areas during organised sporting events.

Within 4 metres of a pedestrian access point to a public building bus stops, taxi ranks, ferry wharves; and

From 6 July 2015, in commercial outdoor dining areas".

amenity of the local area by reducing the amount of cigarette butt litter found in outdoor spaces.

#### **SOCIAL IMPLICATIONS**

There is increasing evidence of the serious and life threatening health impacts of passive smoking on people in outdoor areas. Children are most vulnerable to the effects of passive smoking on respiratory illness and asthma. Evidence shows that risks can be considerable reduced through the implementation of smoking bans in outdoor areas. In addition, evidence shows that smoking bans support smokers who are trying to quit as well as reduce their overall cigarette consumption.

#### **ECONOMIC IMPLICATIONS**

Associated with the littering of cigarette butts, smoking bans have proven to reduce clean-up costs. In relation to the health implications of passive smoking, smoking bans will ultimately reduce costs and demands of health care.

#### **ENVIRONMENTAL IMPLICATIONS**

Cigarette butts are not biodegradable and take up to five years to break down. They are also the most common form of litter. Smoking bans have proven to reduce these negative effects to the environment.

#### **RELEVANT LEGISLATIVE PROVISIONS**

- NSW Local Government Act 1993.
- NSW Smoke-Free Environment Act 2000.

#### **ENFORCEMENT OF THE BAN:**

In implementing council's Smoke-free Outdoor Areas policy a program of community education and awareness will be undertaken.

Enforcement of this policy will be by signage, positive persuasion and self policing through the community.

Suitable signage, including the installation of new signage as well as the appendage of internationally recognised "no smoking" symbols to existing signage.

#### **IMPLEMENTATION RESPONSIBILITY**

Environmental Health and Compliance

#### **REVIEW DATE**

1 July 2016

#### **Changes**

**Delete:** "All staff"

**Insert:** "Environmental Health and Compliance"

**Delete:** " December 2012"

**Insert:** "1 July 2016"

ITEM NO. 9

FILE NO: PSC2009-08257

**DRAFT CORPORATE SPONSORSHIP POLICY**

REPORT OF: ROSS SMART - ECONOMIC DEVELOPMENT AND COMMUNICATIONS  
SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the draft Corporate Sponsorship Policy (**ATTACHMENT 1**);
  - 2) Place on public exhibition for a period of 28 days;
  - 3) Should no submissions be received, revoke the existing Corporate Sponsorship Policy (**ATTACHMENT 2**) and adopt the draft Corporate Sponsorship Policy.
- 

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Paul Le Mottee</b> <b>Councillor Steve Tucker</b>
	That the recommendation be adopted.

**MOTION**

219	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to present to Council the draft changes to the Corporate Sponsorship Policy. The Corporate Sponsorship Policy was adopted on 8/12/2009 (minute 410). The purpose of the policy is to enable Council to take a proactive approach towards the financial and information management related to seeking and providing sponsorship as a marketing tool.

Corporate sponsorship is a common business function across all industry sectors. In a Council setting, corporate sponsorship is the mechanism which allows Council to support initiatives with the potential to generate reputational benefit as well as benefit back to the community or the local economy. A recent example of Council providing sponsorship is its support for the staging of the 2013 NSW Aboriginal Rugby League knockout. A corporate sponsorship policy is also useful in clearly spelling out

the framework used by Council when seeking support from third parties for its own initiatives, such as the sponsorship proposed to support the 2013 Australia Day celebrations.

The draft policy provides a transparent framework into how Council assesses sponsorship requests (financial and non-financial) and how Council will promote the existence of sponsorship opportunities. It also spells out those funding initiatives that do not fall under the definition of Corporate Sponsorship, such as grants and donations.

Key changes from the existing and draft policies are summarised as follows:

- Background: greater clarity around definition of sponsorship, the marketing focus of sponsorship, and its necessary alignment to community expectation and Council objectives;
- Definition: removal of unnecessary detail into those funding arrangements that are not considered corporate sponsorship.
- Objective: greater clarity around the expected procedural outcomes of providing or seeking sponsorship.
- Policy statement: criteria around providing sponsorship has been clarified for transparency purposes. The requirement for an Expression of Interest process to be followed when Council is seeking external sponsorship for its own initiatives has also been clarified.
- Sponsorship partners: rewording and removal of specific reference to inappropriate businesses and industries, on common sense grounds.
- Approval of sponsorship: Increase (from \$3,000 to \$10,000) the level of sponsorship able to be approved by the Economic Development & Communications Section Manager, to align closer to annual budget amount.
- Inclusion of requirement for Council resolution for approval of requests >\$10,000.

The proposed amendments to the policy bring it in line with Council's current corporate structure and current community strategic plan (19.1.1 Strengthen Council's brand and reputation; and 12.1.1.4 Sponsor major events that deliver economic benefit to the Port Stephens community).

## **FINANCIAL/RESOURCE IMPLICATIONS**

This policy, if adopted will provide a formalised, transparent process on how Council seeks and provides sponsorship.



Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	200	Current corporate sponsorship budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

The recommendation is consistent with the provisions outlined in the Local Government Act 1993, the Independent Commission Against Corruption Act 1988, and the Port Stephens Council Code of Conduct 2012. The draft policy ensures that all corporate sponsorship arrangements are agreed to in writing under the delegation and direction of the General Manager. All other requests outside of this delegation will require a Council resolution.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that non-adoption of the draft Corporate Sponsorship Policy will leave Council without an appropriate, up to date framework by which to consider sponsorship requests.	Medium	Adopt the draft Corporate Sponsorship Policy	Yes

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting this policy will ensure Council can accurately and transparently report its sponsorship contributions within the community and the necessary requirements of that sponsorship arrangement.

## CONSULTATION

Extensive internal consultation took place with regard to the development of the new draft policy and associated Council report. This included discussion with the Mayor, the General Manager, Group Manager Development Services, Financial Services Section Manager, and those coordinators who have responsibilities in the sponsorship area, including the Business Development and Investment Manager, the Communications and Marketing Coordinator, and the Visitor Information and Events Coordinator.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Draft Corporate Sponsorship Policy;
- 2) Current Corporate Sponsorship Policy.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

## ATTACHMENT 1

### Draft Corporate Sponsorship Policy



#### POLICY

Adopted: 8/12/2009  
Minute No: 410  
Amended:  
Minute No:

**FILE NO:** PSC2009-08257

**TITLE:** CORPORATE SPONSORSHIP POLICY

**REPORT OF:** ECONOMIC DEVELOPMENT AND COMMUNICATIONS  
SECTION MANAGER

#### 1. BACKGROUND

Corporate sponsorship is a key marketing function of Port Stephens Council. As many sponsorship opportunities have become competitive and regulated, this policy will ensure consistency in approach and effective outcomes for the organisation and the community.

It is important that sponsorships meet our community's expectations while also supporting and promoting the organisations key objectives.

Sponsorship should be advantageous to both parties, however Council must ensure sponsorship agreements do not compromise or bring into question the integrity of Council operations.

##### 1.1 Definition

Sponsorship refers to a commercial relationship between two parties, governed by a written agreement. It involves provision of financial or non-financial (in-kind) support in return for mutually agreed economic, cultural, community or reputational benefits.

Sponsorship should not be confused with Grants or Donations. For more information about Grants & Donations, please refer to Council's Financial Assistance Policy.

#### 2. OBJECTIVE

The objective of this policy is to provide clarity around the means in which Council distributes and receives sponsorship.

This policy enables Council to engage in corporate sponsorship arrangements that are beneficial to the organisation and community.

This policy and related documents will allow openness, transparency and accountability throughout the execution of Council sponsorship, and allow Council to take a proactive approach in seeking and providing sponsorship as a marketing tool.

### **3. POLICY STATEMENT**

Sponsorship can take the form of Council providing or seeking sponsorship from a third party of money, goods or services to support activities in exchange for a mutually agreed benefit.

Groups and organisations may be sponsored by Council under S356 of the Local Government Act (1993).

When providing sponsorship, Council must also consider the provisions relating to granting financial assistance under S356 of the Local Government Act (1993) and Council's current Financial Assistance Policy.

#### **3.1 Criteria for providing sponsorship (Council as sponsor)**

To be eligible to apply to Council for financial or in-kind sponsorship, the following criteria must be met:

- The group or organisation applying must be legally registered or constituted and not part of Council
- Individual applicants will be considered on a case-by-case basis and must apply with more than 28 days' notice
- It is preferable that groups or individuals are based in or operate within the Port Stephens LGA, however applications from outside of the LGA may also be considered.
- Individuals must be from within the Port Stephens LGA

One or more of the following should also be evident from the information provided to support the application for sponsorship.

- The economic benefit to the community should be argued in terms of increased visitation, increased economic activity by way of increasing utilisation of accommodation, local product etc.
- Widespread branding opportunity to raise the profile of the Council or the region or both.
- Increased promotion of the Council and/or identification of the LGA with a recognised product such as food, wine, agribusiness, clean environment etc.
- Council can clearly recognise the value of its assistance in the event, promotion etc. This must be quantifiable.
- Will it strengthen Council's ties to the community?
- Will it provide relevant and required infrastructure/services to the community?

- Will it demonstrate Council's commitment to sustainability?

### **3.2 Criteria for seeking sponsorship (Sponsorship of Council initiatives)**

Council must ensure a consistent and strategic approach is applied when seeking financial or in-kind sponsorships to assist in the staging of its promotions and activities.

Opportunities to sponsor a Council activity must be advertised and clearly communicated to the public through an Expression of Interest (EOI) process. If an overwhelming reason exists not to undertake an EOI process (ie demanding timeframes or availability of relevant sponsors) this must be first approved by the relevant Group Manager and the Manager Economic Development and Communications prior to entering any agreement.

EOI's will be evaluated against the following criteria:

- Is the business/organisation offering sponsorship which the Council wishes to be identified with i.e. will not bring the Council into disrepute?
- Is there a risk that a public perception could be formed that an individual/business has received favourable treatment due to its sponsorship?
- Would the donation signify to the community a religious or political bias?

Benefits supplied to sponsors will be determined by:

- The value of the sponsorship in dollar terms
- The length of the sponsorship
- The type of assets, services, function or program being sponsored

All arrangements must be finalised in writing prior to implementation or exchange of money.

The following is a list of the types of benefits that may be offered by Council when developing a sponsorship package.

- Acknowledgement of the sponsor, including their logo in a range of promotional material associated with the event/promotion including fliers, brochures, invitations, programs and promotional banners.
- Reference to the sponsor's name and logo in print, radio and television advertising with the event or promotion.
- Reference to the sponsor in official media releases issued by Council promoting the event/activity.
- Allowing display signage and other promotional material on behalf of the sponsor at selected Council events or facilities associated with the sponsorship.

### **3.3 Sponsorship Partners**

Council will look to negotiate sponsorship agreements with any reputable company, partnership or community group who wishes to participate in

Council's sponsorship and whose public image, products or services are consistent with the values, goals and specific policies of Port Stephens Council.

Any organisation that has the potential to involve Council in controversial issues, or expose the Council to adverse criticism will not be considered for sponsorship or as a sponsor.

No sponsorship arrangements will be entered into which impose or imply conditions that would limit, or appear to limit Council's ability to carry out its functions fully and impartially.

No Councillor or employee, or members of their families, are to receive personal benefit from the sponsorship.

Should a Councillor or employee perceive a potential conflict of interest in dealing with a sponsor on Council's behalf, that potential conflict of interest is to be declared to the General Manager.

#### **3.4 Sponsorship agreements**

All sponsorship agreements must be subject to a written contract and conditions will be fully described in a written agreement which clearly sets out:-

- The benefits including economic benefits, available to Council and the sponsor – also
- The scope of uses which the sponsor can make of the sponsorship arrangement including logos, Council's name etc
- The term of the sponsorship and any conditions regarding renewal
- Financial accountability requirements
- Provision for termination or suspension of the agreement.

Written agreements must include a statement that Council's functions will continue to be carried out fully and impartially, notwithstanding the existence of a sponsorship arrangement.

The agreement will include a statement to the effect that any attempted influence of Council's regulatory functions will result in an automatic review and/or termination of the sponsorship arrangement.

#### **3.5 Approval of sponsorship**

Approval for sponsorship involving less than \$10,000 (financial and in-kind value) may be provided by the Manager Economic Development and Communications.

Financial or in-kind sponsorship of major events (greater than \$10,000 value) must have a Council resolution with recommendation drafted by the Manager Economic Development and Communication.

Final approval for sponsorship arrangements must be signed by the General Manager.

### **3.6 Monitoring and evaluation**

The Manager Economic Development and Communications will manage the sponsorship policy implementation.

A written evaluation must be conducted by the relevant Council officer rating the performance of the sponsorship activity and adherence to the agreement. In addition, those groups or individuals who receive Council sponsorship are required to provide a financial report detailing how the sponsorship was spent at the conclusion of each sponsored event. This is in order to allow Council to accurately and transparently report upon its sponsorship activities. These evaluations must be provided to the Manager Economic Development and Communications and will form part of the assessment for future sponsorship.

Measurements for evaluation should be established with the sponsor before the activity.

### **RELATED POLICIES**

Financial Assistance Policy 2009  
Port Stephens Council Code of Conduct

### **SUSTAINABILITY IMPLICATIONS**

#### **SOCIAL IMPLICATIONS**

The provision of Corporate Sponsorship to worthy groups and individuals offers Council the opportunity to strengthen its ties to the Port Stephens community. It also helps to raise the profile of Council or the region locally and regionally.

#### **ECONOMIC IMPLICATIONS**

This policy provides the framework for the delivery and receipt of financial contributions related to Corporate Sponsorship. In supplying and seeking Corporate Sponsorship, Council will deliver services to the community whilst also reducing the overall impact on the rate payer

#### **ENVIRONMENTAL IMPLICATIONS**

Nil

#### **RELEVANT LEGISLATIVE PROVISIONS**

- Local Government Act 1993
- Independent Commission Against Corruption Act 1988
- Code of Conduct 2012

#### **IMPLEMENTATION RESPONSIBILITY**

Communications and Marketing unit

**REVIEW DATE**

3 years from date of adoption



## ATTACHMENT 2

### Current Corporate Sponsorship Policy



#### POLICY

Adopted: 8/12/2009

Minute No: 410

Amended:

Minute No:

**FILE NO:** PSC2009-08257

**TITLE:** CORPORATE SPONSORSHIP POLICY

**REPORT OF** STEPHEN CROWE, SECTION MANAGER COMMUNICATIONS  
AND CUSTOMER RELATIONS

#### 1. BACKGROUND

Sponsorship opportunities have become competitive and regulated. In addition, the community expects that when Council becomes involved in sponsorship it is gaining value and that the processes are transparent.

Sponsorship should be advantageous to both parties, however Council must ensure sponsorship agreements do not compromise or bring into question the integrity of Council operations.

##### 1.1 Definition

Sponsorship does not include the selling of advertising space, joint ventures, consultancies, grants (in regard to received sponsorship) or unconditional gifts, donations, bequests or endowments. Sponsorship is not philanthropic. A sponsor expects to receive a reciprocal benefit beyond a modest acknowledgement.

To further assist with understanding the differences between different types of financial assistance, the following definitions are offered:

**Sponsorship:** The provision of monetary or non-monetary goods and services in return for certain specified benefits. It should not be confused with donations.

**Grant:** A form of financial assistance that funds an individual or organisation to develop a specific project. It is generally given with directions about the administration of the grant.

**Donation:** Provision of cash or other items of value with no return benefit expected

## **2. OBJECTIVE**

This policy and related documents will enable Council to take a proactive approach towards the financial and information management related to seeking and providing sponsorship as a marketing tool.

It seeks to ensure an open and transparent process and that Council complies with the relevant legislation.

## **3. POLICY STATEMENT**

Sponsorship can take the form of Council providing sponsorship to a third party or Council seeking sponsorship of money, goods or services to support Council activities in exchange for a mutually agreed benefit.

Groups may be sponsored by Council under S356 of the Local Government Act (1993). However under that Section, 28 days notice is required for individuals. Please refer to Council's Financial Assistance Policy for further details.

When providing sponsorship, Council must also consider the provisions relating to granting financial assistance under S356 of the Local Government Act (1993).

### **3.1 Council providing sponsorship**

Council can receive requests to 'sponsor' activities of an external party eg. the provision of funding or resourcing for activities or events.

In most cases, 'sponsorship' is actually a request for financial assistance or support. These requests should be assessed in accordance with Council's Financial Assistance Policy.

### **3.2 Criteria for providing sponsorship**

Council considers suitable sponsorship activities those that will assist Council in meeting community expectations to enhance lifestyle in the Local Government Area.

Before the Council will consider a sponsorship agreement the following benefits should be considered:

- Will it strengthen Council's ties to the community?
- Will it provide relevant and required infrastructure/services to the community?
- Will it demonstrate commitment to sustainability?

In addition, the following criteria should be evident from the information provided to support the application for sponsorship.

- The economic benefit to the community should be argued in terms of increased visitation, increased economic activity by way of increasing utilisation of accommodation, local product etc.
- Widespread branding opportunity to promote the Council and the region.
- Increased promotion of the Council and/or identification of the LGA with a recognised product such as food, wine, agribusiness, clean environment etc.
- Council can clearly recognise the value of its assistance in the event, promotion etc. It should be quantifiable.

### **3.3 Council seeking sponsorship**

Council may, from time to time, seek sponsorship for an event such as a conference, or facility such as a sporting field, hall or park . In this case, Council should make sponsorship opportunities widely known through open tendering. In certain circumstances this ideal may be impractical and request for sponsorship could be by invitation.

Where practical the sponsorship opportunity must be advertised in print media and on the Council's website.

### **3.4 Criteria for seeking sponsorship**

The purpose of this policy is to provide guidelines that will ensure a consistent and strategic approach for seeking monetary and non-monetary sponsorships by Council to assist in the staging of its promotions and activities.

The policy outlines the process and criteria that Council will use to gain sponsorship for its corporate and community events and programs.

Opportunities to sponsor a Council activity must be advertised and clearly communicated to the public.

Expressions of interest will be evaluated against the following criteria:

- Is the business/organisation offering sponsorship one which the Council wishes to be identified with i.e. will not bring the Council into disrepute?
- Is there a risk that a public perception could be formed that an individual/business has received favourable treatment due to its sponsorship?
- Would the donation signify to the community a religious or political bias?

### **3.5 Recognition of sponsors**

In return for accepting a corporate sponsorship, Council has a commitment to fully acknowledge and promote the contribution and involvement by the sponsor in Council's event or promotion.

Benefits supplied to sponsors will be determined by:

- The value of the sponsorship in dollar terms
- The length of the sponsorship
- The type of assets, services, function or program being sponsored.

The following is a list of the types of benefits that may be offered by Council when developing a sponsorship package.

- Acknowledgement of the sponsor, including their logo in a range of promotional material associated with the event/promotion including fliers, brochures, invitations, programs and promotional banners.
- Reference to the sponsor's name and logo in print, radio and television advertising with the event or promotion.
- Reference to the sponsor in official media releases issued by Council promoting the event/activity.
- Allowing display signage and other promotional material on behalf of the sponsor at selected Council events or facilities associated with the sponsorship.

### **3.6 Sponsorship Partners**

Council will look to negotiate sponsorship agreements with any reputable company, partnership or community group who wishes to participate in Council's sponsorship and whose public image, products or services are consistent with the values, goals and specific policies of Port Stephens Council.

Any organisation that has the potential to involve Council in controversial issues, or expose the Council to adverse criticism will not be considered for sponsorship or as a sponsor.

No sponsorship arrangements will be entered into which impose or imply conditions that would limit, or appear to limit Council's ability to carry out its functions fully and impartially.

If a sponsorship agreement is entered into with an organisation or person, who is or is likely to be subject to regulation or inspection by Council during the life of the agreement, the sponsor is to be informed in writing that their sponsorship will have no bearing on Council's regulatory or inspectorial responsibilities.

The sponsor is also to be informed in writing that should the sponsor engage in any activity that contravenes Council's regulations the sponsorship agreement will be terminated.

Council does not consider the following companies, partnerships, organisations or individuals suitable for entering into sponsorship agreements.

- Those involved in the manufacture, distribution and wholesaling of tobacco, pornography and addictive drugs.

- Those found guilty of illegal or improper conduct by the Independent Commission Against Corruption (ICAC) or any other legal authority
- Those who are involved in political fields (political parties or lobbyists)
- Those whose services or products are considered to be injurious to health, or are seen to be in conflict with Council's policies and responsibilities to the community.

No Councillor or employee, or members of their families, are to receive personal benefit from the sponsorship.

Should a Councillor or employee perceive a potential conflict of interest in dealing with a sponsor on Council's behalf, that potential conflict of interest is to be declared to the General Manager.

### **3.7 Sponsorship agreements**

All sponsorship agreements must be subject to a written contract and conditions will be fully described in a written agreement which clearly sets out:-

- The benefits including economic benefits, available to Council and the sponsor – also
- Document nature of benefits eg naming rights
- Any personal benefits available to the sponsor's employees and their relatives
- The form or forms of sponsorship acknowledgment which will be available
- The scope of uses which the sponsor can make of the sponsorship arrangement including logos
- The term of the sponsorship and any conditions regarding renewal
- Financial accountability requirements
- Provision for termination or suspension of the agreement.

Written agreements must include a statement that Council's functions will continue to be carried out fully and impartially, notwithstanding the existence of a sponsorship arrangement.

The agreement will include a statement to the effect that any attempted influence of Council's regulatory functions will result in an automatic review and/or termination of the sponsorship arrangement.

### **3.8 Approval of sponsorship**

Final approval for sponsorship arrangements is determined by the General Manager. Approval for sponsorship involving less than \$3,000 approval may be provided by the Manager Communications and Customer Relations.

### **3.9 Monitoring and evaluation**

The Manager Communications and Customer Relations will manage the sponsorship policy implementation.

Formal marketplace research may assist both Council and sponsor in measuring the outcomes. Market research may be used to assist Council in acquiring sponsors in the future and encouraging existing sponsors to renew.

An evaluation must be conducted to gauge the performance of the sponsorship activity and adherence to the agreement.

Measurements for evaluation should be established with the sponsor before the activity. Qualitative and quantitative measures could include but are not limited to:

- Whether the letter of agreement or contract was fulfilled
- Extent to which the sponsor used benefits
- Qualitative assessment activity
- Whether the target audience was reached
- Whether the general community's awareness was raised
- How much media coverage was generated
- Cost/benefit analysis.

#### **RELATED POLICIES**

Financial Assistance Policy 2009  
Port Stephens Council Code of Conduct  
Asset Provision and Sponsorship Management Directive

#### **SUSTAINABILITY IMPLICATIONS**

##### **SOCIAL IMPLICATIONS**

Strengthen Council's ties to the community

##### **ECONOMIC IMPLICATIONS**

Provide relevant and required infrastructure/services to the community with reduced impact on the rate payer

##### **ENVIRONMENTAL IMPLICATIONS**

Nil

#### **RELEVANT LEGISLATIVE PROVISIONS**

- Local Government Act 1993
- Independent Commission Against Corruption Act 1988

#### **IMPLEMENTATION RESPONSIBILITY**

Communications and Customer Relations

#### **REVIEW DATE**

3 years from date of adoption

**ITEM NO. 10****FILE NO: PSC2013-02686****SPONSORSHIP REQUEST: 2013 SPECIAL OLYMPICS ASIA PACIFIC GAMES****REPORT OF: ROSS SMART - ECONOMIC DEVELOPMENT AND COMMUNICATIONS  
SECTION MANAGER****GROUP: DEVELOPMENT SERVICES**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve \$25,000 in Council sponsorship to be paid to the Special Olympics Asia Pacific Games Trust, to assist in the staging of the Games in Newcastle in December 2013.
- 

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Steve Tucker Councillor Chris Doohan</b>
	That the recommendation be adopted.

**MOTION**

<b>220</b>	<b>Councillor Sally Dover Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to confirm Port Stephens Council's support for the Special Olympics 2013 Asia Pacific Games, which will be held in the Newcastle and Hunter region in December.

The Special Olympics Asia Pacific Games will be the largest Sports and Community event ever staged in the wider Hunter region, with competition and community activities taking place across the Newcastle, Lake Macquarie, Maitland and Port Stephens Local Government Areas.

The Games will feature teams from 32 nations from across the Asia Pacific region, with over 2,500 athletes and carers, 6,000 officials and supporters from overseas and interstate, and 200,000 spectators expected over the course of the event. In

addition, some 4,000 volunteers will be sourced from across the local area to participate in the successful delivery of the Games.

Direct benefits to Council from the proposed sponsorship include significant branding and advertising opportunities in all event publications, branding at event venues, profiling of the region and its attractions via Special Olympics broadcast and other media partners, invitations to the opening and closing ceremonies and other key events, and the staging of a leg of the Law Enforcement Torch Run, an initiative of the Special Olympics and Police Services worldwide, in the Port Stephens local government area in the lead up to the event with an agreed number of running spots allocated to Council representatives. In addition, a seat on the games steering committee will be made available to a Port Stephens Council representative.

Council's Tourism & Events team and Property Services section have been working closely with the event organisers, the Special Olympics Asia Pacific Games Trust, since early 2013. This will continue and increase in the event this sponsorship is approved, to ensure the partnership is appropriately and effectively leveraged.

Economic benefits to the Port Stephens region stemming from the games will be both direct and indirect. More than 500 athletes and coaches will be based at Port Stephens Beachside Holiday Parks for a period of 10 days, resulting in a predicted economic benefit to the region in excess of \$2Million. Port Stephens will also be included in the official route for the Law Enforcement Torch Relay in the lead up to the Games, and the partnership will be recognised through various advertising, publications, broadcast and other leveraging opportunities, details of which are included in the Letter of Agreement attached [Attachment 1].

Indirectly, it is expected that the region's tourism, transport, dining and leisure operators will also benefit thanks to the inclusion of Port Stephens on official rest day and promotional itineraries produced for the Games.

Provision of Council Sponsorship to major events like the Special Olympics 2013 Asia Pacific Games satisfies objective 12.1.1.4 in Councils 2013-14 Operational Plan, "Sponsor major events that deliver economic benefit to the Port Stephens community." In addition to the economic benefits, approval of this request would also bring Port Stephens Council into line with other Councils across the area, including Newcastle (as primary host), Lake Macquarie and Maitland which have all committed, or are expected to commit, to similar sponsorships of the event.

## **FINANCIAL/RESOURCE IMPLICATIONS**

This sponsorship request will be funded from existing Economic Development & Communications section budget, in line with arrangements made following Council's approval of the Newcastle Yowies Sports Club's sponsorship request for the 2013 NSW Aboriginal Rugby League Knockout at its meeting of 14 May 2013 (FILE NO: PSC2013-01615).

Source of Funds	Yes/No	Funding (\$)	Comment
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**MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013**

Existing budget	Yes	25,000	This sponsorship will be funded from the Economic Development & Communications section budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

There are no legal implications associated to this recommendation, which is in alignment with provisions under Council's draft Corporate Sponsorship policy, although risk is a factor.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is an opportunity risk to Council if support for this event is not forthcoming, in the areas of business & tourism, community development and promotion of the LGA.	Low	Adopt the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Economic benefits of the event will be far reaching with allocated teams and supporters staying in Port Stephens for 10 nights. We predict that this event will inject more than \$2Million into our economy in direct spend based on actual figures supplied by Tourism Research Australia (TRA).

Social benefits will be varied and far reaching. It is expected that all Hunter Councils will enter into some cooperative relationship with the event organisers to support the Games providing opportunities to engage with stakeholders including state and local government and the tourism industry. Volunteer programs will also be available to support the Games similar to those run for the Olympic Games.

## **CONSULTATION**

Internal council stakeholders including the General Manager, Mayor, Group Manager, Development Services, and the Visitor Information & Events Coordinator.

External stakeholders including Special Olympics Asia Pacific Games Trust, Newcastle City Council, and Destination Port Stephens.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Letter of agreement.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**  
Letter of Agreement

**Letter of Agreement**

entered into by

Special Olympics Asia Pacific Games Trust (SOAPG)

and

Port Stephens Council

1) **Date** June 12<sup>th</sup> 2013

2) **Parties**

- (i) Special Olympics 2013 Asia Pacific Games Limited | ACN 160 027 869  
As trustee for the Special Olympics 2013 Asia Pacific Games Trust (SOAPG)  
PO Box 62, Concord West NSW 2138
- (ii) Port Stephens Council | ABN 16 744 377 876  
PO Box 42, Raymond Terrace NSW 2324

3) **Recitals**

- The Special Olympics Asia Pacific Games (the Games) are being staged in Newcastle in December 2013.
- The Special Olympics Asia Pacific Games Trust (SOAPG) has the responsibility of managing the Games.
- Port Stephens Council has agreed to undertake a Support Partnership program for the 2013 Special Olympics Asia Pacific Games.
- This Letter of Agreement is based on SOAPG confirming the positioning of Port Stephens Council within the Games and the sponsorship commitment of Council to the Games.

4) **Responsibilities – Special Olympics Asia Pacific Games**

- Partnership level – Support Partner
- For Port Stephens Council to be positioned as a Support Partner of the Games
  - (i) SOAPG will also provide the following branding deliverables:
    - a. Use of designated Special Olympics Asia Pacific Games logos and marks for the purposes of advertising and marketing promotions.
    - b. Advertising within the official event guide.

- c. Advertising in the volunteer handbook distributed to 5000 volunteers.
- d. Preferential access to pre sales for the Opening Ceremony, Prime Minister's Breakfast and Premier's Dinner.
- e. Unique leveraging opportunities through extensive social media to highlight promotional campaigns.
- f. The Law Enforcement Torch Run (LETR) to have its route through the City of Port Stephens, with Port Stephens Council to have an agreed number of nominated runners and community celebration.
- g. Profile of the City of Port Stephens and local region in games coverage and broadcast.

**5) Responsibilities – Port Stephens Council**

- A minimum guarantee payment of \$25,000 (+GST) in return for positioning as a Support Partner of the Games.
- The Special Olympics 2013 Asia Pacific Games Trust has been established as a public ancillary fund with the approval of the Australian Taxation Office and accordingly donations to the trust will have tax deductible status.
- Work with the Games Project Managers, Future Sport and Entertainment, to explore any potential community fundraising initiatives.

**6) Event Rights**

- All rights associated with the Games are owned by the Special Olympics 2013 Asia Pacific Games Trust | ACN 160 027 869.
- In consideration of Port Stephen's Council's payment of \$25,000 (+GST), the SOAPG Trust agrees to grant exclusive support partner positioning rights to the event.

**7) Privacy**

- Both parties agree to comply with the provisions of the Privacy and personal Information Protection Act 1998.

**8) Confidentiality**

- Both parties agree their respective employees, agents, directors, partners, shareholders or consultants must not disclose to any third party, any information including by way of media interviews or releases relating to the Principal or the affairs of others which may have come to its or their knowledge as a result of the Agreement, unless disclosure is compelled by Law.

ITEM NO. 11

FILE NO: PSC2007-2377

## PROPOSED ALTERATION TO THE PORT STEPHENS FEES AND CHARGES 2013 – 2014 (FEES AND CHARGES POLICY)

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

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised fees and charges with respect to planning proposals to the Port Stephens Fees and Charges 2013 – 2014 as at **(ATTACHMENT 2)**;
  - 2) To place the revised fees and charges schedule to the Port Stephens Fees and Charges 2013 – 2014 on public exhibition for a minimum of 28 days in accordance with Clause 610F of the Local Government Act 1993;
  - 3) Should no submissions be made the revised fees and charges at **(ATTACHMENT 2)** be adopted following exhibition;
  - 4) Note the proposed transitional fee arrangement outlined in this report.
- 

### ORDINARY COUNCIL MEETING – 13 AUGUST 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

Cr Paul Le Mottee and Peter Kafer left the meeting at 7.11pm prior Item 11, in Committee of the Whole.

Due to the lack of a quorum the meeting was suspended at 7.11pm.

Cr Peter Kafer returned at 7.13pm.

The meeting resumed at 7.13pm with all present, with the exception of Cr Le Mottee.

	<b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b>
	That the recommendation be adopted, noting the amendment to Category B, Stage 2 in attachment 2 from \$14,500 to \$21,500.

**MOTION**

221	<b>Councillor Geoff Dingle</b> <b>Councillor Peter Kafer</b>
	It was resolved that the Committee of the Whole recommendation be adopted.

**BACKGROUND**

The purpose of this report is to outline proposed changes to Councils existing Fees and Charges Policy 2013 – 2014 for requests to amend Councils Local Environmental Plan by a planning proposal (rezoning application). The proposed payment fee structure takes into account:

- neighbouring Council fees;
- the complexity of a proposal; and
- fairness and transparency.

In March 2013 Council resolved to place the draft Port Stephens Fees and Charges 2013 – 2014 (Fees and Charges Policy) on public exhibition in accordance with Section 610F of the Local Government Act 1993 and Councils Operational Plan 2012 – 2013.

During public exhibition, one submission was received suggesting the proposed fee structure for rezoning requests unfairly burdens larger proposals and requested further review. Council adopted the Fees and Charges Policy at its meeting in May 2013, including the exhibited rezoning fees without change, however resolved that Development Services Group re-assess the approach to charging for re-zoning land for further consideration by Council.

Existing Port Stephens Fees and Charges 2013 – 2014 Structure

The existing adopted Fees and Charges Policy structure for rezoning applications as shown in **(ATTACHMENT 1)** is based on a fixed fee plus a rate per hectare with a sliding scale containing three categories for each of stages 1 (Lodgement) and 2 (Consultation) including:

- less than 1 ha;
- 1-10 ha; and
- above 10 ha.

Proposed Fees and Charges Structure

A comprehensive review has been carried out on Councils existing planning proposals including their level of complexity, size, staff time and resources spent. A comparison of fees with surrounding councils including Maitland, Newcastle, Cessnock, Lake Macquarie was also carried out.

The draft fee structure (**ATTACHMENT 2**) proposes three planning proposals request categories depending on complexity:

**Category A:** Typically minor proposal considered consistent with LEP and do not require additional studies (i.e mapping amendment or anomaly).

**Category B:** Proposals considered consistent with local area strategies or infill and do not have any significant issues such as flora and fauna, flooding, traffic, involve limited consultation and local impact. (i.e spot rezonings)

**Category C:** Proposal considered significant and complex that include urban release areas, Greenfield sites or those that may also require the preparation of an accompanying DCP, S94 Plan or Voluntary Planning Agreement.

The payment fee structure for each of the three categories is in three stages with payment due based on key stages under the Department of Planning and Infrastructure's (DoPI) Gateway process which all planning proposals are required to follow including:

- Stage 1 – Lodgement (up to Gateway)
- Stage 2 - Post Gateway (exhibition)
- Stage 3 – Gazettal

For more complex proposals (Category C) the proposed payment fee structure continues to take into account the additional work required when planning proposals are not consistent with Council policy by requiring applications that are outside of an endorsed Department of Planning and Infrastructure Strategy to pay an additional fee calculated on a per hectare basis.

The proposed payment fee structure takes into account neighbouring Council fees and the complexity of a proposal rather than its size alone. This ensures adequate revenue is obtained to meet the cost to Council and resources required to adequately assess the proposal while maintaining a level of consistency and fairness for applicants depending on the scale of their proposal.

#### Transitional Arrangements

No refunds will be provided for previous stages lodged and paid under a previous fees and charges policy as that was the adopted fee at the time.

#### **FINANCIAL/RESOURCE IMPLICATIONS**

An example of a comparison of fees incurred for past and current planning proposal with Council against the fees proposed under the new structure and other surrounding Councils is included at (**ATTACHMENT 3**). Unlike the current fees, the new structure shows a direct correlation between an increase in fees and the complexity of the proposal. It also shows that Councils new fees when compared to surrounding

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

Councils are relatively comparable for minor and more complex applications taking into account additional charges imposed by other Councils for staff time.

The new fee structure will ensure that future costs incurred by planning proposals will be closer aligned with service costs.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	500	Estimate of advertising cost
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

Under Section 610F of the Local Government Act 1993 any changes to fees and charges are required to be placed on public exhibition.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that fees and charges are not in line with service costs and the community will perceive Council is overcharging for planning proposals.	Medium	Implement proposed fees.	Yes

### SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The revised fee structure ensures that Council continues to receive adequate revenue for applications while ensuring a level of consistency and fairness for applicants.

### CONSULTATION

- 1) The preparation of the revised fees were prepared in consultation with strategic planning staff and Councillors;
- 2) These additional fees and charges would be placed on public exhibition and submissions invited from the general community to provide feedback to Council; and



- 3) The proposed public exhibition of the draft Fees and Charges 2013 – 2014 includes placing the document on Councils website and placing advertisements in the Council's Notices pages of the Port Stephens Examiner.

### **OPTIONS**

- 1) Adopt either the recommended draft fees and charges;
- 2) Make alterations to the recommended fees and charges schedule;
- 3) Reject the recommended fees and charges schedule. Council will continue to levy higher fees in comparison to other Councils which may continue to raise community concerns.

### **ATTACHMENTS**

- 1) Existing Fees and Charges under Port Stephens Fees and Charges 2013 – 2014;
- 2) Proposed Fees and Charges for Planning Proposals;
- 3) Comparison of Existing, Proposed and surrounding Councils fee structure.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1

Existing Fees and Charges under Port Stephens Fees and Charges 2013 - 2014

	Fee	GST	Total Fees	Pricing Policy	Clarification
<b>Local Environmental Plan (Rezoning)</b>					
Note: Fee payable in advance of each stage. Area (Hectare) is rezoning that is increased in value (viz excludes open space)					
Mapping Anomalies or Hardship	\$0.00	\$0.00	\$0.00	Free (Zero Priced)	
Entrepreneurial :					
Stage 1 - Lodgement, investigation and report to Council (up to 1 hectare)	\$22,190.10	\$0.00	\$22,190.10	Full Cost Pricing	
(per hectare to 10 hectares)	\$1,664.65	\$0.00	\$1,664.65	Full Cost Pricing	Up to 1 hectare + \$1,664.65 per Hectare to 10 Hectares + \$845.per
(per hectare over 10 hectares)	\$845.60	\$0.00	\$845.60	Full Cost Pricing	
Stage 2 – Consultation:					
(up to 1 hectare)	\$11,096.00	\$0.00	\$11,096.00	Full Cost Pricing	Up to 1 hectare + \$1664.65 per Hectare to 10 Hectares + \$845 per Hectare over 10
(per hectare to 10 hectares)	\$1,664.65	\$0.00	\$1,664.65	Full Cost Pricing	
(per hectare over 10 hectares)	\$888.40	\$0.00	\$888.40	Full Cost Pricing	
Reclassification of land Community to Operational)	\$8,876.00	\$0.00	\$8,876.00	Full Cost Pricing	
Engaging expert consultants to review submissions					Actual cost of engagement.
All requests other than Mapping Anomalies, Hardship & Reclassification of land (Community to Operations) will be subject to a minimum payment of \$21,756.00	\$22,191.10	\$0.00	\$22,191.10	Full Cost Pricing	Minimum fee.

MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013
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Rezoning and LEP amendment enquiries requiring research, site inspection and written reply	\$204.00	\$0.00	\$204.00	Full Cost Pricing	
Staff Time	\$212.20	\$0.00	\$212.20	Full Cost Pricing	Per hour. May include searching, reviewing and collating files and/or

**ATTACHMENT 2**  
**Proposed Fees and Charges Structure**

	Fee	GST	Total Fees	Pricing Policy	Clarification
<b>LOCAL ENVIRONMENTAL PLAN AMENDMENTS</b>					
<b>Category A</b>					
Stage 1 - Lodgement (up to Gateway)	\$2,000	\$0.00	\$2,000*	Full cost pricing	Minor amendments consistent with the parent LEP and do not require additional studies (i.e minor map anomalies).
Stage 2 – Post Gateway (exhibition)	\$4,500	\$0.00	\$4,500*	Full cost pricing	
Stage 3 – Gazettal	\$2,000	\$0.00	\$2,000*	Full cost pricing	
<b>TOTAL</b>			<b>\$8,500</b>		
<b>Category B</b>					
Stage 1 - Lodgement (up to Gateway)	\$10,500	\$0.00	\$10,500*	Full cost pricing	Proposals consistent with: - local area strategies, - surrounding land use zones/land uses or infill - Present no issues with regard to infrastructure servicing - Not a principal LEP.
Stage 2 – Post Gateway (exhibition)	\$21,500	\$0.00	\$21,500*	Full cost pricing	
Stage 3 – Gazettal	\$7,500	\$0.00	\$7,500*	Full cost pricing	
<b>TOTAL</b>			<b>\$39,500</b>		
<b>Category C</b>					
Stage 1 - Lodgement (up to Gateway)	\$40,000	\$0.00	\$40,000*	Full cost pricing	Proposal which are significant and complex that include new urban release areas, Greenfield sites or those that may also require the preparation of an accompanying DCP, S94 Plan or VPA.
Stage 2 – Post Gateway (exhibition)	\$43,000	\$0.00	\$43,000*	Full cost pricing	
Stage 3 – Gazettal	\$23,000	\$0.00	\$23,000*	Full cost pricing	
<b>TOTAL</b>			<b>\$106,000</b>		

Note 1: For Category C proposals areas outside of an endorsed Department of Planning and Infrastructure Strategy attract an additional fee calculated on a per hectare basis (of all land subject to the LEP amendment regardless of the proposed zone) of \$1650 per ha, capped at \$100,000 (charges at a pro rate basis across each stage).

Note 2: Actual cost of engaging consultants to review submissions or undertake studies will be charged in addition to the fee.

Note 3: Public hearing for all categories at cost.

ATTACHMENT 3

Comparison of Existing, Proposed and surrounding Councils fee structure

	Current Port Stephens	Proposed Port Stephens	Newcastle	Maitland	Cessnock	Lake Macquarie
<b>Category A</b>						
Stage 1	\$8,876	\$2,000	\$8,176.50	-	\$2,933	\$3,550
Stage 2	-	\$4,500	\$12,420	-	\$3,513	\$5,850
Stage 3	-	\$2,000	\$18,650	-	-	\$6,300
<b>Total</b>	<b>\$8,876</b>	<b>\$8,500</b>	<b>\$39,246.50</b>	<b>\$14,000</b>	<b>\$6,446</b>	<b>\$15,700</b>
<i>Notes</i>		Plus - daily fee for public hearing at cost - Actual cost of engaging consultants to review submissions or undertake studies.	Plus - \$145/hr staff time exceeds 40 hours - daily fee for public hearing of \$3,000 - Cost to conduct further studies etc \$2,680 plus direct costs of all third parties engaged by Council.	Plus - full cost recovery of specialist reports	Plus - \$3,000 for any exhibition - actual cost for auditing information necessary.	Plus - advertising \$1,365 - market cost for consultant fees incurred by Council - staff cost ranging from \$93.00 – 216.50/hr for costs in excess of \$6,000.
<b>Category B</b>						
<i>Example 1: 10ha</i>						
Stage 1	\$35,175	\$10,500	\$8,176.50	-	\$4,100	\$3,550
Stage 2	\$24,675	\$21,500	\$12,420	-	\$8,733	\$5,850
Stage 3	-	\$7,500	\$18,650	-	-	\$6,300
<b>Total</b>	<b>\$59,850</b>	<b>\$39,500</b>	<b>\$39,246.50</b>	<b>\$22,000</b>	<b>\$12,833</b>	<b>\$15,700</b>
<i>Example 2: 40ha</i>						
Stage 1	\$61,110	\$10,500	\$8,176.50	-	\$4,100	\$3,550
Stage 2	\$50,610	\$21,500	\$12,420	-	\$8,733	\$5,850
Stage 3	\$0	\$7,500	\$18,650	-	-	\$6,300
<b>Total</b>	<b>\$111,720</b>	<b>\$39,500</b>	<b>\$39,246.50</b>	<b>\$22,000</b>	<b>\$12,833</b>	<b>\$15,700</b>
<i>Notes</i>		Plus - daily fee for public hearing at cost - Actual cost of engaging consultants to review submissions or undertake studies.	Plus - \$145/hr staff time exceeds 40 hours - daily fee for public hearing of \$3,000 - Cost to conduct further studies etc \$2,680 plus direct	Plus - full cost recovery of specialist reports	Plus - \$3,000 for any exhibition - actual cost for auditing information necessary.	Plus - advertising \$1,365 - market cost for consultant fees incurred by Council - staff cost ranging from \$93.00 – 216.50/hr for costs in excess of \$6,000.

**MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013**

			costs of all third parties engaged by Council.			
<b>Category C</b>						
<i>Example 1a: 2.8 ha within an endorsed strategy</i>						
Stage 1	\$23,835	\$40,000	\$8,176.50	-	\$34,875	3,550
Stage 2	\$13,335	\$43,000	\$12,420	-	\$40,735	5,850
Stage 3	\$0	\$23,000	\$18,650	-	\$30,130	6,300
<b>Total</b>	<b>\$37,170</b>	<b>\$106,000</b>	<b>\$39,246.50</b>	<b>\$32,000</b>	<b>\$105,722</b>	<b>15,700</b>
<i>Example 1b: 2.8 ha outside an endorsed strategy (Note 1)</i>						
Stage 1	\$23,835	\$40,000 (+ \$1,540)	\$8,176.50	-	\$34,875	3,550
Stage 2	\$13,335	\$43,000 (+ \$1,540)	\$12,420	-	\$40,735	5,850
Stage 3	\$0	\$23,000 (+ \$1,540)	\$18,650	-	\$30,130	6,300
<b>Total</b>	<b>\$37,170</b>	<b>\$106,000 (+ \$4,620)</b> <b>= \$110,620</b>	<b>\$39,246.50</b>	<b>\$32,000</b>	<b>\$105,722</b>	<b>15,700</b>
<i>Example 2a: 15.7 within an endorsed strategy</i>						
Stage 1	\$40,698	\$40,000	\$8,176.50	-	\$34,875	3,550
Stage 2	\$30,198	\$43,000	\$12,420	-	\$40,735	5,850
Stage 3	\$0	\$23,000	\$18,650	-	\$30,130	6,300
<b>Total</b>	<b>\$70,896</b>	<b>\$106,000</b>	<b>\$39,246.50</b>	<b>\$32,000</b>	<b>\$105,722</b>	<b>15,700</b>
<i>Example 2a: 15.7 outside an endorsed strategy</i>						
Stage 1	\$40,698	\$40,000 (\$8,635)	\$8,176.50	-	\$34,875	3,550
Stage 2	\$30,198	\$43,000 (\$8,635)	\$12,420	-	\$40,735	5,850
Stage 3	\$0	\$23,000 (\$8,635)	\$18,650	-	\$30,130	6,300
<b>Total</b>	<b>\$70,896</b>	<b>\$106,000 (+ \$25,905)</b> <b>= \$131,905</b>	<b>\$39,246.50</b>	<b>\$32,000</b>	<b>\$105,722</b>	<b>15,700</b>
<i>Notes</i>		Plus - daily fee for public hearing at cost - Actual cost of engaging consultants to review submissions or undertake studies.	Plus - \$145/hr staff time exceeds 40 hours - daily fee for public hearing of \$3,000 - Cost to conduct further studies etc \$2,680 plus direct costs of all third parties engaged by Council.	Plus - full cost recovery of specialist reports	Plus - \$3,000 for any exhibition - actual cost for auditing information necessary.	Plus - advertising \$1,365 - market cost for consultant fees incurred by Council - staff cost ranging from \$93.00 – 216.50/hr for costs in excess of \$6,000.

ITEM NO. 12

FILE NO: PSC2006-0073

**DRAFT PLANNING PROPOSAL TO LIST SKETCHLEY COTTAGE AS AN ITEM OF ENVIRONMENTAL HERITAGE SIGNIFICANCE**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the final Planning Proposal (as exhibited) at **(ATTACHMENT 1)** to amend the Port Stephens Local Environmental Plan 2000 or the draft Port Stephens Local Environmental Plan 2013 (which ever is in force at the time) in order to list the building known as *Sketchley Cottage* as an item of Environmental Heritage;
- 2) Council use its delegations under S59 Environmental Planning & Assessment Act 1979. Submit the draft final Planning Proposal to the Minister requesting that the plan be made.

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013**  
**COMMITTEE OF THE WHOLE RECOMMENDATION**

Cr Paul Le Mottee returned to the meeting at 7.14pm, in Committee of the Whole.

	<b>Councillor Sally Dover</b> <b>Councillor Steve Tucker</b>
	That the recommendation be adopted.

**MOTION**

222	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to review the draft plan following exhibition and make any recommended changes leaving regard for any comments.

The purpose of the Planning Proposal ("the Proposal") is to amend the Port Stephens Local Environmental Plan 2000 or the draft Port Stephens Local Environmental Plan

2012 (whichever is in force at the time of the making of the plan) in order to list the building known as *Sketchley Cottage* as an item of Environmental Heritage.

Council resolved to prepare the planning proposal at its meeting dated 23 April 2013. A Gateway determination was received on 29 May 2013 and the planning proposal was subsequently exhibited for a period of 14 days, from 20 June to 5 July 2013.

The Minister's plan making powers were delegated to Council with respect to making this plan. As such, following Council's adoption of the planning proposal, Parliamentary Counsel will be requested to prepare a draft instrument to amend the relevant Local Environmental Plan.

### **Proposal details**

**Planning Proposal:** To list *Sketchley Cottage* as an item of Environmental Heritage under LEP 2000 or draft LEP 2012 as outlined in **(ATTACHMENT 1)**  
**Subject land:** Lot 1 DP 1093118, 1 Sketchley Street, Raymond Terrace  
**Proponent:** Raymond Terrace Historical Society  
**Current zone:** 6(a) – General Recreation "A" Zone  
**Owner:** Port Stephens Council  
**Exhibition period:** 20 June to 5 July 2013

A locality plan showing the land subject to the Planning Proposal is contained in the Planning Proposal at **(ATTACHMENT 1)**.

A heritage assessment of the site was undertaken by the Raymond Terrace Historical Society and endorsed by Council's Heritage Advisor in accordance with the Heritage Office requirements and is included as an attachment to the Planning Proposal. The building meets the Heritage Office criteria for heritage listing.

The cottage was relocated to its current site in 1976 from Doribank Homestead, near Eagleton. The cottage is an ironbark slab cottage and was built by convicts in 1837 and formed part of the Doribank Homestead complex. *Sketchley Cottage* is named after William Sketchley, a founding convict, pioneer and lay preacher who took ownership of the homestead in 1857.

The cottage has rare cultural, social and historical significance due to its association with William Sketchley and it being convict built. The building also has the potential to provide insight and an understanding of the construction techniques of such buildings of the time. *Sketchley Cottage* is the only one of its type and age in the Raymond Terrace area.

### **FINANCIAL/RESOURCE IMPLICATIONS**

The Planning Proposal will be progressed using existing budget allocations.



Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	2,000	Existing budget allocation
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

The Planning Proposal is to be progressed in a manner consistent with statutory and policy requirements under the Environmental Planning and Assessment Act 1979. The Planning Proposal was developed at the request of the Raymond Terrace Historical Society, who lease the site from Council for a museum. The proposal will not change the way in which the site is used. Council's Facilities and Services Group Manager, representing the interests of the land owner, has no objection to the planning proposal.

### Section 117 Direction No 2.3 – Heritage Conservation

Section 117 Direction No 2.3 – Heritage Conservation states that a draft LEP shall contain provisions that facilitate the conservation of:

- (a) *items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area*

A heritage assessment undertaken on *Sketchley Cottage* indicates that the site is of local heritage significance set out by the NEW Heritage Office criteria. The Planning Proposal is consistent with the s117 Direction, to list the item in the Local Environmental Plan in order to facilitate its conservation.

### Port Stephens Local Environmental Plan 2000

The proposal seeks to amend the Port Stephens Local Environmental Plan 2000, and any consequential amendments to the Draft Port Stephens Local Environmental Plan 2012 by amending Schedule 2 – Heritage of the Port Stephens Local Environmental Plan 2000 by including a reference to the land at Lot 1 DP 1093118, 1 Sketchley Street, Raymond Terrace and describing the item as *Sketchley Cottage*.

The LEP contains provisions which seek to protect heritage items by specifying the types of development that require consent, ensuring development in the vicinity of heritage items considers the heritage item.

Draft Port Stephens Local Environmental Plan 2013

Should the Draft Port Stephens LEP 2013 be made prior to this amendment, the plan will be amended by:

- 1) Including a reference to the land at Lot 1 DP 1093118, 1 Sketchley Street, Raymond Terrace and describing the item as *Sketchley Cottage*; and
- 2) Identifying the site at Lot 1 DP 1093118, 1 Sketchley Street, Raymond Terrace on the Port Stephens draft LEP 2013 Heritage Map.

The risks associated with progressing the Planning Proposal are minimal.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that the community may lose a heritage significant building.	Low	List the building as an item of Environmental Heritage on the LEP.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Listing the building as an item of environmental heritage on the Local Environmental Plan:

- formally acknowledges the building's heritage significance;
- provides statutory protection and measures to manage its conservation;
- informs interested parties, as a matter of public record, of the property's heritage status; and
- helps to raise the profile and status of Sketchley Cottage.

The community will benefit from the planning proposal as it will facilitate the protection of a building and site which have been identified as significant at a local level and which is appropriate for listing as a heritage item.

There will be no changes to the use of the site as a result of this Planning Proposal and as such there will be no environmental impacts.

**CONSULTATION**

Consultation has been undertaken with the Raymond Terrace Historical Society, the Port Stephens Heritage Advisory Committee and Council's Facilities and Services Group Manager, who represents the asset owner (**ATTACHMENT 1**).

Government Agency Consultation

In accordance with the Gateway determination, Council was required to consult with the Office of Environment and Heritage (Heritage Branch).

At the time of writing no response was received to Council's correspondence.

Public consultation

In accordance with the Gateway determination, the planning proposal was exhibited for 14 days, from 20 June to 5 July 2013. .

Exhibition material was available for viewing at Councils administration building, libraries and website.

No submissions were received during the exhibition period.

**OPTIONS**

- 1) Adopt the recommendations of this Report and request the Minister to make the plan;
- 2) Amend one or more of the provisions of the Planning Proposal prior to requesting Parliamentary Council to prepare the draft plan;
- 3) Reject the recommendations of this Report and not proceed with the plan making process. The consequences of this option may be that Council's ability to protect a recognized heritage item will be impeded.

**ATTACHMENTS** - All listed below are provided under separate cover.

- 1) Planning Proposal to list *Sketchley Cottage* as an item of Environmental Heritage.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ITEM NO. 13

FILE NO: PSC2006-0549

# **DRAFT PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT NO. 22 – FINALISATION OF DRAFT PLAN**

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

## **RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the final Planning Proposal, as amended in this report (**ATTACHMENT 2**);
- 2) Forward the final Planning Proposal to the Minister for Planning and Infrastructure with a request to make the Plan, once the proponent satisfies Council that the provisions of State Environmental Planning Policy 55 – Remediation of Land and Part 7A in the Environmental Planning and Assessment Act 1979 have been complied with.

## **ORDINARY COUNCIL MEETING – 13 AUGUST 2013 COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Steve Tucker</b> <b>Councillor Sally Dover</b>
	That Council: <ol style="list-style-type: none"><li>1) Amend the Planning Proposal of (<b>ATTACHMENT 2</b>) in accordance with the zoning map (<b>ATTACHMENT 3</b>) (provided with this Supplementary Information paper);</li><li>2) Adopt the final Planning Proposal, as further amended at (<b>ATTACHMENT 2</b>); and</li><li>3) Forward the final Planning Proposal to the Minister for Planning and Infrastructure with a request to make the Plan, once the proponent satisfies Council that the provisions of State Environment Planning Policy 55 – Remediation of Land and Part 7A in the Environmental Planning and Assessment Act 1979 have been complied with.</li></ol>

Those for the Motion: Mayor Bruce MacKenzie, Crs Peter Kafer, Paul Le Mottee, Chris Doohan, Steve Tucker, Geoff Dingle and Sally Dover.

Those against the Motion: Nil.

**MOTION**

<b>223</b>	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the Committee of the Whole recommendation be adopted.

Those for the Motion: Mayor Bruce MacKenzie, Crs Peter Kafer, Paul Le Mottee, Chris Doohan, Steve Tucker, Geoff Dingle and Sally Dover.

Those against the Motion: Nil.

**BACKGROUND**

The purpose of this report is to finalise the planning proposal for Lots 901 & 902 DP 634550 and Lot 1 DP 503876 at 273-321 Gan Gan Road, Anna Bay (historically known as LEP Amendment No. 22). A locality map is included at **(ATTACHMENT 1)**.

The draft LEP was reported to Council for finalisation on **29 June 2010** and adopted as recommended (see Attachment C in the final Planning Proposal **(ATTACHMENT 2)**). The recommendation included a requirement for the preparation of a Voluntary Planning Agreement (VPA) to address the drainage infrastructure and extended the eastern boundary of the land proposed to be rezoned to residential by approximately 30m.

The draft LEP was again reported to Council on **24 April 2012**, wherein it was resolved that a report be provided to Council on how to obtain development contributions within a drainage catchment for multiple landowners for drainage works.

The matter was consequently considered in relation to a report recommending amendments to Council's current Section 94 and 94A Contributions Plans on **12 June 2012**, wherein it was requested that Council provide further information on the inclusion of drainage capital works in the Contributions Plans. This information report was presented to Council on **26 June 2012**. Part 3 of the resolution requires Council to:

*"investigate the cost of developing an LGA wide Strategic Drainage Plan to identify required drainage infrastructure and capital works costs to meet the needs of future population growth. This could enable Council to include a drainage levy in future contributions plans."*

The draft LEP was converted to a Planning Proposal under a Gateway Determination in 2010 following amendments to the Environmental Planning and Assessment Act 1979 and the timeframe for completion of the planning proposal is now 29 September 2013.

**Proposal Details**

**Planning Proposal:** To rezone part of the subject land to residential and environmental conservation/management as an amendment to either the Port Stephens LEP 2000 or the Port Stephens LEP 2013 as outlined in **(ATTACHMENT 2)**

**Subject Land:** Lots 901 & 902 DP 634550 and Lot 1 DP 503876, 273-321 Gan Gan Road, Anna Bay

**Proponent:** David Antcliff

**Current Zone:** 1(a) Rural Agriculture 'A'

**Owner:** RH & TA Antcliff; RO & RH Antcliff and MR & AR & CD Caponecchia; WA & MR West.

The final proposal seeks support to rezone part of the subject land from 1(a) Rural Agriculture 'A' to 2(a) Residential 'A' (or Zone R2 Low Density Residential) and part of the subject land from 1(a) Rural Agriculture 'A' to 7(a) Environmental Protection (or Zone E3 Environmental Management) depending on which environmental planning instrument is in force at the time.

The land identified for rezoning to residential has the potential to yield approximately 50 lots, subject to development consent, with a minimum subdivision lot size of 500m<sup>2</sup>.

#### **ISSUES TO BE RESOLVED**

There are two (2) outstanding issues that need to be resolved in order to finalise this planning proposal:

- 1) stormwater drainage works in response to Council's resolution of 26 June 2012; and
- 2) the extent of land to be included in the 7(a) Environmental Protection/E3 Environmental Management zone, as this matter was not dealt with in the resolution of Council on 24 April 2012.

#### **Stormwater Drainage**

The drainage works have been determined to be developer works under section 80A of the EPA Act, i.e. works essential to the operation of the subdivision, not a contribution for community infrastructure or services.

It is acknowledged that future work on investigating whether a trunk drainage system can be developed for the Anna Bay East sub-catchment may provide a mechanism to co-ordinate a drainage solution for this catchment (when it is required) by including such works as an amendment to the s94 Contributions Plan, but it will not resolve the underlying issue for this planning proposal: the timing of this rezoning submission in the absence of public benefit. At this point in time, any s94 Contributions Plan would require the single developer to contribute 100% of the development cost, effectively negating the need for the development of such a Plan, as no other rezoning requests have been lodged with Council in this location to warrant the co-ordination of infrastructure delivery. Furthermore, the land on the

southern side of Gan Gan Road within the Anna Bay East Neighbourhood in the Strategy is fragmented in its ownership pattern. A change in the existing land use pattern may not occur in this location for some years.

The report recommends that Council finalise the planning proposal by supporting the rezoning of the land, notwithstanding that the drainage solution has not, in itself, been finalised. However, for development to occur on this site, the proponent has two likely options:

- 1) to construct the drainage system to service the subdivision at full cost (as developer works); or
- 2) to wait for a rezoning submission to be lodged for land on the southern side of Gan Gan Road and seek to be included in a drainage solution in the future that includes a cost-sharing arrangement.

### **Land proposed to be zoned for environmental protection**

The inclusion of an environmental zone forms an integral part of the overall consideration of the planning proposal by the proponent's consultants in formulating studies in support of the proposal, and comments from relevant council staff and state authorities to date. As reported to Council on 24 April 2012, the deletion of the environmental zone from this proposal would warrant a new Gateway Determination. Given the length of time taken to finalise this proposal to date, it is unlikely that a new Determination would be issued. The Department may require a new planning proposal to be lodged.

It is also further recommended in the final planning proposal (at Attachment 2) that the zoning map (as adopted by Council on 29 June 2010) be amended to include the entire remnant stand of Swamp Mahogany Paperbark Forest on Lot 902 DP 634550 which is identified in both the proponent's Flora and Fauna Assessment Report (ERM, 2004) and in the Anna Bay Strategy as forming part of an Endangered Ecological Community (EEC) under the Threatened Species Conservation Act 1995. This zoning footprint will result in a more logical indication of the development expectations of the land in this location.

This zoning amendment was discussed with the proponent on 19 July 2013. There was general agreement with this approach and the retention of an environmental zone over part of the site, subject to:

- Amending the environmental zone from E2 Environmental Conservation to E3 Environmental Management, and
- A reduction in the extent of the environmental zone over Lot 1 where the land is cleared and contains an existing dwelling-house.

These two amendments are included in the final planning proposal at Attachment D and F. An aerial photo of the vegetation with the proposed zoning boundary amendment overlaid is included in the Planning Proposal at Attachment E.

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

Preliminary discussions were held with OEH but final comments have not been provided as the proponent sought to amend the planning proposal to delete the 7(a) zone, as reported to Council on 24 April 2012.

The Department of Planning and Infrastructure has indicated to Council that it can proceed to adopt the final version of the planning proposal as recommended, while awaiting final comments from OEH. The Department will consider the final submission from OEH when finalising the planning proposal. Council should continue to liaise with OEH and the proponents in this regard.

### FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	Yes	10,300	LEP Amendment Fees & Charges Schedule (historic)

### LEGAL, POLICY AND RISK IMPLICATIONS

#### Environmental Planning and Assessment Act 1979

The draft LEP was converted to a Planning Proposal under a Gateway Determination in 2010 and the timeframe for completion of the planning proposal has been extended on three (3) occasions. The final date for completion is now 29 September 2013. It should not be expected that an additional extension will be granted.

#### State Environmental Planning Policy 55 – Remediation of Land

The planning proposal includes the rezoning of land from a rural zone to a residential zone. Clause 6 in SEPP55 requires a consent authority to be satisfied that the land to be rezoned is suitable for its intended purpose before the land is rezoned for residential use. This matter has been an oversight during the plan-making process. However, Council cannot forward the final planning proposal to the Minister without ensuring that the provisions of Part 7A in the *Environmental Planning and Assessment Act 1979* (with respect to Council's liability in respect of contaminated land) have been addressed. This matter has been raised with the proponent and will be addressed. The final Planning Proposal will be amended to include the findings in this regard before it is forwarded to the Minister.



## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

### Port Stephens Section 94 Contributions Plan 2007 (CP 2007)

Council does not have funds allocated for a catchment drainage system in the Anna Bay East area, as it is works that should be 100% developer funded.

A catchment wide drainage solution is only effective if there are multiple land owners in the broader catchment that also wish to rezone land for residential purposes. In this way costs could be shared by all developers within the catchment and S.94 or a VPA could be used to facilitate funding between owners. In any event the works would need to be 100% funded by the development of the catchment.

### Anna Bay Strategy and Town Plan (2008)

The Anna Bay Strategy and Town Plan (2008) where it is emphasised that a single drainage solution is required for the entire Anna Bay East catchment, as it is a closed drainage catchment.

### Draft Port Stephens Local Environmental Plan 2013

The exhibited draft plan included land to be zoned E2 Environmental Conservation. This zone was removed post-exhibition in response to submissions received and in recognition of the fact that the planning proposal was a more appropriate mechanism to determine the planning outcome for this site, as it relies on detailed planning studies. The subject land is proposed to be zoned RU2 Rural Landscape in the Port Stephens LEP 2013 (as adopted by Council on 26 March 2013) with the understanding that the planning proposal will amend the LEP 2013 in due course. The final Planning Proposal has been discussed with the proponent, and general agreement on the outcome has been reached.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
Should the matter not proceed there is a risk DOPI gateway determination timeframe may lapse, resulting in the need for a new planning proposal to be submitted.	Medium	Finalise the planning proposal within the timeframe extended in the Gateway Determination.	Yes
There is a risk a sub-catchment drainage solution to serve any future development may lead to future localised nuisance flooding.	High	The proponent will be required at development application stage to provide a detailed drainage solution to the satisfaction of Council's engineers.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Part of the subject land is identified in the Anna Bay Strategy and Town Plan for residential development. As outlined in this report, the release of land in this location must be co-ordinated with infrastructure delivery.

## **CONSULTATION**

The LEP amendment was exhibited in 2006 and no submissions from the general public were received. Similarly, adjoining landowners were notified after Council's resolution of 29 June 2010 and no submissions were received.

Should Council resolve to finalise this planning proposal, final consultation is required with the NSW Office of Environment and Heritage (as outlined in the current Gateway Determination) before the NSW Department of Planning and Infrastructure can make the plan.

## **OPTIONS**

- 1) Adopt the recommendation in this report to finalise the Planning Proposal (at **ATTACHMENT 2**) and forward it to the Minister for Planning and Infrastructure with a request to make the Plan, subject to satisfying the provisions in SEPP55 – Remediation of Land and Part 7A in the Environmental Planning and Assessment Act 1979;
- 2) Amend one or more of the provisions in the Planning Proposal prior to finalising the Planning Proposal and forwarding it to the Minister for Planning and Infrastructure with a request to make the Plan. This may require a fresh Gateway Determination that may not be granted. A new Planning Proposal may be required;
- 3) Reject the recommendation and not proceed to finalise the Planning Proposal. In this instance, the land can not be developed unless the landowner submits a new Planning Proposal in the future.

**ATTACHMENTS** – All listed below are provided under separate cover.

- 1) Map – Subject Land (aerial)
- 2) Final Planning Proposal (August 2013)

## **COUNCILLORS ROOM**

- 1) Anna Bay Strategy and Town Plan (2008).

## **TABLED DOCUMENTS**

Nil.

ITEM NO. 14

FILE NO: PSC2010-04979

# **DRAFT PLANNING PROPOSAL TO AMEND PORT STEPHENS LOCAL ENVIRONMENTAL PLAN – PACIFIC DUNES, MEDOWIE**

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

## **RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the final Planning Proposal as amended (**ATTACHMENT 1**) and refer the Planning Proposal to the Department of Planning & Infrastructure with a recommendation that the Minister make the plan, noting the outstanding issues raised by the Office of Environment and Heritage;
- 2) Amend the site specific Chapter C7 Medowie – Pacific Dunes in the Port Stephens Development Control Plan 2007, where necessary to reflect the final adopted Planning Proposal.

## **ORDINARY COUNCIL MEETING – 13 AUGUST 2013 COMMITTEE OF THE WHOLE RECOMMENDATION**

Cr Chris Doohan left the meeting at 7.15pm prior to Item 14, in Committee of the Whole.

	<b>Councillor Geoff Dingle</b> <b>Councillor Paul Le Mottee</b>
	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, Paul Le Mottee, Steve Tucker, Geoff Dingle and Sally Dover.

Those against the Motion: Nil.

## **MOTION**

224	<b>Councillor Sally Dover</b> <b>Councillor Paul Le Mottee</b>
	It was resolved 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, Paul Le Mottee, Steve Tucker, Geoff Dingle and Sally Dover.

Those against the Motion: Nil.

## **BACKGROUND**

The purpose of this report is review submissions received (**ATTACHMENT 4**) during exhibition of the Pacific Dunes, Medowie Planning Proposal and to make recommendations for the Minister to make the plan.

Details of the Planning Proposal:

**Planning Proposal:** To amend the Port Stephens Local Environmental Plan 2000 or draft Port Stephens Local Environmental Plan 2013 (whichever is in force at the time). Refer to (**ATTACHMENT 1**).

**Subject land:** Part Lot 98 DP280007, Lot 7 DP270438, Lot 10 DP270438, Part of Lot 9 DP270438, Part of Lot 11 DP 1079392, Lot 11 DP1105086 and Lot 14 DP1079392 (**ATTACHMENT 2**).

**Proponent:** SJB Planning (on behalf of landowner Port Stephens Golf and Country Club Pty Ltd)

**Current zones:**

- Part 1(c4) Rural Small Holdings and Part 6(c) Special Recreation Port Stephens Local Environmental Plan 2000. Note: the Site is subject to Clause 54A of PSLEP 2000 which enables residential development of part of the land with consent (**ATTACHMENT 3a**).
- R2 Low Density Residential, RE2 Private Recreation and E2 Environment Conservation Draft Port Stephens Local Environmental Plan 2013 (**ATTACHMENT 3c**).

**Proposed zones:** (as requested)

- 2(a) Residential and 7(a) Environment Protection Port Stephens Local Environmental Plan 2000. Note: that part of the Site comprising the golf course will remain in the 6(c) Special Recreation zone (**ATTACHMENT 3b**).
- R2 Low Density Residential, R3 Medium Density Residential (for the Golf and Country Club precinct) and E2 Environmental Conservation in the Draft Port Stephens Local Environmental Plan 2013. (Note: the RE2 zone would remain for the golf course area) (**ATTACHMENT 3d**).

The Proponent requests the subject land be rezoned from 1(c4) Rural Small Holdings & 6(c) Special Recreation to 2(a) Residential and 7(a) Environmental Protection

(PSLEP 2000) or R2 Low Density Residential, R3 Medium Density Residential and E2 Environmental Conservation (draft PSLEP 2013) in accordance with the Planning Proposal at **(ATTACHMENT 1)**. A Location Map is at **(ATTACHMENT 2)**. Current and proposed Zoning Maps and revised Clause 54A are at **(ATTACHMENT 3a-d)**.

The areas of the estate proposed to be rezoned are:

- Hillside Precinct (2) from 1(c4) Rural Small Holdings to 2(a) Residential or R2 Low Density Residential (whichever instrument is in force at the time);
- Lakes Precinct from 6(c) Special Recreation to 2(a) Residential or R2 Low Density Residential (whichever instrument is in force at the time);
- Links Precinct from 6(c) Special Recreation to 2(a) Residential or R2 Low Density Residential (whichever instrument is in force at the time);
- Portmarnock Precinct from 6(c) Special Recreation to 2(a) Residential or R2 Low Density Residential (whichever instrument is in force at the time);
- Golf and Country Club Precinct from 6(c) Special Recreation to 2(a) Residential or R3 Medium Density Residential (whichever instrument is in force at the time).

It is proposed to apply the following minimum allotment sizes (either through a revised Clause 54A in the PSLEP 2000 or through an amended Lot Size Map in the draft PSLEP 2013):

- Hillside Precinct (2) 700m<sup>2</sup> (currently proposed 4000m<sup>2</sup> in draft PSLEP 2013);
- Lakes Precinct 450m<sup>2</sup> (currently proposed 600m<sup>2</sup> in draft PSLEP 2013);
- Links Precinct 600m<sup>2</sup> (currently proposed 600m<sup>2</sup> in draft PSLEP 2013 therefore no change);
- Portmarnock Precinct 450m<sup>2</sup> (currently proposed 40ha in draft PSLEP 2013);
- Golf and Country Club Precinct 200m<sup>2</sup> (currently proposed 40ha in draft PSLEP 2013);
- South end of existing Fairway Lots Precinct 450m<sup>2</sup> (currently proposed 2000m<sup>2</sup> in draft PSLEP 2013).

All other precincts will maintain existing minimum allotment sizes. The proposed changes will provide a response to market desire for a greater range in lot sizes across the development resulting in a more economically viable development.

**FINANCIAL/RESOURCE IMPLICATIONS**

The Planning Proposal has been assessed using funds from rezoning fees.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	28,998	Stage 2 rezoning fees
Reserve Funds	Nil		
Section 94	Nil		Council will receive s94 contributions subject to any development approvals.
External Grants	Nil		
Other	Nil		

**LEGAL, POLICY AND RISK IMPLICATIONS**Lower Hunter Regional Strategy

The lower Hunter Regional Strategy identifies Medowie as an urban release area with boundaries to be defined through local planning. The changes being sought will increase the density by allowing smaller allotments and provide a variation and extension to the development footprint. These changes are considered to be consistent with the Lower Hunter Regional Strategy.

Port Stephens Planning Strategy 2011-2036

The Port Stephens Planning Strategy identifies Medowie as a Regional Centre Support Town and refers to Medowie as a Future Growth Area. Although not specifically mapped as a Potential Future Growth Area in the Strategy, the proposal is consistent with the PSPS.

Medowie Strategy

The Medowie Strategy provides a concept plan for the future development of Medowie. The subject land is not specifically identified in the Medowie Strategy as it is an established area under Clause 54A of the Port Stephens Local Environmental Plan 2000. Should this Planning Proposal be adopted, it is recommended that any future amendment to the Medowie Strategy reflect the development potential of this land accordingly.

Section 94 Development Contributions

The Port Stephens Section 94 Development Contributions Plan does not account for any specific infrastructure needs as a result of development identified in the Medowie Strategy or the Planning Proposal. This infrastructure may include but not be limited to broader infrastructure such as flooding, drainage and road works. This will require further investigation to determine the appropriate timing and mechanism for the proponent to contribute towards apportionment of the costs of any additional burden of infrastructure as a result of additional development.

Port Stephens Local Environmental Plan 2000

The Port Stephens Local Environmental Plan 2000 has existing provision for the development of the subject land under Clause 54A Development of land – Medowie Road and South Street, Medowie (Pacific Dunes) as follows:

- (1) *"This clause applies to land within and in the vicinity of the Pacific Dunes Golf Course, Medowie Road and South Street, Medowie, as shown edged heavy black and lettered "Fairway Lots" or "Hillside Lots" on the map marked "Pacific Dunes Residential Area".*
- (2) *Despite any other provision of this plan, consent must not be granted to the subdivision of, or the erection of a dwelling-house on, the land to which this clause applies, unless:*
  - *Each lot to be created on so much of the land shown edged heavy black and lettered "Fairway Lots" has a minimum area of 600 square metres; and*
  - *Each lot to be created on so much of the land shown edged heavy black and lettered "Hillside Lots" has a minimum area of 900 square metres; and*
  - *The proposed dwelling houses will comply with the provisions of this plan relating to development of land within Zone No 2(a)."*

The revised Planning Proposal is effectively seeking changes to this Clause to facilitate additional development as follows:

- (1) *This clause applies to land within and in the vicinity of the Pacific Dunes Golf Course, Medowie Road and South Street, Medowie, as shown edged heavy black and lettered "Fairway Precinct", "Hillside Precinct (1)", "Hillside Precinct (2)", "Lakes Precinct", "Links Precinct", "Portmarnock Precinct", "Golf and Country Club Precinct" on the map marked "Pacific Dunes, Medowie, Precincts Map".*
- (2) *Despite any other provision of this plan, consent must not be granted to the subdivision of, or the erection of a dwelling-house on the land to which this clause applies, unless:*
  - *each lot to be created on so much of the land shown edged heavy black and lettered "Fairway Precinct" has a minimum area of 600 square metres; and*
  - *each lot to be created on so much of the land shown edged heavy black and lettered "Hillside Precinct (1)" has a minimum area of 900 square metres; and*
  - *each lot to be created on so much of the land shown edged heavy black and lettered "Hillside Precinct (2)" has a minimum area of 700 square metres; and*
  - *each lot to be created on so much of the land shown edged heavy black and lettered "Lakes Precinct" has a minimum area of 450 square metres; and*
  - *each lot to be created on so much of the land shown edged heavy black and lettered "Links Precinct" has a minimum area of 450 square metres; and*
  - *each lot to be created on so much of the land shown edged heavy black and lettered "Portmarnock Precinct" has a minimum area of 450 square metres; and*

- *each lot to be created on so much of the land shown edged heavy black and lettered "Golf and Country Clubs Precinct" has a minimum area of 200 square metres; and*
- *the proposed dwelling-houses will comply with the provisions of this plan relating to development on land within Zone No 2(a).*

It is proposed to amend the provisions of the Port Stephens Local Environmental Plan 2000 by replacing the map marked "Pacific Dunes Residential Area" with the map marked "Pacific Dunes, Medowie, and Precincts Map".

#### Draft Port Stephens Local Environmental Plan 2013

Should the draft Port Stephens Local Environmental Plan 2013 be finalised before this planning proposal, the planning proposal will amend the draft Port Stephens Local Environmental Plan 2013, as the Port Stephens Local Environmental Plan will be repealed and replaced at that date.

In this circumstance, the various minimum lot sizes as described in Clause 54A will more simply be expressed on the Lot Size Map that forms part of the draft Port Stephens Local Environmental Plan 2013. No specific precinct map will need to be included.

#### Development Control Plan

Pacific Dunes Estate is subject to the provisions of the existing Chapter C7 Medowie – Pacific Dunes Estate of the Port Stephens Development Control Plan 2007. This plan identifies a development footprint, precincts, area per dwelling and building design controls and other relevant detailed design controls.

To avoid any duplication and to reflect the new proposed zone footprint, it will be necessary to review the existing Chapter C7 Medowie – Pacific Dunes Estate. This action forms one of the recommendations of this report.

#### Gateway Determination

The Director-General of the Department of Planning and Infrastructure issued a Gateway Determination on the 10<sup>th</sup> October 2012, which specified certain issues to be addressed, including s117 Direction for Flood Prone Land, SEPP 44 Koala Habitat Protection, SEPP 55 Remediation of Land and consultation requirements.

The planning proposal was amended prior to exhibition to address those issues and it is considered that the conditions of the Gateway Determination have been adequately addressed by additional information supplied by the proponent.



Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that the Minister will not make the plan	Medium to low	Follow rezoning process in accordance with the NSW Environmental Planning and Assessment Act	Yes

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

### Flora and Fauna

The Planning Proposal will facilitate development of the land resulting in the removal of "moderate" to "high" ecological constraint vegetation to create an Asset Protection Zone around residential development and will also require removal of some areas of Preferred Koala Habitat.

It should be noted that the removal of this vegetation is currently facilitated by the development opportunity under the current provisions of Clause 54A of the Port Stephens Local Environmental Plan 2000 including the Preferred Koala Habitat near the driving range. Accordingly the planning proposal will have little net effect.

Additionally, the Planning Proposal will conserve 4.7ha of land in private ownership that will be maintained for its conservation values.

### Flooding and Drainage

A Flood Impact Assessment has been carried out by the proponent and reviewed by Council staff. The overall conclusion of the flood study is that the development will only result in localised increases in flood levels which can be minimised through the drainage design for future development (inclusion of on-site detention structures and source controls). Existing development will not become flood affected and new development can be controlled with an appropriate Flood Planning Level.

## CONSULTATION

The Planning Proposal was exhibited in accordance with the Gateway Determination for a period of 14 days, from 21 February 2013 to 07 March 2013. A total of 11 submissions were received from the community and 5 responses from Government Agencies during this period (**ATTACHMENT 4**). The issues in the submissions are:

### COMMUNITY SUBMISSIONS

Golf Course Layout

Concerns regarding the provision of a golf course practice range and a commitment from the proponent to complete development of the clubhouse prior to settling any lots in the newly created precincts.

Comment

These matters do not form part of the Planning Proposal and as such, are a matter for consideration with any development application lodged in the future. It is noted however, that the location of the proposed practice range is within the area of vegetation to be cleared and is also identified as forming part of the Asset Protection Zones for the lots in the proposed southern precincts. Without removal of vegetation in this area the bushfire risk will increase in this location.

Drainage

Concerns about drainage implications from the development.

Comment

As indicated, the overall conclusion of the flood study is that any localised increases in flood levels can be minimised through the drainage design that will be assessed as part of the Development Application process for future development.

Loss of Koala Habitat and Corridors

Concerns were expressed regarding the long term impacts on koala health and population due to loss of habitat and environmental stress. Also, there were concerns that the proposal does not comply with the Gateway Determination as it fails to ensure consistency with State Environmental Planning Policy (SEPP 44) Koala Habitat Protection.

Comment

Investigations revealed that the areas mapped as Preferred Koala Habitat on the site (in the Port Stephens CKPOM) are post sand mining rehabilitation (estimated to be 15 years old) with no koala browse trees and is therefore not considered to be Preferred Koala Habitat, despite offering some general habitat for koala (i.e. refuge or dispersal habitat). Surveys for koala scats, spotlighting surveys and koala records support this finding.

**GOVERNMENT AGENCY RESPONSES**

The Planning Proposal was also forwarded to The Office of Environment and Heritage (OEH), NSW Rural Fire Service, Hunter Water and the Department of Defence for comment as per the instructions of the Gateway Determination. In addition to that, the Planning Proposal was also forwarded to the Roads & Maritime Services.

OEH Comment

There are a number of issues outstanding regarding the proposal. These include the likely direct impact on the Tilligerry State Conservation Area and impacts to threatened species however, it is acknowledged that the impacts to threatened species may be dealt with post gazettal of this plan.

The OEH strongly request modification to the Portmarnock Precinct along the boundary of the reserve to minimise any potential impacts that may result through clearing of vegetation that is continuous with the reserve, including the endangered ecological community Swamp Sclerophyll Forest on Coastal Floodplains, filling of land to enable construction of residential dwellings, the relocation of the fire/access trail to accommodate dwellings and proposed golf practice facility, additional clearing/modification of currently intact vegetation along the boundary of the reserve to accommodate bushfire protection measures and changes to runoff patterns, erosion and sedimentation.

OEH request a buffer of continuous intact vegetation be maintained along the boundary of the reserve to minimise the aforementioned impacts. OEH considers this can be achieved through removing the residential development from the mapped occurrence of Swamp Sclerophyll Forest and area of High Ecological Constraint. Further consideration should also be given to removing any revised golf practice facility along the boundary of the reserve.

Response

It is considered too onerous for the proponent, Pacific Dunes to be burdened with additional conservation requirements for the adjoining Tilligerry State Conservation Area in light of the previous land history, which involved Pacific Dunes dedicating land in this location to the National Parks and Wildlife Service in a "land swap" – effectively, land disturbed by sand mining had been swapped for undisturbed land including Moffats Swamp. Pacific Dunes have managed this previously disturbed land in a manner that has allowed regeneration of vegetation that shares characteristics with the adjoining endangered ecological community.

Any "edge effects" such as sedimentation, runoff and erosion will be effectively managed through standard Development Consent Conditions and should not penalise the Planning Proposal, particularly as the provisions of the current clause 54A of the Port Stephens Local Environmental Plan 2000 allow for this vegetation removal.

NSW Rural Fire Service Comment

Development Applications for any future development on bush fire prone land within the subject site will be required to comply with either Section 79BA of the Environmental Planning and Assessment Act 1979 or Section 100B of the Rural Fires Act 1997.

Response

Noted

Hunter Water Comment

There is sufficient capacity within the water supply and wastewater networks for the assessed development yield however, due to the nature of development this capacity cannot be guaranteed and a more detailed assessment will be required at Development Application Stage.

Response

Noted

Department of Defence Comment

Note that the subject site is located outside the ANEF contour for RAAF Base Williamtown and Salt Ash Weapons Range and that the proposed development is classified as “acceptable” under the provisions of Australian Standard AS2021:2000 however, this should not be interpreted to imply that the land will not be subject to aircraft noise.

Response

Noted

Road and Maritime Services Comment

The Roads and Maritime Services requested intersection data. This data was provided.

Response

It is acknowledged that RMS will inform the DCP Chapter and any intersection upgrades required at Medowie Road/South Street however, this will not impact on finalisation of the Planning Proposal.

## **OPTIONS**

- 1) Council may resolve to adopt the recommendations of this report to finalise the Planning Proposal and forward it to the Minister for Planning and Infrastructure with a request to make the Plan;
- 2) Council may resolve to amend one or more of the provisions in the Planning Proposal prior to finalising the Planning Proposal and forwarding it to the Minister for Planning and Infrastructure with a request to make the Plan;
- 3) Council may reject the recommendation and not proceed to finalise the Planning Proposal. The rejection of this Planning Proposal will restrict the planned expansion of the site for the supply of additional housing in the Medowie area (to meet identified housing needs).

**ATTACHMENTS** – All listed below are provided under separate cover.

- 1) Final Planning Proposal;
- 2) Location Map;
- 3) Current & Proposed Maps & Clause 54A;
  - a) Port Stephens LEP 2000
  - b) Proposed amendments to Port Stephens LEP 2000
  - c) Draft Port Stephens LEP 2013
  - d) Proposed amendments to draft Port Stephens LEP 2013
- 4) Submissions.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ITEM NO. 15

FILE NO: PSC2011-02657

## SIX MONTHLY REPORT JANUARY – JUNE 2013 AGAINST THE DELIVERY PROGRAM 2011-2015

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

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Six Monthly Report - January to June 2013 against the Delivery Program 2011-2015 presented as **(TABLED DOCUMENT 1)**.
- 

### ORDINARY COUNCIL MEETING – 13 AUGUST 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Sally Dover Councillor Paul Le Mottee
	That the recommendation be adopted.

### MOTION

225	Councillor Sally Dover Councillor Chris Doohan
	It was resolved that the recommendation be adopted.

### BACKGROUND

The purpose of this report is to provide Council and the community of Port Stephens with details of the progress in the six months to 30 June 2013 in achieving the actions in the Delivery Program 2011-2015.

### FINANCIAL/RESOURCE IMPLICATIONS

This statutory report was developed by Corporate Strategy & Planning with inputs from across Council.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	500	Produced in-house and electronic copy available on web site
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

The Six Monthly Report - January to June 2013 fulfils the requirements of Section 404(5) of the Local Government Act: The general manager must ensure that regular progress reports are provided to the Council, reporting as to its progress with respect to the principal activities detailed in its delivery program. Progress reports must be provided at least every six (6) months.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
Failure to report to Council is a breach of legislation.	Low	Report to Council's August meeting to comply with legislative requirements.	Yes

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Six Monthly Report - January to June 2013 gives details of progress against the Delivery Program 2011-2015 and reports social, economic and environmental outcomes derived from actions completed under the Program.

## CONSULTATION

- 1) The Six Monthly Report January to June 2013 was compiled with input from across Council. A draft was supplied to the Executive Team for consultation and feedback.

## OPTIONS

- 1) Adopt the Six Monthly Report – January to June 2013;
- 2) Amend the Six Monthly Report – January to June 2013;
- 3) Reject the Six Monthly Report – January to June 2013.

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

- 1) Six Monthly Report – January to June 2013 against Delivery Program 2011-2015.



ITEM NO. 16

FILE NO: A2004-0877

## CLIPPERS ANCHORAGE – RIGHT OF ENTRY DEED AND CONSENT OF MORTGAGE

REPORT OF: CARMEL FOSTER – PROPERTY SERVICES SECTION MANAGER

GROUP: CORPORATE SERVICES GROUP

### RECOMMENDATION IS THAT COUNCIL:

- 1) Authorise the Mayor and The General Manager to execute the Right of Entry Deed and the Consent to the mortgage of 2A Ridgeway Avenue Soldiers Point being Lot 321 in DP 636840 shown as **(ATTACHMENT 1)**;
- 2) Authorise the Mayor and the General Manager to sign and affix the Seal of Council to the Deed.

### ORDINARY COUNCIL MEETING – 13 AUGUST 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

Cr Chris Doohan returned at 7.21pm during Item 16, in Committee of the Whole.

	<b>Councillor Steve Tucker</b> <b>Councillor Geoff Dingle</b>
	That the recommendation be adopted.

### MOTION

226	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

### BACKGROUND

The purpose of this report is to advise Council of a request for Council to execute a Right of Entry Deed and Consent to a Mortgage over Council owned land located at 2A Ridgeway Avenue, Soldiers Point **(ATTACHMENT 1)**.

The land has been occupied by Clippers Anchorage Pty. Ltd ('Clippers') for an extended period of time and is currently subject to a long term lease with Clippers expiring in 2036. The land is located on the western side of Ridgeway Avenue and is

only 155m<sup>2</sup> in area however, it is regarded as being strategic to the Clippers operation as it is the only possible access to the Clippers boat ramps.

Clippers are refinancing their business interests and the prospective mortgagee (St. George Bank) requires these dealing to complete their finance arrangements.

The consent to mortgage is a dealing which is a usual requirement under these circumstances while the Right of Entry Deed will give St. George Bank power to assume the rights of the Lessee (Clippers) in the event of default.

The Deed of Entry will be in place through the term of the lease which expires on 30 November 2036.

### **FINANCIAL/RESOURCE IMPLICATIONS**

There are no financial or resource implications.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	No		There is a current lease valued at \$7,035 pa in place. There is no financial impact to Council as Clippers will be responsible for Councils legal fees in this matter.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

### **LEGAL, POLICY AND RISK IMPLICATIONS**

Consultation has been undertaken with Harris Wheeler Lawyers to examine potential future impacts of the proposed arrangements. Harris Wheeler has negotiated with Clippers Lawyers on pertinent points to ensure Council is not disadvantaged by consenting to the matters proposed.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that by Council not consenting to the matters proposed, options available to Clippers for refinancing may be limited. This may then pose reputation risk to Council.	Medium	Accept the recommendation.	Yes

### SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

### CONSULTATION

- 1) Harris Wheeler Lawyers;
- 2) Property Investment Coordinator.

### OPTIONS

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

### ATTACHMENTS

- 1) Aerial Photograph – 2A Ridgeway Avenue, Soldiers Point.

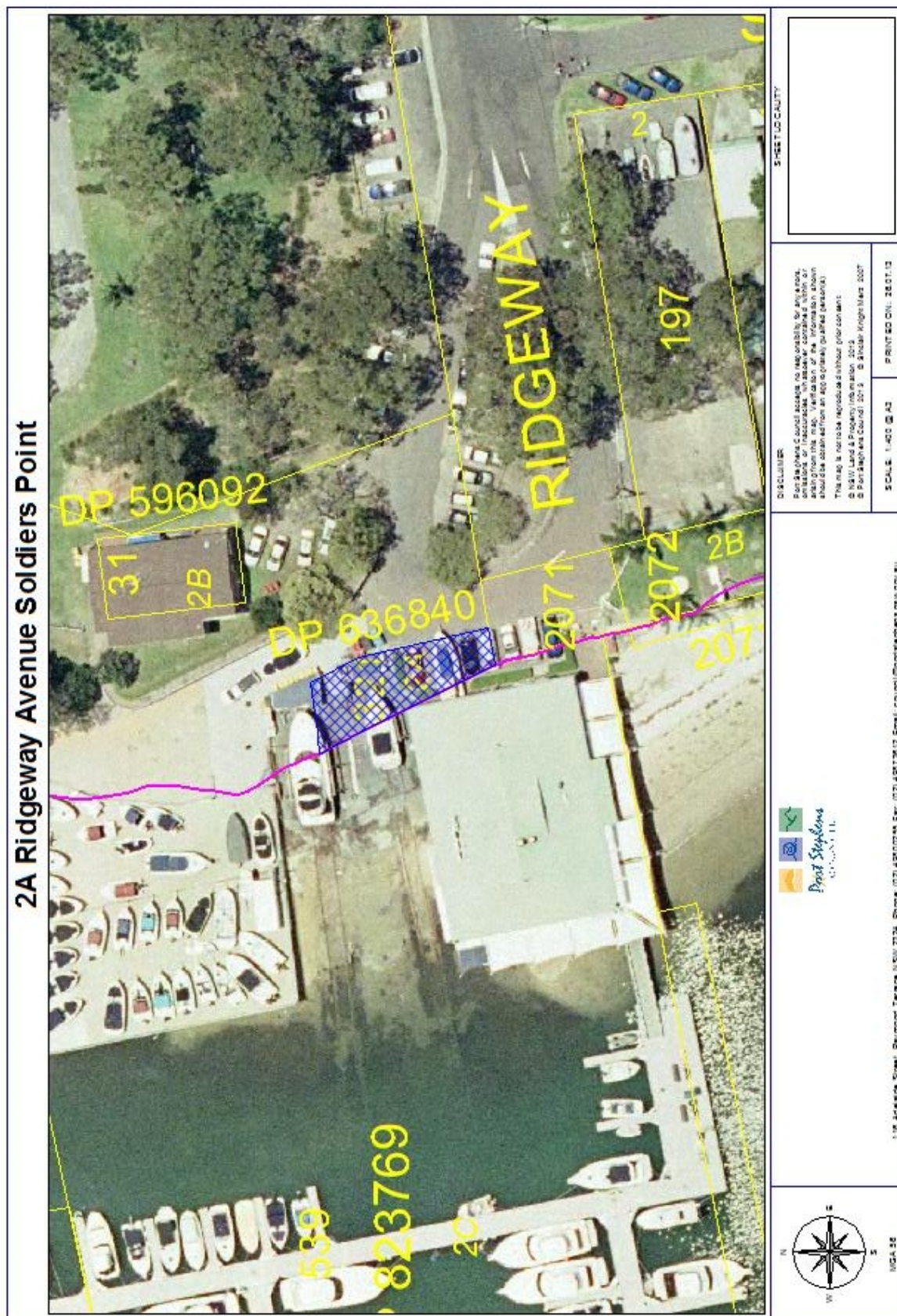
### COUNCILLORS ROOM

Nil.

### TABLED DOCUMENTS

Nil.

ATTACHMENT 1  
2A RIDGEWAY AVENUE, SOLDIERS POINT



ITEM NO. 17

FILE NO: PSC2007-0097

**INTEGRATEDLIVING AUSTRALIA – LEASE OF SHOPS 13 AND 14 AND SUITE 5C – 25 STURGEON STREET RAYMOND TERRACE****REPORT OF: CARMEL FOSTER – PROPERTY SERVICES SECTION MANAGER****GROUP: CORPORATE SERVICES GROUP**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Authorise the Mayor and the General Manager to sign and affix the Seal of the Council to the lease documentation and any associated documentation for property situated at Shops 13 and 14 and Suite 5C at 25 Sturgeon Street, Raymond Terrace for a term of two (2) years with an option for a further two (2) years.
- 

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	That the recommendation be adopted.

**MOTION**

<b>227</b>	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to advise Council that the lease to the existing tenant at Shops 13 and 14 and Suite 5C at 25 Sturgeon Street (former Terrace Shopping Village), Raymond Terrace has expired and a new lease has been negotiated.

The current occupants are a front line community group providing a broad range of quality services to the frail, older people, younger people with disabilities and their carers. Terms of the new lease are for a two (2) year initial period commencing on 1 August 2013 and with a further option of two (2) years.

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

The rental of \$34,125 per annum plus GST has been arrived at following a review to market and by applying the provisions of Council's Community Leasing policy (CLP). While the provisions of the CLP have been applied, the new rental represents a modest increase over the previous rental as the tenant would pay a proportion of outgoings under the proposed lease.

### FINANCIAL/RESOURCE IMPLICATIONS

The negotiated rental of \$34,125 plus a proportion of outgoings represents a modest increase on the previous rental paid.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	34,125	Forms part of the responsibility of the Property Investment Coordinator.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

Specifically in relation to Community Leasing matters, the Lease formalises the obligations placed upon respective parties and identifies the relative contribution to such groups by Council in the form of rental subsidies.

The Community Leasing policy sets out a transparent, structured framework under which Council leases property to community groups, thereby protecting Council from potentially adverse claims and reputation risk.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that Council could be subject to reputation risk if dealings with community groups are not formalised under the terms of the Community Leasing policy	HIGH	Accept the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Nil.

**CONSULTATION**

- 1) Property Investment Coordinator.

**OPTIONS**

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

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 18****FILE NO: PSC2013-02707****WORKPLACE SURVEILLANCE POLICY**

**REPORT OF: ANNE SCHMARR - ORGANISATION DEVELOPMENT MANAGER**  
**GROUP: CORPORATE SERVICES GROUP**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the draft Workplace Surveillance Policy;
  - 2) Place the draft policy on public exhibition for 28 days calling for public submission;
  - 3) Should no submissions be received, adopt the draft Workplace Surveillance Policy at **(ATTACHMENT 1)**.
- 

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013**  
**COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Chris Doohan</b> <b>Councillor Geoff Dingle</b>
	That the recommendation be adopted.

**MOTION**

<b>228</b>	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to provide Council with the draft Workplace Surveillance Policy and the implications of surveillance for the public and our staff. The rights of Council, its workers and others are prescribed in workplace surveillance and privacy legislation that calls for management processes to ensure continued legislative compliance. The Workplace Surveillance Policy establishes the protocol to meet our legislative obligations.



**FINANCIAL/RESOURCE IMPLICATIONS**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	200	Costs relate to advertising
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

Adoption of the policy would provide a framework for workers to operate within to ensure compliance with legislative requirements as well as providing clarity for the public on our surveillance activities and access to information collected.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that without a policy, Council officials maybe in breach of the Code of Conduct when interacting.	Low	Adopt the recommendation	Yes
There is a risk that without a policy surveillance records could be accessed inappropriately resulting in legal and/or industrial action.	Low	Adopt the recommendation	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The Workplace Surveillance Act 2005 requires that workers and the community are made aware of surveillance undertaken by Council.

**CONSULTATION**

- 1) Mayor and Councillors – via a two way conversation;
- 2) General Manager;
- 3) Group and Section Managers;
- 4) Consultative Committee.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Draft Workplace Surveillance Policy.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ATTACHMENT 1



POLICY

Adopted:  
Minute No:  
Amended:  
Minute No:

**FILE NO:** PSC2008-8666  
**TITLE:** WORKPLACE SURVEILLANCE  
**RESPONSIBLE OFFICER:** HUMAN RESOURCES MANAGER

**BACKGROUND**

Council recognises its obligations to ensure, where reasonably practicable, a safe and healthy workplace for its workers and others.

The use of certain devices has the potential through the:

- provision of tracking devices, to identify the geographical location of a worker, if they are in need of emergency assistance;
- provision of CCTV, to deter a possible assailant and reduce the safety risks associated with workers and others or, to deter vandalism and criminal activity;
- monitoring of inputs and outputs of data to manage the risks associated with non-compliance to Councils Code of Conduct and WHS requirements.

Technology advances have made optical devices commonplace through camera capabilities being part of most mobile phones. Council, in the course of its business, uses cameras for the recording of worksites for matters such as marketing and promotional material. Individual workers have similar capabilities with a Council supplied mobile phone, or, their personal mobile phone.

The rights of Council, its workers and others are prescribed in workplace surveillance, and privacy legislation that calls for management processes to ensure continued legislative compliance. This Workplace Surveillance policy establishes the protocol to meet our legislative obligations.

In this policy, a worker has the same meaning as Worker under Section 7 of the Work Health and Safety Act 2011, being:

- (a) an employee, or
- (b) a contractor or subcontractor, or
- (c) an employee of a contractor or subcontractor, or
- (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking, or
- (e) an outworker, or
- (f) an apprentice or trainee, or
- (g) a student gaining work experience, or
- (h) a volunteer, or
- (i) a person of a prescribed class.

#### **OBJECTIVE**

- 1) The purpose of this policy is to comply with Council's legal obligations by informing workers and others of the surveillance devices used in our workplace and to enhance safety outcomes for Port Stephens Council.

#### **PRINCIPLES**

- 1) Tracking Devices – Notification.

Council, at times, requires workers to work alone and in isolation to the general workplace. To reduce the risks associated with this, Council may introduce tracking devices to identify the location of the worker, should an emergency response be required.

Increasingly Council's vehicle fleet has equipment that provides back to base, real time capability with regard to location, engine revolutions per minute (RPM), gear ratio and other performance data. This data is invaluable in informing our process improvement activities and for identifying obstacles to our teams that currently prevents them from doing an even better job than they do now. The clear intention of this policy is not to utilise this information for performance management purposes, however, on occasion, available information may be accessed in the course of a workplace investigation.

Existing workers of Council shall be notified of the installation and intent of tracking devices through the dissemination of this policy.

Workers yet to commence with Council shall be given notification of this surveillance policy as part of their offer of employment. By accepting employment with Council the worker will be consenting to the conducting of surveillance in accordance with this policy, immediately upon the commencement of employment with Council.

2) Tracking Devices - Type of Surveillance in Council's Workplace.

Where tracking devices are utilised surveillance will be continuous and ongoing.

For an 'on person' device, workers will be informed that they are required to carry such a device whilst at work based on a risk assessment identifying the need for such a device. This will occur prior to any operation or function of any such device. A Health and Safety Representative (HSR) shall also be involved throughout this risk assessment process.

Where a vehicle is supplied standard with a GPS device the vehicle will display notification that a GPS device is installed in the vehicle.

Where the provision of the device in the vehicle is optional, a risk assessment process shall also be completed to ascertain the need for such device. This will occur prior to any operation or function of such device. A Health and Safety Representative (HSR) shall also be involved throughout this risk assessment process. If the risk assessment deems it necessary to install a GPS device, the vehicle will display notification that a GPS device is installed in the vehicle.

The clear intention of this policy is not to utilise this information for performance management purposes, however, on occasion, available information may be accessed in the course of a workplace investigation.

3) Tracking Devices – Use of Surveillance Records.

CCTV - Notification

Council uses Closed Circuit Television (CCTV) surveillance cameras in and around various Council worksites and facilities.

Existing workers of Council shall be notified of the installation and intent of the use of CCTV cameras through the dissemination of this policy.

Where Council intends to install new CCTV devices, workers will be notified prior to any operation or function of the new installations which occur after the date of acceptance of this policy by Council.

Workers yet to commence with Council shall be given notification of this surveillance policy as part of their offer of employment. By accepting employment with Council, the worker will be consenting to the conducting of surveillance in accordance with this policy, immediately upon the commencement of employment with Council.

CCTV - Type of Surveillance in Council's Workplace

This clause applies to camera surveillance, which is surveillance by means of a camera that monitors or records visual images of activities on premises or, in any other place.

Signs are located within each site/location to identify the areas affected by the camera surveillance, and are clearly visible at each entrance to that site or location.

CCTV camera surveillance will be continuous and ongoing.

Use of Surveillance Records – Tracking Devices and CCTV

Council may use and disclose confidentially the surveillance records where that use or disclosure is for a purpose related to the matter raised below regarding workers and management of Port Stephens Council.

Council may also use and disclose the surveillance records where that use or disclosure is related to Council's business activities including:

- To a law enforcement agency in connection with a criminal offence or alleged criminal offence;
- In connection with bona-fide legal proceedings; or
- As reasonably believed to be necessary to avert an imminent threat of serious violence or substantial damage to property.

Examples of instances in which use or disclosure of surveillance records might occur include but, are not limited to:

- Allegations of breaches of Council's Code of Conduct;
- Allegations of poor performance or unacceptable behaviour;
- If there is an assault, or suspected assault of a person;
- If theft of Council's property (or that of a related entity of Council) is suspected or;
- Criminal damage to Council's equipment or facilities (or that of a related corporation of Council) has occurred;
- A serious work health and safety incident as defined by the Work Health and Safety Act 2011 (NSW);
- By request of a worker and Union representative regarding any bona-fide investigation.

All surveillance records are available under the Government Information (Public Access) Act 2009; however, persons wishing to access these records should be aware that there are provisions under GIPA that may override the release of the information.

Generally, CCTV surveillance records will not be used or disclosed unless that disclosure is:

- for a legitimate purpose related to employment of workers or legitimate business activities or functions of the employer, or
- to a member or officer of a law enforcement agency for use in connection with the detection, investigation or prosecution of a criminal offence, or
- for a purpose that is directly or indirectly related to the taking of criminal proceedings, or
- that is reasonably believed to be necessary to avert an imminent threat of serious violence to persons or of substantial damage to property.

#### Data Surveillance and Retrieval

The computer usage of workers are not routinely read or monitored however, they are records of Council and shall be managed accordingly. At times, Council may retrieve or review electronic files, records and correspondence of workers. This applies to all Council's Information and Communication systems including telephones, mobile phones and mobile computing technology. Council also provides a number of software systems, which have the ability to track changes made to data. The clear intention of this policy is not to utilise this information for performance management purposes, however, on occasion, available information may be accessed in the course of a workplace investigation.

Designated workers of Port Stephens Council are also required to utilise a variety of security systems such as silkeys and alarm systems, which provide access to Council sites based on unique logins allocated to workers.

Surveillance of workers use of all of these systems and equipment is undertaken by Council on a continual basis.

Existing workers of Council shall be notified of data surveillance through the dissemination of this policy.

Workers yet to commence with Council shall be given notification of this surveillance policy as part of their offer of employment. By accepting employment with Council the worker will be consenting to conducting of surveillance in accordance with this policy, immediately upon the commencement of employment with Council.

#### Camera Devices

Council frequently uses camera devices to take pictures, or videos, eg. For promotions, press releases, training applications, or incident investigations. At times, this may require including workers, and or, others in the picture, or video. To comply with the relevant legislation, the following shall apply:

- A Council worker authorised to operate a Council camera device, shall obtain express, or implied, consent from workers and or others, prior to taking the photograph or video.
- Workers wishing to take pictures or videos, from their personal camera device shall respect a person's privacy and obtain express or implied consent from that person or persons prior to taking the picture or video. Council shall devise such policy and procedures to facilitate this approval.
- Pictures or videos of Council processes, procedures or practices shall not be taken without first obtaining permission from the worker's manager.
- Managers shall ensure that pictures or videos for a use other than for internal purposes shall be approved by the Economic Development and Communications Section Manager, prior to use.

#### Recordings of Conversations

On occasion Council may wish to record conversations. Council will not record a private conversation without the consent, of the principal parties to the private conversation or the persons who took part in the activity, as per the requirements of the Surveillance Devices Act 2007.

If expressly agreed, when a recording of a conversation is made in relation to a Council worker who is participating in an investigation, the worker will receive a copy of the recording together with a transcript of the recording which they will then be asked to sign and verify as a true and correct record. This recording cannot occur without the express permission of the worker involved. Council at no stage will apply any duress for any interview to be recorded.

#### Confidentiality and Records

Council workers shall at all times exercise duty of confidentiality. Data shall only be released in compliance with the Workplace Surveillance Act 2005 (NSW) and on a need to know basis as prescribed by this policy or a workers request for such confidential information that applies to them in accordance with this policy's provisions in relation to requesting access to information.

Non compliance with duty of confidentiality requirements shall render a Council worker liable to disciplinary procedures which may include termination of employment.

All documents created in relation to this policy will be kept in accordance with State Records Act 1998 (NSW) and Port Stephens Council's Records Management management directive.

Members of the public can make application to access Council's data in accordance with Government Information Public Access (GIPA) Act 2009 and Privacy and Personal Information Protection Act (PPIPA) 1998.



For the purposes of determining compliance to this policy, random audits will be undertaken of data generation and collection activities by Council's internal auditor. Audit results shall be reported to the relevant Group Manager for determination and the Consultative Committee for review.

4) Training

New users shall be made aware of this policy during the induction process.

Record of user's awareness of their internet obligations under this management directive shall be achieved by on screen declaration prior to internet access.

Record of user awareness and understanding of this management directive will be obtained by the completion of toolboxing of the policy in accordance with the Toolbox Procedure and by publication on Council's Intranet and Internet Site.

Ongoing training and awareness of this policy shall be provided by Council management throughout the employment relationship.

5) Requesting access to information

All requests for information under this policy from members of public will be assessed under the Government Information (Public Access) Act 2009.

All requests for data retrieval or review from workers (other than approved Information and Communication Technology workers) can only be approved by any two of the following workers, with the exception of the General Manager who may request data retrieval or review without the approval of another manager:

- the General Manager; or
- a Group Manager;
- a Section Manager;
- the Executive Officer;
- the Legal Services Manager;
- the Human Resources Manager.

Any request must specify the reason for data retrieval or review, the specific period to be accessed and the Approved Worker(s) undertaking the investigation.

All requests and approvals must be given in writing.

This shall not apply to requests where an individual piece of data directly related to a task being undertaken by a worker is required. In such case a request to gain the individual piece of data shall require approval from the worker's manager.

**POLICY STATEMENT**

- 1) At Port Stephens Council, a number of electronic systems are in place, which are utilised for surveillance.
- 2) The Workplace Surveillance Act 2005 (NSW) ('the Act') requires us to advise workers and the community of the surveillance methods we have in use and how we may use this information in relation to the surveillance of workers.
- 3) In relation to workers, the systems may be utilised to provide relevant data to support investigations into allegations of unacceptable performance or behaviour. Sporadic auditing of data may occur which may lead to investigations in relation to workers performance and/or behaviour if inconsistencies or matters of concern are identified, however, it is Council's clear intention not to monitor the data provided from all of these surveillance systems in relation to worker performance and behaviour.
- 4) These systems are primarily used to assist Council to capture relevant data needed for the operation of Council's business, improve service delivery, enhance safety outcomes and ensure compliance with relevant legislative requirements.
- 5) The types of matters which may result in the use of data collected through surveillance include but are not limited to:
  - If there is an assault, or suspected assault of a person;
  - If theft of Council's property (or that of a related entity of Council) is suspected;
  - Criminal Damage to Council's equipment or facilities (or that of a related corporation of Council) has occurred;
  - A serious work health and safety incident as defined by the Work Health and Safety Act 2011 (NSW);
  - Complaints of poor performance or behaviour made against workers;
  - Allegations of breaches of the Code of Conduct;
  - Other matters that may from time to time arise involving workers performance and behaviour;
  - Or by request of a worker and Union representative regarding any bona-fide investigation.
- 6) Where a worker is required to respond to an investigation or disciplinary matter where data collected through surveillance is utilised, the worker will be entitled to review the data upon which Council is relying as part of any investigation or disciplinary matter prior to responding to any allegations.

**RELATED POLICIES &/OR MANAGEMENT DIRECTIVES**

- 1) Port Stephens Council Enterprise Agreement 2011;
- 2) Code of Conduct;
- 3) Records Management management directive;
- 4) Information & Communication Technologies (ICT) Systems & Information Access management directive;
- 5) Information & Communication Technologies (ICT) Asset Management management directive;
- 6) Mobile Phones management directive;
- 7) Telecommunications management directive;
- 8) Toolbox procedure.

**SUSTAINABILITY IMPLICATIONS**

**SOCIAL IMPLICATIONS**

The Workplace Surveillance Act 2005 requires that workers and the community are made aware of surveillance undertaken by Council.

**ECONOMIC IMPLICATIONS**

Nil.

**ENVIRONMENTAL IMPLICATIONS**

Nil.

**RELEVANT LEGISLATIVE PROVISIONS**

- 1) State Record Act 1998;
- 2) Local Government Act 1993;
- 3) Workplace Surveillance Act 2005 (NSW);
- 4) Workplace Surveillance Regulations 2012(NSW);
- 5) Surveillance Devices Act 2007 (NSW);
- 6) Privacy and Personal Information Protection Act 1998 (NSW);
- 7) Government Information (Public Access) Act 2009;
- 8) Privacy and Personal Information Protection Act (PPIPA) 1998;
- 9) Industrial Relations Act 1996.

**IMPLEMENTATION RESPONSIBILITY**

- 1) Group Managers;
- 2) Section Managers;
- 3) Coordinators.

**PROCESS OWNER**

- 1) Human Resources Manager.

**REVIEW DATE**

- 1) 13 August 2015.

ITEM NO. 19

FILE NO: A2004-0511

**LOCAL TRAFFIC COMMITTEE REPORT – 2 JULY 2013**

**REPORT OF: JOHN MARETICH – CIVIL ASSETS SECTION MANAGER**  
**GROUP: FACILITIES AND SERVICES**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the recommendations contained in the minutes of the Local Traffic Committee meeting held 2 July 2013.
- 

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013**  
**COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Chris Doohan</b> <b>Councillor Sally Dover</b>
	That the recommendation be adopted.

**MOTION**

229	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to bring to Council's attention traffic issues raised and detailed in the Traffic Committee minutes and to meet the legislative requirements for the installation of any regulatory traffic control devices associated with Traffic Committee recommendations. (Community Strategic Plan Section 5.4)

**FINANCIAL/RESOURCE IMPLICATIONS**

Council has an annual budget of \$44 000 (\$25 000 grant from RMS and the balance from General Revenue) to complete the installation of regulatory traffic controls (signs and markings) recommended by the Local Traffic Committee. The construction of capital works such as traffic control devices and intersection improvements resulting from the Committee's recommendations are not included in this funding and are to be listed within Council's "Forward Works Plan" for consideration in the annual budget process.

**MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	27,242	Approximately 60% of allocated budget spent
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

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

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

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that recommendations may not meet community expectations	Medium	Ensure proper consultation is carried out when required, prior to meetings	Yes
There is a risk that recommendations may not meet required standards and guidelines	Medium	Traffic Engineer to ensure that all relevant standards and guidelines are applied	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

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

## **CONSULTATION**

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

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Local Traffic Committee minutes – 2/7/2013

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**

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**LOCAL TRAFFIC COMMITTEE MEETING  
HELD ON TUESDAY 2<sup>ND</sup> JULY 2013  
AT 9:30AM**

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**Present:**

Senior Constable John Simmons – NSW Police , Mr Mark Morrison - Roads and Maritime Services, Ms Lisa Lovegrove (Chairperson), Mr Graham Orr – Port Stephens Council

**Apologies:**

Cr Geoff Dingle, Mr Joe Gleeson - Port Stephens Council

- A. ADOPTION OF MINUTES OF MEETING HELD 4<sup>TH</sup> JUNE, 2013**
- B. BUSINESS ARISING FROM PREVIOUS MEETING**
- C. LISTED MATTERS**
- D. INFORMAL MATTERS**
- E. GENERAL BUSINESS**



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## PORT STEPHENS LOCAL TRAFFIC COMMITTEE AGENDA

### INDEX OF LISTED MATTERS TUESDAY 2<sup>ND</sup> JULY 2013

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- A. ADOPTION OF THE LOCAL TRAFFIC COMMITTEE MINUTES OF 4<sup>TH</sup> JUNE, 2013
- B. BUSINESS ARISING FROM PREVIOUS MEETING
  - B.1 611\_06/13 RAYMOND TERRACE ROAD NELSONS PLAINS – SAFETY CONCERNS RELATING TO THE INTERSECTION OF RAYMOND TERRACE ROAD AND SEAHAM ROAD
- C. LISTED MATTERS
  - C.1 20\_07/13 STURGEON STREET RAYMOND TERRACE - REQUEST FOR INSTALLATION OF A LOADING ZONE AND NO STOPPING RESTRICTIONS
  - C.2 21\_07/13 FREETH STREET RAYMOND TERRACE - REQUEST FOR 'NO STOPPING' RESTRICTIONS
  - C.3 22\_07/13 JAMES PATERSON STREET ANNA BAY - REQUEST FOR CHANGES TO BUS PARKING AT BIRUBI BEACH
  - C.4 23\_07/13 GOWRIE AVENUE NELSON BAY - REQUEST FOR REMOVAL OF 1 PARKING BAY AT BAY PARKLANDS
  - C.5 24\_07/13 SALAMANDER WAY SALAMANDER BAY - REQUEST FOR REVIEW OF 'NO STOPPING' RESTRICTIONS
  - C.6 25\_07/13 GRIFFIN STREET HEATHERBRAE - REVIEW OF INTERSECTION CONTROLS AT THE HANK STREET INTERSECTION
- D. INFORMAL MATTERS
- E. GENERAL BUSINESS
  - E.1 613\_07/13 NELSON BAY ROAD FULLERTON COVE – SAFETY CONCERNS AT THE FULLERTON COVE ROAD INTERSECTION

**B. Business Arising from Previous Meeting**

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**B.1 Item: 611\_06/13**

**RAYMOND TERRACE ROAD NELSONS PLAINS – SAFETY CONCERNS RELATING TO THE INTERSECTION OF RAYMOND TERRACE ROAD AND SEAHAM ROAD**

The Roads and Maritime Services Representative advised that they have conducted investigations at this location. They advise that they have 24 crashes recorded for the previous 5 years.

Sign posting for queued vehicles has been suggested as a solution and they are conducting further investigations in regards to the installation of queue activated signals.

**C. Listed Matters**

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**C.1 Item: 20\_07/13****STURGEON STREET RAYMOND TERRACE - REQUEST FOR INSTALLATION OF A LOADING ZONE AND NO STOPPING RESTRICTIONS**

**Requested by:** Port Stephens Council – Library Services

**File:** PSC2005-4025/022

**Background:**

The Raymond Terrace library is relocating to the former Gym/Police station adjacent to the Council Administration Building and there are a number of adjustments required to the parking area to improve safety and access for the Mobile Library truck.

**Comment:**

Council's Civil Assets staff met on-site with Library staff and project managers to determine what is required to enable the Mobile Library vehicle to safely access its new home in the driveway area of the new library. After viewing the Mobile Library vehicle manoeuvres it was evident that some parking changes are required. These include removal of 1 parking space on the north of the driveway and 2 spaces on the south, as well as 3 spaces opposite where a loading zone is proposed.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule167 – No stopping signs, Rule 179 – Stopping in a loading zone

RTA signs database – R5-400, R5-23

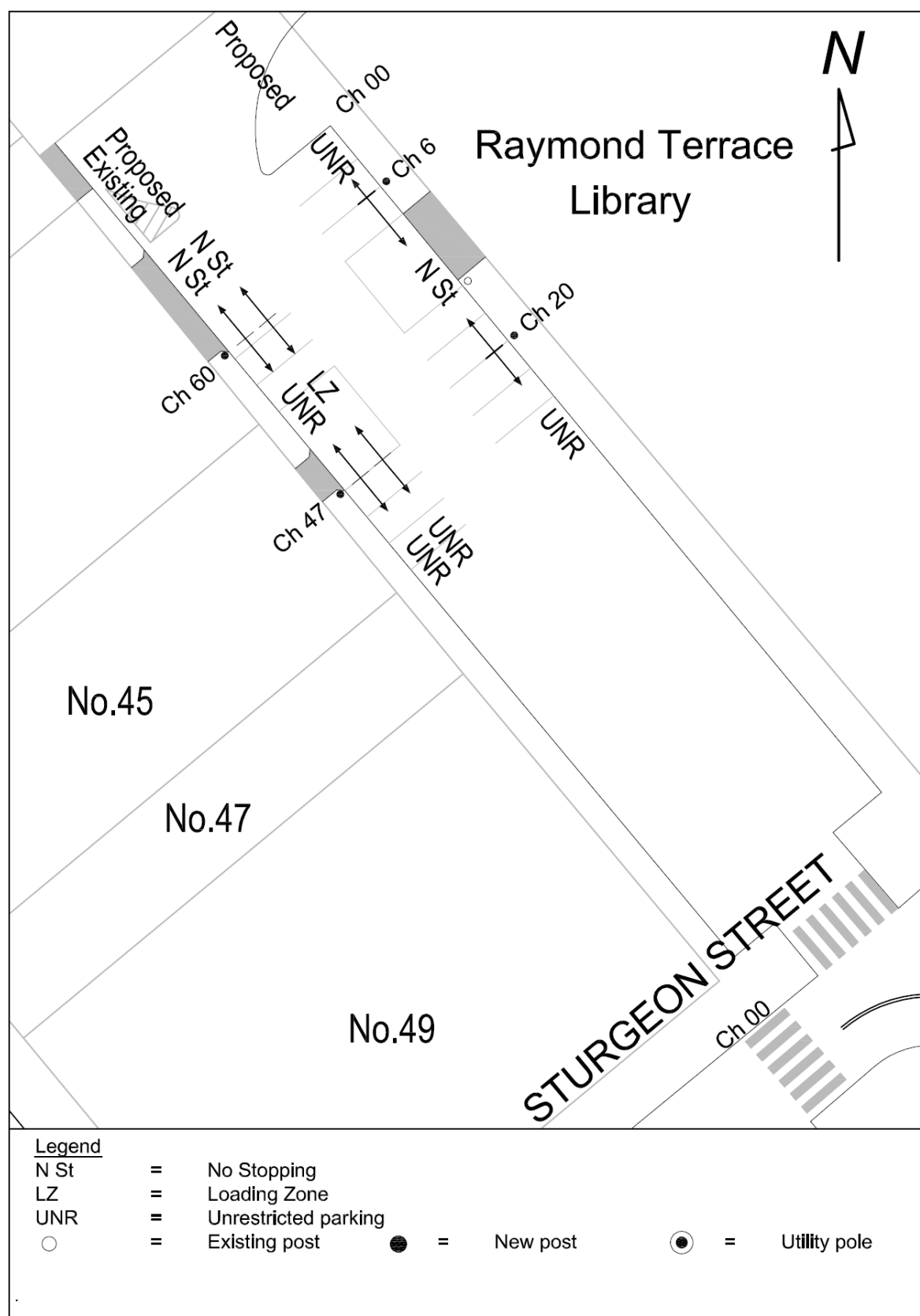
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

**Recommendation to the Committee:**

Install a loading zone and 'No Stopping' restrictions in the library parking area as shown on the attached sketch, Annexure A.

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



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C.2 Item: 21\_07/13

**FREETH STREET RAYMOND TERRACE - REQUEST FOR 'NO STOPPING' RESTRICTIONS**

**Requested by:** Fleet & Depot Services Coordinator

**File:** 164691/2013

**Background:**

There are concerns from local residents and Port Stephens Council road users that vehicles parked on the bottom of Freeth Street are inhibiting vision for drivers when turning at the Kangaroo Street corner at the Raymond Terrace Depot.

**Comment:**

Traffic Inspection Committee members noted that drivers are approaching a give way sign and should be slowing to cross or turn safely. The presence of parked vehicles should not make much difference however the statutory parking restrictions should apply.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule167 – No stopping signs

RTA signs database – R5-400

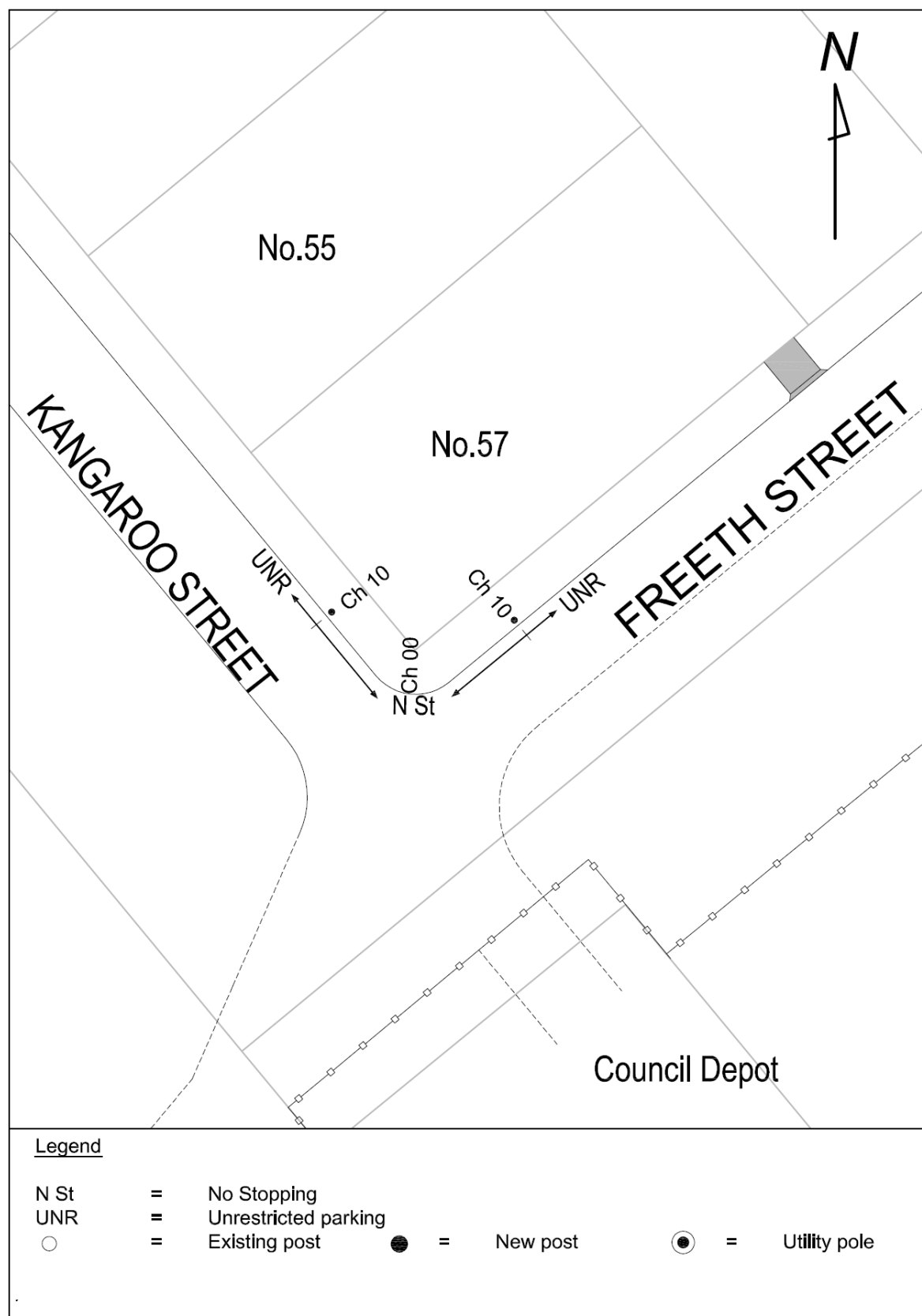
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

**Recommendation to the Committee:**

Install 'No Stopping' restrictions in Freeth and Kangaroo Streets Raymond Terrace, as shown on the attached sketch, Annexure A.

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



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C.3 Item: 22\_07/13

**JAMES PATERSON STREET ANNA BAY - REQUEST FOR CHANGES TO BUS PARKING AT BIRUBI BEACH**

**Requested by:** Community and Recreation Section Manager

**File:** PSC2008-3752

**Background:**

The construction works for the new Birubi Surf Club are to commence shortly and there will be major changes to parking in the area as a result. Access for coaches to drop-off and pick-up will be impacted.

**Comment:**

Traffic Inspection Committee members noted that current arrangements for coach and bus access are not best practice. The proposed changes will at least still allow some access despite the loss of parking.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule 183 - Stopping in a bus zone

RTA signs database – R5-1-20

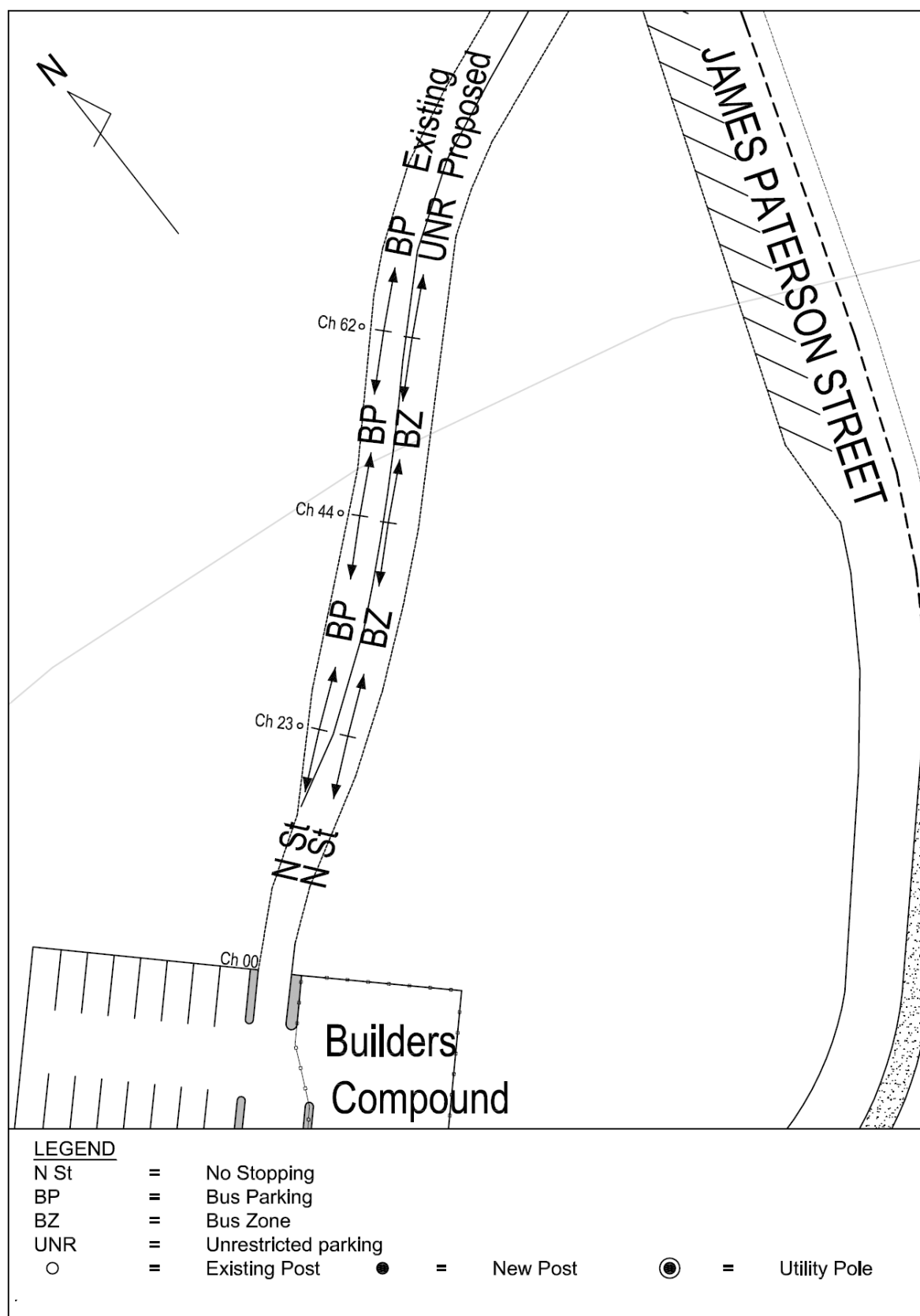
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

**Recommendation to the Committee:**

Replace part of the existing bus parking zone with a bus zone, as shown on the attached sketch, Annexure A.

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	





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C.4 Item: 23\_07/13

**GOWRIE AVENUE NELSON BAY - REQUEST FOR REMOVAL OF 1 PARKING BAY AT BAY PARKLANDS**

**Requested by:** Owners Corporation for Bay Parklands

**File:** PSC2005-4189/153

**Background:**

The chairman of the Owners Corporation for Bay Parklands has been asked to speak on behalf of all owners in requesting Council to remove the parking space to the north of the site driveway.

**Comment:**

Traffic Inspection Committee members noted that the applicant does raise a good point that the driveway is actually dedicated as a public road and should technically have 10m of 'No Stopping' at the intersection with Gowrie Avenue.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule167 – No stopping signs

RTA signs database – R5-400

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

**Recommendation to the Committee:**

Install 'No Stopping' restrictions at No.2 Gowrie Avenue as shown on the attached sketch, Annexure A.

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



**C.5    Item:   24\_07/13**

**SALAMANDER WAY SALAMANDER BAY - REQUEST FOR REVIEW OF 'NO STOPPING' RESTRICTIONS**

**Requested by:**    Roads and Maritime Services

**File:**                165017/2013

**Background:**

The crossing supervisor at St Philips school has complained about vehicles parking too close to the crossing on the High School side, restricting the sight distance for drivers and pedestrians.

**Comment:**

The children's crossing requires 'No Stopping' restrictions in accordance with statutory requirements. In addition, the crossing requires pedestrian cross-walk lines and re-marking of the stop lines to bring it up to standard.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule167 – No stopping signs

RTA signs database – R5-400

AS1742.10 – Pedestrian Control and Protection

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Delineation Guidelines Section 7 Transverse Lines Pedestrian Facilities Figure 7.2

**Recommendation to the Committee:**

Install 'No Stopping' restrictions and linemarking in Salamander Way as shown on the attached sketch, Annexure A.

Move existing wheel stops east to protect the No Stopping post and the Utility Pole.

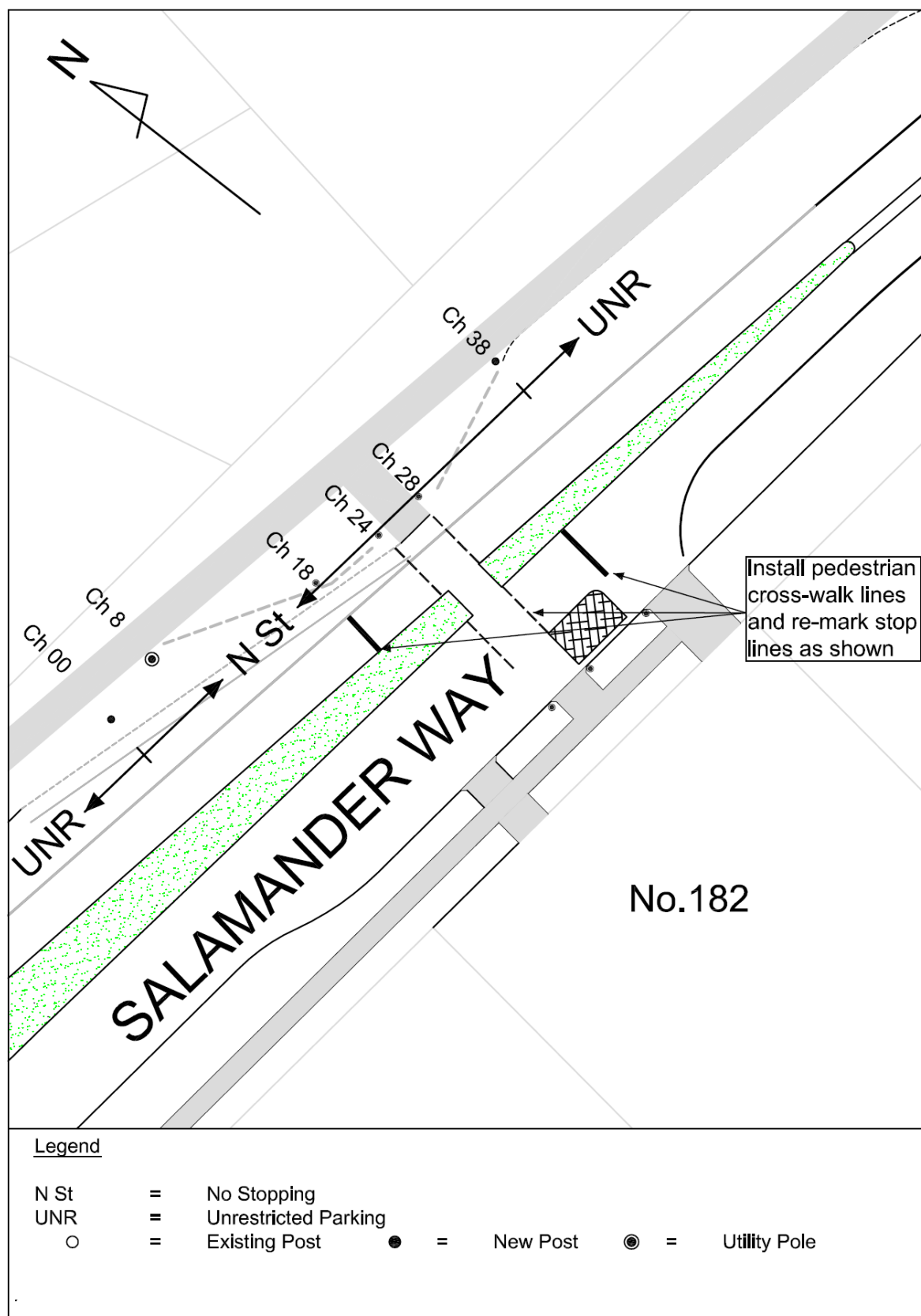
Install Pedestrian Crossing Walk Lines (PCW) set 3 metres apart to align path and re-mark Stop Lines

**Discussion:**

The Committee discussed the need to relocate the wheel stops to provide protection for the Stop Sign Post and the Utility Pole.

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



C.6 Item: 25\_07/13

**GRIFFIN STREET HEATHERBRAE - REVIEW OF INTERSECTION CONTROLS AT THE HANK STREET INTERSECTION**

**Requested by:** Port Stephens Council

**File:**

**Background:**

The intersection of Griffin and Hank Streets currently has no signage control.

**Comment:**

Traffic Inspection Committee members noted that the intersection is a four-way intersection and that Australian Standard 1742.2 requires that Give Way controls shall be provided at all intersections with 4 or more legs.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule 69 - Giving way at a give way sign or give way line at an intersection

RTA signs database – R1-2

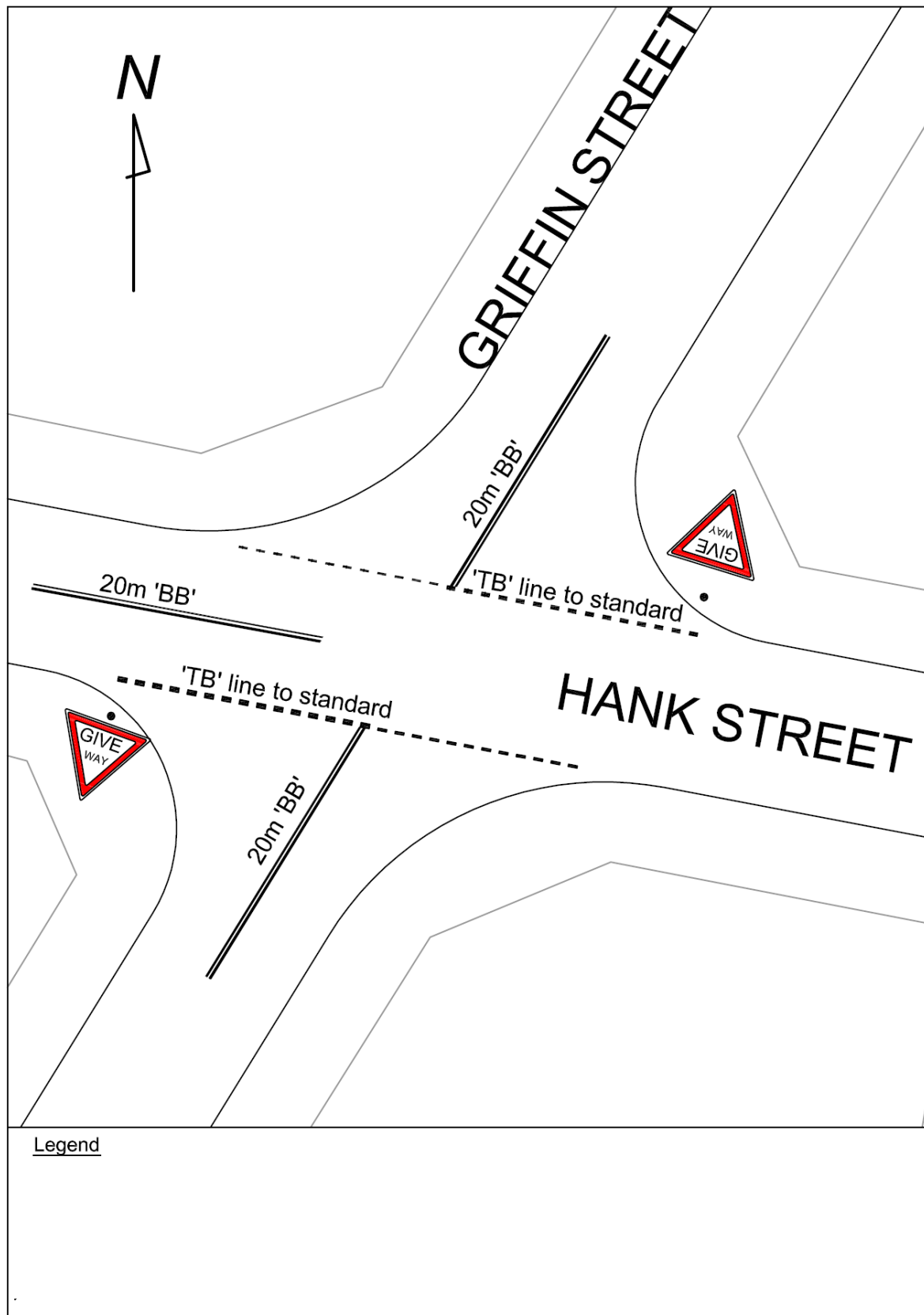
Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

**Recommendation to the Committee:**

Install Give Way signs and lines in Griffin Street Heatherbrae, at the Hank Street intersection, as shown on the attached sketch, Annexure A.

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



D. Informal Items

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E. General Business

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E.1 Item: 613\_07/13

**NELSON BAY ROAD FULLERTON COVE – SAFETY CONCERNS AT THE FULLERTON COVE ROAD INTERSECTION**

**Requested by:** Port Stephens Council

**Background:**

Council officers raised concerns the zipper merge at the northern intersection of Fullerton Cove Road.

**Discussion:**

The safety issue discussed was that South Bound turn lane is marked right turn or straight through and the slip lane is unmarked. There is no signage in place to suggest that the two lanes merge back into one after the intersection.

**Committee's recommendation:**

That Roads and Maritime Services staff conduct further investigations at this location.

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ITEM NO. 20

FILE NO: T231213HUN

**T231213HUN REGIONAL PROCUREMENT INITIATIVE TENDER SUPPLY & DELIVERY OF TRAFFIC & SAFETY SIGNAGE, GALVANISED POSTS & CAPS**

**REPORT OF:** PETER MATWIJOW –PUBLIC DOMAIN & SERVICES SECTION MANAGER  
**GROUP:** FACILITIES AND SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Rescind the previous Council Resolution T231213HUN Regional Procurement Initiative Tender – Supply and Delivery of Traffic and Safety Signage Galvanised Posts and Caps dated 25 June 2013 Minute Number 176.
  - 2) Accept the following tenders as a single source by category tender to Port Stephens Council for the period of 1 July 2013 to 30 June 2015.
    - Category 1 Supply & Delivery of Traffic & Safety Signage - Barrier Signs Pty Ltd.
    - Category 2 Supply & Delivery of Galvanised Posts & Caps - HI-VIS Signs & Safety.
  - 3) Provide for a 12 month extension to this contract based on satisfactory supplier performance which may extend this contract to 30 June 2016.
- 

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Steve Tucker</b> <b>Councillor Chris Doohan</b>
	That the recommendation be adopted.

**MOTION**

<b>230</b>	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to rescind the previous Council Resolution dated 25 June 2013 Minute Number 176. The rationale for this is to clarify that Council is accepting



single contractors for the supply and delivery of traffic and safety signage and supply and delivery of galvanised posts and caps. The previous report stated the acceptance of panel tenders whereas it should have stated "single source" tenders. Council to note that there has been no change in the recommended contractors.

Council currently purchases these services through preferred suppliers engaged on a quotation basis. Council has traditionally used these suppliers based on cost and ability to provide products in a timely manner which suits operational timeframes. It is anticipated purchasing these services via a bi-annual contract, with an option of a 12 month extension ensures Council will receive the best market rate for these services. The granting of the contract extension would be based on the performance of the contractors over the initial contract period and Council being satisfied with the renegotiated schedule of rates for the extension period. This process is conducted in accordance with Councils Community Strategic Plan clause 5.1.3 *"ensures Council's procurement activities achieve best value for money."*

Regional Procurement Initiative, a division of Hunter Councils Inc. has been established in response to a need for a collaborative approach to regional tendering and contracting. It is estimated the Regional Procurement Initiative members contribute upwards of 200 Million dollars to the region through their tenders and contracts.

Port Stephens Council along with other Hunter Council members were approached by Regional Procurement to establish a single source by category tender for the supply and delivery of Traffic and Safety Signage, Galvanised Posts and Caps. Based on experience with other tenders for various materials and services, participation would provide an opportunity to gain cost benefits by utilising group purchasing power while satisfying legislative requirements.

By using Regional Procurement we support the Memorandum of Agreement signed by the General Managers of each of the Hunter Councils that agrees to support a regional approach and accept the outcomes of tenders where there is an equal to or better outcome than alternate sources.

Regional Procurement called tenders across a number of local government areas that include Maitland City Council, Dungog Shire Council, Upper Hunter Shire Council, Cessnock City Council, Mid-Western Regional Council, Newcastle City Council, Singleton Council, Muswellbrook Shire Council and Port Stephens Council. Regional Procurement received seven (7) and five (5) conforming tenders respectively for Traffic and Safety Signage and Galvanised Posts and Caps across all Council's.

Each of the bids were evaluated against "Value Selection" criteria and allocated a weighted score for each assessed criteria. This evaluation allows each bid to be ranked according to its performance against a pre determined set of criteria. The "Value Selection" method for the Supply and Delivery of Traffic and Safety Signage, Galvanised Posts and Caps were assessed against criteria that included tender price, quality assurance, previous experience and referees.

## FINANCIAL/RESOURCE IMPLICATIONS

This tender represents a budget expenditure of approximately \$50,000 per annum for the Facilities and Services Group. The actual annual expenditure varies year to year and is dependent on the extent of maintenance scheduled in Councils capital and recurrent works programs. The procurement of the "best value for money" services is critical to providing sustainable services to the community.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	50,000	Funded from existing budgets.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

This tender process complies with the Local Government Act 1993 and Local Government (tendering) Regulations.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that supply of Traffic and Safety Signage, Galvanised Posts and Caps may not be available as required which may lead to works being delayed or cancelled.	Medium	Appoint only suitably qualified tender with good work history and references.  Monitor & report non-conformance	Yes
There is a risk that the supply of posts and caps may not be available as required which may lead to works being delayed or diminished safety for road users.	Low	Monitor and report non-conformance	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

A bi-annual contract with provision for a 12 month extension allows Council to program works with known costs, known availability of products and thereby provides for improved project scheduling, cost accuracy and budget management.

All supplied services are undertaken to current industry risk management standards and legislation to mitigate possible environmental impacts.

## **CONSULTATION**

- 1) Procurement and Contracts Co-ordinator;
- 2) Roadside & Drainage Co-ordinator;
- 3) Roadside & Drainage Facilities & Services Officer;
- 4) Section Manager Public Domain & Services;
- 5) Group Manager Facilities and Services.

## **OPTIONS**

- 1) As recommended;
- 2) Reject all submissions and recall tenders.

## **ATTACHMENTS**

- 1) Value Selection Methodology Summary.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

## ATTACHMENT 1



REGIONAL PROCUREMENT INITIATIVE®

a division of Hunter Councils Inc.

Table 1 – Category 1 Supply &amp; Delivery of Traffic &amp; Safety Signage

CRITERIA	%	ARTCRAFT	BARRIER	DENEFFE	HI-VIS	INDUSTROQUIP	JAYBRO	RMS
Price 1-9: Warning Signs A & B size only	15	13.25	14.88	10.52	11.67	5.53	11.56	15.00
Price 1-9: Regulatory Signs	5	4.78	4.90	3.48	4.94	2.11	4.22	5.00
Price 1-9: Hazard & Guide Signs	5	3.89	5.00	3.40	4.92	3.32	4.66	4.22
Price 1-9: Temporary Warning Signs	15	13.08	14.16	10.99	14.75	9.01	11.67	15.00
Class 1 Background (Black Legend)								
900x600 and 900x1200 only								
Price 1-9: Temporary Warning Signs	5	3.84	4.31	3.52	4.49	2.93	3.37	5.00
Diamond Grade (Black Legend)								
Price 1-9: Regulatory Non-Reflective Parking Signs	3	3.00	2.50	1.56	1.86	1.02	2.50	2.05
Price 1-9: Barrier Mesh	2	1.38	1.44	1.41	1.70	1.52	2.00	1.61
Price 1-9: Ad Base & Frames	2	2.00	1.11	1.32	1.62	0.77	1.78	1.18
Price 1-9: Barrier Boards	2	1.51	2.00	1.27	1.64	1.38	1.82	1.64
Price 1-9: Paddles Stop/Slow	2	1.55	1.45	1.65	1.57	1.36	2.00	1.48
Price 1-9: Hazard Warning Lights	2	1.31	1.82	1.03	1.02	1.00	2.00	1.14
Price 1-9: Traffic Cones	2	2.00	1.92	1.86	1.95	1.30	1.81	1.98
Price 10+: All Categories as per 1-9 plus	10	4.80	6.94	4.47	5.73	3.65	10.00	6.32
G Series Information, Assurance & Direction Signs								
Referees	10	8.27	9.87	8.73	9.40	9.00	8.93	8.20
Previous Experience	5	5.00	5.00	5.00	5.00	4.00	0.00	5.00
Quality Assurance	10	10.00	10.00	10.00	10.00	4.50	0.00	10.00
Ecologically Sustainable Development	5	2.50	5.00	2.50	5.00	2.50	1.50	4.00
<b>Total</b>	<b>100</b>	<b>82.17</b>	<b>92.28</b>	<b>72.71</b>	<b>87.27</b>	<b>54.90</b>	<b>69.83</b>	<b>88.84</b>

\*\* Please review excel matrix for full explanation of scores\*\*

QA.MER.03 Version 3 Master Evaluation Report version control by CAO 20.06.2011 Reviewed by QAMTRT 20.06.2011 P:\Regional Procurement\Tender Master Folder\Tenders HUN\Work in Progress\T231213HUN Traffic and safety signage\Evaluation\Recommendation\T231213HUN Traffic Signage Evaluation Report to accept 140513 D Stewart.doc

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ATTACHMENT 1



**Table 2 – Category 1 Supply & Delivery of Galvanised Posts & Caps**

CRITERIA	%	ARTCRAFT	HI-VIS	INDUSTROQUIP	JAYBRO	RMS
Price	70	59.94	66.74	32.92	70.00	60.48
Referees	10	8.27	9.40	9.00	8.93	8.20
Quality Assurance	10	10.00	10.00	4.50	0.00	10.00
Previous Experience	10	5.00	5.00	4.00	0.00	5.00
<b>Total</b>	<b>100</b>	<b>83.21</b>	<b>91.14</b>	<b>50.42</b>	<b>78.93</b>	<b>83.68</b>

**Contract Duration**

This contract will run for a period of 24 months from 1 July 2013 to 30 June 2015 with a one (1) year option which may be taken up based on satisfactory performance by the successful tenderer.

**Price schedules**

Prices are fixed for the first 6 months period with any variation for each subsequent 6 month period in accordance with Clause 3.4 of the Deed of Agreement.

**Tender de-brief:**

Regional Procurement® will formally invite all unsuccessful tenderers to make an appointment to discuss their respective tender submissions with a view to providing them with feedback on the tender process.

**Report to council?**

In accordance with the Local Government (General) Regulation 2005 – Part 7 Tendering, where expenditure on a tender exceeds \$150,000 over the term of the contract, a council must adopt by resolution a report accepting the tender recommendation.

Where expenditure is less than \$150,000 over the term of the contract, acceptance of the tender recommendation may be undertaken by the manager responsible (subject to internal delegations).

Either way, an email confirmation advising council's acceptance/rejection of the tender recommendation is required prior to the successful tenderer being advised.

To achieve a 1 July 2013 start date for this tender please submit your respective reports to council as soon as possible.

Your advice by return email is appreciated.

**Evaluation Panel Recommendation:**

**Category 1 - Supply & Delivery of Traffic & Safety Signage**

1. That council accept the tender of Barrier Signs Pty Ltd for the period 1 July 2013 to 30 June 2015, and
2. That provision be allowed for a one (1) year extension to this contract based on satisfactory supplier performance which may take this tender through to 30 June 2016.

**Category 2 - Supply & Delivery of Galvanised Posts & Caps**

1. That council accept the tender of Hi-Vis Signs & Safety for the period 1 July 2013 to 30 June 2015, and
2. That provision be allowed for a one (1) year extension to this contract based on satisfactory supplier performance which may take this tender through to 30 June 2016.

Yours truly,

**Leanne Roberts**  
Account Executive  
Regional Procurement Initiative®

ITEM NO. 21

FILE NO: PSC2013-02756

**22<sup>ND</sup> COASTAL CONFERENCE 2013**

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the attendance of Cr John Nell at the 22<sup>nd</sup> Coastal Conference at Port Macquarie to be held on 12-15 November 2013.
- 

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b>
	That the recommendation be adopted.

**MOTION**

<b>231</b>	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

**BACKGROUND**

The purpose of this report is to inform Council of the 22<sup>nd</sup> Coastal Conference at Port Macquarie to be held on 12-15 November 2013.

The Conference Programme is shown at **(ATTACHMENT 1)**.

The Conference is open to all Councillors.

As Councillors would be aware the Payment of Expenses and Provision of Facilities to Councillors Policy requires that a resolution of Council be sought for all travel outside of the Hunter Councils area.

## FINANCIAL/RESOURCE IMPLICATIONS

The costs associated with registration, travel and accommodation would be covered from the budget, subject to an individual Councillor not exceed the conference budget limits in the Policy.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	715	These costs are covered under the policy and the existing budget. Travel & Accommodation shall be additional.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

The Payment of Expenses and Provision of Facilities to Councillors Policy requires Council to approve all Councillor conference attendances outside the Hunter Region. Councillors' conference costs are limited to \$3,500.00 per year under the Policy.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that the Port Stephens community will not be aware of emerging issues. It is important for the area to have input into these matters.	Low	Adopt the recommendation.	Yes.

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Port Stephens community would benefit from Councillors attending this Conference to ensure the Local Government Area has a voice in emerging issues.

## CONSULTATION

Nil.

**OPTIONS**

Nil.

**ATTACHMENTS**

- 1) Conference Programme.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



ATTACHMENT 1

22<sup>ND</sup> NSW COASTAL CONFERENCE  
12-15 NOVEMBER 2013, GLASSHOUSE, PORT MACQUARIE, NSW

Tuesday 12th November 2013	
5pm – 6pm	<b>Optional Early Registration with an Arrival Drink</b> <i>Mezzanine Foyer, Glasshouse Port Macquarie</i>  <b>Enjoy an evening at your leisure to experience the local restaurants</b>

Day 1 – Wednesday 13 <sup>th</sup> November 2013	
8.00am	<b>Registration</b>
8.45am – 10.45am	<b>Session 1 – Plenary</b>
	<b>Welcome Conference Opening</b> <b>Keynote Address</b>
10.45am-11.20am	Morning Tea
11.20am – 12.45pm	<b>Session 2 – Concurrent</b>
12.45pm – 1.45pm	Lunch and Poster Session
1.45pm – 3.10pm	<b>Session 3 – Concurrent</b>
3.10pm – 3.40pm	Afternoon Tea
3.40pm – 5.05pm	<b>Session 4 – Concurrent</b>
5.05pm	<b>Close of Day One</b>
6.30pm – 9.00pm	<b>Welcome Reception</b> <b>"Barefoot Bowls &amp; Dinner"</b> <i>Port City Bowling Club, Port Macquarie</i>

Day 2 – Thursday 14th November 2013	
8.30am	Registration (for 1 Day delegates)
9.00am-10.00am	Session 5 – Plenary
	<b>Welcome to Day 2</b> <b>Keynote Address</b>
10.00am-10.30am	Morning Tea
10.30am - 12.55pm	Session 6 – Concurrent
12.55pm-1.35pm	Lunch and Poster Display
1.45pm-4.45pm	<b>Session 7 - Local Field Trips</b>  <a href="#">FT 1: Acid Sulfate Soils Management in the Hastings and Camden Haven</a> <a href="#">FT 2: Coastal Hazards, Management of Local Assets and Infrastructure</a> <a href="#">FT 3: Investigating the Long Term Management for Lake Innes</a>
	<a href="#">Close</a> <b>FT 1: Acid Sulfate Soils Management in the Hastings and Camden Haven - New Science and Insights, Partridge Creek and Rossglen</b>  This field trip will look at the effectiveness of acid sulfate soils remediation works and delve into the latest research associated with the remediation process and its implications for future approaches to management.  <a href="#">Close</a> <b>FT 2: Coastal Hazards, Management of Local Assets and Infrastructure - Town Beach Port Macquarie and Lake Cathie</b>  Presenters will host a tour of key locations around the Port Macquarie area where coastal hazards are impacting local infrastructure and discuss the management techniques being planned and implemented by Port Macquarie-Hastings Council.

<b>MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013</b>
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	<a href="#">Close</a> FT 3: Investigating the Long Term Management for Lake Innes  A field trip to the Innes Peninsula for a discussion on a recent study into the feasibility of reverting Lake Innes from an artificial estuarine lake to a fresh water ecosystem and a tour of the historic Lake Innes Ruins.
5.00pm	<b>Close of Day Two</b>
7pm for 7.30pm	<b>Conference Dinner &amp; Annual NSW Coastal Management Awards</b> <i>Bayside Ballroom, The Rydges Port Macquarie</i>

Day 3 - Friday 15th November 2013	
8.30am	<b>Registration (for 1 Day delegates)</b>
9.00am - 10.55am	<b>Session 8 - Concurrent</b>
10.55am - 11.25am	Morning Tea
11.25am – 12.45pm	<b>Session 10 - Plenary</b>
	<b>Keynote Address</b> <b>Announcement for 2014 host council; poster prize winner announce</b> <b>Summary and Wrap Up of Conference</b>
12.45pm - 1.30pm	<b>Lunch</b>
	<b>Close of the Conference</b>

**ITEM NO. 22**

**FILE NO: PSC2013-02337**

## **COMMUNITY GRANTS JULY 2013 – FINANCIAL ASSISTANCE**

**REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER**

**GROUP: GENERAL MANAGER'S OFFICE**

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### **RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act from Mayoral and Ward Funds as detailed below:

#### **EAST WARD**

- a) Parkrun – Contribution towards purchase of equipment - \$400.
- b) Corlette Hall Parks & Reserves Committee – Contribution towards the installation of a tap at Roy Wood Reserve - \$500.
- c) Port Stephens Nelson Bay Australia Day Committee – Contribution towards purchase of chairs - \$900.
- d) Port Stephens Police Citizens Youth Club – Contribution towards improvements at the Club- \$1,000.
- e) Karingal Preschool – Contribution towards a charity fundraiser - \$600.
- f) Bay Life Church – Contribution towards the 2013 Christmas Carols event - \$2,000.
- g) Sailability NSW Inc – Port Stephens – Contribution towards maintenance on the walkway and pontoon - \$283.
- h) Port Stephens Family Support Service – Contribution towards domestic violence workshop - \$100.
- i) Life Education – Contribution towards programs - \$333.

#### **CENTRAL WARD**

- a) Tanilba Bay/Mallabula Rural Fire Brigade – Contribution towards purchase of a laptop and projector - \$1,400.
- b) 1<sup>st</sup> Tilligerry Scout Group – Contribution towards purchase of new flags and banners - \$1,000.
- c) Sailability NSW Inc – Port Stephens – Contribution towards maintenance on the walkway and pontoon - \$284.
- d) Port Stephens Family Support Service – Contribution towards domestic violence workshop - \$350.
- e) Life Education – Contribution towards programs - \$333.

#### **WEST WARD**

- a) St.Brigid's Parents & Friends – Contribution towards setting up an edible garden at the school - \$1,000.

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

- b) Salvation Army Raymond Terrace – Contribution towards purchase and installation of an air conditioner - \$1,000.
- c) Irrawang High School – Contribution towards purchase of 4 sun screens - \$900.
- d) Seaham Park & Wetlands Committee – Contribution towards purchase of a secure bin at Seaham Park - \$ 1,500.
- e) Karuah Oyster & Timber Festival – Contribution towards the Festival - \$1,000.
- f) Sailability NSW Inc – Port Stephens – Contribution towards maintenance on the walkway and pontoon - \$283.
- g) Port Stephens Family Support Service – Contribution towards domestic violence workshop - \$100.
- h) Life Education – Contribution towards programs - \$334.

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### ORDINARY COUNCIL MEETING – 13 AUGUST 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

	<b>Councillor Sally Dover</b> <b>Councillor Steve Tucker</b>
	That the recommendation be adopted.

### MOTION

232	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

### BACKGROUND

Council's Financial Assistance Policy provides for Community Grants to be called in July and January each year. This is the sixth round of funding under this Policy.

Council called for Community Grant applications from 20 June to 18 July 2013. All applications received are shown at **(ATTACHMENT 1)**. A total of 17 applications were received.

The total value of the Grants received is:

East Ward	\$ 7,520 – shown in blue in attachment
Central Ward	\$ 2,400 – shown in yellow in attachment
West Ward	\$ 10,766 - shown in green in attachment
Whole of LGA	<u>\$ 2,850</u> – shown in white in attachment
	\$ 23 536

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

The applications received were assessed by the panel comprising of the Mayor MacKenzie, Councillors Dover (replacing Cr Nell), Doohan, Jordan, in accordance with the criteria under the Financial Assistance Policy.

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 Community Strategic Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

### FINANCIAL/RESOURCE IMPLICATIONS

Council Ward Funds are the funding source for all financial assistance. Council has provided for \$36,000 per year, with \$18,000 being available on each occasion Grants are called. These Grants are limited to \$2000 per grant.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	Yes	18,000	
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;
- b) the funding will directly benefit the community of Port Stephens;
- c) applicants do not act for private gain.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk of Council being liable for capital projects on land other than community land should Council provide funding for such works	Low	Council's current policy restricts such provision of funding.	Yes
There is a risk of Council not complying with Section 356 of the Local Government	Low	Council's current policy provides specific requirements for	Yes

Act 1993		compliance.	
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### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The provision of the Community Grants allows organisations and groups to build relationships and provide events to the local community whilst further developing the cultural, social and economic aspects of the local government area.

### **CONSULTATION**

- 1) Mayor;
- 2) Councillors;
- 3) General Manager;
- 4) 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** - All listed below are provided under separate cover.

- 1) Community Grants applications received.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

**ITEM NO. 23****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) Nelson Bay Senior Citizens Hall Committee – Mayoral Funds – Reimbursement of \$1800 for Council fees regarding use of the Hall by the Nelson Bay Social & Welfare Club.

**ORDINARY COUNCIL MEETING – 13 AUGUST 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Chris Doohan</b> <b>Councillor Sally Dover</b>
	That the recommendation be adopted.

**MOTION**

<b>233</b>	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

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.



## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

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 provided through Mayoral Funds:-

### MAYORAL FUNDS – Mayor MacKenzie

Nelson Bay Senior Citizens Hall Committee	Reimbursement of \$1800 for Council fees regarding use of Hall by the Nelson Bay Social & Welfare Club for 6 months	\$1800.00
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### 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	1800	Funded from Mayoral Funds
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;
- b) the funding will directly benefit the community of Port Stephens;
- c) applicants do not act for private gain.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may set a precedent when allocating funds to	Low	Adopt the recommendation	Yes

the community and an expectation that funds will always be available.			
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### **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. 24

## INFORMATION PAPERS

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

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### RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 13 August, 2013.

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No:	Report Title
1	BUSINESS IMPROVEMENT QUARTERLY REPORT
2	QUARTERLY REPORT OF MAYOR AND COUNCILLOR EXPENSES

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### ORDINARY COUNCIL MEETING – 13 AUGUST 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

	<b>Councillor Sally Dover</b> <b>Councillor Paul Le Mottee</b>
	That the recommendation be adopted.

210	<b>Councillor Paul Le Mottee</b> <b>Councillor Steve Tucker</b>
	It was resolved that Council move out Committee of the Whole.

### MOTION

234	<b>Councillor Sally Dover</b> <b>Councillor Chris Doohan</b>
	It was resolved that the recommendation be adopted.

# INFORMATION PAPERS



INFORMATION ITEM NO. 1

**BUSINESS IMPROVEMENT QUARTERLY REPORT**

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

**FILE:** PSC2011-04300

**BACKGROUND**

The purpose of this report is for Council to receive and note the attached Business Improvement Process Quarterly Report April -June 2013.

Council is committed to work both "in" the system (delivering services) and "on" the system (continuous improvement). Opportunities for improvement are identified, prioritised and executed based on an alignment with the organisation's business objectives, risk appetite and return on investment.

The Business Improvement report lists a number of Council's improvement activities. Through the reduction of waste and an improvement in the flow of work these efficiencies contribute directly to the organisations ability improved service delivery to our community.

**ATTACHMENTS**

- 1) Business Improvement Quarterly Report: April – June 2013.

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

### ATTACHMENT 1

Group	Section	Service or Function	Improvement cause	Improvements result	Created
Corporate Services	Property Services	To provide information sharing with other Councils within a Google Group environment – Initiated through Property Officer Forum approx 18 months ago by one the Council members (Dirk Nagle).	A people/relationship improvement	A saving in time, An improved, expanded or more efficient service	2/04/2013
<p>Google Group has been set up for Property Forum members to assist day to day work by sharing questions and responses to overcome issues. Many Council's within NSW are part of this group who meet annually (if possible) to share information and spark conversations with similar jobs. This also reduces costs to various members as they don't rely on Solicitors to assist to get advice making it also more efficient.</p>					
Development Services	Development Assessment and Compliance	PSC as the Building Certifying Authority	A process improvement, A people/relationship improvement	A saving in time, An improved, expanded or more efficient service	9/04/2013
<p>The Building Certifying Authority agreement form has been improved collaboratively by relevant PSC stakeholders to:-</p> <ul style="list-style-type: none"> <li>- better serve customer needs and provide clearer information,</li> <li>- meet the statutory requirements of the amended legislation within the BP Act and the EP&amp;A Act</li> <li>- comply with Council's Risk management framework</li> <li>- expanded to include Part 4a Certificates as well as PCA appointment</li> </ul>					
Development Services	Development Assessment and Compliance	DA List - Outstanding DA's -100 Day BA Team	A process improvement	A saving in time, An improved, expanded or more efficient service	9/04/2013
<p>100 day DA list spreadsheet on the E drive maintained by the individual assessment officers to:-</p> <ul style="list-style-type: none"> <li>- efficiently communicate and summarise the DA's outstanding for longer than normal within the BA Team</li> <li>- routinely prompt officers to consider the outstanding DA's they are responsible for</li> <li>- provides a regular review &amp; rectification opportunity of the DA tracking of such DA's</li> </ul>					
Development Services	Development Assessment and Compliance	BA Team Field WHS	A process improvement, A people/relationship improvement	An improved, expanded or more efficient service	9/04/2013
<p>Development and Implementation improved WHS program incorporating new SWAT forms for BA team field work, including site inspections, building and other inspections. Follow-up of recent WHS training provided by the PSC WHS team.</p>					
Development Services	Development Assessment and Compliance	BA Team - DA customer service initiative	A people/relationship improvement	An improved, expanded or more efficient service	9/04/2013
<p>The BA team &amp; Section Manager have collaboratively agreed to implement a DA customer service initiative resulting in the BA Team has agreeing to:-</p> <ul style="list-style-type: none"> <li>- make early contact with DA applicants, once the allocation has occurred. The assessment officer will contact the applicant to introduce themselves, identify the main issues, provide direct contact information, and promote the PSC Building Certification Services.</li> <li>- In respect to email correspondence, the BA Team will within 2 working days (48 hours) of an email being received, ensure it is acknowledged using the authority email template which will sit on the DA electronic file (Authority) and TRIM</li> </ul>					

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

Group	Section	Service or Function	Improvement cause	Improvements result	Created
Corporate Services	Organisation Development	Recruitment & Selection, Work Health & Safety	A process improvement	A saving in time, An improved, expanded or more efficient service	10/04/2013
We have introduced the use of a online Work Safety Psychometric Assessment as part of the pre-employment screening tests. The results show the candidates attitude towards Safety Control, Risk Aversion, Stress Management, Drug Aversion, Attitude Towards Violence. This will help us to identify training needs or assist in the decision making process when selecting a preferred candidate. In undertaking this assessment it may help improve Workplace Safety within the organisation.					
Corporate Services	Organisation Development	Payroll	A process improvement	A saving in time, An improved, expanded or more efficient service	16/05/2013
Online leave was launched on 2 May 2013. Online leave is available within Authority, it allows employees to submit their leave applications online. Supervisors prompted to approve or reject applications via email and a task entry on the Authority 'My Tasks' list. Approved applications are automatically sent to Payroll module for processing at the appropriate time. Open to all full-time and part-time employees who work regular weekday hours. Employees are able to view the status of any submitted leave applications. Supervisors can view the applications of all employees under their care. All major leave types available. Checks for leave already entered. Checks for leave entered on weekend or public holiday. Checks the balance of your leave accruals and will not allow you to submit more leave than you have available. Reduces manual Payroll keying of paper-based leave forms. Approved leave requests are automatically sent to Payroll module. Supervisors can view all leave applications made by their staff.					
General Manager's Office	Office of the General Manager	Code of Conduct process	A process improvement	An improved, expanded or more efficient service	27/05/2013
To improve the end result and the ongoing management of Code of Conduct matters, meetings are now held with the respective Group & Section Managers to discuss the matter. This will provide improved staff management and relationships.					
Corporate Services	Organisation Development	Work Health and Safety - Legislative Requirements Procedure	A process improvement	An improved, expanded or more efficient service	29/05/2013
This procedure provides guidance on all the WHS legislative requirements for Port Stephens Council.					
Corporate Services	Organisation Development	Work Health and Safety - Plant and Equipment Procedure	A process improvement	An improved, expanded or more efficient service	29/05/2013
This procedure details the legislative and internal requirements for plant management through the lifecycle of Council ownership or control.					
Corporate Services	Organisation Development	Work Health and Safety - Construction Procedure	A process improvement	An improved, expanded or more efficient service	29/05/2013
This Construction Work Procedure provides guidance on minimising the risks associated with construction work.					

## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

Group	Section	Service or Function	Improvement cause	Improvements result	Created
Corporate Services	Property Services	Investment Properties – Rental Invoicing in ProgenNet	A process improvement, A people/relationship improvement	A saving in time, An improved, expanded or more efficient service	4/06/2013
Investment Property invoicing of rents now done in Property Management system; ProgenNet which is now interfaced with Council's core systems.					
Corporate Services	Business Systems Support	The report that provides data to assist with the process of ensuring employees are booked to attend training to renew an expiring licence has been streamlined	A process improvement	A saving in time, An improved, expanded or more efficient service	5/06/2013
<p>Time saving: 2 - 3 hours per month.</p> <p>This is achieved through more information contained in 1 report such as displaying staff that are already booked to attend a course, displaying staff who have attended training but not returned a copy of the licence, the supervisor name (which is a big time saver as I had to manually search for each employee's supervisor on My Port), it also fits well with the training calendar in which staff are booked to attend training upto 12 months in advance. This report will also assist with the workforce planning process on an annual basis.</p>					
Corporate Services	Organisation Development	Mentoring	A process improvement, A people/relationship improvement	An improved, expanded or more efficient service	14/06/2013
<p>A new mentoring process has been developed to enhance opportunities provided to Council staff to improve and progress their careers.</p> <p>The mentoring process includes the development of a new mentoring site on myPort.</p> <p><a href="http://myport/corporateServices/organisationDevelopment/learning/Pages/Mentoring.aspx">http://myport/corporateServices/organisationDevelopment/learning/Pages/Mentoring.aspx</a></p>					



INFORMATION ITEM NO. 2

**QUARTERLY REPORT OF MAYOR AND COUNCILLOR EXPENSES**

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

FILE: PSC2010-04205

**BACKGROUND**

The purpose of this report is to provide the quarterly expenses of the Mayor and Councillors which have been incurred in accordance with the Payment of Expenses and Provision of Facilities to Councillors policy.

The table at **(ATTACHMENT 1)** also includes the total number of meetings attended during the period.

**ATTACHMENTS**

- 1) Quarterly Report of Mayor and Councillor Expenses.

MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

ATTACHMENT 1

QUARTERLY REPORT – APRIL – JUNE 2013

			<i>Cr Bruce Mackenzie</i>	<i>Cr Chris Doherty</i>	<i>Cr Geoff Dingle</i>	<i>Cr John Morello</i>	<i>Cr John Neil</i>	<i>Cr Ken Jordan</i>	<i>Cr Paul Le Mothee</i>	<i>Cr Peter Kafer</i>	<i>Cr Sally Dover</i>	<i>Cr Steve Tucker</i>	<i>TOTALS</i>
Total Council Meetings Attended (6 held)			6	5	6	5	5	5	6	6	6	5	55
		Limits as per policy											
Councillor Mobile Rental	802.123	\$200 per month	\$0.00	\$281.00	\$122.00	\$117.00	\$89.00	\$127.00	\$646.00	\$0.00	\$229.00	\$0.00	\$1,611.00
Councillor Mobile Calls	803.123		\$364.00	\$0.00	\$61.00	\$235.00	\$45.00	\$418.00	\$306.00	\$199.00	\$0.00	\$473.00	\$2,101.00
Councillor Landline Phone Rental	804.123		\$0.00	\$0.00	\$161.00	\$46.00	\$164.00	\$55.00	\$92.00	\$0.00	\$8.00	\$194.00	\$720.00
Councillor Landline Phone Calls	805.123		\$0.00	\$0.00	\$13.00	\$94.00	\$0.00	\$127.00	\$0.00	\$0.00	\$109.00	\$6.00	\$349.00
Councillor Fax Rental	807.123		\$0.00	\$0.00	\$0.00	\$0.00	\$16.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$16.00
Councillor Fax Calls	808.123		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Councillor Internet	806.123	\$60 per month	\$0.00	\$109.00	\$164.00	\$109.00	\$164.00	\$218.00	\$327.00	\$0.00	\$164.00	\$218.00	\$1,473.00
Councillor Intrastate Travel Expenses	801.123	\$6,000 per year	\$152.00	\$691.00	\$645.00	\$522.00	\$1,162.00	\$951.00	\$1,158.00	\$0.00	\$1,283.00	\$1,079.00	\$7,643.00
Councillor Intrastate out of pocket expenses	809.123		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$177.00	\$177.00
Councillor Interstate Travel (out of NSW)	810.123		\$83.00	\$671.00	\$0.00	\$0.00	\$0.00	\$0.00	\$592.00	\$0.00	\$0.00	\$351.00	\$1,697.00
Councillor Interstate out of pocket expenses	813.123		\$872.00	\$42.00	\$0.00	\$0.00	\$0.00	\$124.00	\$435.00	\$0.00	\$0.00	\$0.00	\$1,473.00
Councillor Interstate Accommodation (out of NSW)	811.123	\$3,500 per year	\$2,386.00	\$1,045.00	\$0.00	\$0.00	\$0.00	\$1,045.00	\$886.00	\$0.00	\$0.00	\$1,045.00	\$6,407.00
Councillors Intrastate Accommodation	812.123		-\$480.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$480.00
Councillor Conferences	814.123		-\$100.00	\$1,614.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,614.00	\$0.00	\$0.00	\$273.00	\$3,401.00
Councillor Training	815.123		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Councillor Partner Expenses	816.123	Mayor \$1,000 per term \$500 per term Crs	\$727.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$459.00	\$0.00	\$0.00	\$45.00	\$44.00	\$357.00
Councillor Computers	817.123	\$3,000 per term	\$747.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$90.00	\$837.00
Councillor Stationary	818.123	No limit.	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Councillor Awards/Ceremonies/Diners	819.123	\$100 per day	\$783.00	\$233.00	\$0.00	\$0.00	\$9.00	\$115.00	\$228.00	\$16.00	\$55.00	\$213.00	\$1,652.00
Councillor Child Care Costs	820.123	\$2,000 per term	\$0.00	\$145.00	\$0.00	\$0.00	\$0.00	\$818.00	\$0.00	\$0.00	\$0.00	\$0.00	\$963.00
Councillor Allowances		Mayor \$55,650 per annum Crs - \$17,490 per annum	\$13,912.00	\$4,372.00	\$4,372.00	\$4,372.00	\$4,372.00	\$4,372.00	\$4,372.00	\$4,372.00	\$4,372.00	\$4,372.00	\$53,260.00
TOTALS			\$19,446.00	\$9,203.00	\$5,538.00	\$5,495.00	\$6,021.00	\$7,911.00	\$10,456.00	\$4,587.00	\$6,265.00	\$8,535.00	\$83,657.00

# NOTICES OF MOTION

# NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217

## RE-ALLOCATE REPEALED SECTION 94 FUNDS

MAYOR BRUCE MACKENZIE

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### THAT COUNCIL:

- 1) Allocate repealed Section 94 funds as follows:
    - a. \$100,000 to East Ward Funds;
    - b. \$100,000 to West Ward Funds;
    - c. \$100,000 to Central Ward Funds;
    - d. \$30,000 to Retro fitting of light poles in Raymond Terrace for installation of banners.
    - e. \$20,000 to cover costs of removal of dangerous trees, causing damage to foot paths and roads.
- 

### BACKGROUND REPORT OF: TIM HAZELL – ACTING GROUP MANAGER CORPORATE SERVICES

### ORDINARY COUNCIL MEETING – 13 AUGUST 2013 MOTION

Cr Paul Le Mottee returned at 8.02pm during the Notice of Motion.

235	<b>Mayor Bruce MacKenzie</b> <b>Councillor Sally Dover</b>
	<p>It was resolved that Council allocate repealed Section 94 funds as follows:</p> <ol style="list-style-type: none"><li>a. \$100,000 to East Ward Funds;</li><li>b. \$100,000 to West Ward Funds;</li><li>c. \$100,000 to Central Ward Funds;</li><li>d. \$30,000 to Retro fitting of light poles in Raymond Terrace for installation of banners.</li><li>e. \$20,000 to cover costs of removal of dangerous trees, causing damage to foot paths and roads.</li></ol>

## **BACKGROUND**

Further to recent Council reports on the issue of repealed Section 94 funds, the proposed allocation as detailed within this Notice of Motion will require further clarification to ensure that the expenditure is in accordance with recent legal advice on the use of repealed funds.

The works suggested will need to be on Council land and be duly advertised in accordance with this legal advice. Funding is available to the extent of \$350,000, which will complete the allocation of all previously repealed Section 94 funds.

# NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217 + PSC2004-0212

## DEVELOPMENT APPLICATION ONLINE SYSTEM

COUNCILLOR: STEVE TUCKER

### THAT COUNCIL:

- 1) Investigate making full Development Application information available via the on-line enquiry portal and reconsider its stance regarding copyright issues associated with this application.

### BACKGROUND REPORT OF: MIKE MCINTOSH – DEVELOPMENT SERVICES GROUP MANAGER

### ORDINARY COUNCIL MEETING – 13 AUGUST 2013 MOTION

236	<b>Councillor Steve Tucker</b> <b>Mayor Bruce MacKenzie</b>
	It was resolved that Council investigate making full Development Application information available via the on-line enquiry portal and reconsider its stance regarding copyright issues associated with this application.

### BACKGROUND

- 1) Currently Council have an on-line DA enquiry portal known as DA Tracker. This has been in operation for some years and has received favourable feedback from those in the industry. The DA Tracker provides up to date information on the status of all live DA's currently being processed by Council. However, this does not include plans and associated reports and information. It simply provides the status of the DA at a point in time.
- 2) Some Council's in NSW include more comprehensive information as part of their DA Tracker service. This is commonly referred to as the 'Eplanning' system whereby the community can lodge DA's online as well as view plans and associated reports and the current status of DA's. For Copyright and Insurance reasons, Port Stephens Council have not pursued this 'Eplanning' program at this point in time.

- 3) Council has previously sought legal advice with respect to the implications of copyright with regard to development applications and associated documents. Legal advice has been sought from a number of solicitors and a barrister. In summary, Council is not able to release any material that maybe subject to copyright laws (ie. plans, drawings, consultant reports).
- 4) The Division of Local Government has also advised all NSW Councils not to produce plans in business papers for Council meetings.
- 5) The Government Information (Public Access) Act 2009, states that Council cannot release any document where the release would breach copyright law.
- 6) Council's insurers have also advised that should Council take action contrary to the legal advice, Council would not be provided with cover under the insurance policy.

# NOTICE OF MOTION

ITEM NO. 3

FILE NO: A2004-0217

## REVIEW OF HERITAGE CONSERVATION AREA IN RAYMOND TERRACE

MAYOR BRUCE MACKENZIE

### THAT COUNCIL:

- 1) Council resolve to prepare a planning proposal to amend the Local Environmental Plan to remove the Raymond Terrace Heritage Conservation Area.

### BACKGROUND REPORT OF: BRUCE PETERSEN - COMMUNITY PLANNING AND ENVIRONMENTAL SERVICES SECTION MANAGER

#### ORDINARY COUNCIL MEETING – 13 AUGUST 2013 MOTION

237	<p>Mayor Bruce MacKenzie Councillor Paul Le Mottee</p> <p>It was resolved that Council resolve to prepare a planning proposal to amend the Local Environmental Plan to amend the Raymond Terrace Heritage Conservation Area.</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, Chris Doohan, Steve Tucker, Geoff Dingle and Sally Dover.

Those against the Motion: Nil.

### BACKGROUND

The purpose of a Heritage Conservation Area (HCA) is to identify areas recognised as having both important visual and historic qualities. Council must assess proposed development within the HCA with regards to the potential impact of the heritage significance on the area.

As part of the comprehensive LEP 2013, a review of the Raymond Terrace Heritage Conservation Area was conducted by Council's Heritage Advisor in 2009, in



## MINUTES FOR ORDINARY COUNCIL – 13 AUGUST 2013

consultation with the Heritage Advisory Committee. The revised heritage conservation area was adopted by Council at its meeting held on 15 February 2011.

In order to remove the Raymond Terrace Conservation Area from the LEP, a planning proposal must be prepared and submitted to the Department of Planning and Infrastructure (DOPI) for a Gateway determination. Should Council resolve to prepare a planning proposal, it is likely that a heritage study, undertaken by specialist consultants, will be required by the gateway determination (to support the amendment). Such a heritage study may cost up to \$50,000 (this has not been included in the current budget).

A planning proposal is likely to take up to 18 months to be finalised including studies, assessment by DOPI, exhibition and state agency consultation.

There being no further business the meeting closed at 8.16pm.

*I certify that pages 1 to 225 of the Open Ordinary Minutes of Council 13 August 2013 were confirmed by Council at its meeting held on 27 August 2013.*

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**Bruce MacKenzie**  
**MAYOR**