

## MINUTES 11 JUNE 2013



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 11 June 2013, commencing at 5.51pm.

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

156	<b>Councillor Ken Jordan</b> <b>Councillor John Nell</b>
	It was resolved that the apology from Cr John Morello be received and noted.
157	<b>Councillor Chris Doohan</b> <b>Councillor John Nell</b>
	It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 28 May 2013 be confirmed.

Cr Peter Kafer recorded his vote against the adoption of the Minutes.

	Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 1. The nature of the interest being his company did survey work for the applicant.

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SUBJECT

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# COUNCIL REPORTS

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 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 – 11 JUNE 2013 MOTION

	<b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b>
158	It was resolved that Council move into Committee of the Whole.

Cr Paul Le Mottee left the meeting at 5.55pm.

### COMMITTEE OF THE WHOLE RECOMMENDATION

	<b>Councillor Chris Doohan</b> <b>Councillor Ken Jordan</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 Chris Doohan, Steve Tucker and Sally Dover.

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

The motion was passed with the casting vote of the Mayor.

**MOTION**

Cr Paul Le Mottee left the meeting at 6.32pm.

<b>160</b>	<b>Councillor Geoff Dingle</b> <b>Councillor Ken Jordan</b>
	It was resolved that Council defer Item 1 to allow for a site inspection.

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 Chris Doohan, Steve Tucker, Sally Dover, Peter Kafer, Ken Jordan, Geoff Dingle and John Nell.

Those against the Motion: Nil.

Cr Paul Le Mottee returned the meeting at 6.40pm.

**BACKGROUND**

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

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 use only. Development consent 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.

## **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 approximately 200mm.

The wall of the storage shed is located approximately 200mm from the boundary fence. 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.

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

Solar access is not considered to be altered significantly due to the location of the structure being to the south-east of the complainant's property.

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

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 increased the length roof by 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.

## MINUTES FOR ORDINARY COUNCIL – 11 JUNE 2013

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

Nil.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	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).

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that the adjoining owner may take action through the Land and Environment Court should the development be approved	Low	Approve the recommendation	Yes
There is a risk that the applicant may take action in the Land and	Low	Approve the recommendation	Yes

Environment Court should the development not be approved			
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**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. The assessment officer has determined 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.

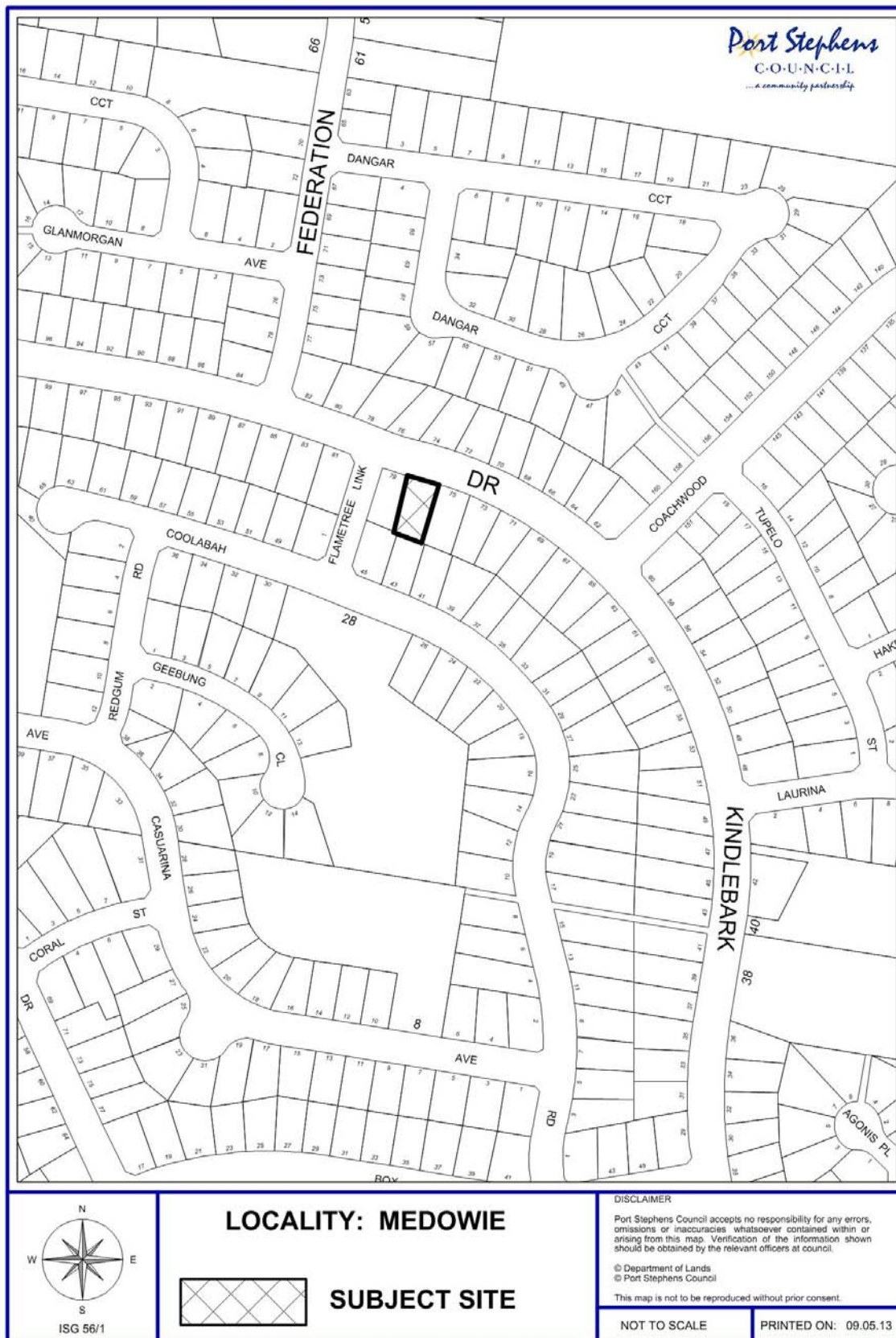
### **COUNCILLORS ROOM**

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 200mm from the boundary fence. 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: 16-2012-154-1

**DEVELOPMENT APPLICATION FOR TWO (2) LOT SUBDIVISION –  
TORRENS TITLE AT NO. 121 NAVALA AVENUE NELSON BAY**

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

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**RECOMMENDATION IS THAT COUNCIL:**

Refuse Development Application 16-2012-154-1 for the following reasons:

- 1) The proposal is integrated development under the Rural Fires Act. The NSW Rural Fire Service have not issued general terms of approval for the development as required by Section 91A(2) of the Environment Planning & Assessment Act 1979;
  - 2) The development cannot provide the necessary Asset Protection Zones, and poses an unacceptable risk to people and property from threat of bushfire.
- 

**ORDINARY COUNCIL MEETING – 11 JUNE 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

Cr Paul Le Mottee returned to the meeting at 6.11pm.

	<b>Councillor John Nell</b> <b>Councillor Sally Dover</b>
	<p>That Council defer Item 2, the Development Application 16-2012-154-1 for the following reasons:</p> <ol style="list-style-type: none"><li>1) To allow further negotiations to occur between Council and the applicant to investigate the potential transaction of land to accommodate a practical Asset Protection Zone in accordance with "<i>Planning Bushfires</i>".</li><li>2) To enable appropriate community consultation to be undertaken during the investigation ensuring surrounding property owners and relevant stakeholders are reasonably informed.</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 Chris Doohan, Steve Tucker, Sally Dover, Peter Kafer, Paul Le Mottee, Ken Jordan, Geoff Dingle and John Nell.

Those against the Motion: Nil.

## **MOTION**

<b>161</b>	<b>Councillor Ken Jordan</b> <b>Councillor Paul Le Mottee</b>
	It was resolved that the Committee of the Whole 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 Chris Doohan, Steve Tucker, Sally Dover, Peter Kafer, Paul Le Mottee, Ken Jordan, Geoff Dingle and John Nell.

Those against the Motion: Nil.

## **BACKGROUND**

The Development Application (DA) 16-2012-154-1 for a two (2) lot subdivision of 121 Navala Avenue, Nelson Bay was previously reported to Council for determination on 23<sup>rd</sup> April 2013. It was resolved that the matter should be deferred pending a site inspection and further consideration.

### Site Inspection

A site inspection was undertaken on 2<sup>nd</sup> May 2013, attended by the Mayor, Councillors Le Mottee, Dover and Nell and Council staff. The possibility of whether the part of the Wallawa Road/Navala Avenue road reserve required for the development's bushfire asset protection zone could be offered for sale to the applicant was discussed at the meeting.

This would result in the owners of the proposed lot being able to own and maintain the asset protection zone needed for the development, and allow Development Services staff to amend the recommend to approval of the DA subject to conditions.

In order to purchase part of the road reserve from Council, the applicant would need to pay land value (unknown), in addition to costs associated with the road closure and transfer (between \$15,000 to \$20,000).

The option has been discussed with Council's Property Services and Facilities & Services Sections. Although Council is unlikely to construct the road between Wallawa Road and Navala Avenue, concern has been raised that selling part of the road reserve to the applicant may impact future development of the vacant lot to the west (Lot 664 DP 9165). Sale of the road reserve may result in Lot 664 needing an easement over the proposed lot in order to gain legal access.

However, it is noted that a driveway access to Lot 664 could also be constructed from Wallawa Road.

Although the sale of the road reserve does present an option for resolving the APZ issue, Council staff do not consider it reasonable to potentially restrict construction of a dwelling on existing Lot 664 to facilitate a subdivision of 121 Navala Avenue, and as such it is still recommended that Council refuse the application.

#### Key Issues

The key issue with this DA is bushfire protection. The proposal is integrated development, however the NSW Rural Fire Service (RFS) have refused to issue General Terms of Approval due to the development not providing sufficient Asset Protection Zones (20m to west and 35m to south) within the site. The applicant has proposed to provide the majority of the APZs within part of the Navala Avenue road reserve that is not currently constructed.

Council and the RFS generally require that APZs be provided within the development site, and not within any adjoining public land, due to inability to guarantee continual maintenance of the APZ for the life of the development and associated safety and liability issues. Following consultation with Council's Facilities & Services Section, it is considered that providing the APZ within the road reserve is unreasonable in this instance due to on-going maintenance costs and sets a poor precedent.

However, if Council were seeking to support the application, options available for resolving this issue include:

- Council agreeing to maintain an APZ within the Navala Ave road reserve ;
- The applicant acquiring part of the Navala Ave road reserve for provision of the APZ.

If either of these options were to be explored, any determination of the matter should be deferred until general terms of approval can be obtained from the NSW RFS, to enable a legal consent to be issued by Council.

In addition to concerns regarding bushfire APZs, there are both engineering and environmental issues that remain outstanding. However, there is potential scope to resolve these issues via the imposition of conditions of consent if necessary.



It is noted that the proposal is generally consistent with the requirements of LEP 2000 and DCP 2007. However, Council staff have recommended refusal of the application due to the outstanding bushfire issues and the inability to legally grant development consent without obtaining General Terms of Approval from the NSW Rural Fire Service under the 'integrated development' provisions of the Environmental Planning & Assessment Act and Rural Fires Act.

## **FINANCIAL/RESOURCE IMPLICATIONS**

The recommendation to refuse the DA will not have any foreseeable financial or resource implications.

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

If Council does not support the recommendation and seeks to approve the DA subject to NSW RFS approval, there will likely be some on-going cost and resource implications for Council associated with ensuring that any APZ on Council land is maintained in a suitable state in perpetuity.

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

The development application is inconsistent with Council's Policy of not supporting provision of APZs on public land.

Approval of the DA may set an undesirable precedent, and raises serious safety and liability issues if Council approves the development and the APZ is not maintained to the standard required.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk with any refusal of an application or an appeal of the decision.	Low	Adopting recommendation, reasons for refusal are considered sound and defensible.	Yes
There is a risk that if approval was granted providing APZs on public land will create a safety risk if not maintained.	High	Adopting recommendation, or ensuring that APZ is provided wholly within land controlled by developer/owner removes this risk.	Yes

There is a risk that approving this DA will create an undesirable precedent.	Medium	Adopting recommendation, or ensuring that APZ is provided wholly within land controlled by developer/owner.	Yes
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**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Following assessment of the application, it is considered that adopting the recommendation is unlikely to have any significant or adverse social, economic or environmental implications for Council or the general public.

If the recommendation is not supported, any approval of the DA could have potential economic and social implications for the Council and ratepayers through increased maintenance costs and liability.

**CONSULTATION**

The application was exhibited in accordance with Council policy and two (2) submissions were received. Concerns raised in submissions related to:

- Impacts on existing shared ROW access
- Potential vegetation removal
- Potential impacts on privacy
- Potential for noise impacts
- Potential for damage to existing driveway and buildings
- Potential for future subdivision.

These are discussed in Section 4 of **(ATTACHMENT 2)**.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Plan;
- 2) Assessment.

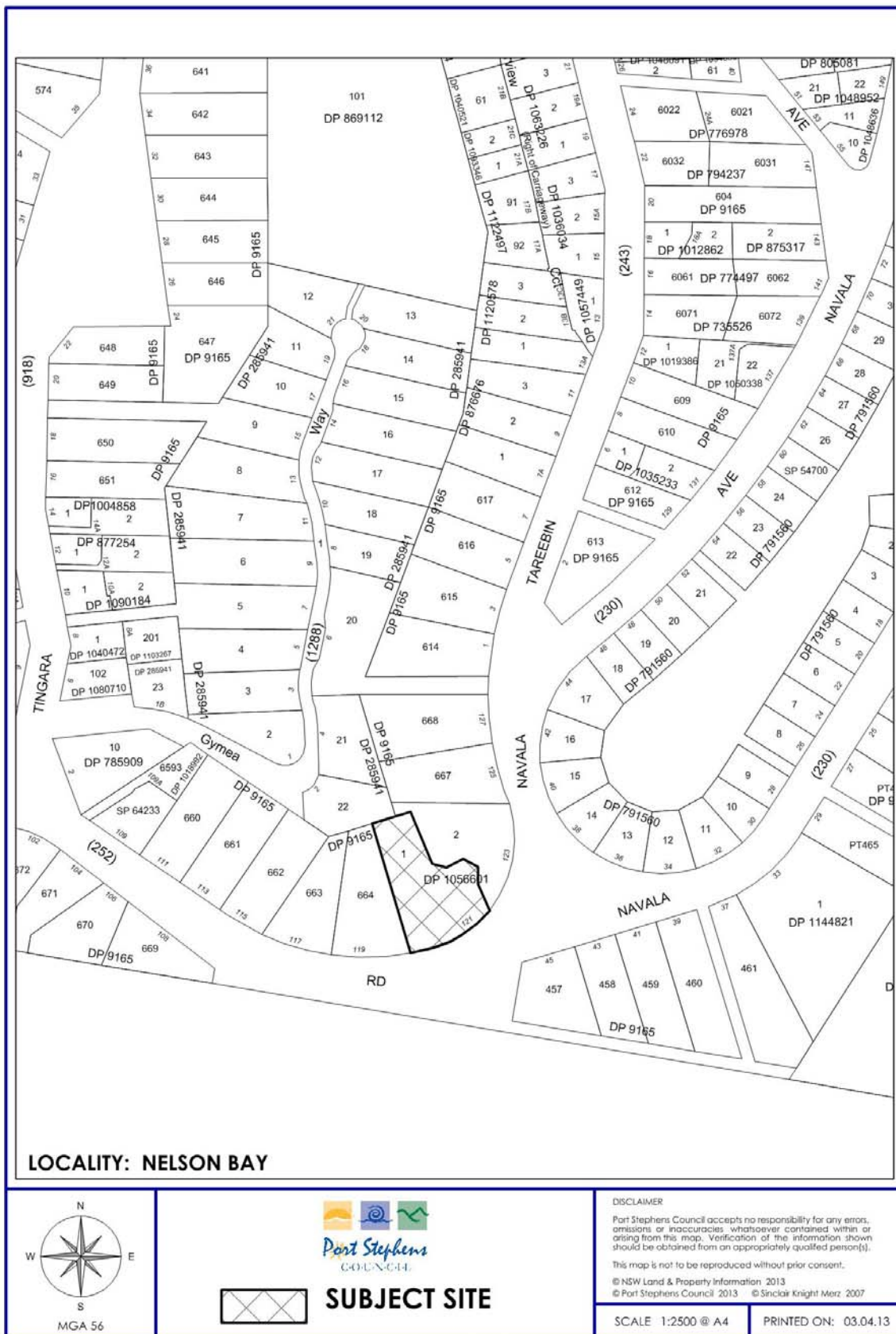
**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

# ATTACHMENT 1 LOCALITY PLAN



**ATTACHMENT 2  
ASSESSMENT**

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

**THE PROPOSAL**

Development consent is sought for a two (2) lot Torrens Title subdivision of 121 Navala Avenue, Nelson Bay (Lot 1 DP 1056601).

The newly created lot is intended to be used for residential purposes, with a future dwelling being subject of a separate Development Application.

**THE APPLICATION**

Owner	Mr K J & Mrs B M Barry
Applicant	Mr K J Barry
Detail Submitted	SoEE, Plans, Flora/Fauna & Bushfire Reports

**THE LAND**

Property Description	Lot 1 DP 1056601
Address	121 Navala Avenue, Nelson Bay
Area	2185sqm
Characteristics	Steep site, with 25% fall to street and is within a mapped Land Slip area. Front half of site is vegetated, consisting of some mature trees and intact understory. Site contains an existing dwelling, which is accessed off Navala Ave via ROW over adjoining property (Lot 2 DP 1056601). GIS shows site constrained by bushfire, landslip, koala habitat (supplementary), Local/Landscape Veg Corridor, Class 5 Acid Sulphate Soils, Nelson Bay West (Hill Tops)

## THE ASSESSMENT

### 1. Planning Provisions

LEP 2000 – Zoning	2(a) Residential
Relevant Clauses	16 – Residential Zonings
	17 – Subdivision in Residential Zones
	44 – Appearance of land and buildings
	47 – Services
	51A – Acid Sulphate Soils
Development Control Plan	B2 – Environmental & Construction Management
	B3 – Parking & Traffic
	C5 – Nelson Bay West
Rural Fires Act	Section 100B
Port Stephens Section 94 Plan	

#### 1.1 Port Stephens Local Environmental Plan 2000

The site is zoned 2(a) Residential. Following assessment of the DA, it is considered that the proposal is generally consistent with the zone objectives, excluding bushfire provisions.

##### Clause 16 Residential Zonings

Subdivisions are not listed as prohibited under this clause. The proposed is considered to be permissible under LEP 2000, subject to any relevant requirements.

##### Clause 17 Subdivision in Residential Zones

Part 3 of Clause 17 requires subdivision in the "Hill Tops" precinct of Nelson Bay West, which the subject site is within, to have a minimum lot size of 600sqm. Both proposed lots (Proposed Lot 11- 1206sqm and Proposed Lot 12 – 979.6sqm) will have areas greater than 600sqm and comply with this clause.

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

The proposed subdivision, or future construction of a dwelling on Proposed Lot 11, is considered unlikely to have any significant or detrimental visual impact when viewed from any waterway, main road or public land.

##### Clause 47 Services

It is considered that necessary services will be available to all proposed lots.

#### Clause 51A Acid Sulphate Soils

The site is shown as Class 5 on the planning map. The development will not require substantial (less than 600mm) excavation, which does not trigger the need for further investigation of potential acid sulphate soils under this clause.

### **1.2 Development Control Plan 2007**

#### Section B1 Subdivision

The proposal will create 2 irregular shaped lots and will result in a potential building area for Proposed Lot 11 on steep land (approx 30%).

Control B1.C7 of DCP 2007 requires that any subdivision creating a building area greater than 25% be accompanied by an application for a dwelling. Although this DA does not propose construction of any dwelling, and does not strictly comply with this control, plans for a dwelling on site have been provided by the applicant to address this issue.

The proposed dwelling would require approximately 2.5m of cut. However the majority of the dwelling will be backfilled, which greatly reduces the amount of cut associated with the outcome on-site.

As such, it is considered that the proposed building area for Proposed Lot 11 can potentially contain a dwelling, and the non compliance with Council's DCP does not warrant refusal of the application in this instance.

It is considered that the irregular lot shapes are largely impacted by the original lot shape, topography and constraints of the site, including provision of access, bushfire and flora and fauna. Further, the applicant has provided a Geotechnical Report stating that the proposed building area has no significant risk for land slip.

It is considered that these variations to Section B1 of DCP 2007 are minor and unlikely to result in any adverse impacts and should be supported in this instance.

#### Section B2 Environmental & Construction Management

The site is mapped as having supplementary Koala Habitat. The applicant has provided a "Response to the Port Stephens Comprehensive Koala Plan of Management" for the development, which stated that the site did not provide significant koala habitat, nor any evidence of use by koalas.

This report was reviewed by Council's consultant Ecologists, who did not raise any particular concerns with the Koala assessment.

It is considered that the development is unlikely to significantly impact koala habitat, feed availability or movement around the site and therefore complies with the requirements of DCP 2007.

Section C5 Nelson Bay West

The site is mapped within the "Hilltops" precinct. Although Section C5 does not have any specific controls for subdivision, it is considered that the proposed lot will be capable of containing a dwelling that complies with the relevant design requirements of the DCP.

**1.3 Rural Fires Act – Section 100B**

The site is mapped as bushfire prone. As such, the proposed subdivision is considered to be integrated development under the provisions of Section 100B of the Rural Fires Act and Environmental Planning & Assessment Act.

The DA has been referred to the NSW Rural Fire Service, who have refused to issue General Terms of Approval for the development, most recently on 24 October 2012.

The reasons for this refusal are:

- Asset Protection Zones (APZs) available within the site do not comply with Planning for Bushfire Protection 2006, which are 20m to the west and 35m to the south.
- Concern was also raised regarding the access and compliance with Planning for Bushfire Protection 2006.

The APZ issue has been discussed with Council's Facilities and Services Section, who do not support provision of the APZ within the Navala Avenue road reserve.

Although options for resolving this matter have been discussed (including Council agreeing to maintain the APZ or the applicant acquiring part of the road reserve for the APZ), they have not currently been included in the DA.

Unless the RFS issues can be resolved, it is considered that the potential bushfire risk warrants refusal of the application in this instance. Furthermore, as the proposal currently stands Council cannot legally grant Development Consent.

**1.4 Port Stephens Section 94 Plan**

The development will require Section 94 contributions for the additional lot. If the DA is to be supported, payment of Section 94 would be recommended as part of any draft conditions of consent.

**2. Likely Impact of the Development**

2.1 Built Environment

The proposed subdivision and future construction of a dwelling is considered unlikely to have a significant or detrimental impact on the existing built environment.

Due to the orientation of the site and Navala Avenue, there will only be 2 dwellings within close proximity to the proposed building area on Proposed Lot 11. Further, the Navala Avenue streetscape is currently inconsistent, due to the road alignment and varying front setbacks which have been influenced by the areas topography.

## 2.2 Natural Environment

### *Flora and Fauna*

The proposed subdivision, provision of access and APZs and future construction of a dwelling will require the removal of approximately 10-20 trees and intact understorey.

The site is mapped as supplementary koala habitat. The applicant has provided a "Response to the Port Stephens Comprehensive Koala Plan of Management" and "Flora & Fauna Assessment".

The DA has been reviewed by Council's consultant Ecologists, and the overall assessment has concluded that the documentation provided is insufficient to determine whether the proposed development will likely have an impact on threatened species.

The principal concern raised was that surveys conducted on the site were not within the orchid flowering period of late August – early September, and that the flora species *Diuris arenaria*, *Diuris praecox* (Newcastle Doubletail) and *Prostanthera densa* (Villous Mintbush) could occur on site and should be assessed with 7 part tests.

However, the Ecological review notes that these species do not flower every year which makes targeted surveys difficult.

Given the site adjoins an 83 hectare site zoned for public recreation owned by the NSW Government, and the size of the proposed development area (approx 30m x 30m), it is considered that the likely impact of the development on any local population of these species identified are likely to be minimal and it is unreasonable to recommend refusal on flora and fauna impacts grounds.

## 2.3 Traffic & Access

Through the assessment of engineering matters, there is concern that the proposed driveway grades do not comply with Australia Standard AS2890.1, and this issue should be resolved prior to any approval being issued for the development.

## 2.3 Social & Economic Impacts

The proposed development is unlikely to have any significant social or economic impacts on the local community.



### **3. Suitability of the Site**

The proposed development is not considered suitable for the site, due to the outstanding bushfire, engineering and flora and fauna issues.

### **4. Submissions**

This application has been advertised and notified in accordance with Council Policy. Council received two (2) submissions from adjoining property owners concerning the proposed development. Following consideration of these concerns, it is considered that they do not warrant refusal of the application in this instance.

The issues raised in the submissions, and relevant assessment comments, are included below:

- Traffic/Access

Both submissions raised concern regarding the developments impact on the existing driveway (ROW) off Navala Avenue, which services a number of properties.

#### **Comment**

It is noted that the existing driveway is not ideal with regard to grade or sight distance. However, given the number of existing properties (5) using the access, it is considered unlikely that an additional dwelling would result in an unreasonable impact on traffic safety.

- Vegetation removal

A submission raised concern about the amenity impact resulting from vegetation removal for the development.

#### **Comment**

The DA has been assessed, and it is considered that the proposal is unlikely to have a significant impact on the natural environment. It is considered that the development is unlikely to unreasonably impact existing amenity of adjoining properties due to it proposing sufficient setbacks and vegetation retention.

- Privacy

A submission raised concern about privacy impacts from any future dwelling on Proposed Lot 11.

#### **Comment**

As mentioned previously, it is considered that the development is unlikely to unreasonably impact the existing amenity or privacy of adjoining properties due to the amount of setbacks and vegetation retention proposed as part of the development.

- Noise

A submission raised concern regarding noise impact as a result of the development.

Comment

It is considered that the intended residential use of the site is not generally considered to be a significant noise source, and any construction on site would be controlled by the relevant noise guidelines.

- Damage to existing driveway and buildings

A submission raised concern that the development might result in damage to the existing driveway and adjoining buildings.

Comment

This is a reasonable concern, given the topography of the site, which is mapped within a landslip area. Any development consent could include a condition requiring a Dilapidation Report.

- Future development

A submission raised concern that future subdivision of proposed Lot 11 may occur.

Comment

Although any speculation of future use of the site is outside the scope of this DA, it is noted that any future application for subdivision of this site would have difficulty in addressing bushfire, access and flora and fauna issues.

Based on the information provided to Council, it is considered that appropriate management measures can be put in place to manage likely impacts from the development. A condition is recommended requiring submission of a detailed management plan prior to the issue of any Construction Certificate.

## **5. Public Interest**

Despite the concerns with the proposal, the development is considered unlikely to significantly impact the wider public interest.

**ITEM NO. 3****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 is not suitable for the subject site.
- 

**ORDINARY COUNCIL MEETING – 11 JUNE 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

Cr Peter Kafer left the meeting at 6.13pm.

Cr Peter Kafer returned to the meeting at 6.14pm.

	<b>Councillor Ken Jordan</b> <b>Councillor Chris Doohan</b>
	That Council defer Item 3 until the next Ordinary Council meeting on 25 June 2013.

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

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

**MOTION**

<b>162</b>	<b>Councillor Ken Jordan</b> <b>Councillor Steve Tucker</b>
	It was resolved that the Committee of the Whole 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, Paul Le Mottee, Ken Jordan, Chris Doohan, Steve Tucker and Sally Dover.

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

## **BACKGROUND**

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 PSC030413/1 (Location 1)	Sample PSC030413/2 (Location 2)	Sample PSC030413/3 (Location 3)
Total Suspended Solids (mg/L)	1990	2320	2360
Turbidity (NTU)	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		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.

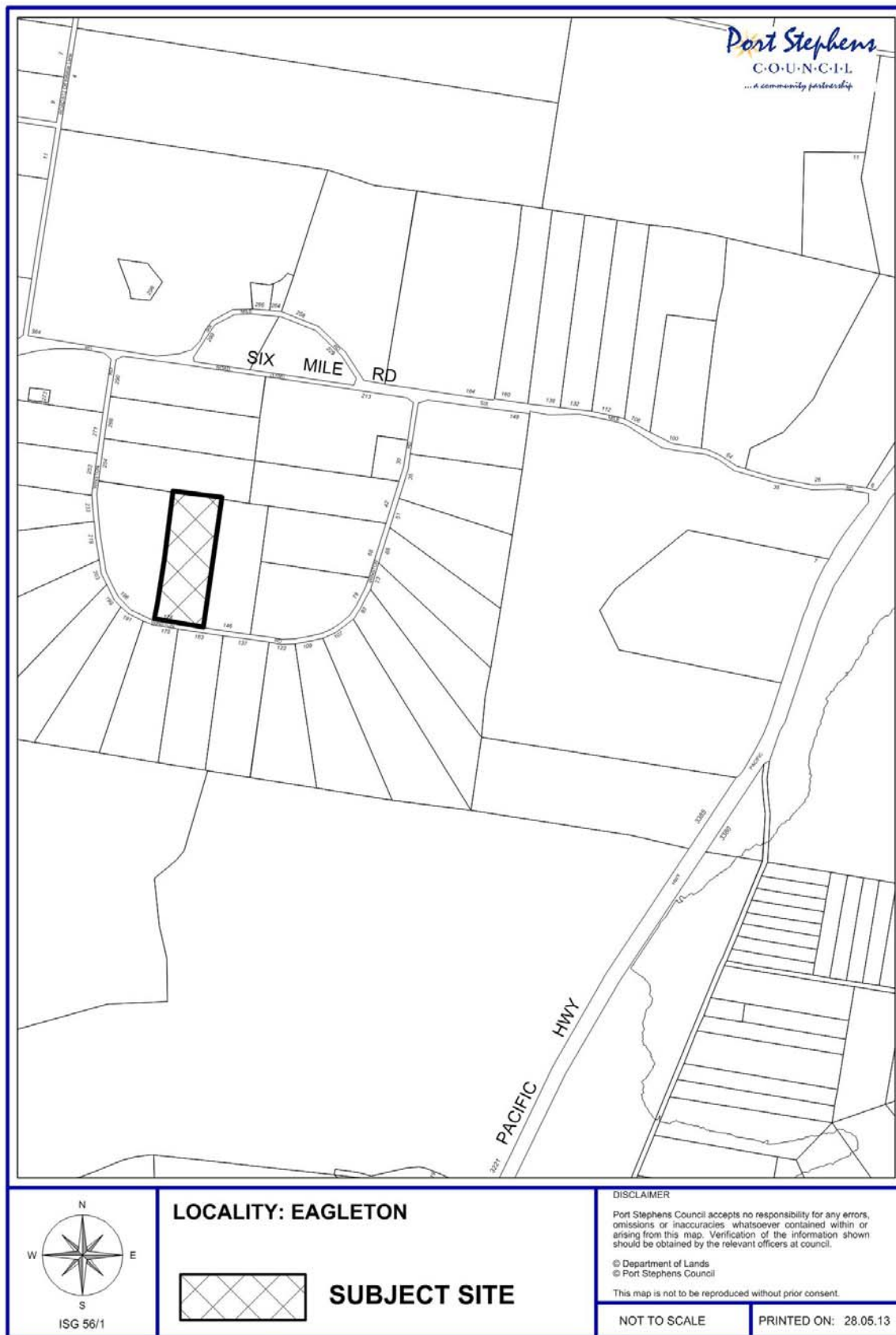
## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

ATTACHMENT 1  
LOCALITY PLAN



ITEM NO. 4

FILE NO: PSC2006-6753

## REZONING AND RECLASSIFICATION OF 22 HOMESTEAD STREET SALAMANDER BAY

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

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal (**ATTACHMENT 2**) to amend the Port Stephens LEP 2000 (or Port Stephens LEP 2013, whichever is in force at the time) to:
    - a) rezone Lot 598 DP27382 from public recreational to part residential and part environmental;
    - b) rezone Part Lot 51 DP 803471 from public recreation to residential; and
    - c) reclassify Part Lot 51 DP 803471 from community land to operational land.
  - 2) Forward the Planning Proposal to the NSW Department of Planning and Infrastructure under section 56 in the Environmental Planning and Assessment Act 1979 with a request for a Gateway Determination.
- 

### ORDINARY COUNCIL MEETING – 11 JUNE 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Nell Councillor Sally Dover
	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 Chris Doohan, Steve Tucker, Sally Dover, Peter Kafer, Paul Le Mottee, Ken Jordan, Geoff Dingle and John Nell.

Those against the Motion: Nil.

**MOTION**

<b>163</b>	<b>Councillor Ken Jordan</b> <b>Councillor Paul Le Mottee</b>
	It was resolved that the Committee of the Whole 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 Chris Doohan, Steve Tucker, Sally Dover, Peter Kafer, Paul Le Mottee, Ken Jordan, Geoff Dingle and John Nell.

Those against the Motion: Nil.

**BACKGROUND**

The purpose of this report is to seek Council's support to prepare a Planning Proposal (**ATTACHMENT 2**) in respect of 22 Homestead Street, Salamander Bay as the Relevant Planning Authority to amend the Port Stephens LEP 2000 (or Port Stephens LEP 2013, whichever is in force at the time). The Planning Proposal has been requested by Councils Property Section. The aim of the planning proposal is to:

- rezone lot 598 DP27382 from public recreational to part residential and part environmental;
- rezone Part lot 51 DP 803471 from public recreation to residential; and
- reclassify Part Lot 51 DP 803471 from community land to operational land

Council resolved as landowner to submit a Planning Proposal which requires Councils separate consideration as the Relevant Planning Authority, as distinct from consideration as landowner.

**Related Reports**

25 November 2008: Council considered a report on the Strategic Overview – Council Owned Lands at Salamander/Soldiers Point prepared for Council by *Strategy Hunter Consultants*. The report recommended that the subject land (identified as 22 Homestead Street in this report) be rezoned from 6(a) Public Recreation to part 2(a) Residential and part 7(a) Environmental Protection and for investigations to include the triangular piece of land to the immediate north. The recommendation was adopted at the meeting.

27 April 2010: Council considered a report from Council's Sustainable Planning Group seeking Council's support for the preparation of a planning proposal to rezone both sites (Lot 598 and Part Lot 51) from public recreation to residential and to reclassify Part Lot 51 from community land to operational land. Council resolved to defer the report to allow a site inspection by the Property Advisory Panel.

11 May 2010: The deferred report from 27 April 2010 was again deferred to allow for a report to be presented to Council on the "pros" and "cons" of the whole site being rezoned to residential, given the ecological constraints on the site, in particular whether a biodiversity offset would be appropriate.

20 December 2011: Council considered a report prepared by the Property Services Section – Corporate Services Group (as proponent) that offered Council three (3) options to consider in relation to the subject land: Option 2A was adopted by Council, and is identified in the Planning Proposal (**ATTACHMENT 2**).

This option is actioned in the planning proposal request by Council as land owner subsequently prepared by *Strategy Hunter Consultants* on behalf of the proponent and has been submitted to Council's Development Services Group as the relevant planning authority as outlined below.

#### Proposal Details

**Planning Proposal:** To rezone Part Lot 51 DP 803471 from public recreation to residential and to reclassify the land from community land to operational land under the Local Government Act 1993. It is also proposed to rezone Lot 598 DP 27382 from public recreation to part residential and part environmental protection, as an amendment to either the Port Stephens LEP 2000 or the Port Stephens LEP 2013 as outlined in (**ATTACHMENT 2**)

**Subject Land:** Lot 598 DP 27382, 22 Homestead Street Salamander Bay and Part Lot 51 DP 803471, part of 1 Diemars Road, Salamander Bay.

**Proponent:** Port Stephens Council - Commercial Services Group

**Current Zone:** Zone 6(a) General Recreation "A"

**Owner:** Port Stephens Council

A locality plan identifying the land and the proposed rezoning and reclassification maps subject to the Planning Proposal are included at (**ATTACHMENT 1**).

The total site area for the combined lots is 4.33 hectares. Council estimates that the lot yield from the proposed residential development would approximate 30 lots.

The Planning Proposal identifies the site as containing significant vegetation. While the proposal does include the rezoning of part of Lot 598 to environmental protection, the adequacy of this approach will be determined in further consultation with the NSW Office of Environment and Heritage.

The issue of land contamination is also required to be considered by Council as part of the plan-making process. Clause 6 in State Environmental Planning Policy 55 – Remediation of Land requires a proponent to submit a preliminary land contamination report to Council in the first instance to ensure that the potential for land contamination has been adequately considered when it is proposed to rezone land for residential purposes. The planning proposal includes this requirement which



should be provided to Council before the planning proposal is placed on public exhibition.

The planning proposal also makes reference the Draft Port Stephens Local Environmental Plan 2013 (final version adopted by Council on 26 March 2013) as this draft LEP was not exhibited before the original planning proposal was prepared. The draft LEP adopts Zone RE1 Public Recreation for the subject land.

## **FINANCIAL/RESOURCE IMPLICATIONS**

The Planning Proposal will be processed using fees collected under the current Fees and Charges Schedule.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	Yes	\$37,800	LEP Amendment Fees & Charges Schedule

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

### Environmental Planning and Assessment Act 1979

The Planning Proposal will be processed in accordance with the plan making procedures in the Environmental Planning and Assessment Act 1979 and LEP Practice Note Practice Note PN 09-003 relating to the reclassification of community land to operational.

The NSW Department of Planning LEP Practice Note PN09-003 outlines the requirements to be addressed in a Planning Proposal where it relates to a land reclassification. This information has been included in the Planning Proposal as additional information. A copy of the Practice Note will be included in the public exhibition documentation.

### Local Government Act 1993

Reclassification of Part Lot 51 DP 803471 from community land to operational land under the Local Government Act 1993 in concert with the proposed rezoning of the land from public recreation to residential will permit Council to develop the land for residential purposes.

Section 117 Ministerial Direction 6.2 – Reserving Land for Public Purposes

This Direction requires the approval of the Director-General of the Department of Planning and Infrastructure to remove the reservation of land for a public purpose. The reclassification of the subject land from community land to operational land will involve the revocation of the public reserve status of the land. The reasons for this direction are outlined in the Planning Proposal. Council will seek this approval as part of the plan-making process.

Council resolution 20 December 2011

The planning proposal actions the resolution of Council from its meeting on 20 December 2011. The resolution arises from consideration of the strategic analysis of open space requirements in the Salamander Bay/Soldiers Point area.

Strategic Policy Framework

The subject site is not identified in either the Lower Hunter Regional Strategy (LHRS) or the Port Stephens Planning Strategy (2011). However, the proposal is supported as 'infill development'. The site is adjacent to the existing urban area of Salamander Bay and the relative scale of the proposal does not warrant specific identification in a strategy. Development of the site for residential purposes will provide increased housing choice in this location and the increased population will support the local community.

Port Stephens Local Environmental Plan 2000

The proposal seeks to amend the Port Stephens Local Environmental Plan 2000 by inserting the following into Part 2 of Schedule 1 as identified on the relevant land reclassification map as "operational land" (**ATTACHMENT 1**).

**Schedule 1 Classification and reclassification of public land****Part 2 Land classified, or reclassified, as operational land—interests changed**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Locality</b>	<b>Description</b>	<b>Any trusts etc not discharged</b>
Salamander Bay, 1 Diemars Road	Part Lot 51 DP 803471as shown edged heavy black on the map marked "Port Stephens Local Environmental Plan 2000 (Amendment No. XX)."	Nil

Port Stephens Local Environmental Plan 2013

Should the Port Stephens LEP 2013 be in force prior to the finalisation of this planning proposal, then this LEP will be amended by inserting the text above into Part 2 in Schedule 4. A new Land Reclassification Map layer (RPL series) will also be required to be included in this LEP. The site will be identified as "operational land" on the Land Reclassification Map.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that the Planning Proposal will be rejected at the Gateway Determination.	Low	Ensure that the relevant planning issues are addressed in the Planning Proposal. To this end, the Planning Proposal has been updated to include reference to the Port Stephens LEP 2013.	Yes
There is a risk that potential Community concern that Council is both applicant and Relevant Planning Authority	Low	Ensure compliance with the NSW LEP Practice Note PN09-003 for reclassification of land  Council maintain a clear separation of its functions as asset land owner and planning authority through separate reporting process.	Yes

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The earlier Council report in December 2011 identified that the subject land is surplus to the open space requirements of Council and is largely unused. Rezoning and reclassifying the land will provide Council with the opportunity to develop this land for residential purposes.

## CONSULTATION

Council will consult with the NSW Office of Environment and Heritage and Hunter Water Corporation, and other relevant agencies identified in the Gateway Determination.

The public exhibition process will be conducted for 28 days in accordance with the relevant provisions in the Environmental Planning and Assessment Act 1979, section 5.5.2 in the Department's publication "*A guide to preparing local environmental plans*" (April 2013) and the Department's LEP Practice Note PN 09-003. A public hearing is required to be conducted after the close of the public exhibition period in accordance with section 57(6) in the Act.

## **OPTIONS**

- 1) Adopt the recommendation in this report to submit the Planning Proposal to the NSW Department of Planning and Infrastructure with a request for a Gateway Determination;
- 2) Amend one or more of the provisions in the Planning Proposal prior to submitting the Planning Proposal to the NSW Department of Planning and Infrastructure with a request for a Gateway Determination;
- 3) Reject the recommendations in this report and not proceed with the Planning Proposal. In this instance, the subject site will remain largely unused and present as a cost burden to Council in terms of ongoing maintenance of the land and the loss of revenue from the inability to achieve Council's resolution to rezone and develop the land primarily for residential purposes.

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

- 1) Locality Plan, Rezoning Map and Reclassification Map – 22 Homestead Street and part of 1 Diemars Road, Salamander Bay (Sites 15a and 15b);
- 2) Planning Proposal (02 May 2013).

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

ITEM NO. 5

FILE NO: PSC2012-05097

**MAKING OF RATES AND CHARGES 2013-2014**

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER

GROUP: CORPORATE SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Make rates and charges for 2013-2014 in accordance with **(ATTACHMENT 1)**.
- 

**ORDINARY COUNCIL MEETING – 11 JUNE 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Nell</b> <b>Councillor Paul Le Mottee</b>
	That the recommendation be adopted.

**MOTION**

<b>164</b>	<b>Councillor Ken Jordan</b> <b>Councillor Paul Le Mottee</b>
	It was resolved that the Committee of the Whole recommendation be adopted.

**BACKGROUND**

The purpose of this report is to make rates and charges for 2013-2014. The proposed rates and charges reflect those listed in the Statement of Revenue Policy contained in the Operational Plan 2013-2014 adjusted for supplementary valuation lists received since the original budget. Legislation requires 2013-2014 rates to be calculated using 1 July 2010 base date land values.

**FINANCIAL/RESOURCE IMPLICATIONS**

The Independent Pricing and Regulatory Tribunal (IPART) has set the rate peg for 2013-2014 at 3.4%. Council must serve rate notices before 1 August 2013 to comply with legislation. Rate and charge income must be collected in a timely manner to ensure cash flow to fund Council operations.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	Nil.	Levy and collection functions are within existing operational budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

Legislation requires rates and charges to be made annually by Council resolution and served by 1 August.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that failure to make and serve rate notices by 1 August will defer the due date of the first instalment payment to 30 November and adversely affect cash flow.	High	Make rates and charges and serve notices before 1 August.	Yes
There is a risk that rate income may exceed the ratepegging limit.	Low	Calculate notional income prior to levy.	Yes

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Rate and charge income is necessary for Council to deliver the services outlined in the Operational Plan 2013-2014.

## CONSULTATION

- 1) The proposals were exhibited in the Integrated Strategic Plans 2013-2023.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Schedule of Rates and Charges 2013-2014.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**  
**SCHEDULE OF RATES AND CHARGES 2013-2014**

- 1) Make ordinary rates in accordance with the following schedule for 2013-2014 using 2010 land values.

Type of Rate	Name of Rate	Category Rate Applies to	Ad Valorem Rate c in \$	Base Amount \$	% of Yield from Base Amount
Ordinary	Residential	Residential	0.3071c	\$333.00	35%
Ordinary	Farmland	Farmland	0.3071c	\$333.00	20%
Ordinary	Business	Business	0.6733c	\$1,410.00	35%
Ordinary	Mining	Mining	0.6733c	\$0.00	

- 2) Levy on behalf of Hunter-Central Rivers Catchment Management Authority a catchment contribution at the rate determined by the Authority for 2013-2014 on all rateable land with a land value of \$300 or more in the defined catchment area. The defined catchment area is shown on the Hunter Central Rivers Catchment Contribution Area Map.
- 3) Fix the interest rate to apply to overdue rates and charges in 2013-2014 at 9% the maximum rate as determined by the Minister for Local Government.
- 4) Make the following annual Domestic Waste Management Charges and Waste Management Charges for 2013-2014. All rateable assessments that are undeveloped (ie have no buildings erected upon them) will be levied either a Domestic Waste Management Charge or a Waste Management Charge. All developed rateable assessments (ie have a building/s erected upon them) will be levied either a Domestic Waste Management Service Charge or a Waste Management Service Charge in addition to the Domestic Waste Management Charge/Waste Management Charge.

Charge Type	Charge Code	Charge Name	Land Category Charge Applies to	Amount of Charge (ex GST)
Domestic Waste Management (\$496 Local Government Act, 1993)	6-63	Domestic Waste Management Charge	All rateable land categorised as Residential except land that is levied a \$496 Domestic Waste Management Service Charge (7-73).	\$48.00 per assessment



**MINUTES FOR ORDINARY COUNCIL – 11 JUNE 2013**

<b>Charge Type</b>	<b>Charge Code</b>	<b>Charge Name</b>	<b>Land Category Charge Applies to</b>	<b>Amount of Charge (ex GST)</b>
Waste Management Charge (s501 Local Government Act, 1993)	6-64	Waste Management Charge	All rateable land categorised as Mining or Business. All rateable land categorised as Farmland except land that is levied a s501 Additional Farm Waste Management Charge (6-65). All rateable land categorised as Residential except land that is levied a s496 Domestic Waste Management Charge (6-63). All non-rateable land that uses the Domestic Waste Management Service	\$48.00 per assessment
Waste Management Charge (s501 Local Government Act, 1993)	6-65	Additional Farm Waste Management Charge	All rateable land categorised as Farmland where more than one assessment is held in the same ownership and those assessments are operated as a single farming entity, then the Waste Management Charge (6-64) is to be levied on the first assessment and this Additional Farm Waste Management Charge (6-65) is to be levied on the second and subsequent assessments.	\$1.00 per assessment
Domestic Waste Management (\$496 Local Government Act, 1993)	7-73	Domestic Waste Management Service Charge	All developed rateable land categorised as Residential or Farmland, whether occupied or unoccupied. All non-rateable land that uses the Domestic Waste Management Service	\$354.00 per dual 240 litre bin service

**MINUTES FOR ORDINARY COUNCIL – 11 JUNE 2013**

<b>Charge Type</b>	<b>Charge Code</b>	<b>Charge Name</b>	<b>Land Category Charge Applies to</b>	<b>Amount of Charge (ex GST)</b>
Waste Management Charge (s501 Local Government Act, 1993)	7-74	Waste Management Service Charge	All developed rateable land categorised as Mining or Business, whether occupied or unoccupied.	\$354.00 per dual 240 litre bin service
Waste Management Charge (s501 Local Government Act, 1993)	3-74	Waste Service Charge – Additional Red Bin	All rateable land categorised as Farmland, Residential, Mining or Business where the ratepayer requests provision of the additional service. All non-rateable land where provision of the additional service is requested.	\$236.00 per additional waste (red lid) bin
Waste Management Charge (s501 Local Government Act, 1993)	4-74	Waste Service Charge – Additional Yellow Bin	All rateable land categorised as Farmland, Residential, Mining or Business where the ratepayer requests provision of the additional service. All non-rateable land where provision of the additional service is requested.	\$118.00 per additional recycling (Yellow lid) bin

ITEM NO. 6

FILE NO: PSC2012-04560

**ADDITIONAL FEES AND CHARGES FOR 2013-2014**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Agrees to place the proposed additional fees and charges for 2013-2014 as contained in **(ATTACHMENT 1)** on public exhibition for the period 13 June 2013 to 11 July 2013 and invite submission from the public.
  - 2) Should no submissions be received adopt the additional fees and charges contained in **(ATTACHMENT 1)** to form part of the Fees and Charges 2013-2014 adopted by Council on 28 May 2013, Minute No.146.
- 

**ORDINARY COUNCIL MEETING – 11 JUNE 2013**  
**COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Ken Jordan</b> <b>Councillor Chris Doohan</b>
	That the recommendation be adopted, including the additional fees and charges contained within the Supplementary Information dated 11 June 2013.

**MOTION**

165	<b>Councillor Ken Jordan</b> <b>Councillor Paul Le Mottee</b>
	It was resolved that the Committee of the Whole recommendation be adopted.

**BACKGROUND**

The purpose of this report is to seek Council's support to place on public exhibition fees and charges that would apply from 1 August 2013. These additional fees and charges arise from:

1. Change to the business model for Family Day Care;
2. Request for additional information by Council related to the Archiving Fee for Section 96 development applications;

## MINUTES FOR ORDINARY COUNCIL – 11 JUNE 2013

3. Clarification of GST for work undertaken in Council's workshops which the public may access against the Roads & Maritime Services scale of fees; and
4. Omissions from the adopted Fees & Charges 2013-2014 through clerical error.

The proposed additional fees and charges are contained in **(ATTACHMENT 1)** to this report.

### FINANCIAL/RESOURCE IMPLICATIONS

These additional fees will, if adopted, be added to the Fees & Charges 2013-2014 document that Council adopted on 28 May 2013. There are no financial implications, as hard copies will not be produced until after Council's meeting in July 2013. There is a small amount of staff time to update records and advertising in Council's page in the Examiner newspaper.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$200	Administrative costs to be absorbed within existing budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

Council is required under section 610 of the Local Government Act 1993 to place on public exhibition for a period of 28 days any proposed fees and charges it intends to make in the next financial year and to consider submissions that derive from the public exhibition process.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that delay in completing the exhibition process could result in financial loss to Council.	Low	Council adopts the recommendation and places the proposed additional fees on exhibition.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The fee income to Council will be enhanced by the proposed additional fees and at the same time, Council is providing a service for its community. The proposed fee structure for Family Day Care will substantially enhance its financial sustainability by attracting educators and families from other services who might reasonably go elsewhere.

## **CONSULTATION**

- 1) These additional fees and charges would be placed on public exhibition for the period 13 June 2013 to 11 July 2013 and submissions invited from the general community to provide feedback to Council.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Schedule of proposed additional fees for 2013-2014.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

## ATTACHMENT 1

## PROPOSED ADDITIONAL FEES AND CHARGES 2013-2014

Item	Description	Existing Fee	Proposed Fee	Comment
1	<b>Family Day Care:</b> 1. Family Levy Per Hour Per Child 2. Carer Levy Per Hour of Care 3. Carer Levy Per Week of Operation	\$0.85 \$0.40 New	\$0.80 \$0.00 \$10.00	Reduction achieved due to changed business model. Note: GST does not apply to child care fees.
2	<b>Workshop:</b>	<b>Market Pricing. Roads &amp; Maritime Services (RMS)</b> Inspections at price scheduled by RMS per vehicle. Rate based on the benchmarking of commercial local suppliers of this service. However all work subject to availability as upkeep of Council fleet is workshop priority. Appointment necessary.		
	1. Mechanical servicing and repair of vehicles	New	\$110.00 per hour or part thereof inclusive of GST	Workshop fees were identified in the Sustainability Review of Fleet Services and accidentally omitted in the original Report to Council.
	2. Mechanical servicing and repair of vehicles - Emergency Service Vehicles Only	New	\$82.50 per hour or part thereof – GST does not apply.	Per hour or part thereof. Parts will be charged in line with Council's Pricing Policy. Appointment necessary.
	3. Pink Slips - Light Vehicles	New	\$35.70	Statutory pricing – no GST
	4. Pink Slips - Motor Cycles	New	\$21.20	Statutory pricing – no GST
	5. Pink Slips - Trailer without brakes	New	\$19.30	Statutory pricing – no GST
	6. Pink Slips - Trailer with brakes	New	\$28.20	Statutory pricing – no GST
	7. Blue Slips - Light Vehicles	New	\$57.80	Statutory pricing – no GST
	8. Blue Slips - Motor Cycles	New	\$35.20	Statutory pricing – no GST
	9. Blue Slip - Trailer without brakes	New	\$29.50	Statutory pricing – no GST
	10. Blue Slip - Trailer with brakes	New	\$41.30	Statutory pricing – no GST

**MINUTES FOR ORDINARY COUNCIL – 11 JUNE 2013**

Item	Description	Existing Fee	Proposed Fee	Comment
	11. Design Check – no Compliance Certificate	New	\$26.80	Statutory pricing – no GST
	12. Design Check – with Compliance Certificate	New	\$40.60	Statutory pricing – no GST
	13. Adjustment of Records	New	\$26.20	Statutory pricing – no GST
	14. Gas Inspection	New	\$15.10	Statutory pricing – no GST
	15. Safety Check only	New	\$37.50	Statutory Pricing – no GST <ul style="list-style-type: none"> <li>• Rigid truck over 4.5 tonne GVM but not over 5 tonne tare. (Not prime movers).</li> <li>• Buses over 2.5 tonne tare but not over 5 tonne tare.</li> <li>• Tow trucks not over 5 tonne tare.</li> </ul>
	16. Safety Check only	New	\$72.70	Statutory Pricing – no GST <ul style="list-style-type: none"> <li>• Rigid trucks or buses over 5 tonne tare or any prime mover.</li> <li>• Rigid truck over 4.5 tonne GVM with power operated brakes.</li> </ul>
	17. Safety Check only	New	\$43.40	Statutory Pricing – no GST <ul style="list-style-type: none"> <li>• Trailers over 2 tonne GTM including tow truck trailers.</li> <li>• Any trailer fitted with breakaway brakes.</li> </ul>

**MINUTES FOR ORDINARY COUNCIL – 11 JUNE 2013**

Item	Description	Existing Fee	Proposed Fee	Comment
3.	<p>Cemeteries:</p> <p>(a) Fees 2 to 5 below apply to Carumbah Memorial Gardens, Raymond Terrace Cemetery, Anna Bay Lawn Cemetery (Gazebo - E F G H).</p> <p>(b) Fees 6 – 9 below apply to Anna Bay Lawn Cemetery (Front Walls A B C D).</p> <p>(c) Fee 10. below applies to Bushland Memorial Gardens – Carumbah.</p> <p>(d) Fee 11 below applies to Terrazzo Walls - Carumbah Memorial Gardens &amp; Karuah Cemetery.</p> <p>(e) Fee 12 below applies to Walls and Gardens.</p>	The fees below were omitted from the Draft Fees & Charges 2013-2014 and need to be re-exhibited.		
	1. Special requirements to be charged at hourly rate plus materials.	\$78.00	\$82.00	Per hour or part thereof; materials at cost plus 20% - Marketing pricing.
	2. Plaque	\$575.00	\$630.00	8 line bronze niche plaque including installation.
	3. Extra line inscription on plaque.	\$50.60	\$56.00	Each additional line.
	4. Vase (Optional)	\$118.00	\$130.00	
	5. Additional Emblem	\$77.00	\$85.00	
	6. Plaque	\$575.00	\$630.00	8 line bronze niche plaque including installation.
	7. Extra line inscription on plaque	\$50.60	\$56.00	Each additional line.
	8. Vase (Optional)	\$118.00	\$130.00	
	9. Additional Emblem	\$77.00	\$85.00	



**MINUTES FOR ORDINARY COUNCIL – 11 JUNE 2013**

Item	Description	Existing Fee	Proposed Fee	Comment
	10. Plaque	\$720.00	\$790.00	10-line bottle green gumleaf motif plaque including installation.
	11. Plaque	\$770.00	\$850.00	Oval gum motif niche plaque with vase including installation.
	12. Special requirements to be charged at hourly rate plus materials.	\$78.00	\$82.00	Per hour or part thereof; materials at cost plus 20% - Marketing pricing.
4.	Archiving Fees:	Council Meeting 28 May 2013 (Minute No. 146) raised the issue of an Archiving Fee for Section 96 Applications. After consultation with Councillor Le Mottee it is proposed to delete this fee and to increase the general archiving fee for development applications as shown below:		
	Development Applications – Archiving Fee	\$75.00	\$100.00	GST does not apply.
	Modifications – Section 96 Archiving Fee	\$55.00	\$0.00	
5.	Subdivision Certificate Application Fees:	The Sustainability Review of Development Assessment & Compliance Section endorsed the substantial increase of these fees (as suggested by industry) provided we could provide a guaranteed short turnaround time. For a number of reasons the Section Manager is not convinced now that the Section can achieve the anticipated short turnaround times, and accordingly recommends that we should decrease the fees.		
	Subdivision Certificate per application	\$335.00 including GST	\$280.00 including GST	
	Plus fee per allotment in application	\$160.00 including GST	\$130.00 including GST	

ITEM NO. 7

FILE NO: A2004-0511

**LOCAL TRAFFIC COMMITTEE REPORT – 7 MAY 2013**

**REPORT OF: JOHN MARETICH – CIVIL ASSETS 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 on 7 May 2013
- 

**ORDINARY COUNCIL MEETING – 11 JUNE 2013**  
**COMMITTEE OF THE WHOLE RECOMMENDATION**

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

**MOTION**

<b>166</b>	<b>Councillor Ken Jordan</b> <b>Councillor Paul Le Mottee</b>
	It was resolved that the Committee of the Whole 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 – 11 JUNE 2013**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$21 676	Approximately 50% of annual 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 – 7/5/2013

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ATTACHMENT 1**

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**LOCAL TRAFFIC COMMITTEE MEETING  
HELD ON TUESDAY 7<sup>TH</sup> MAY, 2013  
AT 9:30AM**

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**Present:**

Cr Peter Kafer, Cr Geoff Dingle, Senior Constable John Simmons – NSW Police, Mr Mark Morrison, Mr Joe Gleeson (Chairperson), Mr Graham Orr - Port Stephens Council

**Apologies:**

Craig Baumann MP, Mr Mark Newling – Port Stephens Coaches, Mr John Meldrum – Hunter Valley Buses, Mr Nick Trajevski – Roads and Maritime Services, Ms Lisa Lovegrove - Port Stephens Council

- A. ADOPTION OF MINUTES OF MEETING HELD 5<sup>TH</sup> MARCH, 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 7<sup>TH</sup> MAY, 2013

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- A. ADOPTION OF THE LOCAL TRAFFIC COMMITTEE MINUTES OF 5<sup>TH</sup> MARCH, 2013
  
- B. BUSINESS ARISING FROM PREVIOUS MEETING
  - B.1 603\_03/13 CLARENCETOWN ROAD WOODVILLE – SAFETY CONCERNS AT THE DUNMORE BRIDGE APPROACH
  
- C. LISTED MATTERS
  - C.1 09\_05/13 TANILBA AVENUE TANILBA BAY - REQUEST FOR REVIEW OF PARKING AT TANILBA BAY HALL
  - C.2 10\_05/13 WILLIAM STREET RAYMOND TERRACE - REQUEST FOR PARKING RESTRICTIONS
  - C.3 11\_05/13 IRRAWANG STREET RAYMOND TERRACE – INSTALLATION OF BUS ZONE AT ST BRIGID'S
  - C.4 12\_05/13 FORESHORE DRIVE SALAMANDER BAY – REQUEST FOR ONE-WAY TRAFFIC AND INSTALLATION OF SPEED HUMPS
  - C.5 13\_05/13 MORNA POINT ROAD ANNA BAY – REQUEST FOR INSTALLATION OF STOP SIGN
  
- D. INFORMAL MATTERS
  
- E. GENERAL BUSINESS
  - E.1 606\_05/13 MEDOWIE ROAD CAMPVALE – SAFETY CONCERNS RELATING TO MOTOR VEHICLE SALES ON THE ROADSIDE
  - E.2 607\_05/13 PACIFIC HIGHWAY HEATHERBRAE –INSTALLATION OF DIRECTIONAL SIGNS FOR HOLIDAY TRAFFIC
  - E.3 608\_05/13 MARINE DRIVE FINGAL BAY – ROAD SAFETY AUDIT AT THE FINGAL BAY SURF CLUB

**B. BUSINESS ARISING FROM PREVIOUS MEETING**

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**B.1     Item: 603\_03/13**

**CLARENCETOWN ROAD WOODVILLE – SAFETY CONCERNS AT THE DUNMORE BRIDGE APPROACH**

**Requested by:**     Road Safety Officer

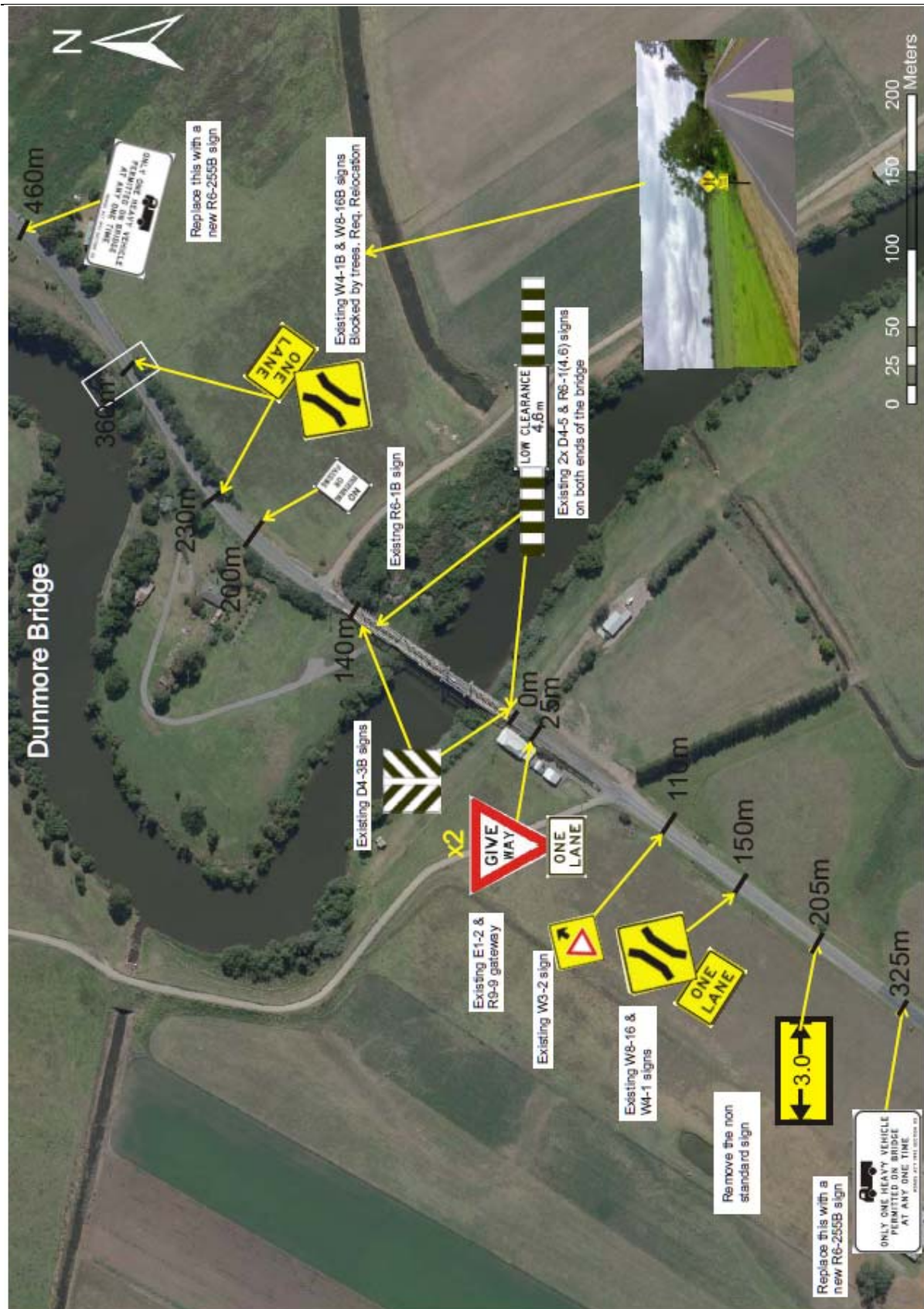
**File:**

**Background:**

Council's Road Safety Officer raised concerns identified in the recent recreational motorcycle route audit regarding the approaches to the Dunmore Bridge and the need for better signposting to alert riders and drivers to the narrow bridge and reduced speed environment.

**Discussion:**

Roads and Maritime Services advise that the signposting will be upgraded in the near future and that the attached plan shows the signs that are intended to be installed.





## C. Listed Matters

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### C.1 Item: 09\_05/13

#### TANILBA AVENUE TANILBA BAY - REQUEST FOR REVIEW OF PARKING AT TANILBA BAY HALL

**Requested by:** Cr Dingle -

**File:**

**Background:**

Port Stephens Council is currently undertaking upgrade works in Tanilba Avenue which includes kerb & gutter works and construction of footpath. Local residents have requested some additional works at the Tanilba Bay Hall to improve access.

**Comment:**

Traffic Inspection Committee members met with members of the Tanilba Bay Hall committee and discussed planned footpath upgrades which the hall committee members were happy with. The need for a short section of 'No Stopping' was identified between the access driveway and the kerb ramp to allow sight distance for pedestrians crossing the road.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule167 – No stopping signs

RMS signs database – R5-400

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

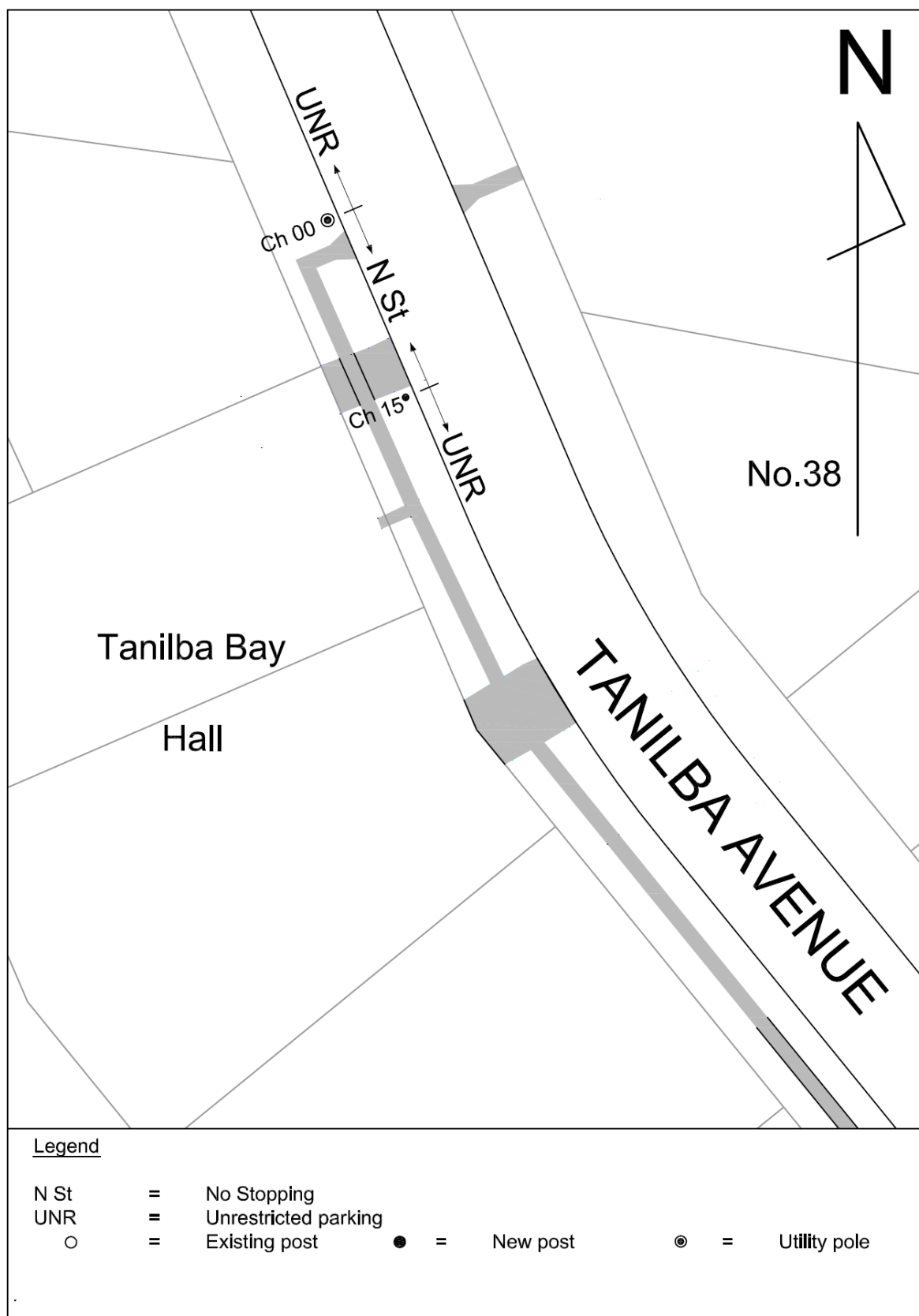
**Recommendation to the Committee:**

Install 'No Stopping' signage at the Community Hall in Tanilba Avenue Tanilba Bay, as shown on the attached sketch, Annexure A.

**Discussion:**

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



**C.2    Item: 10\_05/13****WILLIAM STREET RAYMOND TERRACE - REQUEST FOR PARKING RESTRICTIONS**

**Requested by:**    Raymond Terrace Before & After School Care

**File:**                PSC2005-4019

**Background:**

Staff from the Raymond Terrace Before & After School Care centre have received complaints from parents unable to access the service due to a lack of parking available except up the top of the park area. Concern was also raised regarding the safety risk to staff who on arrival can only park up the very top of Boomerang Park at the beginning of their shift but when leaving are walking in an isolated and quite unsafe area to their cars.

**Comment:**

Traffic Inspection Committee members noted that the centre is a reasonable distance from the Senior Citizens centre and questioned how many people would park here in preference to on-street along Irawang Street. Some short-term parking would be of benefit to allow drop-off and pick-up. Staff parking is more difficult with no standard signage available to exclude other vehicles.

It was also suggested that additional parking spaces could be accommodated in the Senior Citizens Centre car park.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule205 – Parking for longer than indicated

RMS signs database – R5-15

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

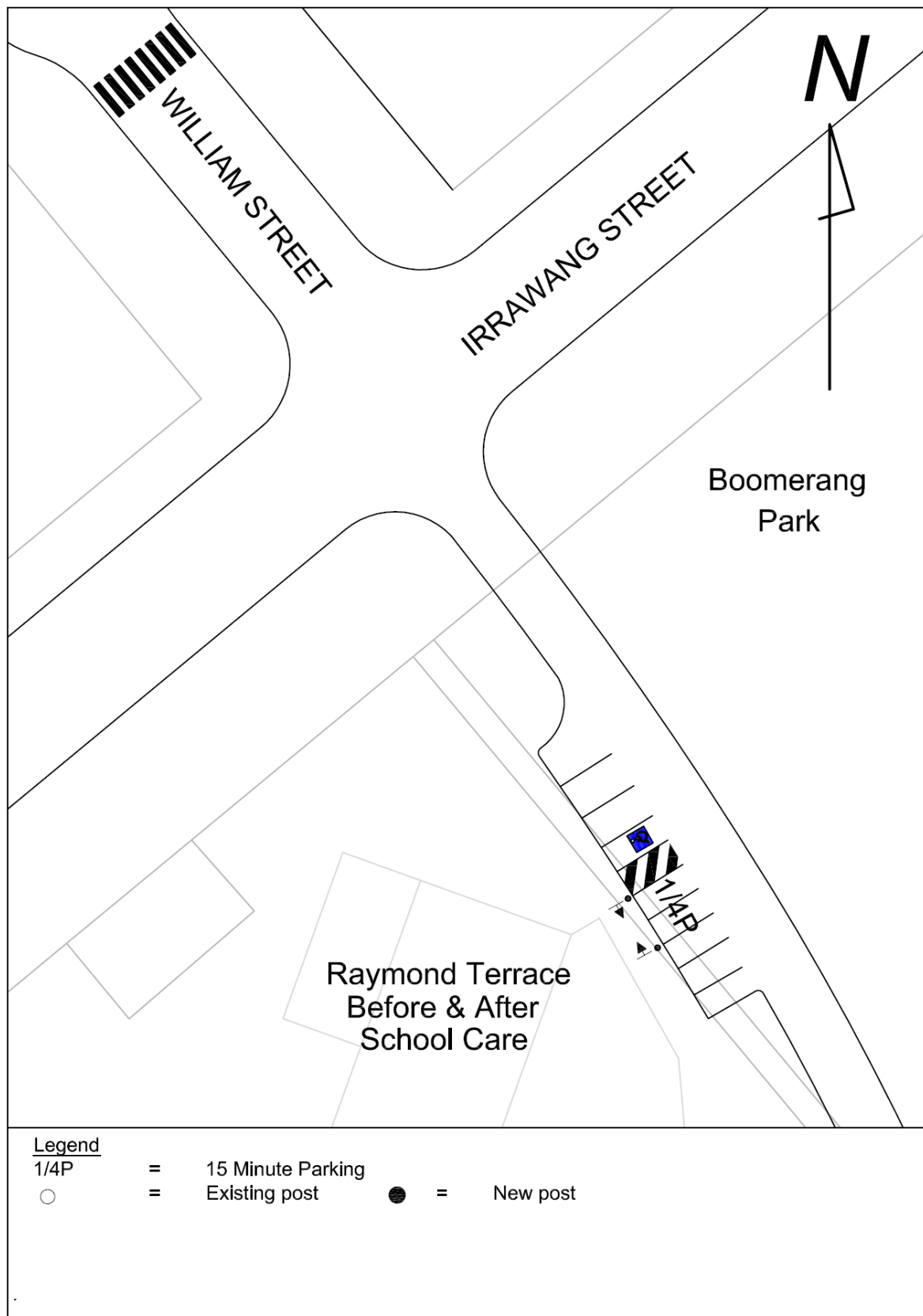
**Recommendation to the Committee:**

Approve installation of 15 minute parking restrictions covering the first 2 parking spaces at the Raymond Terrace Before & After School Care centre, as shown on the attached sketch, Annexure A.

**Discussion:**

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



C.3 Item: 11\_05/13

**IRRAWANG STREET RAYMOND TERRACE – INSTALLATION OF BUS ZONE AT ST BRIGID'S**

Requested by: Port Stephens Council

File:

Background:

The existing bus stops at St. Brigid's School in Irrawang and William Streets are both signposted as school times only. This is despite the stops being on the main bus routes to and from Raymond Terrace and potentially servicing public buses at all times.

Comment:

Council has contacted both St Brigid's School and Hunter Valley Buses who have no objection to the proposed parking changes.

Legislation, Standards, Guidelines and Delegation:

NSW Road Rules – Rule183 – Stopping in a bus zone

RMS signs database – R5-20

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

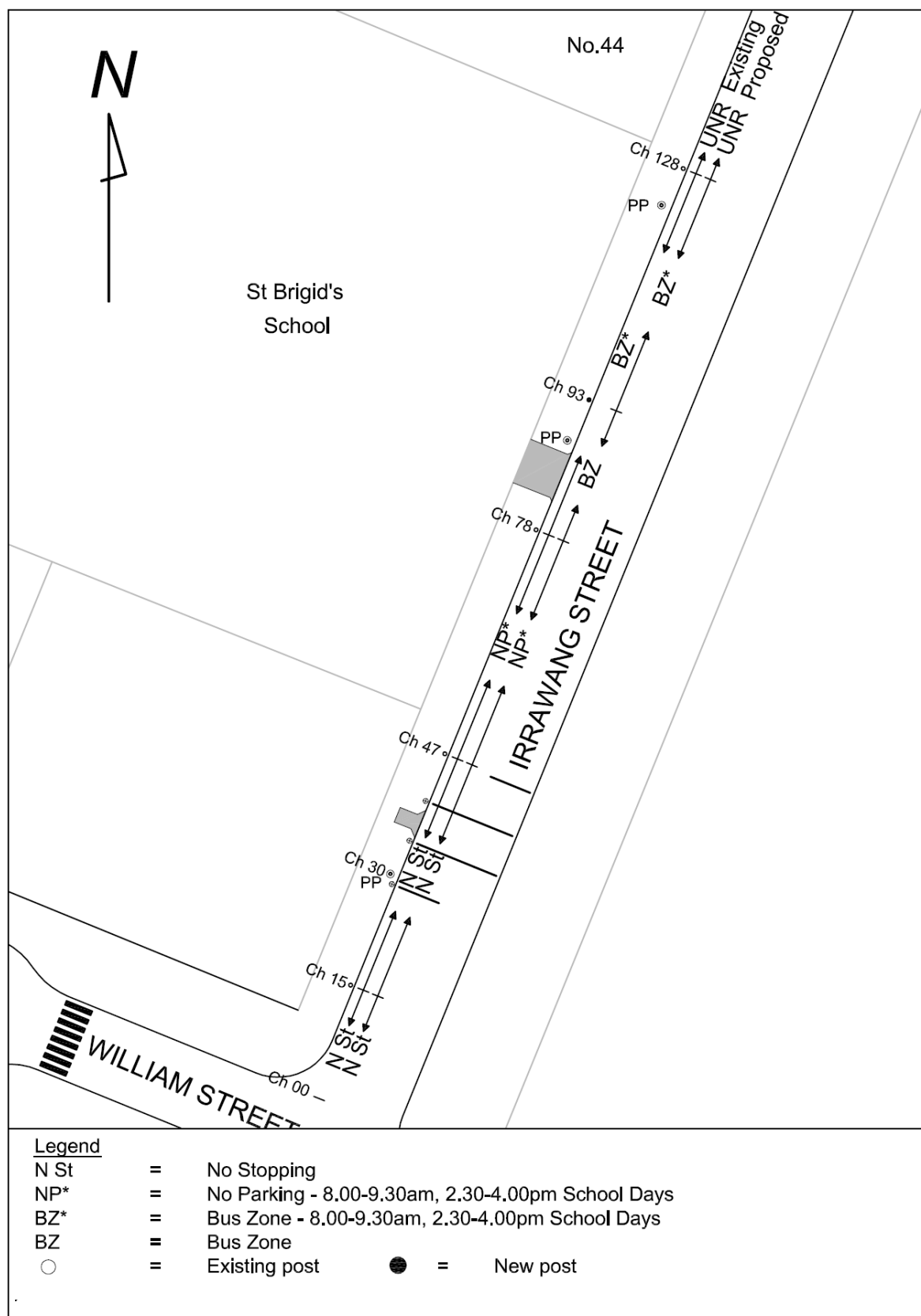
Recommendation to the Committee:

Install 'Bus Zone' signage in part of the existing school bus stop area in Irrawang Street Raymond Terrace, as shown on the attached sketch, Annexure A.

Discussion:

Support for the recommendation:

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



**C.4    Item:   12\_05/13****FORESHORE DRIVE SALAMANDER BAY – REQUEST FOR ONE-WAY TRAFFIC AND INSTALLATION OF SPEED HUMPS**

**Requested by:**    A resident  
**File:**                PSC2005-4019/395  
**Background:**

A resident of Foreshore Drive Salamander Bay has contacted Council requesting investigation of one-way traffic flow and installation of speed humps to improve safety for residents.

**Comment:**

Council installed traffic classifiers in Foreshore Drive in February 2013 to determine the speed and volume of traffic using this road. The results of the traffic survey indicate an average daily traffic volume of approximately 2 400 vehicles with an 85<sup>th</sup> percentile speed of 60km/h. Council's accident database indicates 1 non-injury crash in the western section of Foreshore Drive over the most recent 5 year period. Using this data and assessing the road against Council's priority ranking criteria for Local Area Traffic Management proposals gives a rating of a site with low safety and amenity concerns with no further action required.

**Legislation, Standards, Guidelines and Delegation:**

Austrorads – GTM Part 8 – Local area Traffic Management  
Australian Standard -1742.13 Part 13: Local area traffic management

**Discussion:**

Traffic Committee members noted that the speed and volumes recorded in Foreshore Drive compare favourably to other similar roads throughout the LGA. It was noted that Foreshore Drive is relatively narrow however, as it does not meet the criteria for consideration of traffic calming, making the road one-way would almost certainly lead to an increase in vehicle speeds.

**Committee's recommendation:**

No further action

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	

Priority System for ranking LATM proposals – Foreshore Dive

Traffic Parameter	Observed value	Points for a street or road		
		Local street	Collector/distributor	Sub-Arterial
Traffic Speed as 85 <sup>th</sup> % speed	50-54	3	0	0
	55-59	9	1	0
	60-64	15	6	1
	65-69	24	12	4
	70-74	33	18	7
	75-79	45	27	15
	Over 80	60	40	25
Traffic Volume (V/day)	1000-1499	4	0	0
	1500-1999	7	0	0
	2000-2499	10	2	0
	2500-2999	15	3	0
	3000-3999	20	4	0
	4000-4999	30	7	0
Rat-run Traffic As peak hour percent of 24 hour volume	10-11%	0	0	0
	11-12%	2	1	0
	Over 12%	4+2 per%	2+1%	0
Crash data Per fatal crash Per Casualty crash Per non-injury crash	Points per crash			
		5	5	5
		2	2	2
		0.5	0.5	0.5
Heavy vehicles	Points per % Above 3%	2	1	0
Topography (add scores together)	Restricted sight	4	5	6
	Grade over 3%	3	2	1
	Long Straight	5	2	0
	Tight bend	3	2	3
Activity generators (add scores for all uses in the street)	Passive reserve	1	1	1
	Active playground	7	5	1
	Industrial	2	0	0
	Residential	2	2	1
	Primary School	10	8	8
	Secondary School	8	6	6
	Tertiary College	6	4	4
	Small retail	8	6	6
	Large retail	10	8	8

Action response table

Decision	Total Point score	Action response
Denoted as technical problem site	More than 50	Considered to be a site that has problems. Suitable solutions to be considered for funding and implementation
Denoted as minor technical problem	30 to 50 points	Consider low cost, non-capital works solutions (e.g. signing and linemarking) if appropriate. Review again after 2 years
Denoted as a site with low safety and amenity concerns	Under 30 points	No further action required



C.5 Item: 13\_05/13

**MORNA POINT ROAD ANNA BAY – REQUEST FOR INSTALLATION OF STOP SIGN**

**Requested by:** Port Stephens Council

**File:** PSC2005-4030/159

**Background:**

Council has recently installed a raised pedestrian crossing in Morna Point Road at the Gan Gan Road intersection, as well as raised the adjacent pedestrian crossing in Gan Gan Road.

**Comment:**

As part of the works it has come to attention that the northern leg of Morna Point Road is 'Give Way' controlled whilst the southern leg is 'Stop' sign controlled. This is contrary to the Australian Standard 1742.2 which requires that stop signs be installed on controlled approaches where intersection sight distance is substandard.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule 67 – Stopping and giving way at a stop sign or stop line at an intersection without traffic lights

RMS Signs database – R1-1

AS 1742.2 – Manual of uniform traffic control devices – RMS Supplement

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

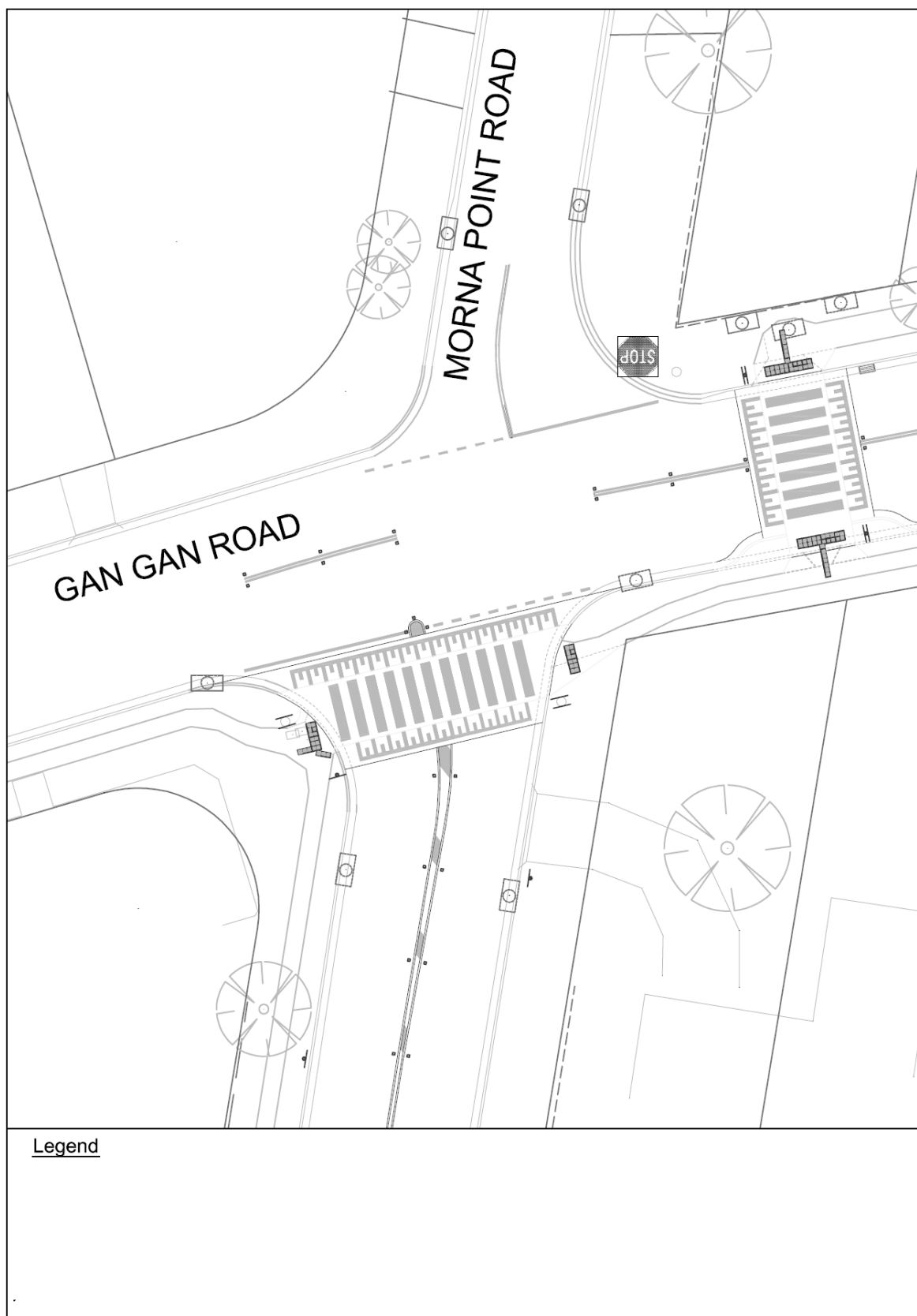
**Recommendation to the Committee:**

Install 'Stop' sign and stop line marking at the intersection of Morna Point Road and Gan Gan Road, Anna Bay, as shown on the attached sketch, Annexure A.

**Discussion:**

**Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	



## D. Informal Items

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## E. General Business

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### E.1 Item: 606\_05/13

#### MEDOWIE ROAD CAMPVALE – SAFETY CONCERNS RELATING TO MOTOR VEHICLE SALES ON THE ROADSIDE

Requested by: Cr Dingle

File:

Background:

Cr Dingle raised concerns regarding parking of vehicles around major local intersections at Campvale and Salt Ash. These are de-facto car yards where people park their cars and members of the public stop and inspect the vehicles.

#### Discussion:

This practice is quite common in these high exposure areas and is generally not a problem. It can become a problem as more and more people participate, especially at weekends.

#### Committee's recommendation:

The Traffic Committee recommended that Council officers discuss this issue with Council's Rangers to determine enforcement issues and possibilities.

---

### E.2 Item: 607\_05/13

#### PACIFIC HIGHWAY HEATHERBRAE –INSTALLATION OF DIRECTIONAL SIGNS FOR HOLIDAY TRAFFIC

Requested by: Cr Kafer

File:

Background:

Cr Kafer congratulated Roads and Maritime Services on the installation of new and improved signage along the Pacific Highway between Heatherbrae and Hexham. The new signs are to assist holiday traffic to better utilise the highway when heading south at peak times.

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E.3     Item: 608\_05/13

**MARINE DRIVE FINGAL BAY – ROAD SAFETY AUDIT AT THE FINGAL BAY SURF CLUB**

Requested by:     Port Stephens Council

File:

Background:

The previous Local Traffic Committee meeting requested that Council conduct a road safety audit at the new Fingal Bay Surf Club. In particular, the loading arrangements and interaction between the club activities and the shared path were of concern.

**Discussion:**

Council officers reported that a safety audit was conducted over the busy Anzac Day long weekend. As expected the car park and shared path at the Surf Club were quite busy at the time. The major concern identified by the audit is the procedure for waste collection which requires the waste contractor vehicle to park close to the club driveway. The operator then has to manually move the skip bin onto the shared path before operating the overhead loader on the waste truck. Meanwhile, pedestrians and cyclists including young children are continually moving around and past the site, in close proximity. It was also noted that the truck enters and exits the car park illegally, in contravention of the signed travel direction. A lack of lighting along the shared path adjacent to the Surf Club was also identified.

**Committee's recommendation:**

The Traffic Committee recommended that Council officers discuss these identified issues with the Project Manager for the Surf Club to ensure that they are addressed.

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ITEM NO. 8

FILE NO: T331213HUN

**T331213HUN - REGIONAL PROCUREMENT INITIATIVE TENDER - SUPPLY AND DELIVERY OF READY MIXED CONCRETE**

REPORT OF: PETER MURRAY – OPERATIONS SECTION MANAGER

GROUP: FACILITIES AND SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Attachment Item 8 on the Ordinary Council agenda namely **Regional Procurement Initiative Tender –T331213HUN Supply and Delivery of Ready Mixed Concrete.**
  - 2) That the reasons for closing the meeting to the public to consider this item be that:
    - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
    - ii) In particular, the report includes confidential pricing information in respect of the **Regional Procurement Initiative Tender –T331213HUN Supply and Delivery of Ready Mixed Concrete.**
  - 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
  - 4) That the report of the closed part of the meeting is to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179) of the Local Government (General) Regulation 2005.
  - 5) Accept the following tenders :- Boral, Hanson, Holcim, Hunter Ready Mix and Maitland Ready Mix as panel tenders to Port Stephens Council for the period 1<sup>st</sup> July 2013 to 30<sup>th</sup> June 2015, and further that a provision be allowed for a 12 month extension to this panel contract based on satisfactory supplier performance which may extend this contract to 30<sup>th</sup> June 2016.
-

**ORDINARY COUNCIL MEETING – 11 JUNE 2013  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Nell</b> <b>Councillor Steve Tucker</b>
	That Council accept the following tenders :- Boral, Hanson, Holcim, Hunter Ready Mix and Maitland Ready Mix as panel tenders to Port Stephens Council for the period 1 <sup>st</sup> July 2013 to 30 <sup>th</sup> June 2015, and further that a provision be allowed for a 12 month extension to this panel contract based on satisfactory supplier performance which may extend this contract to 30 <sup>th</sup> June 2016.

**MOTION**

<b>167</b>	<b>Councillor Ken Jordan</b> <b>Councillor Paul Le Mottee</b>
	It was resolved that the Committee of the Whole recommendation be adopted.

**BACKGROUND**

The purpose of this report is for Council to consider and determine the preferred panel for the Supply and Delivery of Ready Mixed Concrete.

Council currently purchases these services through a Regional Procurement Initiative Panel Tender that expires 30<sup>th</sup> June 2013. 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 extensions 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 \$200M to the region through their tenders and contracts.

Port Stephens Council along with other Hunter Council members were approached by Regional Procurement to establish if renewing a group tender for the supply and delivery of ready mix concrete was viable. Based on experience with the previous

tender, participation would provide an opportunity to gain cost benefits by utilising group purchasing power while satisfying legislative requirements.

By utilising Regional Procurement to facilitate the tender process we support the Memorandum of Agreement signed by the General Managers of each of the Hunter Councils that agrees to support Regional Procurement and accept the outcomes of tenders where there is an equal to or better outcome than alternative sources.

Regional Procurement called tenders for the Supply and Delivery of Ready Mixed Concrete across a number of local government areas that include Maitland, Dungog, Upper Hunter, Cessnock, Mid-Western Regional Council, Newcastle, Singleton, Muswellbrook and Port Stephens. Regional Procurement received 10 conforming tenders across all locations and 6 conforming tenders for Supply and Delivery of Ready Mixed Concrete to Port Stephens.

Each of the bids was 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 Ready Mixed Concrete were assessed against criteria that included tender price across a range of mixes, quality assurance, safety, ecologically sustainable development, references regarding previous performance and physical resources.

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

This tender represents a budget expenditure of approximately \$200,000 per annum for the Facilities and Services Group. The actual annual expenditure varies year to year and is dependent on the extent of concrete construction and maintenance works funded 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.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes	\$200,000	Funded from recurrent and capital 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 ready mixed concrete may not be available as required which may lead to works being delayed or cancelled.	Medium	Appoint only suitably qualified tenders with good work history and references.  Appoint multiple providers as part of panel tender to guarantee supply.	
There is a risk that concrete projects may not be completed to agreed standard due to inferior product or delivery.	Medium	Appoint only suitably qualified tenders with good work history and references.	

## 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 ready mixed concrete costs 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) Roads and Construction Co-ordinators;
- 3) Group Manager - Facilities and Services;
- 4) Works Managers.



**OPTIONS**

- 1) As recommended;
- 2) Reject all submissions and recall tenders.

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

- 1) Confidential - Value Selection Methodology Summary.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ITEM NO. 9

FILE NO: T09-2013

## T09-2013 - CONTRACT FOR CEMETERY MOWING SERVICES

REPORT OF: STEVEN BERNASCONI – COMMUNITY AND RECREATION SERVICES

SECTION MANAGER

GROUP: FACILITIES AND SERVICES

### RECOMMENDATION IS THAT COUNCIL:

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Attachment Item 9 on the Ordinary Council agenda namely **Contract for Cemetery Mowing Services T09-2013**.
- 2) That the reasons for closing the meeting to the public to consider this item be that:
  - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
  - ii) In particular, the report includes confidential pricing information in respect of the **Contract for Cemetery Mowing Services T09-2013**.
- 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
- 4) That the attachment to this report of the closed part of the meeting is to remain confidential.
- 5) Accept the tender received from Pacific Facilities Management for the provision of mowing services for Port Stephens Council cemeteries for a two (2) year term with a two (2) year plus two (2) year extension option (total six years) in Councils favour.

### ORDINARY COUNCIL MEETING – 11 JUNE 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Nell Councillor Sally Dover
	That Council accept the tender received from Pacific Facilities Management for the provision of mowing services for Port Stephens

## MINUTES FOR ORDINARY COUNCIL – 11 JUNE 2013

	Council cemeteries for a two (2) year term with a two (2) year plus two (2) year extension option (total six years) in Councils favour.
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### MOTION

168	<b>Councillor Ken Jordan</b> <b>Councillor Paul Le Mottee</b>
	It was resolved that the Committee of the Whole recommendation be adopted.

### BACKGROUND

The purpose of this report is to recommend the preferred tender for the provision of mowing services for Port Stephens Council cemeteries.

In March 2013 tender submissions for the provision of mowing services for Council cemeteries were invited through public advertisement. The closing date for the tender submissions was 2 April 2013 resulting in three (3) tenders being received from the following companies:

- (1) Excel Mowing Services
- (2) Luhrmann Environment Management
- (3) Pacific Facilities Management

In accordance with Council's Procurement Guidelines a panel was established to conduct a review of all tenders received. The panel assessed each tender in accordance with the agreed weighting – Shown in Table 1.

Criteria	% Weighting
Price	30
Capacity – management, technical expertise, physical resources	30
Cemetery Experience (including references)	25
Work, Health and Safety and Insurance	10
Conformance with the Tender	5
TOTAL	100

Table 1 - Evaluation criteria weighting

### FINANCIAL/RESOURCE IMPLICATIONS

The resources and costs associated with the execution of this tender are able to be accommodated within existing and future budget allocations. The funding of this service is derived from a combination of income from fees and charges from cemeteries and revenue.

The contract term is two (2) years with the option of a further two (2) years plus two (2) years extension as per clause 26 of the General Conditions of Contract. For clarity this means there is potential for a total of six (6) years for the full contract when options are exercised. These extensions are subject to the satisfactory performance of the contract and Council's acceptance of the amended pricing for each two year extension period.

At the end of each two year period Council will assess the performance of the contractor and whether any proposed price increase is within available budget before determining the extension the contract. The Section Manager has the delegated authority to enter into the initial contract and activate any or all extension options.

Table 2 shows the funding model.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$75,000	Per year based on a set schedule of works which may increase or decrease depending on site requirements. Source of funds are income from cemeteries fees (50%) and General Revenue (50%).
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

Table 2 – Funding model

## LEGAL, POLICY AND RISK IMPLICATIONS

The tender process has been conducted in accordance with the Local Government (General) Regulations and is to be awarded under the conditions of contract prescribed in the Hunter Councils Conditions of Contract. Table 3 shows identified risks associated with the contract.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that actions of the contractor may result in poor environmental management which may result in damage to the environment and	Low	Monitor performance of contract from site observations and regular contract performance meetings.	Yes

Council's reputation.			
There is a risk that actions of the contractor may result in adverse attention, complaints or loss of reputation caused by poor performance of contractor.	Low	Monitor performance from site observations and complaints. Issues addressed promptly and reviewed at scheduled contract performance meetings.	Yes
There is a risk that the contract could terminate early which may result in financial loss caused by going out to the open market until a new contract is in place.	Low	Interim action outsource alternative service provider until a new contract can be established or utilise Council's Parks staff.	Yes

Table 3 – Risks associated with contract

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Adequate and efficient mowing services for Council's cemeteries improves the community access, safety and enjoyment of these areas.

Pacific Management Services currently hold the contract for cemetery mowing services and provide excellent service. During the current contract Pacific Facilities Management have sourced supplies such as turf and soil wherever possible from suppliers within the Port Stephens local government area contributing to the local economy.

**CONSULTATION**

Feedback from customers, funeral directors, West Ward Cemeteries Committee (355c) and Tomaree Cemeteries Committee (355c) have all assisted in determining the level of service for mowing at Council's cemeteries.

Consultation and advice has also been sought and received from Council officers, namely: Cemetery Coordinator, Contracts and Services Coordinator, Emergency Management Coordinator and Purchasing Officer

**OPTIONS**

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

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

- 1) Confidential – Cemeteries Mowing Services Tender – Selection Summary.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 10****FILE NO: 1190-001****REQUEST FOR 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 the respective Mayor and Ward Funds to the following:-
- a) Rapid Response – Cr Geoff Dingle – Fern Bay 355c Hall Committee – Cleaning Tennis Courts - \$500.00
  - b) Rapid Response – Cr Geoff Dingle – Medowie Girl Guides – Donation towards funds to attend Regional Camp - \$500.00
- 

**ORDINARY COUNCIL MEETING – 11 JUNE 2013**  
**COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Nell</b> <b>Councillor Chris Doohan</b>
	That the recommendation be adopted.

**MOTION**

<b>169</b>	<b>Councillor Ken Jordan</b> <b>Councillor Paul Le Mottee</b>
	It was resolved that the Committee of the Whole 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

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

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

**CENTRAL WARD – Councillors Dingle, Doohan & Tucker**

Fern Bay 355c Hall Committee	Cleaning Tennis Courts	\$500
Medowie Girl Guides	Donation towards funds to attend Regional Camp	\$500

**FINANCIAL/RESOURCE IMPLICATIONS**

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	Yes	\$1,000	Central Ward Funds
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 associated with this recommendation that relates to reputation	Low	Adopt the recommendation	Yes

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

## CONSULTATION

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

## OPTIONS

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

## ATTACHMENTS

Nil.

## COUNCILLORS ROOM

Nil.

## TABLED DOCUMENTS

Nil.

ITEM NO. 11

## 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 11 June, 2013.

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No:	Report Title
1	SCORES ON DOORS TRIAL PERIOD

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### ORDINARY COUNCIL MEETING – 11 JUNE 2013 COMMITTEE OF THE WHOLE RECOMMENDATION

	<b>Councillor Paul Le Mottee</b> <b>Councillor John Nell</b>
	That the recommendation be adopted.

159	<b>Councillor Paul Le Mottee</b> <b>Councillor Steve Tucker</b>
	It was resolved that Council move in Committee of the Whole.

### MOTION

170	<b>Councillor Ken Jordan</b> <b>Councillor Paul Le Mottee</b>
	It was resolved that the Committee of the Whole recommendation be adopted.

# INFORMATION PAPERS



**INFORMATION ITEM NO. 1**

**SCORES ON DOORS TRIAL PERIOD**

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

**GROUP:** DEVELOPMENT SERVICES

**FILE:** PSC2011-03633

**BACKGROUND**

At its ordinary meeting on 18 October 2011, Council resolved to participate in the NSW Food Authority's Scores on Doors trial.

Under the trial Council's Environmental Health Officers used a standardised checklist to provide businesses with a performance rating during routine food safety inspections. Accordingly, businesses that performed well were awarded a certificate with a "5 Star" rating and businesses that performed less satisfactorily were awarded a lower star rating or in extreme cases no rating at all. Regardless of the rating businesses that were participating in the trial had entered into a contract with Council and were obliged to display the certificate on their premises. This allowed the public to know how well food businesses complied with food safety and hygiene requirements.

Participation by Councils and food businesses was voluntary. The trial was initially intended to be for one year with ongoing continuation being based on interest and participation from food businesses.

There has been little positive response from food businesses to participate in the trial, despite a serious proactive effort on the part of the Environmental Health Team to generate interest. It is the opinion of Environmental Health team that the lack of interest from food business proprietors is due mainly to the initiative being a non compulsory trial only and the risk that participating voluntarily could potentially result in an unsatisfactory rating that they had no choice but to display to the public.

To date out of a total of three hundred and thirty eight (338) registered food businesses in the Port Stephens area only ten (10) proprietors agreed to participate in the trial. The lack of interest in the voluntary trial is something not limited to our Council but across the entire food industry within other Local Government areas. This lack of interest has been verified via feedback from other Council's regional food groups. In this regard it is Council's intention to discontinue the initiative.

In considering this decision it was noted that the standard of our food premises inspections is high and is backed up by enforceable legislation being the Food Act 2003 and the Australian New Zealand Food Standards Code.

There being no further business the meeting closed at 6.50pm.

*I certify that pages 1 to 93 of the Open Ordinary Minutes of Council 11 June 2013 were confirmed by Council at its meeting held on 25 June 2013.*

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**Bruce MacKenzie**  
**MAYOR**