

MINUTES 24 JUNE 2014



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 24 June 2014, commencing at 6.04pm.

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

147	Councillor Steve Tucker Councillor Ken Jordan
	It was resolved that the apology from Cr Chris Doohan be received and noted.
148	Councillor John Morello Councillor Sally Dover
	It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 10 June 2014 be confirmed.
	There were no Declaration of Interest received.

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COUNCIL REPORTS

ITEM NO. 1**FILE NO: 16-2014-224-1****DEVELOPMENT APPLICATION FOR A COMMUNITY FACILITY (MEN'S SHED) AT 5-9 MEMORIAL DRIVE, KARUAH****REPORT OF: MATTHEW BROWN – DEVELOPMENT ASSESSMENT AND COMPLIANCE
SECTION MANAGER****GROUP: DEVELOPMENT SERVICES****RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application (16-2014-224-1) for the use of the site as community facility (Karuah Men's Shed) subject to the conditions contained in **(ATTACHMENT 3)**.

**ORDINARY COUNCIL MEETING – 24 JUNE 2014
MOTION**

149	Councillor Ken Jordan Councillor Steve Tucker
	It was resolved that Council move into Committee of the Whole.
	Mayor Bruce MacKenzie Councillor Sally Dover
	It was resolved that Item 5 be brought forward and dealt with prior to Item 1 in Committee of the Whole.

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Ken Jordan Councillor Sally Dover
	<p>That Council approve Development Application (16-2014-224-1) for the use of the site as community facility (Karuah Men's Shed) subject to the conditions of consent shown below:</p> <p>DEFERRED COMMENCEMENT</p> <p>Pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979 (as amended), this is a deferred commencement condition. The consent is not to operate until the Applicant satisfies the Council that:</p>

1. Concurrence is required to be obtained from the Minister of Primary Industries in accordance to clause 19 of the Marine Parks Act 1997 for the development. Any conditions imposed on the use by the Marine Parks Authority shall be adhered to.

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

1. Development Consent is granted for a change of use for a community facility (Karuah Man's Shed) at 5-9 Memorial Drive, Karuah (Lot 141, 158 & 189 DP 753196).
2. The development must be carried out in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Statement of Environmental Effects prepared by Le Mottee Group dated 8 April 2014

Site plans titled 'Karuah Boat Shed' and undated
--

Floor plan titled 'Karuah Boat Shed' and undated
--

North and South Elevations undated

East and West Elevations undated

CONDITIONS TO BE REVIEWED/CONSIDERED WITHIN 12 MONTHS

3. The building is to be provided with an accessible wc to conform to AS1428.1 **within 12 months of the date of this consent.**
4. The development shall provide two (2) on-site car parking spaces, including 1 disabled parking space. These spaces shall be separately accessible, clearly line-marked and adequately paved and drained in accordance with Section B3 – Parking, Traffic and Transport, of Port Stephens Development Control Plan 2007 and/or the relevant Australian Standards. **Car parking must be provided within 12 months from the date of this consent.**

CONDITIONS TO BE SATISFIED AT ALL TIMES

5. Any fuel or lubricants stored on site for the use of machinery will need to be placed in a bunded area so:
 - a. they cannot spill and leak into the water and
 - b. are above the 1:100 year flood level.

6. Any changes in the floor level inside the building are to be provided with a ramp that conforms to the provisions of AS1428.1 and access to and throughout the building is to be upgraded as required to meet the provisions of AS1428.1.

Note: This will include modifying the entrance area of the building to remove or relocate the trench.

7. A portable fire extinguisher selected located and installed to conform to AS2444-2001 is to be provided to the building.
8. Any relevant easements required for the provision of electricity, water or sewer services is to be obtained and evidence provided to Council within **2 years of the date of this consent**.
9. **If sewer is not available to the site** approval shall be obtained under Section 68 of the *Local Government Act 1993*, for the installation of an on-site sewage management system, in relation to the installation of wc amenities.

The application shall be submitted to Council together with the design details, site assessment report and payment of the prescribed fee.

Following installation of the approved on-site sewage management system, an “application to operate” the system, under the provisions of section 68 of the *Local Government Act 1993*, shall be submitted to and approved by Council, prior to use of the system.

10. All electrical equipment (including electrical cords and connections) are to be placed on shelving, or elevated otherwise, at a minimum level of 1.8m AHD.

11. The following design precautions must be adhered to:-

- a. In sewered areas some plumbing fixtures may be located below the Flood Planning Level. Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge.
- b. No potentially hazardous or offensive material is to be stored on site that could cause water contamination during floods.
- d. All new/additional building materials, equipment, ducting, etc., below the Flood Planning Level shall be flood compatible.

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

	<p>e. All main power supply, heating and air conditioning service installations, including meters shall be located above the Flood Planning Level.</p> <p>f. All electrical wiring below the Flood Planning Level shall be suitable for continuous submergence in water. All conduits below the Flood Planning Level shall be self-draining. Earth core leakage systems or safety switches are to be installed.</p> <p>g. All electrical equipment installed below the Flood Planning Level shall be capable of disconnection by a single plug from the power supply.</p> <p>h. Where heating equipment and fuel storage tanks are not feasible to be located above the Flood Planning Level then they shall be suitable for continuous submergence in water and securely anchored to overcome buoyancy and movement which may damage supply lines. All storage tanks shall be vented to an elevation above the Flood Planning Level.</p> <p>i. All ducting below the Flood Planning Level shall be provided with openings for drainage and cleaning.</p>
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

MOTION

151	<p>Councillor Ken Jordan Councillor Paul Le Mottee</p>
	<p>It was resolved that Council approve Development Application (16-2014-224-1) for the use of the site as community facility (Karuah Men's Shed) subject to the conditions of consent shown below:</p> <p>DEFERRED COMMENCEMENT</p> <p>Pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979 (as amended), this is a deferred commencement condition. The consent is not to operate until the Applicant satisfies the Council that:</p>

1. Concurrence is required to be obtained from the Minister of Primary Industries in accordance to clause 19 of the Marine Parks Act 1997 for the development. Any conditions imposed on the use by the Marine Parks Authority shall be adhered to.

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

1. Development Consent is granted for a change of use for a community facility (Karuah Man's Shed) at 5-9 Memorial Drive, Karuah (Lot 141, 158 & 189 DP 753196).
2. The development must be carried out in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Statement of Environmental Effects prepared by Le Mottee Group dated 8 April 2014

Site plans titled 'Karuah Boat Shed' and undated
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Floor plan titled 'Karuah Boat Shed' and undated
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North and South Elevations undated

East and West Elevations undated

CONDITIONS TO BE REVIEWED/CONSIDERED WITHIN 12 MONTHS

3. The building is to be provided with an accessible wc to conform to AS1428.1 **within 12 months of the date of this consent.**
4. The development shall provide two (2) on-site car parking spaces, including 1 disabled parking space. These spaces shall be separately accessible, clearly line-marked and adequately paved and drained in accordance with Section B3 – Parking, Traffic and Transport, of Port Stephens Development Control Plan 2007 and/or the relevant Australian Standards. **Car parking must be provided within 12 months from the date of this consent.**

CONDITIONS TO BE SATISFIED AT ALL TIMES

5. Any fuel or lubricants stored on site for the use of machinery will need to be placed in a bunded area so:
 - a. they cannot spill and leak into the water and

	<p>b. are above the 1:100 year flood level.</p> <p>6. Any changes in the floor level inside the building are to be provided with a ramp that conforms to the provisions of AS1428.1 and access to and throughout the building is to be upgraded as required to meet the provisions of AS1428.1.</p> <p>Note: This will include modifying the entrance area of the building to remove or relocate the trench.</p> <p>7. A portable fire extinguisher selected located and installed to conform to AS2444-2001 is to be provided to the building.</p> <p>8. Any relevant easements required for the provision of electricity, water or sewer services is to be obtained and evidence provided to Council within 2 years of the date of this consent.</p> <p>9. If sewer is not available to the site approval shall be obtained under Section 68 of the <i>Local Government Act 1993</i>, for the installation of an on-site sewage management system, in relation to the installation of wc amenities.</p> <p>The application shall be submitted to Council together with the design details, site assessment report and payment of the prescribed fee.</p> <p>Following installation of the approved on-site sewage management system, an "application to operate" the system, under the provisions of section 68 of the <i>Local Government Act 1993</i>, shall be submitted to and approved by Council, prior to use of the system.</p> <p>10. All electrical equipment (including electrical cords and connections) are to be placed on shelving, or elevated otherwise, at a minimum level of 1.8m AHD.</p> <p>11. The following design precautions must be adhered to:-</p> <p>a. In sewered areas some plumbing fixtures may be located below the Flood Planning Level. Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge.</p> <p>b. No potentially hazardous or offensive material is to be stored on site that could cause water contamination during floods.</p> <p>d. All <u>new/additional</u> building materials, equipment, ducting, etc., below the Flood Planning Level shall be flood</p>
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	compatible.
e.	All main power supply, heating and air conditioning service installations, including meters shall be located above the Flood Planning Level.
f.	All electrical wiring below the Flood Planning Level shall be suitable for continuous submergence in water. All conduits below the Flood Planning Level shall be self-draining. Earth core leakage systems or safety switches are to be installed.
g.	All electrical equipment installed below the Flood Planning Level shall be capable of disconnection by a single plug from the power supply.
h.	Where heating equipment and fuel storage tanks are not feasible to be located above the Flood Planning Level then they shall be suitable for continuous submergence in water and securely anchored to overcome buoyancy and movement which may damage supply lines. All storage tanks shall be vented to an elevation above the Flood Planning Level.
i.	All ducting below the Flood Planning Level shall be provided with openings for drainage and cleaning.

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

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

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present a development application to Council for determination. The application has been called to Council by Mayor MacKenzie.

The proposed development is to use the existing building on the site as a community facility, being for the purpose of the Karuah Men's Shed. The site consists of three parcels of land adjacent to the Karuah River and the Karuah Memorial Park. The sites are zoned W2 Recreational Waterway and are partly reclaimed land with a large portion of the site being the waterway (by technical definition). There is an existing building on the site which was previously used as a boat shed. The building is in a dilapidated condition with the decks being noted on the plans as being structurally unsafe. The eastern portion of the building is built on piers with the Karuah River being located underneath.

It is noted the proposed use is a highly valuable community use. However, due to the constraints of the site in this instance, the proposal fails to comply with Councils Local Environmental Plan 2013 and Development Control Plan 2007 and cannot be supported.

Previous Advice to the Proponent

The proponents contacted Council's Development Assessment Team in September 2011 regarding the use of the premises for a Men's Shed. A letter was sent to the proponent advising them that Council staff were not able to support the use of this site for a number of reasons including:

- The risk of flooding on the site and that the current floor level of the building is below the minimum acceptable flood planning level.
- The safety of the building with regard to its structural integrity.
- The requirement for developments such as community facilities to provide a formalised car park.
- The requirement for community facilities to be provided with adequate toilet/amenities and the lack of sewer connection to the property.
- The lack of a formal easement for the provision of electricity to the building.

Council staff were of the opinion that these constraints would be difficult to overcome, however the applicant is welcome to go through the development assessment process as they have done.

Current Application

In addition to the issues raised previously for the site the development does not provide disabled access for pedestrians to and within the building and no disabled parking has been provided in close proximity to the entrance of the building. Further assessment of the flooding issues on the site has been undertaken and significant concerns have been raised.

The subject property extends from the foreshore over the Karuah River. Elevation levels from a previous application for the same building state the floor levels are 1.18m AHD for the timber decking over the water and 1.38m AHD for the concrete slab on the ground surface. This is consistent with photos taken during the 2009 king high tide which show the timber floor levels are just above king high tide levels (approx. 1.05m AHD).

The estimated flood levels for the property are:

- Current 5% AEP = 1.8m AHD
- Current 1% AEP = 1.9m AHD
- Current PMF = 2.0m AHD
- 2050 5% AEP = 2.2m AHD
- 2050 1% AEP = 2.3m AHD
- 2050 PMF = 2.4m AHD

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Review of the above flood levels in conjunction with the floor levels indicate the building is subject to relatively frequent flooding. A typical flood planning level for habitable rooms on the site would be advised at 2.8m AHD. Compared to the actual minimum floor level of 1.18m AHD, there is a significant variation between the FPL and the actual floor levels at this site.

Due to the risk of frequent inundation, any property stored in the building (e.g. machinery, computers, electrical equipment, refrigerators etc.) will be subject to frequent inundation and damaged in minor flood events. The damage to equipment/machinery/electrical goods in the building have the potential to cause harm/injury to persons using the equipment including after the flood events.

The use of this property for regular use by the Men's Shed community group is not considered appropriate due to the risk to property and personal injury caused by frequent inundation, as well as the increased consequences of flooding during a major flood event.

Notwithstanding the above, should Council wish to consent to this use of the land for a men's shed, conditions of consent may reduce the risk.

In summary, whilst the men's shed concept is supported heartedly, it is not appropriate to provide community facilities without toilets, adequate access, safe and easy parking or in areas at high risk of flooding. Using the amenities and parking in Memorial Park is not considered to be a suitable solution given the topography of the site, the lack of a suitable and accessible pathway of the men's shed.

It is acknowledged that the Men's Sheds play a vital role in the community and their social benefit is supported and encouraged. However, unfortunately the site that has been selected is unsuitable for the use.

If Council determines to adopt the recommendation and refuse the application, the reasons for refusal are included in **(ATTACHMENT 3)**.

FINANCIAL/RESOURCE IMPLICATIONS

As with any Development Application, it could potentially be challenged in the Land and Environment Court. Defending Council's determination would have financial 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		

LEGAL AND POLICY IMPLICATIONS

The Development Application is not consistent with Council's Local Environmental Plan 2013 and Development Control Plan 2007 and presents a risk to Council and the community if the application is approved.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the application is refused, the determination may be challenged in the Land and Environment Court.	Medium	Determine application in line with recommendation.	
There is a risk that if the application is approved, that Council may be liable for any damage or consequences to approving a development located on a site with a known flood risk and that does not have adequate essential services or disabled access.	Medium	Determine application in line with recommendation	

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Despite the immediate social benefits of a men's shed the development is considered to have an adverse social and economic impact in the locality. The flooding constraints of the site and the lack of accessible parking, disabled access, provision of basic services such as electricity and sewer and toilets do not enhance and promote the social needs of the community. Supporting such a development would have an economic cost to the community as it will place undue pressure on emergency services such as the SES, ambulance, fire brigade and police in terms of responding to any natural hazards and any medical emergencies that may occur on the site.

Council may recall that it adopted a revised Corporate Risk Management Policy on 27 November 2012. The policy includes Councils risk appetite statement that explicitly states:

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

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

A review of the assessment report and the Applicant's submission details that a decision contrary to the recommendation presents an unacceptable risk to Council as per Council's standard risk management matrix. These unacceptable risks relate to Council and the local community in respect to public safety, Council reputation and legal exposure.

A decision contrary the planning framework may waiver the good faith provisions in the *Local Government Act 1993*. This could result in individuals being personally accountable / responsible for any subsequent implications resulting from the decision. Further, discussions with Councils Corporate Risk Unit confirmed that it is likely Council's insurers may not cover Council should a decision be made contrary to the relevant standards etc.

CONSULTATION

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

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan;
- 2) Assessment;
- 3) Reasons for refusal

COUNCILLORS ROOM

- 1) Development Plans..

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



**ATTACHMENT 2
ASSESSMENT**

1. APPLICATION REFERENCES	
Application No.	16-2014-224-1
Property	5 - 9 Memorial Drive KARUAH
Lot and DP	LOT: 189 DP: 753196, LOT: 141 DP: 753196, LOT: 158 DP: 753196
Description of development	Change of Use – Community Facility (Men's Shed)
Applicant	LE MOTTEE GROUP PTY LTD
Date lodged	10/04/2014
Owners Consent	Yes
Capital Investment Value	Nil
Present use	Vacant – previously used as a recreational boat hire business
Zoning	W2 RECREATIONAL WATERWAYS
Site Constraints	Acid Sulphate Soils (Class 1 & 5), Great Lakes Marine Park, Flood prone land, Corridor mapping, Wetlands
88B Instrument and Deposited Plan	Not available to view
Submissions	Nil
Recommendation	Refusal
Assessing Officer	Priscilla Emmett
Proposal	
<p>The proposed development is to use the existing building on the site as a community facility, being for the purpose of the Karuah Men's Shed. The Men's Shed will provide the following opportunities:</p> <ul style="list-style-type: none"> • restoring and fixing furniture and everyday items • building/creating items for the community or charity • young men working with older men learning new skills • sharing a cup of tea or coffee and providing a place for members to sit and talk • teaching skills such as cooking, using computers etc • providing a safe place to discuss and learn about men's health issues. <p>The facility will typically be open varying days and hours each week depending on the activities planned. The hours will not exceed 50 hours in a week and will not be open</p>	

after 10pm.

The applicant has stated that the previous use of the site was for a recreational boat hire business.

Site Description

The site is made up of three land parcels, being lots 141, 158 and 189 in DP 753196. Lot 189 contains a building, which is partly located over the water. Lot 141 consists of three quarters of the site being vacant foreshore land and the remaining part of the lot is water, this lot is reclaimed land. Lot 158 is three quarters water and the remainder of the lot is land.

The lots are located in an area adjoining the Karuah River which is accessed via a steep unformed access track on the southern side from Memorial Park. There is an alternate access to the building from the north where the topography is not as steep but this access point is located a further distance away from Memorial Drive.

The existing building is 151.2m² in size, being 18m in length and 8.4m in width. It is essentially split into two components, with the eastern half having a timber floor and the rear of the building having a concrete floor. The concrete floor is located 20cm above the timber floor, prohibiting accessibility between both sections of the building. There is no disabled access into the building due to the design of the entrance point and the location and depth of a trench in front of the main entrance.

The existing building is quite degraded in that the decks on the eastern and northern elevations are considered to be structurally unsafe (as shown on the submitted plans). There is also a disused fuel pump located on the front deck. It is unclear if there is still a tank connected to the pump underneath the building.





Site History

The Men's Shed contacted Council's Development Assessment Team in September 2011 regarding the use of the premises for a Men's Shed. A letter was sent to the proponent advising them that Council would not support the use of this site for a number of reasons including:

- Location risk in regards to flooding. The current floor level of the building is below the minimum acceptable flood planning level.
- The safety of the building with regard to its structural integrity.
- The requirement for developments such as community facilities to provide formalised car parking and/or access to the site over the Crown owned public reserve/heritage item.
- The requirement for community facilities to be provided with adequate toilet/amenities and the lack of sewer connection to the property.
- The lack of a formal easement for the provision of electricity to the building.

Council was of the opinion that these constraints would be difficult to overcome.

Development Application No. 16-2009-59-1 for the use of the premises as a restaurant was withdrawn on the 4 August 2009 due to the constraints of the site.

Environmental Planning and Assessment Act 1979

Classification of development	y/n
Is the development proposal <u>Local</u> Development?	Yes
Is notification necessary?	Yes
Have all adjoining and affected owners been notified (two week period)?	Yes
Is the development proposal <u>Advertised</u> Development?	Yes
Have adjoining and affected properties been notified?	Yes
Has an advertisement been placed in local newspaper?	Yes
Is the development proposal <u>Nominated Integrated</u> Development or captured	No

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Classification of development	y/n
under <u>Threatened Species Act</u> ?	
Is the development proposal of <u>Regional Significance</u> ?	No
Is the development proposal <u>State Significant Development</u> ?	No
Is the development proposal <u>Integrated Development</u> ?	No
Is the development proposal <u>Designated Development</u> ?	No

Other External Referrals		
Agency	Legislation	Y/N
Marine Parks Authority	<i>Marine Parks Act 1997</i>	
<p>The subject site is located within the boundaries of the Great Lakes Marine Park. Clause 19 of the <i>Marine Parks Act 1979</i> requires the concurrence of the Minister of Primary Industries for development within the Marine Park, if the consent authority intends to grant consent to the development.</p> <p>At this stage, as the development is recommended for refusal the concurrence of the Minister of Primary Industry has not been requested. However, if the application is approved by Council it is recommended that concurrence be obtained before any consent is activated.</p>		

INTERNAL REFERRAL ASSESSMENT

Building

Council's Building Assessment Team reviewed the proposal and raised several concerns.

The building is likely to be 50-60 years old and is showing signs of age and exposure to the weather. A report is needed from a structural engineer as to whether the structural capacity of the building is appropriate for the proposed use as a men's shed with consideration given to the potential flooding of the site. Concern is also raised over accessibility within and into the building and the lack of bathroom facilities. However, these issues maybe able to addressed and upgraded over time.

As there is not change of use of class under the BCA with the proposal, the *Environmental Planning and Assessment Regulation 1993* is technically not applicable. However these issues should be considered in principle, hence the need to establish structural suitability by asking for a structural engineers report.

Engineering

Council's Development Engineers reviewed the proposal and raised no concerns other than a notation that no formal parking has been supplied and if this is to be supplied they would like to review the design of any such parking.

Flooding Engineer

Council's Flood Engineer reviewed the proposal and had significant concerns with the

INTERNAL REFERRAL ASSESSMENT

application. The proposed application does not consider the structural stability of the existing structure, the general safety of the property or the increased maintenance requirements of the property due to its coastal exposure.

The subject property extends from the foreshore over the Karuah River. Elevation levels from a previous application for the same building state the floor levels are 1.18m AHD for the timber decking over the water and 1.38m AHD for the concrete slab on the ground surface. This is consistent with photos taken during the 2009 king high tide which show the timber floor levels are just above king high tide levels (approx. 1.05m AHD).

Other observations from photos:

- The majority of power points appear to be approx. 1.4m above the floor level
- Concrete flooring at one end of the building and timber floor boards extending over the river

The estimated flood levels for the property are:

- Current 5% AEP = 1.8m AHD
- Current 1% AEP = 1.9m AHD
- Current PMF = 2.0m AHD
- 2050 5% AEP = 2.2m AHD
- 2050 1% AEP = 2.3m AHD
- 2050 PMF = 2.4m AHD

Review of the above flood levels in conjunction with the floor levels indicate the building is subject to relatively frequent flooding. A typical flood planning level for habitable rooms on the site would be advised at 2.8m AHD. Compared to the actual minimum floor level of 1.18m AHD, there is a significant variation between the FPL and the actual floor levels at this site.

Council does not currently have information to indicate the likely frequency of flooding of the property, however the 1 in 20 year ARI (5% AEP) flood event is 0.6m above the minimum floor level and therefore it can be assumed that over floor flooding would occur much more frequently.

Due to the risk of frequent inundation, any property stored in the building (e.g. machinery, computers, electrical equipment, refrigerators etc.) will be subject to frequent inundation and damaged in minor flood events. The damage to equipment/machinery/electrical goods in the building have the potential to cause harm/injury to persons using the equipment including after the flood events.

The use of this property for regular use by the Men's Shed community group is **not** considered appropriate due to the risk to property and personal injury caused by frequent inundation, as well as the increased consequences of flooding during a major flood event.

INTERNAL REFERRAL ASSESSMENT

- Risk to property created by:
 - Frequent low level flood inundation of equipment stored in the building (by brackish water which will cause more damage than fresh water)
 - Complete submergence of equipment in a major flood event
 - Damage to electrical equipment caused by dangling electrical cords in water
 - Damage to the building and materials caused by the frequent inundation
- Risk to personal injury
 - Injury caused by the exposure of electrical equipment partially or completely submerged in water
 - Malfunction of equipment affected by flooding
 - Danger to people trying to rescue equipment when flood is approaching

Natural Resources

Council's Natural Resources Team reviewed the proposal and had no concerns with the application. However, a number of recommendations to minimise the impacts of the use on marine species was made if the application is approved.

Heritage	y/n
<p>Will the proposal:</p> <ul style="list-style-type: none"> • Affect a heritage item or within the vicinity of a heritage item; • Affect places/sites of known/potential Aboriginal heritage significance; or • Affect known/potential archaeological sites/relics of European heritage significance? 	Yes
<p>The proposed development is located adjacent to Karuah Town War Memorial, which is listed as a local heritage item under the LEP 2013.</p> <p>The applicant has not addressed the impacts on this heritage item or provided any comments on this issue.</p> <p>The main impact on the heritage item through the development is the increased use of the amenity block and carpark associated with the use, which can have both positive and negative impacts, being increased maintenance costs and improvements to passive surveillance of the park. However, the impacts on the heritage significance of the Memorial Park is minimal.</p>	

SECTION 5A CONSIDERATIONS	y/n
Having regard for Section 5A of the Environmental Planning and Assessment Act, do any of the following issues require further consideration?	No

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SECTION 5A CONSIDERATIONS	y/n
Whether the life cycle of a threatened species will be disrupted.	No
Whether the life cycle of an endangered population will be disrupted.	No
Whether the habitat of a threatened species or ecological community will be modified.	No
Whether habitat will become isolated from other areas of interconnecting or proximate habitat.	No
Whether critical habitat will be affected.	No
Whether a threatened species, ecological community or habitat are represented in the region's conservation reserves.	No
Whether the development is recognised as a threatening process.	No
Whether any threatened species or ecological community is at the limit of its known distribution.	No
<p>With the limited information provided it is not believed that there will be a significant impact on threatened species and ecology.</p> <p>However, it is noted that the application has not yet been referred to the Marine Parks Authority for concurrence as the application is recommended for refusal. If the application is approved it is recommended that the concurrence be sought from the Marine Parks Authority, who will assess whether there are any impacts on marine ecology.</p>	

MARINE PARKS ACT 1997	
<p>The site is located within the Great Lakes Marine Park and the concurrence of the Minister of Primary Industry is required in accordance to clause 19 of the Marine Parks Act 1997. Clause 19(1) of the Act is as follows:</p> <p><i>Before determining a development application under Part 4 of the Environmental Planning and Assessment Act 1979 for the carrying out of development within a marine park, a consent authority must:</i></p> <p><i>(a) take into consideration:</i></p> <p><i>(i) the objects of this Act specified in section 3, and</i></p> <p><i>(ii) if there is a zoning plan for the marine park, the objects of the zone within which the area concerned is situated as specified in that zoning plan, and</i></p> <p><i>(iii) the permissible uses of the area concerned under the regulations, and</i></p> <p><i>(iv) any relevant marine park closures, and</i></p> <p><i>(b) if the consent authority intends to grant consent to the carrying out of the development, obtain the concurrence of the relevant Ministers to the granting of the consent.</i></p> <p>The proposed change of use will be consistent with the objects of the Act, as the use will not impact on ecological processes or marine biological diversity. The subject site is zoned General Use Zone under the Marine Park Zoning Plan 2007 and allows for a wide</p>	

MARINE PARKS ACT 1997

range of environmentally sustainable activities relating to commercial and recreational fishing. However, concurrence is required from the Minister of Primary Industries for the proposed development and the Marine Parks Authority would undertake an assessment of the proposal. If the application is approved concurrence will need to be obtained before any development consent is granted.

Section 79C(1) EP&A Act 1979 – potential matters for consideration

(a)(i) the provisions of any environmental planning instrument (EPI)

State Environmental Planning Policies

State Environmental Planning Policy No 55 – Remediation of Land aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health and the environment.

There is a disused fuel pump on the deck of the existing building. It is unclear as to whether there is any associated pump under the building as no information on this issue was submitted with the application.

The site is not listed on Council's Contamination Register. However, as the proposal is for a change of use this issue must be considered and if the application is approved further investigation of this issue is recommended to ensure that the site is not contaminated.

State Environmental Planning Policy No. 71 aims to protect and manage the New South Wales coast and foreshores and requires certain development applications in sensitive coastal locations to be referred to the Director-General for comment, and it identifies master plan requirements for certain developments in the coastal zone.

The site is defined as a sensitive coastal location (clause 3(a)) as it is located within within a Marine Park. However, concurrence from the Director General is not required as clauses 9 and 18 do not apply, as the development is not proposed within 100m below the high mean water mark and a master plan is not required.

The application has been assessed under clauses 2 and 8 of the policy as shown in the table below. In summary, the application is considered to be inconsistent with the aims and matters of consideration of the SEPP.

Clause No. 8	Comments
a) aims of the Policy (cl 2)	The development is not consistent with the aims of the Policy as it does not propose to improve existing public access to the coastal foreshore.
b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public	Public access to the foreshore and the building is not proposed to be altered. There is no disabled access available to the site and there is no proposal to

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access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,	provide such access to the site.
c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,	There is a boat ramp located in the adjacent Council reserve. There are limited opportunities to provide additional access as the foreshore park is currently quite large and appears to be sufficient for the demand.
d) the suitability of development given its type, location and design and its relationship with the surrounding area,	The proposed community facility (men's shed) is not suitable in this location given its risk of flooding and exposure to coastal processes which has already damaged the structural integrity of the building.
e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,	The development will not have a detrimental impact on the foreshore. The building is existing so there will be no changes to overshadowing or view loss.
f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,	The scenic quality of the coast will not be altered with the proposed use.
g) measures to conserve animals (within the meaning of the <i>Threatened Species Conservation Act 1995</i>) and plants (within the meaning of that Act), and their habitats,	The proposal is for a change of use and no measures have been proposed to conserve animals.
h) measures to conserve fish (within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i>) and marine vegetation (within the meaning of that Part), and their habitats	The proposed use will be located in the building and no physical building works are proposed, so it is anticipated that there will be little impact on marine vegetation and fauna. However, if the application is approved conditions will be placed on the use to minimise any impact on marine life.
i) existing wildlife corridors and the impact of development on these corridors,	The development will not have a significant impact on wildlife corridors.
j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development	Coastal processes and hazards will impact on the proposed use of the building and has impacted on the

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on coastal processes and coastal hazards,	building in the past. The site is considered to be flood prone and the king high tides in 2009 were up to the floorboards and such events have caused a degree of structural damage to the building in the past.
k) measures to reduce the potential for conflict between land-based and water-based coastal activities,	There are no potential conflicts identified on the site. Land based and water based activities in this area complement each other.
l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	No issues of concern has been raised in this regard; the development is to occur within an existing building.
m) likely impacts of development on the water quality of coastal waterbodies,	The development will not impact on the water quality of the coast.
n) the conservation and preservation of items of heritage, archaeological or historic significance,	No heritage items are located on the site. However, the site adjoins a heritage item, being Memorial Park. If the development is approved the use of the park for its toilet facilities and car parking will increase as the subject site has no such amenities.
o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,	This subclause is not relevant.
p) only in cases in which a development application in relation to proposed development is determined: i) the cumulative impacts of the proposed development on the environment, and ii) measures to ensure that water and energy usage by the proposed development is efficient.	The development has not proposed measures in relation to energy efficiency. The cumulative impact of the development on the environment is considered to be satisfactory as no physical changes are proposed to the building.
Port Stephens Local Environmental Plan 2013	
What is the land zoned?	W2 Recreational Waterways
What is the proposal for?	Change of use to a community facility (men's shed)
Is this permissible within the zone?	A community facility is permissible in the zone.

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Does it meet the objectives of the zone?		The proposed use meets the objectives of the zone in that it protects the recreational values of the waterways.
Part 2: Permitted or Prohibited Development		
Cl.2.1	Land use zones	W2 Recreational Waterways
Part 5: Miscellaneous Provisions		
Cl.5.5	Development within the coastal zone	The proposal is consistent with protecting the aesthetic qualities of the coastal zone as an existing building located on the foreshore will be used and will contribute to the cultural values of the coast. However the site is subject to coastal processes in that it is flood prone and the current floor level of the building is below the acceptable flood planning level. Disabled access is also not available to the site and no improvements are proposed to improve public access. The proposal is considered to be inconsistent with the overall intentions and goals of the Coastal Policy.
Cl.5.9	Preservation of trees or vegetation	There are no trees or vegetation proposed to be removed as part of the application.
Cl.5.10	Heritage conservation	<p>The proposed development is located adjacent to Karuah Town War Memorial which is listed as a local heritage item (number 26) under the LEP 2013.</p> <p>The applicant has not addressed the impacts on this heritage item or provided any comments on this issue.</p> <p>The main impact on the heritage item will be that the use of the Memorial Park will be intensified due to the need for patrons of the men's shed to use the amenities and car parking located in the Park. This will have both positive and negative impacts in that the Park will be required to be maintained more frequently and that it will also increase passive surveillance for the Memorial and in the Park itself.</p>
Part 7: Additional Local Provisions		
Cl.7.1	Acid sulphate soils	The site is subject to acid sulphate soils. However no building works are proposed so there will be no disturbance to acid sulphate soils.
Cl.7.3	Flood planning	Significant concerns are raised over the flooding of the site. Refer to Flood Engineers comments above.

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Cl.7.6	Essential services	There are no sewer facilities or electricity supplied to the building. It is also unclear if water is available to the site. Suitable vehicular access has also not been provided to the site. On this basis, the development cannot be supported as adequate services are not available to the site and no arrangements have been made to connect these services (or such information supplied as part of the application).
Cl.7.9	Wetlands	The site is designated as wetlands. It is not anticipated that the use of the building will have an impact on the wetlands. However, as the building may require structural work to render it safe, there maybe some impact as a result of this work if the application is approved.

(a)(iii) any development control plan

Development Control Plan 2007

Part A1 Section A.1.9 – Development Notification Requirements

Has the application been appropriately notified?	Yes
Have all adjoining and affected properties been notified?	Yes

Section B2 – Environmental and Construction Management

B2.4	Acid Sulphate Soils	The subject site is identified as containing Class 1 and 5 Acid Sulphate Soils (ASS). Accordingly, any works below the natural ground surface requires consideration. There is no excavation works proposed as part of the submitted development application.
B2.6	Contaminated Land	The site is not listed on Council's Contamination Register. However, there is a disused fuel pump on the site and it is unclear if there is still a tank underneath the building.
B2.7	Vegetation Management	There are no trees or vegetation proposed to be removed from the site.
B2.12	Waste Water	There is no sewer connected to the site and there is no proposal to build amenities on the site.

Section B3 – Parking, Traffic and Transport

B3.4	Access Requirements	There is no formal vehicle access to the site at present. There is a steep access track that runs past the building connecting it to the car park in Memorial Park, however, this is considered to be somewhat unsafe
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		and not appropriate for the use as a community facility.
B3.8	Schedule of Car parking Requirements	There is no specified number of car parking spaces for a community facility in the DCP. The applicant has stated that patrons using the facility will park in and around Memorial Park. However, there is no safe footpath or access arrangement connecting the Park to the building. In addition, there are no parking areas for the use of the facility in terms of loading and unloading of supplies and to allow for disabled access into the building.
Section C12 – Karuah Locality Provisions		
C12.4	Objectives	The proposal is considered to be inconsistent with section C12 of the DCP, specifically C12.05 in that the development has not avoided the natural hazards such as flood prone and low lying land.
(a)(iia) - any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F		
There is no planning agreement that has been entered into under section 93F, and no draft planning agreement that a developer has offered to enter into under section 93F of the Act that relates to this development.		
(a)(iv) – any matters prescribed by the regulations		
<i>Primary Matters</i>	<i>Specific Considerations</i>	<i>Y/N</i>
Clause 92 EP&A Regulation: Government Coastal Policy	Does the policy apply to the coastal zone of the council area as specified in cl.92 of the EP&A Regulation?	Yes – refer to comments under the LEP.
	Is the proposal consistent with the 'strategic actions' and the 'design and location principles' for the development control in the Policy?	Yes
(b) – the likely impacts of the development		
The development is considered to have an adverse social and economic impact in the locality. The flooding constraints of the site and the lack of accessible parking, disabled access, provision of basic services such as electricity and sewer and toilets do not enhance and promote the social needs of the community. Supporting such a development would have an economic cost to the community as it will place undue pressure on emergency services such as the SES, ambulance, fire brigade and police in terms of responding to any natural hazards and any medical emergencies that occur on the site.		
(c) – the suitability of the site for the development		

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The proposed site is not suitable for the development. The site is flood prone, does not have suitable disabled access for pedestrians to and within the building and no parking has been provided in close proximity to the entrance of the building. The building is also dilapidated and may require structural work to enable it to be suitable for occupation. In addition, the building is not serviced by sewer and electricity and no amenities have been proposed.

(d) –any submissions made in accordance with this Act or the regulations

No submissions were received from the public or from public authorities.

(e) –the public interest

The proposed development is not in the public interest. it is not appropriate to provide community facilities without toilets, adequate access, safe and easy parking or in areas at high risk of flooding. Using the amenities in Memorial Park is not considered to be a suitable solution given the topography of the site, the lack of a suitable and accessible pathway, and the general demographic of the patrons of the men's shed.

SECTION 94 - CONTRIBUTIONS	y/n
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Are contributions required for the provision, extension or augmentation of public amenities and public services?	No
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Recommendation:

The application is recommended for refusal.

**ATTACHMENT 3
REASONS FOR REFUSAL**

1. The proposed development is not consistent with the flood planning objectives of Port Stephens Local Environmental Plan 2013 in that the development is not compatible with the flood hazard of the land and the development has not minimised the flood risk to life and property associated with the development (Section 79c(a)(i) Environmental Planning and Assessment Act 1979).
2. The use of this property is not considered appropriate due to the risk to property and personal injury caused by frequent inundation, as well as the increased consequences of flooding during a major flood event (Section 79c(a)(i) Environmental Planning and Assessment Act 1979).
3. The proposed development has not demonstrated that essential services (water, electricity, sewer and suitable vehicle access) are available or that adequate arrangements have been made to make them available when required (Section 79c(1)(a)(i) Environmental Planning and Assessment Act 1979).
4. The proposed development is not consistent with the objectives of Section C12 Karuah of the Port Stephens Development Control Plan 2007 in that the proposed development has not avoided natural hazards such as flood prone and low lying land (Section 79c(1)(a)(iii) Environmental Planning and Assessment Act 1979).
5. The proposed development has an adverse social and economic impact in the locality (Section 79c(1)(c) Environmental Planning and Assessment Act 1979).
6. The site is unsuitable for the proposed development and is not consistent with the provisions of Section 79c(1)(c) Environmental Planning and Assessment Act 1979.
7. The proposed development is not in the public interest. In particular the proposal fails to provide suitable community facilities with essential services, amenities, accessibility and places people and property at risk to natural hazards (Section 79C(1)(e) Environmental Planning and Assessment Act 1979).

ITEM NO. 2**FILE NO: 16-2013-626-1****DEVELOPMENT APPLICATION FOR A REDEVELOPMENT OF AN EXISTING TOURIST FACILITY (MARINA RESORT) AT NO. 29-45 MAGNUS STREET, NELSON BAY**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2013-626-1 for a redevelopment of an existing tourist facility (Marina Resort) at No. 29-45 Magnus Street, Nelson Bay subject to the conditions contained in **(ATTACHMENT 3)**.
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ORDINARY COUNCIL MEETING – 24 JUNE 2014**COMMITTEE OF THE WHOLE RECOMMENDATION**

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

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

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

Those against the Motion: Nil.

MOTION

152	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved that Council approve Development Application 16-2013-626-1 for a redevelopment of an existing tourist facility (Marina Resort) at No. 29-45 Magnus Street, Nelson Bay subject to the conditions contained in (ATTACHMENT 3) .

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

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

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present a development application to Council for determination at the request of Cr Nell for the reason of public interest.

The Development Application seeks approval for demolition of the existing Marina Resort (single 5 storey building containing 44 hotel units) and construction of a Tourist Facility, consisting of 2 separate 7 and 8 storey buildings containing 70 (4 star) units with multi-keyed option, basement parking for 140 vehicles and a podium level containing a conference room (capacity 400 delegates), foyer/reception area, swimming pool, health retreat, restaurant, kitchen, amenities and managers residence.

A previous Development Application 16-2010-680-1 lodged over the site sought approval for 3 separate 10-11 storey buildings containing 155 units and conference facility. The proposal triggered the JRPP provisions, but was withdrawn prior to determination following Council raising concern with the height and potential impacts. The current application does not exceed the \$20 million JRPP trigger, and as such Council is the consent authority.

The key issues for this application is the proposed height (28m for the 8 storey building when measured from the basement level), impact on the visual amenity of Nelson Bay, view loss, overshadowing and privacy impacts on adjoining properties (Council received 8 submissions in this regard) and potential precedent.

With building height and urban design being a key issue, the proposal was reviewed by the Newcastle and Lake Macquarie Urban Design Review Panel. During assessment of the DA, the proposals design and response to the Panel's comments (which were generally supportive subject to consideration of shadowing and privacy impacts on adjoining properties) was reviewed internally by a qualified and experienced architect and building designer and Development Assessment Planner, respectively. Following this process, it is considered that the proposed design is suitable, however the applicant has included recommended changes, most notable is the inclusion of vertical architectural features and varying balustrade treatment to break up the size and horizontal lines of the proposal.

With regard to the height, the Nelson Bay Strategy recommends that Council can consider an additional height allowance of 2 storeys (to the general 5 storey height limit) for development that provides strategic and economic benefit, and gives a specific example of high quality tourist accommodation with conference rooms for 400 delegates. While the site is not strictly in the town centre, the site is on the edge of the CBD and it is considered that application of the additional height provisions is

suitable, as the proposal provides a suitable design and will help achieve other recommendations in the Strategy (such as increasing activity along Magnus St).

Following assessment of the proposed application, it is considered that the likely visual amenity, view loss, shadowing and privacy impacts will not be unreasonable, and is consistent with the relevant requirements of Council's Development Control Plan (DCP) (although a minor variation for setbacks to adjoining development is required to the Yelamandy Apartments).

The development will be clearly visible from a number of important sites around Nelson Bay, including the War Memorial in Apex Park and Church St/Donald St and Church St/Government Rd intersections. The development will be most prominent, however, when viewed from the waters of Port Stephens and some sections of the foreshore, particularly the breakwalls and area around the kids playground and eastern side of the Marina car park (where there is minimal landscaping along Victoria Pde). From these locations, the top 2-3 storeys will be visible and will protrude above the existing tree line.

The main visual feature of Nelson Bay is the natural landform, and while the development will stand above the tree line, the dominant visual feature is still likely to be the larger hills and linking tree line. However, it is important to maintain the tree line, and while the impacts from this individual development do not warrant refusal, the cumulative impacts from further development at this height would be likely to significantly reduce the visual amenity of Nelson Bay.

With regard to impact on adjoining properties, the development is likely to obstruct the majority of views from Portside Apartments (4 storey building at 1 Donald St), although any views over Yelamandy Apartments will be unaffected. However, any 5 storey development on the site would be likely to have the same level of impact, and the proposed 2 building design will reduce the visual impact on the adjoining property. The proposal will maintain at least 3 hours of sunlight between 9am and 3pm, midwinter, as per the requirements of Council's Development Control Plan. The development is not likely to have significant privacy impacts on either the Portside or Yelamandy Apartments, as the main decks face Magnus St, and only small secondary decks fitted with privacy screens will face adjoining properties.

It is considered that the proposed development is consistent with the requirements of the Port Stephens LEP 2000, DCP 2007 and the intent of the Nelson Bay Strategy. The likely impacts are significant, but do not warrant refusal of the application, particularly as the proposal is not likely to create any significant precedent. As such, the proposal is recommended for approval subject to conditions.

When the previous DA 16-2010-680-1 was lodged, there was extensive public objection including approximately 60 submissions. However, the height and number of buildings/units has been significantly reduced and Council has received only eight submissions in response to the revised proposal.

The proposed design is considered pleasing from an urban design perspective. A number of modifications to the proposal occurred improve the aesthetics of the

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

buildings, including additional of vertical design elements and varying balustrade treatment, to reduce the visual bulk of the building.

FINANCIAL/RESOURCE IMPLICATIONS

Determination of this Development Application as per the recommendation is unlikely to have any direct or significant financial or resource implications for Council.

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

LEGAL AND POLICY IMPLICATIONS

The development application is consistent with Council's Local Environmental Plans and local policy including Development Control Plan 2007 and Section 94 Plan.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council's determination is subject to a third party appeal.	Medium	Determine the Development Application as per the recommendation.	Yes
There is a risk that the height and urban design may detract from the amenity of the area	Medium	Determine the Development Application as per the recommendation which includes the design changes as recommended by two separate architects.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

This Development Application does not present any likely sustainability implications for Council. The potential social, economic and environmental impacts on both adjoining properties and the local community are discussed in **(ATTACHMENT 2)** – Assessment and it is considered that the likely impacts from the development are not unreasonable, and do not present any significant implications for Council.

The proposal will have a range of economic benefits for the region, in particular the conference facilities for 400 delegates. In addition to the \$18 million construction direct economic output, further economic output of \$12.9 million will occur in terms of supporting goods and services being supplied during the construction (from other

sectors in the economy). Then a further \$3.5 million worth of economic output will occur as those working on the project get paid and spend money in the local economy. Meaning total economic output for this development (direct, indirect and consumption) is \$34.4 million. From a direct increase in output of \$18 million the corresponding creation of direct jobs is estimated at 30 jobs. Additionally a further 52 jobs will be created as a result of employment creation occurring as a result of the indirect and consumption effects. Meaning total employment for this development (direct, indirect and consumption) is 82 jobs

CONSULTATION

- 1) The proposal has been publicly advertised and notified in accordance with the Environmental Planning & Assessment Act, Regulations and Council Policy. Council received eight (8) submissions objecting to the proposed development. The concerns raised in the submissions, and relevant assessment comments are discussed in **(ATTACHMENT 2)**.

OPTIONS

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

ATTACHMENTS

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

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Site photographs and photo montages.

ATTACHMENT 1
LOCALITY PLAN



**ATTACHMENT 2
ASSESSMENT****1.0 APPLICATION DETAILS**

Application no:	16-2013-626-1
Property:	29-45 Magnus St, Nelson Bay
Lot & DP:	Lots 36, 37, 38, 39, 40, 41, 42, 43 & 44 DP 15998
Description of development:	Redevelopment of existing Marina Resort – Tourist Hotel Facility
Applicant:	Chan Industrial Pty Ltd
Date lodged:	9/10/2013
Estimated Cost of Development:	\$19,690,000
Present use:	Marina Resort Tourist Facility – 5 storey with 44 hotel suites
Zoning:	LEP 2000 – 2(c) Residential DLEP 2013 – R3 Medium Density Residential
Issues:	Height, visual appearance
Submissions:	Eight (8) objections
Recommendation:	Approve subject to conditions
Integrated Development:	No (See Report – Special Protection Use under Rural Fires Act)
Designated Development:	No
Regional Development (JRPP):	No, estimated cost does not exceed \$20 million threshold for general development, as per Schedule 4A in EPA Act.
State Significant Development:	No, although proposal exceeds \$10 million, site is not located within an environmentally sensitive area or sensitive coastal location as per Schedule 1 of SEPP (State & Regional Development) 2011.

2.0 THE PROPOSAL

This application seeks consent for:

- Demolition of the existing Marina Resort (5 storey containing 44 hotel suits).
- Construction of a Tourist Facility containing:

- Podium including foyer/reception, health retreat, swimming pool, restaurant, kitchen, conference room, amenities and managers residence.
- West building (7 stories above basement) containing 20 x 2 brm units, 10 x 3 brm units, and 2 x 4 brm units.
- Central building (8 stories above basement) containing 24 x 2 brm units, 12 x 3 brm units and 2 x 4 brm units.
- Parking for 140 vehicles in basement. Retaining 37 existing spaces in eastern part of site.

3.0 THE SITE AND SURROUNDING AREA

3.1 THE SITE

Area	6693sqm
Dimensions	137.8m x 48.57m
Slope	Site located on minor high point, with moderate fall at eastern and western end of site
Existing development	Marina Resort tourist facility, containing 44 units
DP and 88b instrument	No easements or restrictions relevant to proposal shown on Council's records
Vegetation	No significant areas of natural vegetation on site
Constraints	Bushfire Acid Sulphate Soils (Class 5, but 75m from Class 4, 3, 1)
Stormwater and drainage	Development will drain to Magnus St
Access	Access to the proposed basement car parking and existing car park are located off Magnus St
Services	Available to site

4.0 HISTORY

4.1 SITE AND DA HISTORY

Original Marina Resort DA (7-1984-2441-3)

Approved the original Marina Resort, which was to be a 3 stage development. Only Stage 1 has been completed, which contains 44 hotel suites, restaurant, 250sqm conference room, has a building footprint of 690sqm and a height of 15m.

The approved development was for a total of 44 hotel units (Stage 1), 26 serviced apartments (Stage 2) and 14 permanent units (Stage 3), and would have had a building footprint of 2200sqm.

Withdrawn Marina Resort DA (16-2010-680-1)

A proposal was lodged for a construction of 3 buildings (10-11 storeys in height, including a 2 storey podium) containing 155 units (incl. 22 hotel suites), 400sqm conference facility, hospitality and cooking school and associated amenities.

The DA was withdrawn prior to being reported to JRPP.

Pre-lodgement meetings

Prior to this application being lodged, the applicant had pre lodgement meetings with both the Urban Design Review Panel (who also reviewed the withdrawn DA) and Council.

Urban Design Review Panel

An amended proposal was tabled at the meeting with the Urban Design Review Panel held on 17 August 2011. The amended proposal was still for 3 separate buildings, although the height had been scaled to 8, 7 and 6 storeys for the central, west and east buildings respectively.

The Panel was reasonably satisfied with the height reduction, but still raised the issue of potential visual impacts and provided recommendations that further consideration be given to articulation (particularly regarding balustrade treatments and coloured elements) and privacy/overshadowing impacts on adjoining properties.

Council

A number of meetings have been held between the applicant and Council staff prior to lodgement of this DA. A formal Development Advisory Panel meeting was held on 12 July 2012.

The plans tabled at the DAP meeting on July 2012 were the same as those submitted to the Urban Design Review Panel in August 2011.

The advice provided to the applicant raised significant concern with the height and the precedent for the Nelson Bay area. The need for a detailed assessment of the visual impact on the Nelson Bay area was identified. The advice also identified the need for privacy, overshadowing, parking and stormwater impacts to be considered and justified in any DA submission to Council.

5.0 CONSULTATION – COMMUNITY

The development has been publicly exhibited for a period of 14 days in accordance with the requirements of the Environmental Planning & Assessment Act and Regulations, with notifications being sent to adjoining neighbours and an advertisement in the Port Stephens Examiner. Notifications were also sent to properties from where the development may be visible, including properties between Church and Donald St, and properties in Nelson Bay West (on Tareebin & Ullora Rd, Navala & Wollomi Ave, Galoola Dr, Pillinda Cct), as per the original DA (16-2010-680-1).

Council received eight (8) submissions objecting to the proposed development. The concerns relate to direct impacts on adjoining properties and impact on Nelson Bay in general. Following assessment of the submissions, it is considered that the concerns raised do not warrant refusal of the application. These concerns have been listed below, along with the relevant assessment comments:

- Views

The majority of submissions raised loss of views as a key concern.

Comment:

It is noted that while some minor views will likely be retained between Yelamandy Apartments and the proposed buildings, the majority of views from Portside Apartments (1 Donald St) will be obstructed.

Full consideration of this issue is contained later in this report. However, any development on the site complying with the 15m/5 storey height limit would have similar or greater impacts on views than the proposal, and as such the extent of the likely impacts are not considered unreasonable in this instance.

- Privacy

Concern was raised that the height of the proposal increased the likelihood of "overlooking" and unreasonable privacy impacts.

Comment:

The most likely source for privacy impacts from the development would be from the side and rear decks. These decks have an area of 2.5sqm and 5.2sqm and face Yelamandy and Portside Apartments, respectively.

The main decks face Magnus St, and are accessed directly from the living areas. The side and rear decks are accessed off individual bedrooms, are shallow and will be fitted with sliding privacy screens. As such, they are considered unlikely to generate significant privacy impacts.

- Overshadowing

Concern was raised that the height of the proposal would result in significant overshadowing of adjoining properties.

Comment:

The applicant has submitted shadow diagrams, which indicate that the development is likely to significantly reduce solar access to some units in Portside Apartments.

Detailed assessment of shadowing is included later in this report. However, the shadows likely to be generated by the proposal will not exceed 3 hours between 9am and 3pm, midwinter, and therefore the proposal complies with the requirements of Council's Development Control Plan.

- Noise

A submission raised concern that the proposal would create high levels of noise.

Comment:

The proposal is generally consistent with the setbacks required by Council's Development Control Plan (a minor variation is required to the western boundary), however the open area pool, terrace and kids area on the first floor (RL 27) is a potential noise source.

The pool is located toward the Magnus St frontage, and the West building will predominantly screen it from the Portside Apartments. The landscaping plans show that the pool/outdoor area will have screening vegetation around the perimeter. A recommended condition will also require this to include a solid screen for additional noise attenuation, which is likely to be effective due to the relative height of the open areas to the Portside Apartments.

- Property Values

The majority of submissions raised concern that loss of views, privacy and overshadowing would have a serious impact on property values.

Comment:

This assessment is based on the proposals permissibility, compliance with the relevant planning instruments, regulations and Council policy, and reasonableness of impacts on adjoining properties. Case law has established that consideration of direct impact on adjoining property values is outside the scope of what Council can lawfully take into account under Section 79C.

- Visual Amenity and Character

The majority of submissions raised concern that the height, bulk and scale of the proposal was out of character with other development in the area, and was likely to adversely impact the visual amenity of Nelson Bay in general.

Comment:

A detailed assessment of the likely impact on the visual amenity and character of the surrounding area is included later in this report. The proposal will be a prominent feature when viewed from the breakwall, parts of the foreshore and waters of Port Stephens off Nelson Bay, particularly due to the topography of the area (site is located on minor high point).

Following assessment of the proposal, it is considered that the additional height recommended by the Nelson Bay Strategy does not result in unreasonable impacts on the visual amenity and character in this instance. Further, the Nelson Bay Strategy and new LEP 2013 provide planning controls to ensure that this proposal does not create any undesirable precedents or cumulative impacts in the future.

- Traffic

A few submissions raised concern that the additional traffic from the development would adversely impact traffic flow and congestion in the Nelson Bay CBD.

Comment:

The proposal has been reviewed by Council's Development & Traffic Engineers, and it is considered that the proposed traffic entry/exit arrangements comply with Council's requirements. Further, the additional 26 units created as a result of this development are not likely to have a significant impact of the number of vehicles in Nelson Bay during peak periods.

- Economic Impact

A submission raised concern that the additional restaurant, conference and other facilities provided by the development would have an adverse economic impact on existing businesses in Port Stephens.

Comment:

The proposal is considered by Council's Economic Development section to be a positive outcome for the local economy, and it is noted that competition between individual businesses is separate from the "economic impact" of a development and is not a matter for consideration under Section 79C, which is highlighted by case law (particularly *Fabcot Pty Ltd v Hawkesbury City Council* (1997) 93 LGERA 378) and the draft State Environmental Planning Policy (Competition) 2010.

6.0 INTERNAL REFERRALS

6.1 Engineering

No objections following submission of additional information, subject to inclusion of recommended conditions, including relocation of existing bus bay.

6.2 Building

No comments or objections, subject to inclusion of standard conditions.

6.3 Traffic

No objections subject to inclusion of recommended conditions from Development Engineers.

6.4 Internal Design Referral

The application was reviewed by a qualified and experienced architect and building designer, who are employed at Council as a Senior Building Surveyor and Development Assessment Planner, respectively. The purpose of this referral was to review the proposals response to the comments provided by the Newcastle and Lake Macquarie Design Review Panel prior to lodgement of the DA. While the proposed design is considered suitable, comments were provided recommending a number of modifications to the proposal, including additional of vertical design elements and varying balustrade

treatment, to reduce the visual bulk of the building. These have been included in the design by the applicant.

7.0 EXTERNAL REFERRALS

Nil. There are no external referrals required for this application.

Bushfire

The site is mapped as being bushfire prone. The proposal is for tourist accommodation and is a Special Protection Use under the NSW Rural Fires Act. Following assessment of the proposal, it is considered that the likely bushfire risk is low, which is supported by the General Terms of Approval the RFS issued for DA 16-2010-680-1, which was a larger proposal. In this instance, the Application form does not identify the proposal as Integrated Development, nor have the relevant integrated fees being paid, and as such it is appropriate to require any approval of the DA to be subject to a recommended condition requiring the applicant obtain General Terms of Approval from the RFS prior to the issue of Construction Certificate.

Height

Height variations used to require the Director General's concurrence under Hunter REP 1989 clause 58 (1) for the erection of a building over 14 metres. However, the REP has been repealed and this now does not apply.

Traffic

The combined total (177) of the proposed (140) and existing car park (37) does not exceed the 200 car trigger for referral to RMS under the Infrastructure SEPP.

8.0 STATUTORY PROVISIONS

8.1 State Environmental Planning Policies (SEPP)

SEPP 65 – Residential Flat Development

This policy does not apply, as the proposal is for a tourist facility, which is not considered to be a residential flat building.

However, the proposal has been assessed against the design considerations in the SEPP, which include context, scale, built form, density, resource, energy and water efficiency, landscape, amenity, safety and security, social dimensions and housing affordability and aesthetics.

It is considered that the proposed design and accompanying statement (regarding compliance with SEPP 65 design considerations) are appropriate.

SEPP 71 – Coastal Protection

The proposal is considered to be consistent with the matters for consideration in Clause 8, as detailed below:

- *The aims of SEPP 71*

The proposal is consistent with the aims of SEPP 71, as detailed in the matters for consideration below. Additionally, the proposal is not likely to impact public access to the foreshore, any coastal vegetation, rock platforms or marine environments, and is consistent with the principle of ecologically sustainable development and likely to have a positive impact on economic and recreational opportunities in Port Stephens.

- *The suitability of development given its type, location and design and its relationship with the surrounding area*

The nature of the proposed development, which provides tourist accommodation and facilities, is permissible on the site and considered suitable for the location on the edge of the Nelson Bay CBD.

The site is located on a minor high point along Magnus St, which will increase the visual impact of the development. However, it is considered that the design, which includes 2 separate buildings with vertical architectural elements aimed at breaking up their visual bulk, suitably addresses this constraint.

- *Any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore*

The development is not likely to overshadow the foreshore, or significantly impact views from any public place to the foreshore.

- *The scenic qualities of the New South Wales coast, and means to protect and improve these qualities*

The proposal will have some impact the scenic amenity of the coast, as it will be clearly visible from some areas of the Nelson Bay foreshore and waters of Port Stephens.

When viewed from the water, the development will protrude above the existing landform of Nelson Bay, which is characterised by the tree line and Kurrara Hill to the east of the site and an unnamed hill to the west of the site.

In order to protect the visual amenity of the area, it is desirable to maintain the existing landform. While the development will break the tree line, the visible part of the development from the water will be limited to the top 2-3 stories and is unlikely to have an unreasonable impact on the visual amenity when viewed from the foreshore or water, as it will maintain the existing hills as the dominant landscape feature.

It is considered that the extent of any visual impact will not significantly impact the visual amenity or use of Port Stephens foreshore and waterways, and does not warrant refusal of the application in this instance.

- *Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals*

The proposal will be located on the site of the existing Marina Resort building, and based on the available information, does not appear likely to impact any known Aboriginal place or area of significance.

- *Likely impacts of development on the water quality of coastal waterbodies*

The proposal is not likely to impact the water quality of Port Stephens, subject to compliance with recommended conditions of consent.

- *Only in cases in which a development application in relation to proposed development is determined:*

- (i) the cumulative impacts of the proposed development on the environment*

The proposal will be the only development that clearly protrudes above the existing tree line when viewed from the water and foreshore.

Multiple developments protruding above the tree line would have an increasingly negative impact on the visual amenity of the Nelson Bay area. However, this development is unlikely to set any significant precedent, as the Nelson Bay Strategy has clearly defined parameters for application of additional height and FSR allowances, and Port Stephens Local Environmental Plan 2013 includes building height maps, which apply to all development and increases the strategic control on building heights in the area.

- (ii) measures to ensure that water and energy usage by the proposed development is efficient*

The development will have to comply with legislative water and energy efficiency requirements.

8.2 Port Stephens Local Environmental Plan 2000 (LEP 2000)

The subject land is zoned 2(c) Residential.

Clause 10 – Zone Objectives and Development Control Table

The proposed development providing tourist accommodation and associated facilities (conference room, health retreat, restaurant, swimming pool) is considered to best fit the definition of a tourist facility in LEP 2000.

Tourist facilities are not listed as a prohibited use in the Development Control Table, and are considered to be permissible in the 2(c) zone subject to consent. Following assessment of the DA, it is the proposal is considered to be consistent with the relevant zone objectives, which are listed below:

- *To promote the principles of urban consolidation by providing residential areas which meet the diverse needs of the community with a wide choice in housing and associated public and commercial uses*

The proposal provides tourist accommodation and facilities that are compatible with a higher density residential area and nearby CBD.

- *To facilitate an ecologically sustainable approach to residential development by minimising fossil fuel use, protecting environmental assets*

and providing for higher densities and a more efficient use of existing infrastructure and services

The proposed development is considered to be consistent with the principles of ecologically sustainable development, and will provide improved tourist accommodation and facilities on the existing site in close proximity to the services available in the Nelson Bay CDB.

- *To ensure that new development in the zone has regard to the character of the area in which it is proposed and does not have an unacceptable effect on adjoining land by way of shading, invasion of privacy, noise and the like*

Following assessment of the proposal, it is considered that the development has regard to the existing character of the area and is not likely to have an unreasonable impact on the privacy, solar access or acoustic amenity of adjoining properties.

- *To provide for non-residential uses that are compatible with the area and service local residents*

The proposed tourist facility and associated facilities are considered to be compatible with the area, which is on the fringe of the Nelson Bay CBD, and will provide both local residents with the opportunity to use these facilities and benefit from any economic and recreational opportunities arising from the proposal .

Clause 19 – Dwelling Houses and Dual Occupancy Housing and Urban Housing

This clause does not apply to the proposal, which is for a tourist facility, but does impose restrictions on residential development in the 2(c) zone for maximum heights of 15m, site density of 150sqm per dwelling and Floor Space Ratio of 1.8:1.

As detailed later in this report, the development exceeds 15m in height, but has a FSR of 1.77, which would comply with the LEP requirements for residential development.

Clause 44 - Appearance of land and buildings

As detailed later in this report, it is considered that the visual impact when viewed from the water and public foreshore is not unreasonable, and does not warrant refusal of the DA.

Clause 47 - Services

It is considered that necessary services are available to the site and can be connected to the proposed development.

Clause 51A - Development on land identified on Acid Sulfate Soils Planning Map

The site is within Class 5 land on the planning map, but is within 200m of Class 1, 3 and 4 land located along the Port Stephens waterfront . Although the

proposal requires significant excavation for the basement car park, the site is significantly elevated from the Class 1, 3 and 4, complies with the requirements of DCP 2007 and is not likely to disturb acid sulphate soils or impact the water table.

8.3 Port Stephens Local Environmental Plan 2013 (LEP 2013)

The subject land is zoned R3 Medium Density Residential under new LEP 2013, which came into force on 22 February 2014.

The proposal would best fit the definition of tourist and visitor accommodation under the definitions in LEP 2013. Hotel and motel accommodation (which is considered to be a type of tourist and visitor accommodation) is listed as a permitted use in the Development Control Table subject to consent.

LEP 2013 imposes a maximum height of 15m for all development on the subject site. LEP 2013 does not have any additional requirements to LEP 2000, and includes clauses for consideration of Acid Sulphate Soils and Services.

The proposal would not comply with the 15m height limit, however a variation to the height limit could potentially be sought under Clause 4.6. Given the proposal has been lodged under LEP 2000, no variations are required.

9.0 POLICY PROVISIONS

9.1 Nelson Bay Town Centre and Foreshore Strategy

The site is located in a medium density residential area 140m east of the edge of the Nelson Bay Town Centre, which ends at the Donald St carpark.

The Strategy includes recommendations for development principles and controls in the Nelson Bay Town Centre, and highlights important features contributing the visual amenity and quality of the area.

As part of the Strategy, a Development Opportunity Analysis recommends on page 65 that specifies that a variation of 2 storeys (7m) and FSR of 0.5:1 be considered for development that provides strategic public benefit and outstanding design excellence.

In this regard, it specifies that an example of suitable development would be *"4 star accommodation associated with a comprehensive conference centre that includes a facility seating at least 300 people and breakout rooms"*, which is what this development would provide.

The Strategy highlights that the visual amenity of the area is characterised by the wooded ridge and headlands that surround the Bay area, views between Kurrara Hill and the marina/Apex park and the need to ensure that development does not eclipse these features. Further, it identifies Magnus St as an entry into the Town Centre and encourages development that *"delivers greater pedestrian activity and life at the eastern end of the Magnus St village precinct."*

Following assessment of the proposal, it is considered that application of the additional allowances for height and FSR are appropriate in this instance, despite the site not being strictly in the town centre, as the development will

provide the economic benefit and improved activity sought by the recommendations in the Strategy, while providing a good design that will maintain a reasonable level of impact on the visual amenity of the area.

9.2 Port Stephens Development Control Plan 2007

The application has been assessed against the relevant provisions of Port Stephens Development Control Plan, 2007, as follows:

Section B2 - Environmental and Construction Management

Water quality management

The DA has been reviewed by Councils' Development Engineers, and it is considered that the proposal and associated stormwater measures comply with Council requirements and are unlikely to have any adverse impacts on water quality.

Acid Sulphate Soils

The site is mapped as Class 5 on the Acid Sulphate Soils planning map. The site is within 500m of Class 3 and 4 PASS, located along the Nelson Bay foreshore. A geotechnical investigation of the site undertaken by Coffey Partners on behalf of the applicant indicates that the development is unlikely to disturb any acid sulphate soils.

Section B3 – Parking & Traffic

Under the provisions of DCP 2007, the proposed tourist facility requires 1 space per unit and 1 space per employee, while restaurants require 4.5 spaces per 100sqm and Places of Assembly (Conference rooms) require 1 space per 10sqm.

The development will provide 177 spaces for the 70 proposed units. It is noted that this is made up of 44 x 2 bdm, 22 x 3 bdm and 4 x 4 bdm units. The development will also include a restaurant, conference rooms and managers residence. It is noted that there will be a maximum of 24 employees during any one shift.

Due to the units being multi keyed, the configuration of the units could be changed to a maximum capacity of 106 units, comprising of 36 x 1 bdm hotel suites, 28 x 1 bdm apartments, 24 x 2 bdm apartments, 14 x 3 bdm apartments, 4 x 4 bdm apartments.

The following table outlines the developments compliance with the parking requirements of DCP 2007:

Component	DCP Parking Rate	Standard Unit Layout
Tourist Accommodation	1 space per unit	70 spaces
Restaurant	15 spaces per 100sqm	48 spaces
Conference Rooms (Place	1 space per 10sqm	39 spaces

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of Assembly)		
Employees	1 space per 2 employees	12 spaces
Managers Residence	1 space	1 space
Total		170 spaces

Compliance

Under the provisions of the DCP, the Multi Keyed Option requires a maximum of 106 spaces for the tourist accommodation, and a total requirement of **206 spaces** for the entire development.

The development will provide 177 spaces (mix of basement and existing above ground parking), which will comply with the DCP requirement for the standard unit layout, but not the maximum multi keyed option (shortfall of 29 spaces).

Discussion

The applicant has argued that hotel guests will make up a large part of the demand for the restaurant and conference facilities, which significantly reduces the likely parking demand for the development. Assuming that hotel guests contribute 50% of the demand for the restaurant and conference facilities (which is probably conservative), then parking demand for the development is likely to be approximately 163 for the maximum multi keyed option, which is less than the 177 parking spaces provided by the development. Further, the applicant argues that the development is likely to operate at less than the maximum capacity for the majority of the time (based on 2011 ABS information).

It is considered that the applicants request to vary the parking requirement of DCP 2007 is reasonable in this instance, and not likely to generate significant or adverse impacts.

Section B8 – Residential Flat Buildings

The proposal has been assessed against the relevant provisions of Section B8, as detailed below, which applies to developments for tourist facilities.

Clause	Required	Proposed
B8.C8	Front setback of 6m for 80% of front façade	The west building is closest to the front boundary. The ground floor has a minimum setback of 9m. First floor is setback 8.9m setback to the wall, but only 4.5m to the deck.
B8.C10	Top level must be setback	Wall of top floor setback 3m

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	3.5m from main frontage	from wall of lower floors.
B8.C14	Main entrance must be have direct connection to street and be clearly identifiable	Main entry faces street and located in an identifiable area.
B8.C16	Must provide front fence	No front fence provided.
B8.C18	Separate driveway and pedestrian access	Separate pedestrian ramps provided next to each driveway access.
B8.C19	Driveway crossing no more than 6.5m wide in public road reserve	Both driveways are more than 6.5m wide.
B8.C20	Max width of 6.5m of frontage for garage doors or car parking entry	Car park entry 8.8m.
B8.C27	Excavation for basement parking must not encroach on front, side or rear setbacks	Excavation for basement car park will encroach on front setback.
B8.C28	Earthworks in setback areas must not alter natural ground level by more than 1m	Existing retaining walls around the property boundary are to be maintained.
B8.C29	Max batter slope of 1:4	Development to maintain or improve existing levels. No steep batters proposed.
B8.C30	Max height 1m for retaining walls	Stone retaining walls along frontage will be greater than 1m.
B8.C31	Retaining walls must be separated by 2m	Retaining walls around frontage will have less than 2m separation.
B8.C32	Retaining walls within 2m of side boundary must not exceed 600mm	Existing retaining walls around property boundary to be maintained.
B8.C34	Development to comply with LEP standards for density and FSR If development was residential, it would require 150sqm per dwelling (45 units for 6693sqm site) and FSR of 1.8:1	No applicable standard in LEP. Development will have 70 units and proposed FSR of 1.77:1.
B8.C35	Site coverage in 2(c) zone	Site will have 21% deep soil

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	must not exceed 75%	planting and 11% planter boxes. Site coverage will be 68%.
B8.C35	Development to comply with LEP standards for height	No applicable height standard in LEP.
B8.C37	Development in the 2(c) zone must not exceed 5 storeys and 15m in height	Development will have heights of 28m (Centre) and 25m (West) measured from basement car park (RL 19.5m AHD). Height will be 25m and 22m when measured from ground floor (RL 22.5m AHD).
B8.C39	Building elements such as parapets, lift towers, plant rooms, storage etc must be contained within height limit	Lift core will extend 600mm above ridge line.
B8.C40	Vents, antennae must be within height limit and not visible from public domain	Can be conditioned to minimise visual impact.
B8.C41	Habitable rooms must have minimum ceiling heights of 2.7m	Habitable rooms to have ceiling height of 2.7m
B8.C44	Internal depth of a habitable storey must not exceed 18m	Building depths are greater than 18m (approx. 21m)
B8.C45	Development must provide a minimum rear setback of 6m in this instance	Min rear setback 6m, but generally maintains a setback average of 8-9m.
B8.C47	Development of more than 3 storeys must provide setbacks between adjoining properties of 12m between habitable rooms/balconies 9m between habitable rooms/balconies and non-habitable rooms 6m between non-habitable rooms	West building is closest to adjoining properties (Portside and Yelamandy apartments). Main decks will have 12m setback to the decks for Yelamandy Apartments. Side decks will have a 9.8m setback to Yelamandy Apartments West building will have a 7.75m setback to Yelamandy Apartments Rear decks will have a 14m setback to Portside Apartments.

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B8.C51	Materials and design to be compatible with surrounding buildings	It is considered that the materials and design are suitable.
B8.C52	Design must provide sun access, shade, privacy, views, wind shelter and natural ventilation	The design is considered suitable with regard to these factors.
B8.C53	Colours and materials must address building massing and articulation	The proposed colour (neutral/earth tones), materials (stone retaining walls), and architectural features (darker vertical panels) are considered suitable.
B8.C54	Blank walls on street frontages must not exceed 5m in length	No excessive blank walls on front elevation.
B8.C55	Window glazing must not occupy 60% of ground floor front wall	Sliding doors will make up the majority of the front elevation on the ground floor, due to the presence of the adjoining balcony areas.
B8.C56	Development must orientate window and balconies to street or rear of lot	Main decks face Magnus St.
B8.C57	Building layout and screening must minimise direct overlooking of rooms and POS from above	Main decks face Magnus St. Side and rear decks are minor and have sliding screens to protect privacy.
B8.C58	Communal OS must be located away from windows of habitable rooms	Communal areas located internally on ground floor, away from proposed decks/windows.
B8.C63	Deck must be at least 20sqm with minimum dimension of 2.4m	Main decks have greater area than 20sqm and min dimension is greater than 2.4m.
B8.C64	Deck must not exceed 20% of floor area	Decks do not exceed 20% of floor area.
B8.C65	Must provide 3 hours sunlight to POS of 70% of new dwellings between 9am and 3pm midwinter	Main decks are north facing and will receive sufficient sunlight.
B8.C66	Must allow for 2 hours sunlight to 50% of POS on adjoining properties between 9am and	The proposal will maintain 2 hours sunlight to decks and living areas of units on adjoining

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	3pm midwinter. Where existing overshadowing is greater than this, development must not reduce by more than 20%	properties (particularly Portside Apartments) between 9am and 3pm midwinter.
B8.C67	POS must be accessible from living area	Main decks accessed off living areas.
B8.C69	Balcony must provide privacy, outlook, shading	Decks will have balustrading that will provide appropriate privacy, shading and outlook.
B8.C78	Safe street and private environments	Development has been reviewed by Design Panel and Council staff, and considered appropriate with regards to safer by design principles.
B8.C87	Garbage collection, loading and servicing areas to be screened	Development will use existing garbage storage area.
B8.C90-101	Drainage	Council's Engineers have reviewed proposed stormwater system, and it is considered that there are no likely adverse impacts on water quantity or dispersion, as per DCP.
B8.C102	Deep soil planting to 20% of site	Deep soil planting will take up 21% of site.
B8.C111	Provision of screened garbage storage area	Development will use existing garbage storage area.

Compliance

The development does not comply with a number of numerical standards in Section B8. The key variations relate to height and setbacks, however others include design features such as building depths, glazing, car park entry widths and excavation in the front and rear setbacks.

The proposed variations are considered acceptable in this instance, as discussed below:

- Building Height

Clause B8.C37 sets a height guideline of 5 storeys and 15m. The development will have a maximum height of RL 47.5m AHD for the Central building and 44.5m AHD for the West building, and will exceed the DCP height limit by 13m and 10m, respectively, when measured from the basement car park (RL 19.5m AHD).

The visible height of the development (from the ground floor – RL 22.5m AHD), will be 10m for the Central building and 7m for the West building.

It is noted that the level of the ground floor for the existing building is RL 23.4m AHD, with a maximum height of RL 38.4m AHD. The proposed development will be 9.1m and 6.1m taller than the existing development, which will have the appearance of 2-3 storeys.

Following assessment of the DA, it is considered that the proposal will be visually prominent from a number of key locations, including parts of the foreshore, break wall and the waters of Port Stephens. However, this individual development is not likely to significantly alter the visual character of the area, which features the natural landform and tree line as the dominant feature.

Further, the proposal is consistent with Council's requirements for overshadowing and privacy, and unlikely to unreasonably impact adjoining properties.

With regard to the height, the Nelson Bay Strategy recommends that additional allowances of 2 storeys and 0.5 FSR be considered for development that provides strategic and economic benefit, and design excellence. In this case, the proposal provides the type of development recommended by the Strategy (provision of 4 star accommodation associated with a comprehensive conference centre that includes a facility seating at least 300 people and breakout rooms), and while the site is not located in the defined Town Centre, it is located on the fringe of the CBD and will help achieve other recommendations in the Strategy, such as increasing activity along Magnus St.

The Central building has a height of 8 storeys, which would exceed the 7 storey limit recommended by the Strategy. The top level is setback 7.5m from the front edge of the building, which greatly reduces its visual appearance when viewed from the street or foreshore. Also, the lower ground level (22.5m AHD proposed, 23.4m AHD existing) reduces the non-compliance with Strategy's height recommendation to 2m in comparison to the existing visual impact. The top level of the Central building does not significantly contribute to any likely shadowing or privacy impacts, and as such, it is considered that the height variation does not warrant refusal of the application.

- Setbacks to adjoining development

The development does not comply with the recommended setbacks to the Yelamandy Apartments, which has windows to habitable rooms and decks along its western elevation. The proposed West building will have a 7.75m setback to the Yelamandy Apartments, and the side decks will have 9.8m setback, but the DCP recommends 9m and 12m respectively. However, the side decks are minor and will have sliding privacy screens. In addition, the main windows for the units in Yelamandy Apartments are orientated toward the northern elevation. Given these circumstances, the setback variations are unlikely to result in unreasonable privacy impacts on existing residents.

- Front Setbacks

The development does not comply with the recommended 6m front setback. The wall of the West building is setback 8.9m to the front boundary, but the front deck is only setback 4.5m. This variation will have a visual impact on the streetscape. However, the existing character of the streetscape is influenced existing by the topography and road alignment, resulting in a varied appearance along the street, particularly down to The Magus development and car park at the entry to the Town Centre.

Further, increasing the front setback may require a reduction in the rear setback, which would have increased shadowing and privacy impacts on Portside Apartments, which is undesirable. It is considered that the likely impact is not unreasonable, and preferable to other alternatives.

- Driveway and Car park Entry Widths

The driveway and car park entry widths are necessary to ensure safe manoeuvring and sight distances, and the visual impact will be controlled through the use of appropriate landscaping areas.

- Excavation in front and rear setbacks

The basement car park will require excavation within the front and rear setback, however this does not require additional retaining walls or impact the appearance of the front elevation.

- Retaining wall heights

With regard to retaining wall heights, the main variation will be along the NW corner of the front elevation, where some of the retaining walls will exceed 1m in height. However, the proposal is considered to minimise unnecessary cut and fill, will maintain the existing retaining walls along the boundary and is not likely to impact adjoining properties or the amenity of the streetscape.

- Design controls

The design is considered suitable from an amenity perspective, and variations to design requirements such as building depth, glazing, and front fencing are not likely to have any adverse impacts.

10.0 SECTION 94 CONTRIBUTIONS

The development requires developer contributions under Council's Section 94 plans. It is considered that Section 94 is most appropriate in this instance.

Under Councils Section 94 Plan, the development should be credited for the existing development on the site, and only levied on the increase. The existing Marina resort has 44 hotel suites, while the proposed development will provide 70 units. As such, Section 94 should be levied on the 26 additional units, as detailed below:

	Per Lot	Total
Civic Administration	(\$553)	(\$14378)
Public Open Space, Parks and Reserves	(\$1147)	(\$29822)

Sports and Leisure Facilities	(\$2705)	(\$70330)
Cultural and Community Facilities	(\$0)	(\$0)
Fire & Emergency Services	(\$110)	(\$2860)
Roadworks	(\$225)	(\$6630)
Total:	\$4770	\$124,020

11.0 LIKELY IMPACTS

11.1 Built Environment

Visual Amenity

The proposal, which will be 7 and 8 storeys, is significantly larger than surrounding development along Magnus St, which is made up of a mix of 1 storey and 2 storey residential dwellings and residential flat buildings ranging between 3 and 5 storey. Given its relative height and the site's topography, the development is likely to be visually prominent from a number of locations, including the foreshore (particularly the kids playground on Victoria Parade), breakwalls around Nelson Bay Marina, the Church St/Donald St and Church St/Government Rd intersections, the War Memorial in Apex Park and from the waters of Port Stephens.

Attached to this report are a number of photo montages provided by the applicant and some photos taken by planning staff of key spots from where the development will be clearly visible.

The visual impact from the Church St/Donald St, Church St/Government Rd intersections and War Memorial are likely to be minimal. Although the top 2-3 storeys of the development will be visible, the character of these views are, and will continue to be, primarily influenced by existing residential development (located on sites much closer to the vantage points than the proposed development). The visual impact of the development from these vantage points is likely to be reduced in the future due to older buildings (a number of which are less than 5 storeys) being replaced with 5 storey development.

When viewed from the majority of the Nelson Bay foreshore, the proposed development will be screened by existing vegetation (in the Victoria Pde road reserve). However, the area near the kids playground and eastern end of the Marina car park does not have a lot of existing landscaping, and the top 3-4 storeys of the development will be clearly visible and prominent from this location. The primary views from this location are of the Marina/foreshore/Port Stephens. The view back toward Victoria Pde will be impacted, but it is noted that this view is characterised by existing development (2-3 storey residential) and not any tree lines or natural landforms.

The most visual impact will be experienced when viewing the development from the breakwall around Nelson Bay Marina and the waters of Port Stephens, as the top 3-4 storeys will be clearly visible. The existing view of Nelson Bay is characterised by the natural landform and tree line. The development will protrude above the tree line and will be a prominent feature when viewed from these vantage points. However, following review

of the photo montages and a site inspection by Council staff, it is considered that the existing hills and tree line will remain the dominant feature of Nelson Bay when viewed from the breakwall and water.

It is considered that the likely impact from this individual development on the visual amenity of the surrounding area does not warrant refusal of the application in this instance.

However, it is noted that additional development at this height would have an undesirable and significant cumulative impact on the visual amenity of Nelson Bay. In this instance, Council's recently gazetted LEP 2013 imposes a height limit of 15m for all development. Further, the Nelson Bay Strategy sets clear parameters for application of the additional height and FSR allowances. It is considered that the proposal does not set a significant precedent for future development, and that the new LEP will provide greater weight to a 15m height limit.

Adjoining Properties and Amenity

The proposal is likely to impact adjoining properties, due to the location of the site and bulk and scale of the development.

The most likely impacts of significance are loss of views, privacy and access to sunlight on adjoining properties, particularly 1 Donald Street (Port Side Apartments) and 49 Magnus Street (Yelamandy Apartments).

Views

The development will likely result in view loss from existing units in Portside Apartments (1 Donald Street).

Portside Apartments is a 4 storey development (3 storeys over a car parking level) containing 5 distinct segments. The floor level of the car parking level is approximately RL 22.1m AHD, with a roof level of RL 34.48m.

Approximately 12 units in the Portside Apartments development have views of Port Stephens towards Tea Gardens, between the Yelamandy Apartments and existing Marina Resort development.

These views from these units will be obstructed by the West building of the proposed Marina Resort development, which will have a ground floor level of RL 22.5m AHD and roof level of RL 44.5m AHD. Only the 6 units located on the top floor are likely to retain any views, as they are located above the roof line of the Yelamandy Apartments (RL 30.7m AHD).

The Land & Environment Court has a planning principal relating to impact on views. The 4 step assessment process recommended by the planning principle is detailed below:

Views to be affected

A large number of units (approx. 12 units) in Port Side Apartments are likely to have extensive, unobstructed views of Port Stephens, ranging from approximately 50 degree (for units on 3rd storey) to nearly 180 degree views (for 4th/top floor units).

From what part of the property are the views obtained?

The views are obtained from north facing decks, and as such are likely contribute greatly to the amenity of residents.

Extent of Impact

Views from the 3rd floor (RL 26.28m AHD) and 4th floor (RL 30.90m AHD) of Port Side Apartments over the subject site are likely to be obstructed by the west building of the proposed Marina Resort, with losses of nearly 100% of the views from 3rd floor units, and a reduction of the views from units on the 4th floor by more than 50%.

Reasonableness of the proposal that is causing the impact

The west building proposes a height of 7 storeys and 22.5m (max height of RL 44.5m AHD) which is significantly greater than that of any development complying with the 5 storey, 15m height limit generally applied in Nelson Bay. However, it is noted that a residential flat building on the subject site complying with the applicable 15m height limit would have a roof level of RL 37.5m AHD and still have the same or greater (if a single building was proposed) level of impact on the views of residents in Port Side Apartments.

As such, the proposal is not considered unreasonable with respect to impact on views.

Solar Access/Overshadowing

The proposed development will generate shadows impacting the Portside Apartments, which is a 4 storey development (3 residential levels and basement car park) containing 24 units located to the south of the subject site.

The shadow diagrams submitted with the application show that between 9am and 3pm, midwinter, 7 units (7, 8, 9, 10, 13, 15 and 20 in Strata Plan 18000) will have their sunlight reduced by 3 hours, while a further 6 units (12, 16, 17, 19, 22, 24) will have sunlight reduced by 2 hours.

This level of impact complies with the solar access requirements in Section B8 of DCP 2007, which requires developments to maintain 2 hours of sunlight between 9am and 3pm, midwinter. The potential shadowing does not warrant refusal of the application in this instance.

Privacy

The most likely impact on privacy will be a result of the secondary decks facing the side and rear boundaries, which adjoin the Yelamandy and Portside Apartments respectively. The proposal will have the main decks facing Magnus Street and the foreshore, which is unlikely to be result in any adverse privacy impacts.

Despite being generally consistent with the DCP setback requirements for adjoining properties, the development proposes a minor variation to the setbacks required to the Yelamandy Apartments. Following consideration of the DA, it is considered that the proposed setbacks are acceptable, given the

sizes of the decks, design of the proposal (which includes sliding privacy screens) and size and nature of the windows along the eastern elevation of the Yelamandy Apartments (which has its main living areas orientated toward Magnus Street).

The development is considered unlikely to generate significant privacy impacts in this instance.

Streetscape

The stretch of Magnus Street near the subject site is characterised by low density, 2 storey residential development on the eastern side of the site, a mix of 3-5 storey residential flat buildings on the western side and is located on the fringe of the Nelson Bay CBD.

The existing Marina Resort is the most dominant feature of the streetscape, due to its height and the proximity/prominence of the site in relation to the street. The proposed development will increase the site's dominance of the street as a result of the additional height (3 storeys).

However, it is considered that the additional height is not likely to significantly change the overall character of the streetscape, and the site will continue to create a sense of entering or exiting the fringe of the Nelson Bay CBD.

It is considered that the proposed landscaping along the street frontage can assist in minimising the visual impact and dominance of the streetscape.

Landscaping

A landscaping plan has been submitted with the application, and is considered appropriate in this instance.

11.2 Access and Traffic

The development will have 2 access points off Magnus Street. The eastern access is to be entry only, while the western access point is an entry/exit.

A Traffic Report has been submitted to Council in support of the development application, and the proposal has been reviewed by Council's Development & Traffic Engineers.

It is considered that the proposed traffic arrangements are suitable, and unlikely to adversely impact traffic flow or safety along Magnus Street, subject to the recommended conditions of consent.

11.3 Natural Environment

The site does not contain any areas of native vegetation, and the development is not likely to have a significant impact on the natural environment.

Site Contamination

The site is not listed on Council's contamination register, nor is there any available evidence of the site being used for potentially contaminating activities.

11.4 Social and Economic Impacts

The construction of the proposed development at the subject site is considered unlikely to result in any adverse social or economic impacts upon the local or wider community.

Council's Economic Development section has reviewed the proposal, and has advised that the proposal is considered likely to provide a positive benefit to the community in terms of economic and tourist activity growth. The following comments were provided:

"In addition to the \$18m construction direct economic output, further economic output of \$12.9m will occur in terms of supporting goods and services being supplied during the construction (from other sectors in the economy). Then a further \$3.5m worth of economic output will occur as those working on the project get paid and spend money in the local economy. Meaning total economic output for this development (direct, indirect and consumption) is \$34.4m.

From a direct increase in output of \$18 million the corresponding creation of direct jobs is estimated at 30 jobs. Additionally a further 52 jobs will be created as a result of employment creation occurring as a result of the indirect and consumption effects. Meaning total employment for this development (direct, indirect and consumption) is 82 jobs.

- Impact on output

From a direct increase in output of \$18.000 million it is estimated that the demand for intermediate goods and services would rise by \$12.959 million. This represents a Type 1 Output multiplier of 1.720. These industrial effects include multiple rounds of flow-on effects, as servicing sectors increase their own output and demand for local goods and services in response to the direct change to the economy.

The increases in direct and indirect output would typically correspond to the creation of jobs in the economy. Corresponding to this change in employment would be an increase in the total of wages and salaries paid to employees. A proportion of these wages and salaries are typically spent on consumption and a proportion of this expenditure is captured in the local economy. The consumption effects under this scenario are estimated at \$3.464 million.

Total output, including all direct, industrial and consumption effects is estimated to increase by up to \$34.423 million. This represents a Type 2 Output multiplier of 1.912.

- Impact on employment

From a direct increase in output of \$18.000 million the corresponding creation of direct jobs is estimated at 30 jobs. From this direct expansion in the economy, flow-on industrial effects in terms of local purchases of goods and services are anticipated, and it is estimated that these indirect impacts would

result in the gain of a further 38 jobs. This represents a Type 1 Employment multiplier of 2.267.

The increase in direct and indirect output and the corresponding creation of jobs in the economy are expected to result in an increase in the wages and salaries paid to employees. A proportion of these wages and salaries are typically spent on consumption and a proportion of this expenditure is captured in the local economy. The consumption effects under this scenario are estimated to further boost employment by 14 jobs.

Total employment, including all direct, industrial and consumption effects is estimated to increase by up to 82 jobs. This represents a Type 2 Employment multiplier of 2.733.

- Impact on tourism

The MICE industry remains buoyant and growth continues in both international and domestic MICE markets. The Australian Business Events industry aims to attract \$16 billion per year from overnight business events delegates by 2020. In 2011, business events accounted for \$10 billion nationally (Source: State of the Australian Business Events Industry Report Calendar Year 2011.) In New South Wales, a total of 2.2 million domestic travellers visited regional areas of the state for the purpose of 'business'. Business visitors spent 5.8 million nights in the state and business travel represented 12.9% of visitors and 9.7% of nights. Domestic overnight business visitors spent \$706 million, an average of \$122 per night. (Source: Destination New South Wales Fact Sheet - Business Travel to Regional NSW, Dec 2011). Within the North Coast region, the number of travellers visiting our region for the purpose of 'business' accounts for 8.5% of all visitors, an increase of 18.7% on the year before. Business travellers make up 4.9% of total nights to our region, an increase of 29.1%. (Source: Destination New South Wales Fact Sheet – Sep 2012).

Given the proposed redevelopment of facilities totalling 400m², this should allow for conference capacity of 469 delegates (theatre style). This would put this facility on par with the likes of Shoal Bay Resort & Spa that currently generate approx. 6000 conference room nights per annum and generate \$5.92 million per year from this market (through conference room hire, food and beverage and accommodation revenues). Currently Wests Diggers offer the largest capacity for conference meeting space for up to 600 delegates with Shoal Bay Resort & Spa coming in after this. If the redevelopment goes ahead it would allow for dual larger scale conferences (defined by 180+ delegates) to be held simultaneously in Port Stephens. Enquiries into the Destination Port Stephens office for residential conferences has shown growth over the last 8 months (since the pilot program launched) with \$1.3 million dollars quoted in the last quarter and a total of \$500,000 booked since March, 2013."

12.0 SUITABILITY OF THE SITE

The site is considered to be suitable for the proposed development.

13.0 PUBLIC INTEREST

The approval of the application is considered is unlikely to have a significant or adverse impact on the wider public interest.

14.0 ANY OTHER RELEVANT MATTERS

There are no other matters for discussion. However, it is noted that relevant owners consent has been received and all submitted plans have been stamped by Hunter Water Corporation.

15.0 UNAUTHORISED WORKS

None identified.

16.0 CONCLUSION

Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development is considered to be satisfactory. Therefore, it is recommended that the application be approved, subject to recommended conditions.

17.0 RECOMMENDATION

THAT Council grant development consent to DA 16-2013-626-1 for a redevelopment of an existing tourist facility (Marina Resort) at No. 29-45 Magnus Street, Nelson Bay subject to recommended conditions contained in (ATTACHMENT 3).

ATTACHMENT 3
CONDITIONS OF CONSENT

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

1. The approved use of the land shall not commence until all relevant conditions of this consent have been complied with and a Final or Interim Occupation Certificate has been issued. Where an Interim Occupation Certificate has been issued, only that part of the building to which the Certificate applies may be occupied or used.
2. The development must be carried out in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Statement of Environmental Effects prepared by Westbury Advisors dated June 2013
Plans prepared by Anton Chan Drawing No. 00, 01, 03, 04, 08, 09, 10, 11, 14, D5, D6, D7, Revision A dated 8/10/13
Plans prepared by Anton Chan Drawing No. 02, 12, 13, 15, 16, , Revision B dated 1/3/14
Plans prepared by Anton Chan Drawing No. 05, 06, 07, 0 , Revision B dated 26/3/14
Landscaping Plans prepared by Moir Landscape Architecture, Drawing No. LP01 to LP08 dated 2/10/13
Engineering Plans prepared by Northrop, Job No. NI120130, Drawing No. C01, C02, C03, Revision B dated 24/3/14
Driveway Profile Plans & Sections DW1 & DW2 (3 sheets), Section DW3 (1 sheet) and Plan & Section DW4 (1 sheet)
Traffic Impact Assessment prepared by Better Transport Futures dated 8/6/12
Bushfire Hazard Assessment prepared by Hale Development Services dated June 2012
Stamped Colour Scheme – Marina Resort Development

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - protect and support the building, structure or work from possible damage from the excavation, and
 - where necessary, underpin the building, structure or work to prevent any such damage.

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

Engineering

4. Medium Rigid Vehicle swept paths in accordance with Australian Standard AS2890.2:2002 shall be provided to demonstrate a MRV can circulate around the existing car park. If Medium Rigid Vehicle swept paths cannot be achieved within the car park, car parking spaces 20, 28, 29 and 35 as referenced on "Marina Resort Development Site Plan dated 1/9/13" shall be deleted from the design as required. Details shall be submitted to the Certifying Authority for approval **prior to the issue of the Construction Certificate.**

5. The stormwater detention system shall be designed and built in accordance with the approved concept plan. A staged orifice structure shall be provided that restricts site discharge to pre-developed flows for all storm events up to the 1% AEP critical storm duration. Full calculations shall be provided demonstrating that the staged discharge rates are achieved (i.e. minor volume up to minor event discharges at minor discharge rate and volume in excess of minor volume discharges at equal to or below major discharge rate).

The construction detail shall also include details of the location and type of detention system, orifice, pipes, pits, major overland flow path and the discharge point to the public drainage system.

Details shall be submitted and certified by a suitably qualified and practising drainage engineer, and approved by the certifying authority **prior to issue of the construction certificate.**

6. The stormwater detention system shall include design features in accordance with Section 8.11 of Australian Standard AS3500.3:2003.

A Construction Certificate cannot be issued until full details of the stormwater detention system have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

7. Structural Certification is required for the underground stormwater detention system including demonstrating it can handle expected traffic loadings

A Construction Certificate cannot be issued until full details of the structural certification of the underground detention tanks have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

8. All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993.

Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional, in accordance with Council's 'Infrastructure Design and Construction Specification - AUS Spec', and Section B of Development Control Plan 2007.

The required works to be designed are as follows:

- 1.2m wide footpath in accordance with standard drawing 'S151' across the full frontage of the development site within Magnus St and connect to a new pram ramp to be constructed at the intersection of Magnus St and Donald St.
- Stormwater connection from internal drainage system to Kerb inlet pit within the road reserve.
- Relocation of the bus stop to comply with the Disability Discrimination Act 1992. The bus stop shall be relocated to a position that can achieve a safe sight distance to vehicles heading west along Magnus St.
- The pedestrian crossings proposed across both entry and exits shall be deleted from the design and replaced with a 1.2m wide delineated footway having at least 30% luminous contrast to the surrounding surface.
- All redundant lay-backs shall be reinstated to match the adjoining kerb and gutter profile to the satisfaction of Council.
- Traffic control plans in accordance with the Roads and Traffic Authority - Traffic Control at Worksites Manual;
- Payment of applicable fees and bonds; and
- Contractor's public liability insurances to a minimum value of \$10 million dollars.

The engineering plans must be approved by Council **prior to the issuing of a Construction Certificate** required under this consent.

Planning

9. General Terms of Approval for the development are to be obtained from the NSW Rural Fire Service **prior to the issue of a Construction Certificate**.
10. A 2m screen is to be erected around the southern perimeter of the first floor kids play/outdoor sitting areas in order to protect the acoustic amenity of adjoining properties. Details regarding the screen shall be provided to Council **prior to the issue of a Construction Certificate**.
11. A Section 50 Certificate under the Hunter Water Corporation Act, 1991 shall be submitted to the Principal Certifying **Authority prior to the issue of a Construction Certificate**. Applications for Section 50 Certificates are to be made direct to the Hunter Water Corporation.

12. The fit out of food preparation, storage and service areas are to be designed and constructed to comply with standard 3.2.3 of the Australia New Zealand Food Standards Code and Australian Standard AS 4674-2004 for the construction and fitout of food premises in particular with reference to the following:-

Details of compliance are to be submitted to the Principal Certifying Authority **prior to the issue of the construction certificate**. Council's Food Surveillance Officer shall be given 48 hours notice to inspect the premises prior to commencement of the business.

Where Council is not nominated as the Principal Certifying Authority a certificate from an appropriately qualified person confirming compliance with the above legislation and guidelines is to be provided to Council **prior to the issue of the occupation certificate**.

Prior to occupation the business is to be registered with Council.

13. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act, 1979 and Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of the following public facilities:-

	Per Lot	Total
Civic Administration	(\$553)	(\$14378)
Public Open Space, Parks and Reserves	(\$1147)	(\$29822)
Sports and Leisure Facilities	(\$2705)	(\$70330)
Cultural and Community Facilities	(\$0)	(\$0)
Fire & Emergency Services	(\$110)	(\$2860)
Roadworks	(\$225)	(\$6630)

Note:

a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, Raymond Terrace.

b) Contributions are to be paid prior to **issue of construction certificate**.

c) The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of original consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this

respect the attached fee schedule is valid for twelve months from the date of original consent.

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

Planning

14. Certification is to be prepared by a registered surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:
 - a. On completion of ground floor construction, confirmation that the floor levels are in accordance with the Reduced Levels indicated on the approved plan.
 - b. On completion of each subsequent floor level, confirming that the floor levels are in accordance with Reduce Levels indicated on the approved plan.
 - c. When the roof has been completed, confirmation that the building does not exceed the Reduced Levels as indicated on the approved plan.

Building

15. All building work must be carried out in accordance with the provisions of the **Building Code of Australia**.
16. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
 - * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * No construction work to take place on Sunday or Public Holidays.
17. It is the responsibility of the applicant to erect a PCA sign and to ensure the PCA sign remains in position for the duration of works.
18. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced.
19. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
20. A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the

Commissioner of New South Wales Fire Brigades. A copy of fire safety certificate needs to be forwarded to Council, If Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.

21. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
 - a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.
22. Building demolition shall be carried out in accordance with Australian Standard AS2601-2001 - The Demolition of Structures.
23. The demolition and disposal of materials containing asbestos should be carried out in accordance with Workcover Authority Guidelines. Material should be disposed of at a licenced landfill facility.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

24. All civil engineering works associated with the Roads Act Approval shall be carried out to the satisfaction of Council (with a letter of practical completion issued) **prior to issue of the Occupation Certificate.**

All works associated with the Roads Act Approval shall be at no cost to Council.
25. The subject lots are to be consolidated **prior to the issue of an Occupation Certificate.**
26. Landscaping shall be carried out in accordance with the approved landscaping plans. The landscaping must be completed **prior to issue of Occupation Certificate.**

CONDITIONS TO BE SATISFIED AT ALL TIMES

27. The tourist facility shall not be occupied by any proprietor or occupier for longer than forty two (42) consecutive days or an aggregate one hundred and fifty (150) days in any twelve (12) month period. Such periods are to be calculated from the date of the first occupation of the tourist facility.

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

28. Deliveries are to be limited to between 7am and 6pm, so as to protect the acoustic amenity of adjoining properties.
29. The swimming pool is to be fully enclosed with fencing and gates to comply with the Swimming Pool Act 1992 and Regulations.
30. Pool plant and equipment shall be sited or enclosed in a sound absorbing enclosure to minimise any potential offensive noise impacts to adjoining neighbours as defined under the Protection of the Environment Operations Act 1997.
31. The development shall be managed so as not to cause offensive noise, as defined under the Protection of the Environment Operations Act 1994, on adjoining properties.
32. Any lighting on the site is to be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.
33. Vents, antennae and any plant equipment, particularly on the roof, are to be located or screened so as not to be clearly visible from the street or any public place.
34. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
35. Works associated with the approved plans and specifications located within the existing Road Reserve shall not commence until:
 - a Roads Act Approval has been issued; and
 - all conditions of the Roads Act Approval have been complied with to Council's satisfaction.

ADVICES

- A. Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- B. This approval relates to **Development Consent** only and does not infer any approval to commence excavations or building works upon the land. **A Construction Certificate should be obtained prior to works commencing.**
- C. The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

ITEM NO. 3

FILE NO: 16-2014-41-1

**DEVELOPMENT APPLICATION FOR STORAGE SHED AT NO. 69
FRANCIS AVE LEMON TREE PASSAGE**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Development Application 16-2011-543-1 Storage Shed at No. 69 Francis Avenue Lemon Tree Passage: for the following reason:
- a) The development is inconsistent with the objectives of the 2 (a) Residential "A" Zone of Port Stephens Environmental Plan 2000, in regards to design, density, associated land use and is out of character with the immediate landscape and does not maintain an acceptable level of visual amenity.
 - b) The development does not comply with the following clauses of Port Stephens Councils Development Control Plan; Section 4.4- Setbacks; minimum front setback to garages 5.5m, be sympathetic to existing streetscape character and Section 6; side boundary setback of 900mm and a maximum height of 3.6m.
-

ORDINARY COUNCIL MEETING – 24 JUNE 2014

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Steve Tucker Councillor John Morello
	That Council defer Item 3 to allow for a site inspection by Council.

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

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

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

MOTION

153	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved that Council defer Item 3 to allow for a site inspection by Council.

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

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

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

BACKGROUND

The purpose of this report is to present a development application to Council for determination. The application was called to Council by Mayor MacKenzie.

Consent has been sought for the ongoing use of storage shed on Lot 74 DP: 214619, 69 Francis Ave Lemon Tree Passage. The subject site is zoned 2(a) – Residential Zone “A” which is described in Port Stephens Local Environment Plan 2000 (LEP). The application was lodged prior to LEP2013 being in force and subsequently the application has been primarily assessed under the objectives of LEP2000.

The applicant has constructed the storage shed to completion, including a concrete floor slab without seeking prior consent for the works.

The unauthorised works were originally referred to Council's Compliance Officer through Council's CRM system after a motorist had lodged a complaint about the bulk and scale and general size of the structure, it's location in respect to the property boundary and the vehicular safe sight distances at the intersection of Moreton and Frances Ave Lemon Tree Passage.

In the context of the compliance investigation it was noted that the structural frame at the corner of the shed had been erected 0.15m from the boundary to an eave height of approximately 3.5 metres and ridge height of approximately 3.85 metres. The garage is noted as 10.4 metres in length with a width of 3.9 metres. This results in a floor area of 40.56 square metres.

A meeting with the owner and Council staff occurred on 10 October 2013 at this meeting the owner was advised that due to the large departures from Council development controls it would be unlikely to be supported by staff in its current form if an application had been lodged prior to the works being undertaken. During the meeting the owner advised that they would lodge an application seeking consent

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

for the ongoing use of the structure. Council cannot retrospectively approve the structure however can approve its ongoing use in its current or a redesigned form.

A development application was received by Council for use the ongoing use of the structure. No other applications exist in relation to this particular development.

In assessment of this application it was determined that the built structure exceeds the scope of variation that might normally be applied to such a structure and in respect to its location coupled with its bulk and scale, officers have recommended that the structure is not suitable nor appropriate in the immediate location.

Given the bulk and scale of the unauthorised structure and its proximity to the property boundary it is considered to have an unacceptable environmental impact on the streetscape character of the area and an adverse impact upon the amenity of the streetscape in the immediate vicinity.

The owner has been advised in writing 11 March 2014 that the application as submitted is unlikely to be supported and was given the opportunity to redesign of the current proposal to bring it into line with more conventional dimensions and boundary setback of private residential sheds in close proximity to boundaries and traffic areas. Likely acceptable dimensions would be in the form of a carport with open sides and a maximum height of 3.6m to the ridge. It is however acknowledged that redesign is difficult as the structure has been completed.

If the applicant chooses to amend the design to a more appropriate design for the location they have been advised to provide amended plans showing the conversion to a carport and subsequently seek development consent and apply for a construction certificate for the amended building work. The applicant has indicated that they do not wish to modify the design any further and would like Council to determine the application as submitted.

The following table outlines the key departures of the existing structure from Councils DCP.

DCP 2013 Control	Actual	Complies
Maximum Floor Area 72sq.m	40.5sq.m	Yes
Maximum Height 3.6m	3.85m	No
Front Setback (not less than 4.5m) plus additional 1m setback for a garage	1.35m	No
Side and Rear Setback 900mm	Varies from 150mm to approx. 2.0m	No

FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseen financial or resource implications for Council resulting from the recommendation of this report.

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

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

LEGAL AND POLICY IMPLICATIONS

The development application is not consistent with Council's Local Environmental Plans and local policy including Development Control Plan 2007.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the Applicant may appeal against refusal.	Medium	Adopt recommendation	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

It is considered that there are potential economic impacts on adjoining property values given the location of the shed as it is considered to be out of character with the immediate streetscape and does not maintain an acceptable level of visual amenity for the immediate community in regards to its bulk and overall scale within the front boundary setback and located in a prominent corner location.

There are positive social and economic impacts for the property owner if Council approve the ongoing use of the shed, as they won't have to modify the structure at a cost.

CONSULTATION

The application was advertised and notified in accordance with standard procedures and no submissions were received.

Assessment staff discussed the application with neighbours who raised no concerns with the structure.

OPTIONS

- 1) Adopt the recommendation and refuse the ongoing use of the structure (resulting in a demolition order);
- 2) Amend the recommendation and discuss options to minimise the streetscape impact with the applicant;
- 3) Refuse the recommendation and accept the "as built" structure.

ATTACHMENTS

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

COUNCILLORS ROOM

- 1) A copy of the submitted plans and documentation.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

Locality Plan



ATTACHMENT 2

Assessment

Report to Development Assessment Panel

Date: 17th February 2014

File No: 16-2014-41-1

Address: Lot 74 69 Francis Ave Lemon Tree Passage

Proposal: Storage shed.

Council is in receipt of a Development Application to approve the use of a storage shed erected without approval at the above mentioned allotment.

The site has a slight slope/ gradient towards to front of the allotment and a stormwater open drain running parallel on Morton St. The plans are been advertised in accordance with Port Stephens Development Control 2007 Policy.



Shed height exceeds max height by 285mm



Shed is located on the side boundary at rear.
Shed is located approx. 2.0m from side boundary at front.



The Location of the shed encroaches building line front setback by 2.65m, side setback and height are non-compliant with the Port Stephens DCP 2013.

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

The application does not comply with the following DCP controls

B6 Cl. 4.4.1- Minimum setback of 4.5m

B6 Cl. 6.2- Maximum height of 3.6m

Minimum boundary setback of 900mm

Discussed with the applicant that Council would accept some variations to the current design; namely the reduction of bulk for the front half of the structure by changing to a carport and maintaining sight lines through the corner and would have the added benefit of reduction of the bulk of the structure that projects forward of the building line. These are the fundamental design changes we would have requested had this application been presented prior to construction.

The applicant has chosen not to amend his design and has requested the application of the as-built structure be determined by the elected Council.

ATTACHMENT 3

Conditions of consent

1. Development consent is granted for the ongoing use only; of the garage as indicated on the site plan and supporting documents with this application on Lot74 DP:214619 69 Francis Avenue Lemon Tree Passage.
2. The development has not been assessed against the provisions of the Building Code of Australia. An application under the Environmental Planning and Assessment Act 1979 may be required if design amendments are necessary to comply with the provisions of the Building Code of Australia.
3. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

ITEM NO. 4**FILE NO: 7-1996-41637-21****MODIFICATION OF DEVELOPMENT CONSENT FOR VANTAGE ESTATE
SUBDIVISION AT LOT 2249 DP 1141586, NO. 4 MOORING AVENUE
CORLETTE**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve the Section 96 Modification of Development Consent (7-1996-41637-21) for Vantage Estate subdivision at Lot 2249 DP 1141586, 4 Mooring Avenue Corlette subject to the conditions contained in **(ATTACHMENT 3)**.
-

ORDINARY COUNCIL MEETING – 24 JUNE 2014**COMMITTEE OF THE WHOLE RECOMMENDATION**

	Mayor Bruce MacKenzie Councillor Ken Jordan
	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 Paul Le Mottee, Ken Jordan, Steve Tucker, John Morello and Sally Dover.

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

MOTION

154	Councillor Ken Jordan Councillor Steve Tucker
	It was resolved that Council approve the Section 96 Modification of Development Consent (7-1996-41637-21) for Vantage Estate subdivision at Lot 2249 DP 1141586, 4 Mooring Avenue Corlette subject to the conditions contained in (ATTACHMENT 3) .

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

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

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

BACKGROUND

The purpose of this report is to present a development application to Council for determination as requested by Councillor Nell.

The application was previously reported to Council on 27 May 2014, with a recommendation adopted to defer the matter to allow for the provision of additional information with respect to Section 94. Further information has now been received, with Council's Legal Services Manager confirming that the additional four lots must be levied in accordance with the previous contributions plan 6 – Tomaree and not with reference to the current section 94 plan. In this regard, it is confirmed that the Section 94 has been appropriately levied.

The proposal relates to Stage 29 of Vantage Estate in Corlette. It is proposed to modify the approved three (3) lot subdivision of Lot 2249 DP 1141586 (subject lot) to allow for a seven (7) lot subdivision.

Specifically, the proposal will adjust and subdivide the internal boundaries of approved lots 2913, 2914 and 2915 to result in seven new lots numbered 2913 – 2919 inclusive.

The modification is considered to be a S96(1A) – modification involving minimal environmental impact. The proposed modification will not necessitate the construction of any additional roads or access points to that currently approved and sufficient services are available in the locality for the new allotments.

Key issues raised during public exhibition include:

Bushfire

Concern has been raised that development is precluded from occurring on proposed Lots 2913 and 2914 due to a 50 metre Asset Protection Zone that exists on the site (in accordance with NSW Rural Fire Service correspondence dated 10 March 2009). In addition, there is concern that the proposed lots 2913 and 2914 off Kallaroo Street will risk blocking the fire trail with parked cars and delivery vehicles.

Comment: The application has been referred to the NSW Rural Fire Service under the provisions for the *Rural Fires Act 1997* and a Bushfire Safety Authority has been issued for the development. This advice from the NSW Rural Fire Service supersedes previous advice issued and as such there are no grounds to not support the development based on bushfire risk and constraints. In addition, Council is not aware of any proposal to close the fire trail.

Drainage

Concern has been raised over drainage of the site due to its topography. It was stated that runoff has resulted in the failure of Kallaroo Road and the blocking of drains in the drainage system and that development of these sites will further exacerbate the issue.

Comment: An assessment of the site drainage has been undertaken by Council's Development Engineers and no issues have arisen that would preclude the development from being supported.

New conditions have been recommended requiring;

- Construction of inter-allotment drainage to service all proposed allotments.
- Creation of easements to benefit upstream properties.

Extension of Mulubinda Parade

Concern has been raised that the plans show Mulubinda Parade extending from Warruga Street to Kallaroo Street and that Council has stated that this road will not be created. Showing a 'paper road' on GPS devices will frustrate drivers who are trying to find this road. It is requested that this part of the road be formally extinguished and deleted from the final plan.

Comment: Council has no plans to formally build this road as a Hunter Water pumping station has been built on this site and there are topography and drainage issues that preclude this road from being built. Council is considering options to absorb this part of the road into an area of open space that is located to the south.

FINANCIAL/RESOURCE IMPLICATIONS

As with any Development Application, it could potentially be challenged in the Land and Environment Court. Defending Council's determination would have financial implications.

There are no foreseen financial / resource implications resulting from the proposed recommendation.

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

LEGAL AND POLICY IMPLICATIONS

The Development Application is consistent with Council's Local Environmental Plan and presents a minimal risk to Council and the community.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the proposed modification may be challenged in the Land and Environment Court.	Low	Determine application in line with recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no foreseen negative social, economic or environmental implications as a result of the amendment to the approved subdivision. The proposal will have a positive economic and social impact as it will allow for additional housing lots to be available in Corlette.

CONSULTATION

1) The application was exhibited in accordance with Council policy and two (2) submissions were received. These are discussed in the Attachments.

OPTIONS

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

ATTACHMENTS

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

COUNCILLORS ROOM

- 1) Development Plans;
- 2) Bushfire Safety Authority;
- 3) Modification Letter from Applicant.

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

It is proposed to modify the approved subdivision of Lot 2249 DP 1141586. The approved layout is for a three (3) lot subdivision. The modification seeks for this subdivision to be for seven (7) allotments.

Specifically, the proposal will adjust and subdivide the internal boundaries of approved lots 2913, 2914 and 2915 to result in seven new allotments numbered 2913 – 2919 inclusive.

The modification is considered to be a S96(1A) – modification involving minimal environmental impact. The proposed modification will not necessitate the construction of any additional roads or access points to that currently approved and sufficient services are available in the locality for the new allotments.

THE APPLICATION

Owner	New South Wales Land and Housing Corporation
Applicant	Tattersall Lander Pty Ltd
Detail Submitted	Cover Letter Subdivision Plan Bushfire APZ/Building Level Map

THE LAND

Property Description	Lot: 2249 DP: 1141586
Address	4 Mooring Avenue Corlette
Area	8130m ²
Dimensions	Irregular
Characteristics	Steep slope down to the north

THE ASSESSMENT**1. Planning Provisions**

LEP 2013 – Zoning	R2 – Low Density Residential
State Environmental Planning Policies	Coastal Protection

Environmental Planning and Assessment Act, 1979

Clause 91 – Integrated Referrals.

The land subject to the application is identified as being bushfire prone land. As such development for the purposes of subdivision is integrated development under the provisions of *Section 100B of the Rural Fires Act, 1997*.

The application was referred to the NSW Rural Fire Service and a Bushfire Safety Authority was issued on 21 February 2014 for the development subject to three conditions of consent. These conditions are:

1. At the issue of Subdivision Certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
2. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bushfire Protection 2006'.
3. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bushfire Protection 2006'.

Port Stephens Local Environmental Plan 2013

The development site is currently zoned R2 – Low Density Residential. Under this zoning the minimum allowable allotment size is 500m². All of the proposed allotments exceed this requirement with the smallest proposed allotment having an area of 676m².

The development is permissible in the zone and is considered to be generally consistent with the requirements of LEP 2013.

Port Stephens Development Control Plan 2000

The development is not considered to be contrary to any provision of the Port Stephens Development Control Plan 2000.

Port Stephens Section 94 Contributions Plan

The original development consent was granted in 1996 and Section 94 contributions were levied under the Port Stephens Section 94 Contributions Plan Number 6 – Tomaree. The subject proposal represents a modification to the original proposal and contributions for the additional four lots have therefore been levied consistent with the section 94 plan in place at the time of the original determination.

Engineering Assessment

Council's Development Engineers have reviewed the application and have recommended that the application be approved on the basis that inter allotment

drainage to service all new lots be constructed, and drainage easements be created to benefit upstream properties. Conditions have been placed on the consent in regards to these issues.

Likely Impact of the Development

The development will not result in any additional adverse impacts to the originally approved subdivision.

No additional allotments will gain access to Kallaroo Street, as the existing allotments have legal access to Kallaroo Street.

Suitability of the Site

The subject site is considered to be suitable for the development. The major site constraint of bushfire has been assessed and the NSW Rural Fire Service has provided a Bushfire Safety Authority.

Submissions

Two (2) submissions were received during the notification period raising concerns over the development. The following issues were raised:

Fire Protection and Assessment

The submission raised concerns that a 50m Asset Protection Zone exists in accordance with NSW Rural Fire Service correspondence dated 10 March 2009. The submission asserts that this will preclude development from occurring on proposed Lots 2913 and 2914.

The submission further requests that the fire trail accessed through Mulubinda Parade remain open and maintained. The author states in their opinion that providing access to proposed allotments 2913 and 2914 off Kallaroo Street will risk blocking the fire access with parked cars and deliveries.

Comment: The application has been referred to the NSW Rural Fire Service under the provisions of the *Rural Fires Act 1997* and a Bushfire Safety Authority has been issued for the development. This advice from the NSW Rural Fire Service will supersede previous advice issued and as such there is no ground to not support the development based on bushfire risk and constraints.

Drainage

The submission raises a concern that due to the site topography run off is a major problem. It is asserted that runoff has resulted in the failure of Kallaroo Street and the blocking of drains in the drainage system. The author states that development of these sites will further exacerbate the issue.

The author has stated that a pipe and pit system should be required, particularly for proposed lots 2913 and 2914 as they pose a risk to an already stressed drainage system.

Comment: An assessment of the site's drainage has been undertaken by Council's Development Engineers and no issues have been raised that would preclude the development from being supported.

New conditions have been imposed requiring;

- Construction of inter-allotment drainage to service all proposed allotments.
- Creation of easements to benefit upstream properties.

Extension of Mulubinda Parade

The submission raises concern that the plans show Mulubinda Parade extending from Warruga Street to Kallaroo Street and that Council has stated that this road will not be created. Concern is raised that showing this as a road on GPS devices will frustrate drivers who are trying to find this road. It is requested that this part of the road be formally extinguished and deleted from the final plan.

Comment: This part of the road is a 'paper road' and Council has no plans to formally build this road. A Hunter Water pumping station has been built on this site and there are topography and drainage issues that preclude this road from being built. Council is considering options to absorb this part of the road into an area of open space that is located to the south.

Public Interest

The application is considered to be in the public interest as additional housing lots will be created with little impact on the local community.

ATTACHMENT 3

Additional Conditions

36. The development has been granted an approval from the NSW Rural Fire Service dated 21 February 2014 under their relevant legislation. Where conditions are imposed by the authority the development shall comply with the general terms of approval.
37. At the issue of Subdivision Certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service's document 'Standards fire asset protection zones'.
38. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bushfire Protection 2006'.
39. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bushfire Protection 2006'.
40. Prior to the issue of the Subdivision Certificate the applicant shall construct inter-allotment drainage to service lots 2913-2919 inclusive.
41. Prior to the issue of the Subdivision Certificate the applicant shall create drainage easements to benefit upstream properties, in relation to the creation of lots 2913-2919 inclusive.

1. AMENDED CONDITIONS

1. The Development Consent No. 7-1996-41637-20 has been superseded by this Modified Development Consent 7-1996-41637-21. The Development Consent No. 7-1996-41637-20 must be surrendered to the Council prior to commencement of works associated with the Modified Development Consent or the issue of any Construction Certificate by the Principal Certifying Authority.
2. Schedule 3 of the consent referencing approved plans and documentations to be amended to reflect the plans submitted as part of this modification application.
3. A monetary contribution is to be paid to Council, pursuant to section 80A(1) and section 94 of the Environmental Planning and Assessment Act 1979, towards the provision of the following public facilities in the locality:-

Open Space and Recreation	(\$1,649,512)
Community Facilities	(\$784,639)
Library	(\$37,776)

The contribution may be provided to Council on a per lot basis in accordance with staging based on the following:

Rate: \$2,086 per Lot – Open Space

Rate: \$997 per Lot – Community Facilities

Rate: \$48 per Lot - Library

Note

The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan No. 6-Tomaree. A copy of the Contributions Plan may be inspected at Councils Customer Service Centre, 116 Pacific Highway, Raymond Terrace.

Contributions are to be paid prior to release of the linen plan of the subdivision.

Option

The monetary contribution for open space shall be (offset) by provision of land shown as open space reserve on the approved plan.

The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect the attached fee schedule is valid for twelve months.

ITEM NO. 5**FILE NO: PSC2013-05247****YACAABA STREET EXTENSION, NELSON BAY**

REPORT OF: TIM CROSDALE – STRATEGY AND ENVIRONMENT SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Acknowledge submissions received during public exhibition and continue to endorse Concept 5 – one-way north bound extension of Yacaaba Street as the preferred extension option without the pedestrian crossing at Victoria Parade **(ATTACHMENT 2)**;
- 2) The detailed design and costing of road component of Concept 5 – one-way north bound **(ATTACHMENT 2)** be included in a future Capital Works Program for Council's consideration.

ORDINARY COUNCIL MEETING – 24 JUNE 2014**COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Sally Dover Councillor John Nell
	That Council defer Item 5, Yacaaba Street Extension-Nelson Bay, until a further traffic study is undertaken.

AMENDMENT

	Mayor Bruce MacKenzie Councillor Steve Tucker
	<p>That Council:</p> <ol style="list-style-type: none">1) Acknowledge submissions received during public exhibition and continue to endorse concept 5 – one way north bound extension of Yacaaba Street as the preferred extension option without the pedestrian crossing at Victoria Parade, and with the residual land to be landscaped to provide improved amenity and public green space area from Yacaaba Street to the Foreshore.2) The General Manager investigate the matter of pedestrian walkways in this location and provide a further report to Council.

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

MOTION

155	Councillor Ken Jordan Councillor Paul Le Mottee
	<p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Acknowledge submissions received during public exhibition and continue to endorse concept 5 – one way north bound extension of Yacaaba Street as the preferred extension option without the pedestrian crossing at Victoria Parade, and with the residual land to be landscaped to provide improved amenity and public green space area from Yacaaba Street to the Foreshore.2) The General Manager investigate the matter of pedestrian walkways in this location and provide a further report to Council.

BACKGROUND

The purpose of this report is for Council to consider submissions received during public exhibition of the preferred extension of Yacaaba Street **(ATTACHMENT 1)**.

At its meeting held on 25 February 2014 **(ATTACHMENT 3)**, Council considered five options for the extension of Yacaaba Street and resolved to exhibit Concept 5 – one-way north bound **(ATTACHMENT 1)**. Options considered at this meeting included:

1. One-way north bound with vehicular separation;
2. One-way south bound with vehicular separation;
3. Two-way with vehicular separation;
4. One-way north bound as a shared pedestrian zone;
5. One-way north bound, with a wider pedestrian footpath than Concept 4 to provide space for alfresco activities.

The matter was placed on public exhibition from March to April for a period of 32 days. During public exhibition 18 submissions were received, which are later discussed under the heading of Consultation.

Key issues raised during the public exhibition period included concerns around the impact on vehicular traffic movements, pedestrian access down to the foreshore and the use of the area as a shared pedestrian space. There was also some confusion around the commercial component of the design as well as concerns

around the implementation of an additional pedestrian crossing across Victoria Parade.

The proposed extension is considered to provide the most appropriate design response for the area. Designed as a shared space, the proposal creates an urban environment that allows for both vehicular and pedestrian movement between the foreshore and the town centre. Shared space environments are typically favoured for their design aesthetics and are preferred as spaces conducive to fostering pedestrian activity in and around nearby retail precincts.

Shared pedestrian zones move beyond the historical separation of the roadway and the pedestrian footpath creating safer and more accessible urban environment through the calming of traffic. It is considered that this design response is most aligned with the advice, spirit and intent outlined within the Nelson Bay and Town Centre Strategy.

It is recommended that the pedestrian crossing at Victoria Parade be removed in response to traffic flow concerns along Victoria Parade. The existing pedestrian refuge would remain in place.

FINANCIAL/RESOURCE IMPLICATIONS

Estimates for the road component of Concept 5- one-way north bound **(ATTACHMENT 1)** is approximately \$700,000. While the budget estimates for Concept 3- two-way vehicular separation is approximately \$750,000.

These figures are estimates based on preliminary designs. Detailed design and costing is subject to Council's endorsement of the preferred concept. To date, Council has contributed funds towards land acquisition and subsequent concept designs for the street extension.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		No existing budget is available to fund this road extension. The recommendation of this Report is for this road extension to be included in a future Capital Works Program for consideration by Council.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS**Nelson Bay Town Centre and Foreshore Strategy 2012**

The Nelson Bay Town Centre and Foreshore Strategy provides further urban design guidance for the Nelson Bay Town Centre. The Yacaaba Street extension is a step towards implementing its recommendations.

Port Stephens Local Environmental Plan 2013

108 Magnus Street, Nelson Bay fronts Victoria Parade and is zoned SP2 Infrastructure under the Port Stephens Local Environmental Plan 2013. Under Clause 5.1 of this Plan the site can only be developed for the purpose of a Local Road. The subject use of this site is subject to a separate future consideration by Council.

Port Stephens Integrated Planning and Reporting Framework

The Integrated Planning and Reporting Framework is intended to provide an integrated approach to various planning and reporting processes of Council in order to strengthen its strategic focus. For example, infrastructure is to align with budget allocation, which aligns with the community goals of the Community Strategic Plan.

This Framework is intended to ensure that projects identified by the community are budgeted and funded over a forward period. The Yacaaba Street Extension has not been previously identified in this Framework and in turn the matter will be included as a future submission for Council's consideration.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the extension will lead to further traffic congestion.	Low	The road reserve width under the endorsed concept is adaptable, in that it allows for a potential expansion for two-way.	Yes
There is a risk that the extension will not encourage pedestrian connections between the Town Centre and the Foreshore.	Low	The extension seeks to encourage pedestrian activity by providing a shared-zone and widening the existing connection between the Town Centre and Foreshore.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council has consulted with the Nelson Bay Community in the development of the Yacaaba Street extension. The community will be encouraged to use this space as it will be activated and considered safe by the interim and future permanent uses that will occupy the eastern portion of the site. The Nelson Bay Community will see the long identified goal of the Yacaaba Street extension realised.

The proposed extension includes a shared zone that will provide both vehicle and pedestrian movements between the town centre and the foreshore. Pedestrian environments have been evidenced to have direct correlations with increased business activity. This correlation is reflective of current shared pedestrian zone trends for at Laman St, Newcastle; Hunter St, Newcastle; and Magnus St, Nelson Bay.

The Yacaaba Street extension is a step towards implementing the Nelson Bay and Town Centre Strategy, which reinforces Council's commitment to public domain improvements. The construction of the road reserve component will create jobs during construction.

The street extension will follow the most direct path to the Foreshore, which is already being trafficked by pedestrians/ cyclists who are using this informal path, which follows the demolition of the building at 108 Magnus Street. The integration of landscaping will provide green infrastructure, which will increase desirability.

CONSULTATION

Consultation with Councillors, Council Officers and the community contributed towards the development of the five concepts. The matter was then placed on public exhibition for 32 days from Thursday, 20 March until Sunday 27, April 2014.

Exhibition material was made available at five separate locations, which included:

- Nelson Bay Business Association at 110 Magnus Street
- Nelson Bay Visitors Information Centre on Victoria Parade
- Tomaree Library and Community Centre
- Port Stephens Council Building, Raymond Terrace
- Port Stephens Council Website

Council Officers also attended the Nelson Bay Business Association Meetings on four separate occasions and fielded several phone/email inquiries from the community. Public notification was provided in the Port Stephens Examiner and a subsequent media release appeared as an article on 5 May 2014.

A total of 18 submissions were received during this period. One of these submissions was a petition that contained 110 signatures. This submission has been considered as one submission. A summary of submissions and planning responses is included as **(ATTACHMENT 4)**. The most common matters raised in submissions with a planning response are now discussed.

1) Support and objections for Concept 5 – one-way north bound

The majority of submissions expressed their support for the extension of Yacaaba Street with several explicitly expressing their support for the Council endorsed Concept 5 (**ATTACHMENT 1**). A definitive direction either for or against the endorsed concept could not be provided given that the submissions spoke to a variety of matters, which included; commercial development, views and traffic direction.

2) The role of the street extension in alleviating traffic congestion

The GHD (2013) Nelson Bay Traffic and Parking Study recognised that the extension was not critical for the purposes of improving the operation of the Nelson Bay road network. This Report stressed the need to reduce non-direct vehicle circulation in the Town Centre and to improve the pedestrian environment.

3) Council to provide further time for community input

Opportunities for public input have been primarily provided during the development of the Nelson Bay Town Centre and Foreshore Strategy and the most recent public exhibition of Concept 5 (**ATTACHMENT 1**).

Future opportunities for input will be provided through future a housekeeping amendment to the Port Stephens Local Environmental Plan 2013 and any future development requiring development consent.

4) The extension should enhance the view corridor down Yacaaba Street

The opportunity to maximise the view corridor has been sought by reserving the eastern portion of the site for a future building. This positioning is further compounded by the misalignment of the Yacaaba and Magnus Street intersection.

5) Public exhibition period seeking feedback on the road component.

The public exhibition period sought feedback on the road component of the street extension, which was based on the preferences discussed in the previous Council Report as follows:

- Preference for One-Way Vehicular Traffic;
- Preference for North-Bound Vehicular Traffic;
- Preference for a Shared-Pedestrian Zone;
- Preference for Buildings on the Eastern Side.

A number of submissions spoke to a proposed building. A building is not proposed at this stage, but rather the road layout has been designed to cater for a future building. Any future building will be subject to a development application process. The recommended concept has been amended to clearly indicate that Council is endorsing a road layout and not a building (**ATTACHMENT 2**).

- 6) Unacceptable amount of space afforded to commercial development

The residual space reserved for a potential building will seek to provide street activation and safety. To achieve this function, the building must take a practical form to allow for future uses.

In summary, the public exhibition period provided the community with a further opportunity for input towards Council's recommended Concept 5 – one-way north bound (**ATTACHMENT 2**). Comments received largely related to concerns around the commercial component of the proposal, impacts on views towards the foreshore and the ability of the proposal to alleviate traffic congestion. There was no disagreement with the extension of Yacaaba Street per se, rather comments largely focussed on whether the street should be one way or two. In the absence of any new information via the submissions which might suggest a two way proposal would improve traffic congestion in and around the Nelson Bay Town Centre, the proposed recommendation for a one way north bound road is still considered the most appropriate design response for the area and most aligned with the directions and intent of the Nelson Bay and Town Centre Strategy.

OPTIONS

- 1) Endorse Concept 5 - one-way north bound (**ATTACHMENT 2**) as the preferred extension concept for Yacaaba Street;
- 2) Not support Concept 5 – one-way north bound (**ATTACHMENT 2**) as the preferred extension option for Yacaaba Street;
- 3) Place the Five Concepts for the extension of Yacaaba Street back on public exhibition for a further period of 28 days and report the matter back to Council.

ATTACHMENTS

- 1) Option 5 – One-way north bound with vehicular separation (public exhibition);
- 2) Option 5 – One-way north bound with vehicular separation without pedestrian crossing at Victoria Parade (post exhibition);
- 3) Council Report - 25 February 2014;
- 4) Submission Summary and Planning Response.

COUNCILLORS ROOM

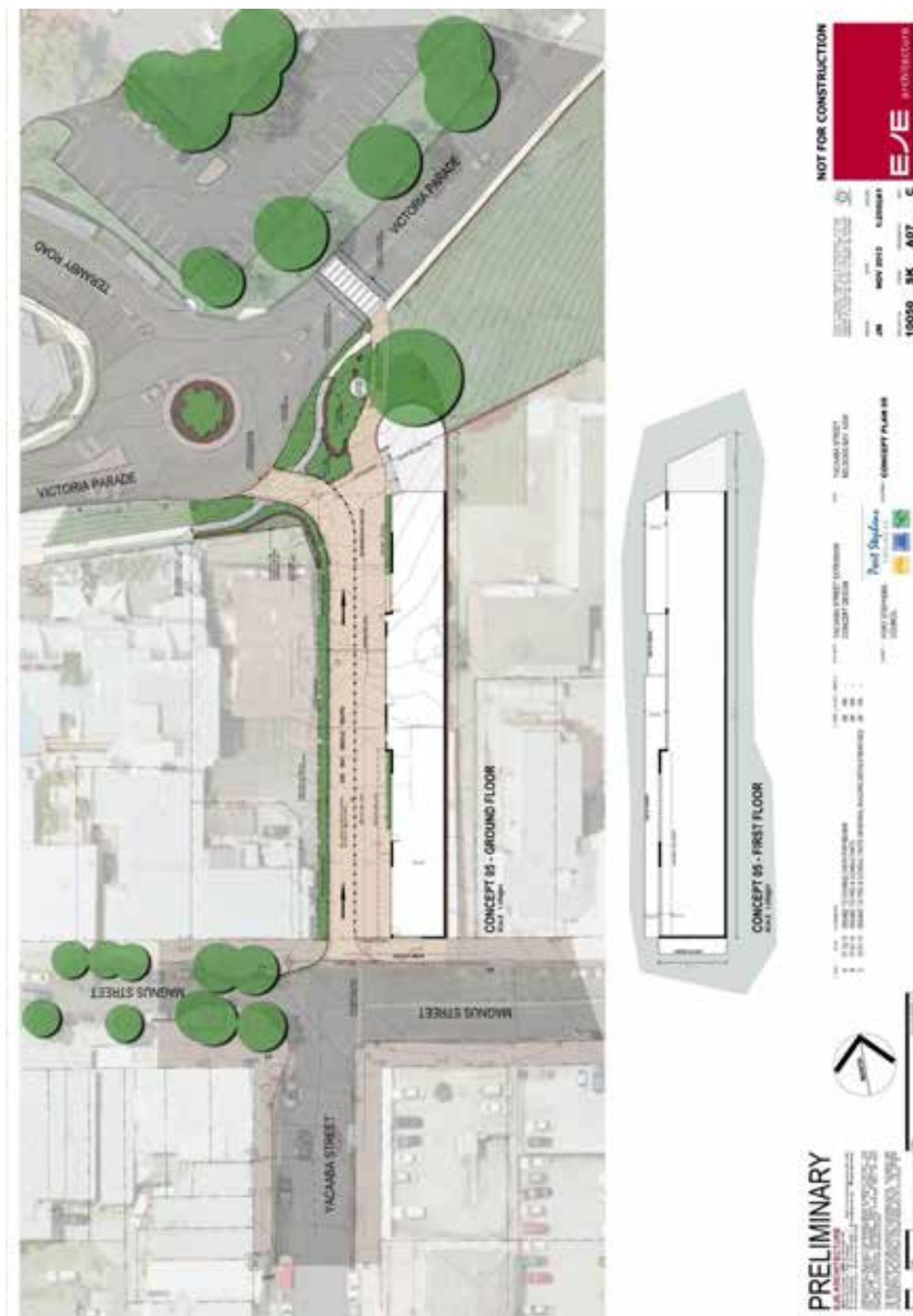
- 1) Port Stephens Local Environmental Plan 2013;
- 2) Nelson Bay Town Centre and Foreshore Strategy.

TABLED DOCUMENTS

Nil.

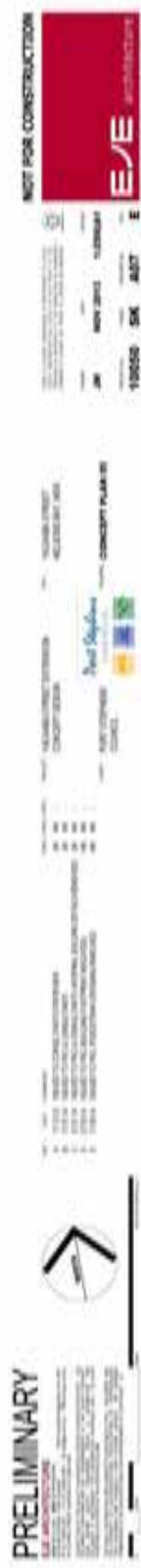
ATTACHMENT 1

Option 5 – One-way north bound with vehicular separation (public exhibition)



ATTACHMENT 2

Option 5 – One-way north bound with vehicular separation – without pedestrian crossing at Victoria Parade (post exhibition)



ATTACHMENT 3
Council Report - 25 February 2014

ORDINARY COUNCIL – 25 FEBRUARY 2014

ITEM NO. 3

FILE NO: PSC2008-9241

YACAABA STREET EXTENSION, NELSON BAY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse Concept 5 - one-way north bound (**ATTACHMENT 5**) as the preferred extension option for Yacaaba Street;
- 2) Place this Concept on public exhibition for a minimum period of 28 days;
- 3) Should no submissions objecting to the exhibited Concept be received then adopt and prepare a submission to Council's 2014/15 Integrated Works (Capital Works) Program;
- 4) Resolve to rezone 108 Magnus Street, Lot 71, DP 573006 from SP2 Infrastructure to B2 Local Centre in a future housekeeping amendment to the Port Stephens Local Environmental Plan 2013.

ORDINARY COUNCIL MEETING – 25 FEBRUARY 2014
COMMITTEE OF THE WHOLE RECOMMENDATION

Cr Paul Le Mottee returned to the meeting at 6.16pm, during Item 3.

	Councillor John Nell Councillor John Morello
	That Council: <ol style="list-style-type: none">1) Endorse Concept 5 - one-way north bound (ATTACHMENT 5) as the preferred extension option for Yacaaba Street;2) Place this Concept on public exhibition for a minimum period of 28 days;3) Should no submissions objecting to the exhibited concept be received then adopt and allocate funds for detailed design in the 2014/2015 budget in preparation for a submission into Council's 2015/2016 Integrated Works (Capital Works) Program;4) Resolve to rezone 108 Magnus Street, Lot 71, DP 573006 from SP2 Infrastructure to B2 Local Centre in a future housekeeping amendment to the Port Stephens Local Environmental Plan 2013.

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

ORDINARY COUNCIL – 25 FEBRUARY 2014

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

Those against the Motion: Nil.

MOTION

Cr Paul Le Mottee returned to the meeting at 6.39pm, during Item 3.

035	Councillor John Neil Councillor John Morello
	It was resolved that Council: <ol style="list-style-type: none">1) Endorse Concept 5 - one-way north bound (ATTACHMENT 5) as the preferred extension option for Yacaaba Street;2) Place this Concept on public exhibition for a minimum period of 28 days;3) Should no submissions objecting to the exhibited concept be received then adopt and allocate funds for detailed design in the 2014/2015 budget in preparation for a submission into Council's 2015/2016 Integrated Works (Capital Works) Program;4) Resolve to rezone 108 Magnus Street, Lot 71, DP 573006 from SP2 Infrastructure to B2 Local Centre in a future housekeeping amendment to the Port Stephens Local Environmental Plan 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, Crs Peter Kafer, Paul Le Mottee, Ken Jordan, Chris Doohan, Steve Tucker, Geoff Dingle, John Neil and John Morello.

Those against the Motion: Nil.

Cr Geoff Dingle left the meeting at 6.39pm after the block vote was carried for all items.

BACKGROUND

The purpose of this report is to seek Council support for the one-way north bound extension of Yacaaba Street, Nelson Bay.

Yacaaba Street runs parallel with Stockton Street and is positioned between Tomaree and Magnus Streets. This project will see Yacabba Street extend to Victoria Parade to connect the Foreshore to the Town Centre. This extension was identified by the 24 April 2012 Council adopted Nelson Bay Town Centre & Foreshore Strategy.

ORDINARY COUNCIL – 25 FEBRUARY 2014

This Strategy was developed to guide Nelson Bay towards becoming more attractive to tourists, the business community and residents. This Strategy was informed by a Traffic and Parking Study that identified that the Yacaaba Street extension was not critical to improve the operation of the road network. The extension aims to:

- Improve pedestrian and vehicular access to the Nelson Bay Foreshore;
- Improve visual sightlines to the Nelson Bay Foreshore;
- Fill a missing link in the permeable Nelson Bay Centre grid-like road structure;
- Support business activity through improving the public domain.

Council resolved to purchase 108 Magnus Street on 23 October 2012. This purchase meant that Council now owned the land required to complete the extension. In late 2013, Council Officers engaged consultants to prepare conceptual road, landscape and built-form designs that resulted in the following road extension concepts:

- 1) One-way north bound with vehicular separation (**ATTACHMENT 1**);
- 2) One-way south bound with vehicular separation (**ATTACHMENT 2**);
- 3) Two-way with vehicular separation (**ATTACHMENT 3**);
- 4) One-way north bound as a shared pedestrian zone (**ATTACHMENT 4**);
- 5) One-way north bound, with a wider pedestrian footpath than Concept 4 to provide adequate space for pedestrians (**ATTACHMENT 5**).

The preferred fifth concept is based on the following underlying preferences:

- Preference for One-Way Vehicular Traffic;

The preference for one-way vehicular traffic is based on the GHD, 2013, 'Nelson Bay Traffic and Parking Study' that recognises that this extension as not being critical for the purposes of improving the operation of the Nelson Bay road network. The GHD Report stresses the need to reduce needless vehicle circulation in the Town Centre and to improve the pedestrian environment.

Two-way vehicular traffic would reduce the space required for pedestrians, on-site dining and accompanying building. This is provided that a minimum 2m pedestrian thoroughfare is generally required and in turn Concept 3 (**ATTACHMENT 3**) would leave less than 0.5 metre for on-street dining. It would also create complications in intersection design and increase the hazard to pedestrians at the intersection of Victoria Parade and Teramby Road.

Two-way vehicular traffic would give preference to vehicles in a town centre that should provide priority to pedestrians. The extent to which pedestrians feel safe within this environment encourages the patronage of businesses.

Two-way vehicular traffic would also decrease the safety of the Yacaaba and Magnus Street Intersection by increasing conflict points from eight to sixteen. Austroads 2013 – Part 6 lists that minimising the number of conflict points is a key safety principle for intersection performance. Safety concerns would be further compounded because of the alignment offset of the current Yacaaba Street with the subject site.

ORDINARY COUNCIL – 25 FEBRUARY 2014

- Preference for North-Bound Vehicular Traffic;

The preference for north-bound vehicular traffic is based on maximising safety at the Yacaaba and Magnus Streets intersection, improving the access to the Foreshore and emphasising the visual sightline as identified within the Nelson Bay Town Centre and Foreshore Strategy.

Access to the Donald Street Car Park will continue from Magnus Street and the existing segment of Yacaaba Street.

- Preference for a Shared-Pedestrian Zone;

The preference for a shared-pedestrian zone is based on the desired amenity for the Nelson Bay Town Centre, being one of pedestrian comfort and safety. Separation between vehicular traffic and stationary pedestrians for such purposes as on-street dining will be provided by integrated bollards.

Pedestrian environments have direct correlations with increased business activity as evidenced by such studies as the Heart Foundation, 2011, 'Good for Business'. This correlation is reflective in current practice with shared zones present at Laman Street, Newcastle; Hunter Street, Newcastle; Magnus St, Nelson Bay; and Church St, Parramatta.

- Preference for Buildings on the Eastern Side;

The preference for the buildings to be placed on the eastern side of the subject site is based on improving the visual sightline to the Nelson Bay Foreshore and minimising the intersection misalignment with Yacaaba Street. This misalignment is best illustrated by the Photomontage provided for Concept 5 (ATTACHMENT 6).

These concepts have been developed through extensive internal consultations between Council's relevant road, property and planning sections. The Nelson Bay and District Business Association have also been consulted through Council Officer presentations in December 2013 and most recently in January 2014.

A number of community submissions have been received following the purchase of 108 Magnus Street, Nelson Bay. The comments expressed in these submissions have included:

- Preference for commercial buildings to be on the eastern boundary;
- Wide footpath to provide for on-street dining;
- Support for a one-way street extension at Yacaaba Street extension;
- Support for a two-way street Yacaaba Street extension;
- Provide connections to the wider pedestrian network, such as the Marina.

During this informal consultation a preference for the two-way with vehicular separation has been demonstrated by some members of the community. As

ORDINARY COUNCIL – 25 FEBRUARY 2014

previously mentioned a number of disadvantages exist with Concept 3 - Two-way with vehicular separation (**ATTACHMENT 3**):

- 1) The GHD Parking and Traffic Study does not identify a need for this extension in regard to traffic movement;
- 2) The offset alignment of the existing Yacaaba St to the subject site could potentially create an unsafe Magnus and Yacaaba St intersection;
- 3) Business activity is facilitated by the creation of a pedestrian environment. Concept 3 (**ATTACHMENT 3**) limits the pedestrian zone to 2m and in turn reduces the potential for streetscape activities, such as on-street dining.

Council is unlikely to develop buildings on the site in the short to medium-term due to the existing adequate supply of commercial properties within Nelson Bay.

In the Interim, Council in consultation with the community would seek to activate this space with a range of temporary pop-up uses by preparing and adequately servicing the site with power outlets for example. If this was implemented it would introduce an exciting and constantly changing element to anchor increased activity in this part of the Town Centre.

FINANCIAL/RESOURCE IMPLICATIONS

ACOR Consultants were engaged to undertake conceptual road, landscape and built-form design for the site. Included within this scope of works was the need to provide preliminary costs for the road and built-form component.

It should be noted that these estimates are preliminary estimates only. More detailed design work would be required to produce the final estimates.

The budget estimate for the road component of Concept 5 – one-way north bound (**ATTACHMENT 5**) is upwards of \$700,000. While the budget estimates for Concept 3 – two-way vehicular separation (**ATTACHMENT 3**) is upwards of \$750,000.

Subject to the public exhibition period and Council's subsequent support of Concept 5 (**ATTACHMENT 5**) these budget estimates could be included as a submission to Council's 2014/15 Integrated Works (Capital Works) Program.

The proposed temporary uses and eventual permanent building will likely attract tenants that will provide a financial return to Council over the longer term.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No	700,000	No existing budget is available to fund this road extension. The recommendation of this Report is to request the budget estimate of \$700,000 for Concept 5 to be included in a submission to Council's 2014/15

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			Integrated Works (Capital Works) Program. The temporary option would be low cost, but would also require a financial allocation, albeit substantially less than the above.
Reserve Funds	No		
Section 94	Yes	43,360	Detailed designs developed to enable the construction of the Yacaaba Street extension have been funded through the contributions framework.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The Yacaaba Street road extension is a step towards implementing the Council adopted Port Stephens Nelson Bay Town Centre and Foreshore Strategy. This is a project that will increase and improve the public domain of the Nelson Bay Town Centre.

108 Magnus Street, Nelson Bay, being the site that fronts Victoria Parade is zoned SP2 Infrastructure under the Port Stephens Local Environmental Plan 2013. Under Clause 5.1 of this Plan the site can only be developed for the purpose of a Local Road, meaning that commercial premises are currently prohibited on this site.

The site was previously zoned 3(a) Commercial under the Port Stephens Local Environmental Plan 2000, but was changed to SP2 Infrastructure for the purpose of acquisition. Now that it has been acquired, it is appropriate the site again be zoned for commercial uses. This rezoning has merit based on its location within the Nelson Bay Town Centre, previous 3(a) Business General under the Port Stephens Local Environmental Plan 2000 and its consistency with the Nelson Bay Town Centre and Foreshore Strategy.

This site specific rezoning could be included in a future housekeeping amendment that could be expected to commence prior to the end of 2014.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council cannot allocate the necessary funds for the road construction in	Low	Write a submission to Council's 2014/15 Integrated Works (Capital Works) Program. Also consider the temporary short-	Yes

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the short-medium term.		term use of the site.	
There is a risk that the residual space allocated for built-form following the road construction will be not be provided with an interim use.	Low	Work with the community through groups such as the Nelson Bay and District Business Association. Also prepare and adequately service the site to allow for an activated space with temporary stalls, markets, markets, mobile food vans, stalls, etc.	Yes
Council cannot find tenants or a buyer for the proposed building.	Medium - High	Delay construction of the building until the commercial market improves and examine options other than Council to develop through out-right sale or a long-term lease.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Yacabba Street Extension seeks to implement a component of the Council adopted Port Stephens Town Centre and Infrastructure Strategy.

This extension will improve the public domain of the Nelson Bay Town Centre and as a result encourage business activity by providing an environment attractive to pedestrians.

The built-form and widened pedestrian space will encourage passive surveillance by occupants and in turn facilitate social interactions. This pedestrian zone will also reduce vehicle-use for those unnecessary short journeys.

CONSULTATION

Consultation has taken place internally, with Councillors and the Nelson Bay and District Business Association. A number of letters have also been received from Nelson Bay residents given previous Council Reports regarding the purchase of 108 Magnus Street, Nelson Bay.

The recommendation is to place the preferred concept design on public exhibition to allow the general community an opportunity to comment on Council's preferred extension option.

OPTIONS

- 1) Endorse Concept 5 - one-way north bound (**ATTACHMENT 5**) as the preferred extension concept for Yacaaba Street, place the matter on public exhibition for 28 days and report the matter back to Council;

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- 2) Place all Five Concepts (**ATTACHMENTS 1-5**) for the extension of Yacaaba St on public exhibition for a period of 28 days and report the matter back to Council;
- 3) Endorse Concept 5 – one-way north bound (**ATTACHMENT 5**) as the preferred extension option and prepare a submission for the costs to be included within the 2014/15 Facilities and Services budget.

ATTACHMENTS - Copyright owners consent has been sought.

- 1) Option 1 – One-way north bound with vehicular separation;
- 2) Option 2 – One-way south bound with vehicular separation;
- 3) Option 3 – Two way with vehicular separation;
- 4) Option 4 – One-way north bound as a shared pedestrian zone;
- 5) Option 5 – One-way north bound as a shared pedestrian zone and widened 5-6m pedestrian zone;
- 6) Option 5 – Photomontage.

COUNCILLORS ROOM

- 1) Port Stephens Local Environmental Plan 2013;
- 2) Nelson Bay Town Centre and Foreshore Strategy.

TABLED DOCUMENTS

NIL.

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ATTACHMENT 1

Option 1 – One-way north bound with vehicular separation



PRELIMINARY
 This drawing is preliminary and is not to be used for construction purposes. It is for informational purposes only. The final design will be subject to public consultation and council approval.

NOT FOR CONSTRUCTION

EJE
 ENGINEERING & JOURNALISTS

Project: [illegible]
 Date: [illegible]
 Drawn by: [illegible]
 Checked by: [illegible]
 Scale: [illegible]

North Arrow

ORDINARY COUNCIL – 25 FEBRUARY 2014

ATTACHMENT 2

Option 2 – One-way south bound with vehicular separation



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ATTACHMENT 3

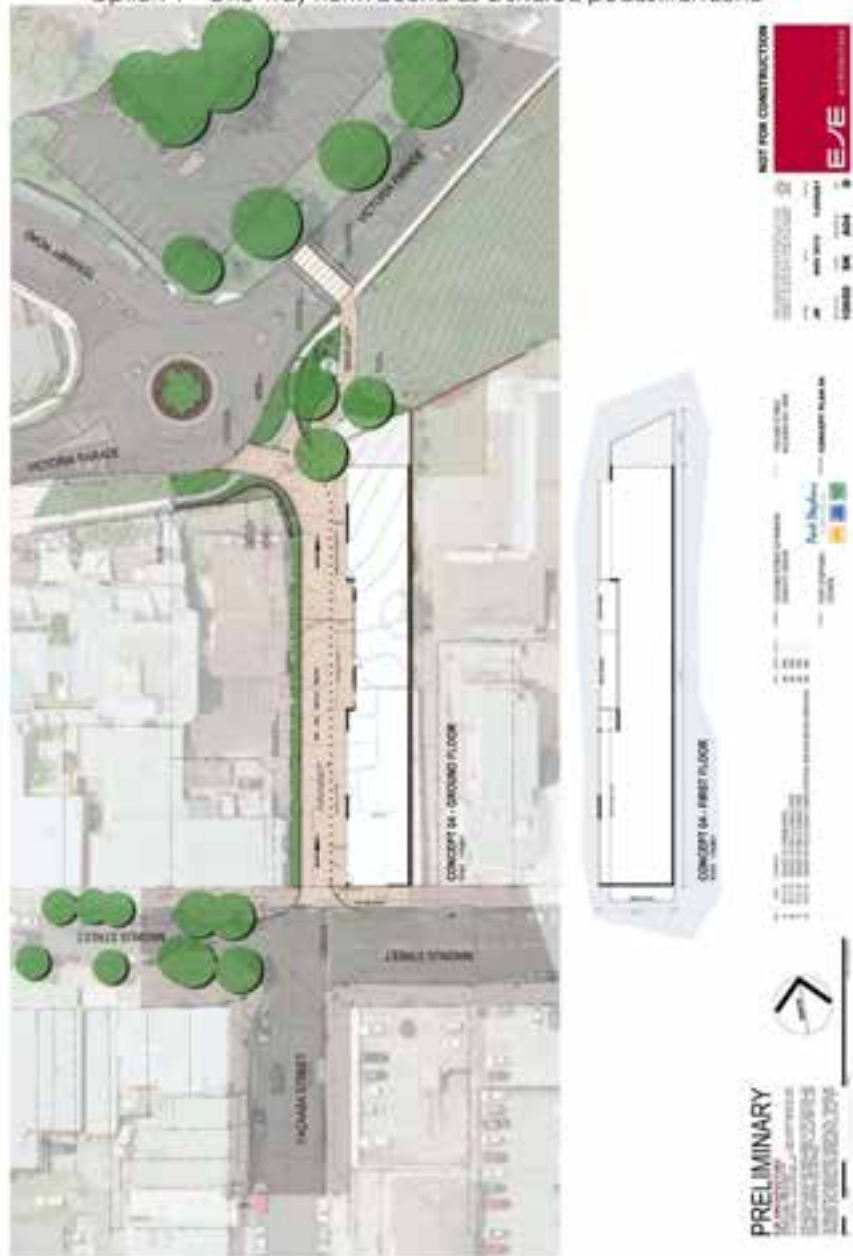
Option 3 – Two way with vehicular separation



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ATTACHMENT 4

Option 4 – One-way north bound as a shared pedestrian zone



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ATTACHMENT 5

Option 5 – One-way north bound as a shared pedestrian zone and widened 5-6m pedestrian zone



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ATTACHMENT 6
Option 5 – Photomontage



ATTACHMENT 4

Submission Summary and Planning Response

Submission Summary – Yacaaba Street, Nelson Bay		
No	Summary	Planning Comment
1	<ul style="list-style-type: none"> a. Supports Option 5 b. One-way north-bound leaves plenty of space for pedestrians c. Commends previous work done on the Nelson Bay Strategy d. Shops will protrude too much into surrounding area e. Delete shops from plan or propose a one-storey structure f. Supports short-term use as a market location 	<ul style="list-style-type: none"> a. Noted b. Noted c. Noted d. The building is not part of this proposal. The space allocated for a future building is less than 50% of lot width e. A future building is subject to future feasibility analysis f. Council will work with the Nelson Bay Community regarding interim uses of this site
2	<ul style="list-style-type: none"> a. Supports Option 5 b. Grant access to 110 Magnus Street via the Yacaaba extension c. Magnus/Yacaaba misalignment currently results in traffic conflict 	<ul style="list-style-type: none"> a. Noted b. This will be considered in detailed designs and costing c. This misalignment is one the key variables influencing the underlying principle of one-way north bound
3	<ul style="list-style-type: none"> a. Not supportive of a concept that fails to achieve an attractive link b. Reserves an unacceptable area for commercial development c. Requests further period of consultation d. Concept 5 would intrude too far into the public domain and severely limit the visual significance of the Foreshore e. Supports substantial development of site so that Council can raise some revenue to offset site acquisition and infrastructure costs f. Should be one-way north only in recognition that the role of the extension should primarily be to encourage foot and cycle traffic g. Consider purchasing adjacent sites to increase view corridor h. Commercial building should be set-back from Magnus Street i. Street extension to be integrated within the context of the Nelson Bay Town Centre & Foreshore Strategy 	<ul style="list-style-type: none"> a. The concept aims to provide an attractive link by enhancing the vista and integrated landscaping b. The building is not part of this proposal. Concept 5 reserves less than 50% of the site width for a future building c. Opportunities for input are discussed in the Council Report under the heading of Consultation. Further opportunities regarding any land-use changes or development requiring notification will provide further potential opportunities d. The extension seeks to connect to the foreshore and enhance the vista. The need to make this an attractive space for pedestrians is provided by activated street frontages, which are provided by buildings, which makes up less than 50% of the site width e. A future building is subject to future feasibility analysis f. Noted g. The objectives of the extension can be achieved on the

		current sites
		<p>h. Any future building would need to comply with the relevant requirements of the planning framework.</p> <p>i. The extension was formally recognised by the Strategy and in turn has been developed with the Strategy in mind</p>
4	<p>a. Not Supportive of Option 5</p> <p>b. More time to decide the use of this rare and valuable space</p> <p>c. Belief that Option 5 is being rushed through with little consultation</p> <p>d. Place the matter on hold to allow for further consultation</p>	<p>a. Noted</p> <p>b. Opportunities for input are discussed in the Council Report under the heading of Consultation. Further opportunities regarding any land-use changes or development requiring notification will provide further potential opportunities</p> <p>c. As above</p> <p>d. As above</p>
5	<p>a. Not supportive of the exhibited documents</p> <p>b. Supportive of alfresco dining and enhancing the view corridor</p> <p>c. Not support of a big building on a narrow thoroughfare</p>	<p>a. Noted</p> <p>b. The 4-6m pedestrian space provides the opportunity for alfresco activities at this site</p> <p>c. Concept 5 provides adequate space for a potential building, which is not a part of this proposal</p>
6	<p>a. Not Supportive of Option 5</p> <p>b. More time to decide the use of this rare and valuable space</p> <p>c. Belief that Option 5 is being rushed through with little consultation</p> <p>d. Place the matter on hold to allow for further consultation</p>	<p>a. Noted</p> <p>b. Opportunities for input are discussed in the Council Report under the heading of Consultation. Further opportunities regarding any land-use changes or development requiring notification will provide further potential opportunities</p> <p>c. As above</p> <p>d. As above</p>
7	<p>a. Stop views from being destroyed – more public debate is needed</p>	<p>a. The opportunities for input are discussed in the Council Report under the heading of Consultation</p>
8	<p>a. Supports the extension of Yacaaba Street</p> <p>b. Traffic should flow in both directions</p> <p>c. Space should be reserved for pedestrians and cyclists</p> <p>d. Buildings should not be included in the Yacaaba Street Extension</p>	<p>a. Noted</p> <p>b. The GHD (2013) Nelson Bay Traffic and Parking Study recognised that the extension was not critical for the purposes of improving the operation of the Nelson Bay road network. This Report stressed the need to reduce needless vehicle circulation in the Town Centre and to</p>

9	a. Objects to the proposed development of central Nelson Bay	improve the pedestrian environment a. The street extension allocated a space for a potential building and the Yacaba Street extension has long been identified by the community
10	<p>a. Supports Option 5</p> <p>b. Objects to the two-storey building being constructed on the eastern boundary of 106 and 108 Magnus Street</p> <p>c. Two-storey building will block existing views and create air pollution through increased traffic</p> <p>d. Supportive of a potential single storey building with a greater setback from the front boundary to maintain views</p> <p>e. Interim-use of site should be tidy, unlike the current situation</p> <p>f. Believes the land should be maintained as public open space</p> <p>g. Significant commercial space currently present within Nelson Bay</p>	<p>a. Noted</p> <p>b. A future building is subject to future feasibility analysis</p> <p>c. A future building is subject to future feasibility analysis and the one-way shared pedestrian zone seeks to encourage an activated pedestrian environment</p> <p>d. As above</p> <p>e. Noted</p> <p>f. The Port Stephens Council Open Space Consolidation Review 2007 identified that the Tomaree Peninsula has a 259% over-supply of open space</p> <p>g. Noted, hence why any future development for commercial purposes would need to be feasible</p>
11	<p>a. Road width needs to be wide enough to accommodate future 2-way traffic, that being between 7.8metres</p> <p>b. Road extension must maintain the view corridor and provide traffic relief consistent with the Nelson Bay Strategy</p> <p>c. Community and out-of-towners need opportunity for comment</p> <p>d. Option needs to be considered in the context of the Nelson Bay Town Centre & Foreshore Strategy</p>	<p>a. Concept 5 (ATTACHMENT 5) provides 9.765m for the road reserve. Concept 3 – Two-way with vehicular separation provides 9.660m for the road reserve (ATTACHMENT 3)</p> <p>b. The GHD (2013) Nelson Bay Traffic and Parking Study recognised that the extension was not critical for the purposes of improving the operation of the Nelson Bay road network. This Report stressed the need to reduce needless vehicle circulation in the Town Centre and to improve the pedestrian environment</p> <p>c. Opportunities for input are discussed in the Council Report under the heading of Consultation. Further opportunities regarding any land-use changes or development requiring notification will provide further potential opportunities</p> <p>d. Any future building would need to comply with the relevant requirements of the planning framework</p> <p>e. The extension was formally recognised by the Strategy and</p>

		in turn has been developed with the Strategy in mind	
12	<ul style="list-style-type: none"> a. Supports the use of the land for the extension of Yacaaba Street b. Does not support commercial development of the site c. Community needs visual connection to the Foreshore 	<ul style="list-style-type: none"> a. Noted b. The urban design benefits of providing passive surveillance to the street is discussed in the Report c. The concept aims to provide an attractive link by enhancing the vista and through landscaping 	
13	<ul style="list-style-type: none"> a. Not supportive as Option 5 draws traffic away from the town b. Extension should be constructed urgently with two-way traffic and a walkway on both sides of Yacaaba Street c. Commercial building on the site is designed fit for purpose d. Affected business and property owners be given a fair voice 	<ul style="list-style-type: none"> a. The GHD (2013) Nelson Bay Traffic and Parking Study recognised that the extension was not critical for the purposes of improving the operation of the Nelson Bay road network. This Report stressed the need to reduce needless vehicle circulation in the Town Centre and to improve the pedestrian environment b. Extension is subject to the support of council, detailed design, costing and funding. The design is a shared zone so pedestrians have right-of-way over the entire street c. A future building is subject to future feasibility analysis and is not a part of this recommended option d. Council will continue to work with the community and be notified of any future works 	
14	<ul style="list-style-type: none"> a. Believes the extension will destroy the Foreshore 	<ul style="list-style-type: none"> a. The extension will provide public space through the road that would not have otherwise been provided if privately owned. The extension seeks to connect the Town Centre to the Foreshore based on the underlying principles discussed in the Report. 	
15	<ul style="list-style-type: none"> • Petition with 5 signatures with a series of questions including: <ul style="list-style-type: none"> a. Why Council contemplating becoming a property developer? b. Why are there only basic plans on exhibition? c. Why have Councillors given support to the concept without consultation with their constituents? 	<ul style="list-style-type: none"> a. Council as a government authority has always managed infrastructure and land assets. This is a key role of good governance by working with the community to get outcomes of most importance to the community b. Concept 5 (ATTACHMENT 5) is the matter endorsed by Council and therefore the matter placed on public exhibition. c. The opportunities for input are discussed in the Council 	

		Report under the heading of Consultation
16	<ul style="list-style-type: none"> Not supportive of Concept 5 because of the following: <ol style="list-style-type: none"> Provides the least amount of road infrastructure Provides the least amount of footpath access Provides the least amount of outdoor activity Provides the most amount of commercial development Inconsistent with the Nelson Bay Strategy 	<ol style="list-style-type: none"> The road width is appropriate to carry one-way vehicular traffic and road reserve is an almost identical to that provided under Concept 3 – Two-way with vehicular separation (ATTACHMENT 3) Concept 5 provides the greatest width of 5.6m for pedestrians. Furthermore, the shared-zone means pedestrians have right-of-way across the whole site The wide 5.6m width provides the space to enable all sorts of activities The building is not part of this proposal. The space allocated for a future building is less than 50% of lot width. The extension was formally recognised by the Strategy and in turn has been developed with the Strategy in mind
17	<ol style="list-style-type: none"> Commercial building will occupy 70% of site frontage The purpose of the extension is to free traffic gridlock Pedestrian crossing at round-a-bout is considered dangerous 	<ol style="list-style-type: none"> The building is not part of this proposal. The space allocated for a future building is less than 50% of lot width The GHD (2013) Nelson Bay Traffic and Parking Study recognised that the extension was not critical for the purposes of improving the operation of the Nelson Bay road network. This Report stressed the need to reduce needless vehicle circulation in the Town Centre and to improve the pedestrian environment The placement of the pedestrian crossing is at a low-speed location where vehicles are already slowing down to access the round-a-bout. Traffic engineers informed the indicative placement of this crossing.
18	<ol style="list-style-type: none"> Petition with 110 signatures stating 'Stop Nelson Bay foreshore views being destroyed – more public debate is needed' 	<ol style="list-style-type: none"> The extension seeks to connect to the foreshore and enhance the vista. The need to make this an attractive space for pedestrians is provided by activated street frontages, which are provided by buildings, which makes up less than 50% of the site width. The opportunities for input are discussed in the Council Report under the heading of Consultation.

ITEM NO. 6**FILE NO: A2004-0230****POLICY REVIEW: CASH INVESTMENT****REPORT OF: TIM HAZELL – FINANCIAL SERVICES SECTION MANAGER****GROUP: CORPORATE SERVICES**

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the amendments to the CASH INVESTMENT policy shown at **(ATTACHMENT 1)**;
- 2) Place the CASH INVESTMENT policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.

ORDINARY COUNCIL MEETING – 24 JUNE 2014**COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Ken Jordan Councillor John Morello
	That the recommendation be adopted.

MOTION

156	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved: <ol style="list-style-type: none">1) Endorse the amendments to the CASH INVESTMENT policy shown at (ATTACHMENT 1);2) Place the CASH INVESTMENT policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.

BACKGROUND

The purpose of this report is to review the Cash Investment policy adopted by Council on 20 December 2005 (Minute No.382) and last amended on 27 March 2012 (Minute No.048).

The objective of the Policy is to guide Council's cash investment process and specifically:

- to establish Council's investment philosophy;
- to establish investment risk management guidelines;
- to prescribe requirements to be followed in investing surplus funds that are not immediately required for any other purpose;
- to identify the duties of those involved in the investment process;
- to prescribe internal control, investment monitoring and reporting procedures.

The Policy proposes a more sophisticated approach to diversification risk management as recommended by Council's Financial Advisor.

FINANCIAL/RESOURCE IMPLICATIONS

Council is responsible for the prudent management of community assets including surplus cash not immediately required for continuous operations.

A Cash Investment policy assists in ensuring the security of invested funds and achieving a return on funds acceptable to the organisation.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Resources required to review this policy are covered within the existing budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Section 23A of the Local Government Act 1993 requires Council to take guidelines issued by the Director General of the Division of Local Government into consideration before exercising its functions. The redrafted policy complies with the Investment Policy Guidelines.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council's legal responsibilities will not be met if the Policy is not implemented, which could cause financial and/or reputational damage.	Medium	Adopt the Cash Investment policy.	Yes

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

There is a risk that if a financial institution were to default on repayment, only the first \$250,000 would be government guaranteed. Investment diversification as proposed reduces Council's exposure to investing in lower rated and unrated financial institutions.	Medium	Invest only in APRA approved Australian Authorised Deposit Taking institutions in accordance with the diversification limits at clause 9.1 of the policy. No APRA (established 1998) approved Australian ADI has ever failed to return term deposits. Pyramid Building Society (the last insolvent Australian financial institution) term deposit shortfalls were repaid to investors by the Victorian Government. The last lost deposits were as a result of the failure of the Primary Producers Bank of Australia in 1931.	Yes
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SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Income from investments needs to be optimised to ensure Council can provide facilities and services to the community on a sustainable basis.

CONSULTATION

- 1) Council's Financial Services staff;
- 2) CPG Pty Ltd – Council's Financial Advisor.

OPTIONS

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

ATTACHMENTS

- 1) Cash Investment policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



POLICY

Adopted: 20/12/2005
Minute No: 382
Amended: 27/03/2012
Minute No: 048

FILE NO: A2004-0230
TITLE: CASH INVESTMENT POLICY
REPORT OF: FINANCIAL SERVICES MANAGER

BACKGROUND

This policy has been subject to periodic review in accordance with Council policy.

OBJECTIVE

The purpose of this policy is to guide Council's cash investment process and specifically:

- Establish Council's investment philosophy;
- Establish investment risk management guidelines;
- Prescribe requirements to be followed in investing surplus funds that are not immediately required for any other purpose;
- Identify the duties of those involved in the investment process;
- Prescribe internal control ~~procedures~~, investment monitoring and reporting procedures.

PRINCIPLES

- 1) Council has an obligation under its charter as the custodian and trustee of public assets to effectively account for and manage the assets for which it is responsible.
- 2) All ~~Council~~ investments are to be made in accordance with ~~the following process~~:
 - a) ~~Determine surplus funds for investment from daily cash flow analysis~~

Changes

Delete:
Procedures

Insert
Council
The following process

Insert
a) Determine surplus funds ...

- | | |
|---|---|
| <ul style="list-style-type: none"> b) Determine cash requirements and the required term of the investment; c) Seek quotations from financial institutions, having regard for: <ul style="list-style-type: none"> i) Section 625 of the Local Government Act which details how Councils may invest; ii) The Ministerial Order made under section 625(2) of the Local Government Act 1993; iii) Section 14 of the Trustee Act which details the powers of investment to which a trustee is to have regard when exercising the power of investment; iv) Clause 212 of the Local Government (General) Regulation 2005; v) The review of NSW Local Government Investments Report (Cole Inquiry Report, April 2008); vi) Investment Policy Guidelines – issued by the Director General of the Division of Local Government under s23A Local Government Act 1993; vii) Local Government Code of Accounting Practice and Financial Reporting. | <p>Code of Accounting Practice and Financial Reporting.</p> |
|---|---|

- | | |
|--|---|
| <ul style="list-style-type: none"> • Local Government Act 1993 – s625 How May Councils Invest? • Local Government Act 1993 – Ministerial investment Order under s625(2) as made from time to time; • The Trustee Act 1925 – s14 including powers of investment and matters to which trustee is to have regard when exercising power of investment; • Local Government (General) Regulation 2005 – cl212 Reports on Council Investments; • Review of NSW Local Government Investments Report (Cole Inquiry Report, April 2008); • Investment Policy Guidelines – issued by the Director General of the Division of Local Government under s23A Local Government Act 1993; • Local Government Code of Accounting Practice and Financial Reporting. | <p>Delete:
Local Government Act 1993...
Code of Accounting Practice and Financial Reporting.</p> |
|--|---|

POLICY STATEMENT

1. Investment Philosophy and Objectives

1.1. Investments are to be allocated to ensure there is

sufficient liquidity to meet reasonably anticipated cash flow requirements, as and when they fall due, without incurring the risk of significant costs due to the unanticipated sale of an investment.

1.2. Preservation of capital and the real value of surplus funds is the principal objective of the investment portfolio.

1.3. Investments are expected to achieve a market average rate of return consistent with Council's risk tolerance. One dollar invested today is expected to earn interest so that it will increase in value to more than one dollar in the future, "the time value of money".

2. Cash Flow

2.1. Council is to plan for future cash flow requirements in its long term financial plan and annual budget.

2.2. Cash flow is to be monitored daily.

2.3. Council is to have an overdraft facility to be used to meet unforeseen commitments, with the aim of avoiding use of this facility as the interest rate is likely to exceed the interest rate Council receives on its investments.

2.4. When appropriate to do so, daily surplus funds are to be automatically swept into an interest bearing bank account to maximise interest earnings.

2.5. Surplus funds that are forecast not to be required for in excess of 30 days are to be identified and invested.

3. Risk Management Criteria

3.1. Placement and retention of investments are to be assessed according to the following criteria:

- Preservation of Capital – the requirement for preventing losses in Council's investment portfolio's total value (considering the time value of money);
- Diversification – setting limits to the amounts invested with individual financial institutions or government authorities to reduce credit risk;
- Credit risk – the risk that a financial institution or government authority fails to pay the interest or repay the principal invested;

- Market risk – the risk that the fair value or future cash flows of an investment will fluctuate due to market prices;
 - Liquidity risk – the risk Council is unable to redeem the investment at a fair price within a timely period;
 - Maturity risk – the risk relating to the length of term to maturity. The larger the term the greater the length of exposure and risk of market volatility and interest rate changes.
- 3.2. Financial instruments detailing investments must clearly show they are held in Council's name.
- 4. Authorised Investments**
- 4.1. All investments must be denominated in Australian Dollars (AUD).
- 4.2. Authorised investments are limited to those forms included in the Ministerial Investment Order, presently:
- Local, State or Commonwealth Government bonds, debentures or securities;
 - Interest bearing deposits, debentures or bonds issued by an authorised deposit taking institution (ADI) regulated by Australian Prudential Regulation Authority, (ie a bank, building society or credit union granted authority by APRA to carry on a banking business in Australia – a full list of ADI's is available on the APRA website www.apra.gov.au);
 - Investments with NSW Treasury Corporation or Hourglass Investment facility.
- 5. Grandfathered Investments**
- 5.1. New investments must comply with the most recent **NSW Local Government** Ministerial Investment Order.
- 5.2. Council holds existing investments that do not comply with the most recent Ministerial Investment Order, but complied with the Ministerial Investment Order in force at the time the investments were made. Under the provisions of the most recent Ministerial Investment Order changes to the Investment Order were

Insert:
NSW Local Government

grandfathered.

- 5.3. Council may hold to maturity, redeem or sell these investments which include Collateralised Debt Obligations (CDO's), derivative based instruments, and subordinated debt.

6. Prohibited Investments

- 6.1. This investment policy prohibits any investment carried out for speculative purposes including, but not limited to:

- Derivative based instruments;
- Principal only investments or securities that provide potentially nil or negative cash flow and;
- Stand alone securities issued that have underlying futures, options forward contracts or swaps of any kind.

- 6.2. This policy also prohibits the use of leveraging (borrowing to invest) of an instrument. However, nothing in this previous paragraph will limit the grandfathering clause pertaining to already purchased investments.

7. Quotations on Investments

- 7.1. Not less than three (3) quotations shall be obtained from authorised institutions whenever an investment is proposed.
- 7.2. The best quote for the day shall be accepted after allowing for administrative costs and also allowing for the diversification limits of this policy.

8. Term to Maturity

- 8.1. The term to maturity of any of Council's direct investments must not exceed ten (10) years.
- 8.2. When the term to maturity exceeds one (1) year, Council must ensure that a secondary market exists for the investment to enable the disposal of the investment prior to maturity if necessary.
- 8.3. To control liquidity risk Council's investment portfolio should be limited to the following term to maturity thresholds.

TERM	MINIMUM	MAXIMUM
------	---------	---------

	PERCENTAGE	PERCENTAGE
< 1 year	30%	100%
> 1 year	0%	70%
> 3 years	0%	40%
> 5 years	0%	30%

The maturity thresholds above are to be assessed at the time of making a new investment.

9. Diversification

- 9.1. ~~Deposits with any one financial institution shall be limited to 10% of Council's total portfolio.~~

Council shall diversify its investments by referencing Standard and Poors long term ratings (or equivalent) and limiting investments with any single financial institution as follows:

S & P LONG TERM RATING	PORTFOLIO MAXIMUM %	SINGLE FINANCIAL INSTITUTION MAXIMUM %
AAA (+ or -)	100%	40%
AA (+ or -)	100%	30%
A (+ or -)	45%	15%
BBB (+ or -)	25%	10%

- 9.2. The Diversification limit above shall be assessed at the time of making a new investment. Any subsequent reduction in portfolio size shall be disregarded in relation to assessing diversification limits of existing investments where there ~~are~~ is likely to be significant costs or losses for terminating or disposing of an investment.

10. Reporting

- 10.1. A monthly report shall be provided to Council, detailing the investment portfolio including ~~type of investment~~, individual amounts invested, financial institution name, maturity date, interest rate, percentage exposure within the total portfolio and current market value. The report is

~~Delete:~~

Deposits with any one financial institution shall be limited to 10% of Council's total portfolio.

~~Insert:~~

Council shall diversify...institution as follows:

~~Insert:~~

Diversification limits table

~~Delete:~~ are

~~Insert:~~ is

~~Insert:~~

type of investment,

to include a certificate as to whether or not the investments have been made in accordance with the Act, regulations and Council's investment policy.

- 10.2. Current market values are to be sought monthly for Council's grandfathered investments such as CDO's. Due to the timing of the provision of such valuations the most recent valuations will be presented in the monthly report to Council which might not include valuations received after the business paper cycle is closed.
- 10.3. For audit purposes certificates must be obtained from banks and investment brokers confirming the amounts of investments held on Council's behalf and their current market value as at 30 June each year.

11. Performance Benchmarks

- 11.1. Council seeks to gain a return on investment at least equal to the following measures.

Investment	Performance Benchmark
Cash	RBA Cash Rate
Term Deposits	Australian Term Deposit Index as published daily
Enhanced Investments	90 day BBSW

12. Duties and Responsibilities of Council Officers

- 12.1. The General Manager is responsible for ensuring that Council's decisions with respect to this investment policy are implemented. The General Manager has delegations to staff in place to make investments in accordance with this policy.
- 12.2. Cl 212 of the Local Government (General) Regulation 2005 requires the Responsible Accounting Officer to provide a monthly written report to Council on its investments. The Responsible Accounting Officer is responsible for keeping Council's accounting records, ensuring they are kept up to date and in an accessible form. The General Manager is the Responsible

Accounting Officer in Port Stephens Council and delegations to staff are in place to keep accounting records and report as required.

- 12.3. Council officers involved in investing funds are required to have appropriate skills to undertake the investment function, have delegations in place and read and comply with this investment policy.
- 12.4. Council officers involved in investing funds should act with the duty of care, skill, prudence and diligence that a prudent person would exercise when investing and managing their own funds and have regard to the requirements under the Trustee Act 1925.
- 12.5. Council officers involved in investing funds must not engage in activities that would conflict with the proper implementation and management of Council's investments.
- 12.6. The ~~Revenue Coordinator~~ **Revenue Team Leader** or other delegated Council officer is required to:
 - Monitor cash flow on a daily basis and estimate cash requirements;
 - Ensure proposed investment products comply with this investment policy;
 - Recommend investment of funds in accordance with the requirements of this policy;
 - Reconcile principal invested on at least a monthly basis;
 - Estimate and account for receipt of all interest due on investments;
 - Ensure financial instruments, investment certificates and related documents are kept in safe custody;
 - Obtain monthly valuations of grandfathered securities;
 - Prepare a monthly report for Council to the satisfaction of the Responsible Accounting Officer;
 - Cause the investment register to be updated on Council's website monthly;

Delete:

Revenue Coordinator

Insert:

Revenue Team Leader

- Store all relevant documents, interest advices, market valuations in TRIM.
- 12.7. To ensure adequate internal controls and separation of duties the ~~Financial Services Manager~~ Accounting and Revenue Coordinator is to authorise investment transactions. If the ~~Financial Services Manager~~ Accounting and Revenue Coordinator is absent investment transactions are to be authorised by the ~~Acting~~ Financial Services Manager or Group Manager Corporate Services or General Manager.
- 13. Investment Advisor**
- 13.1. When ensuring a proposed investment product complies with this investment policy it may be necessary to obtain independent financial advice.
- 13.2. Before considering independent financial advice Council must ensure the financial advisor is licensed by the Australian Securities and Investment Commission. The advisor must confirm that they do not have any conflicts of interest in relation to the investment products being considered.
- 13.3. When recommending or reviewing investments any independent financial adviser must provide written confirmation that they are not receiving any commissions or other benefits in relation to the investments being recommended or reviewed.
- 13.4. Council is to undertake separate reference checks before relying on information provided by an advisor.
- RELATED POLICIES**
- 1) Restricted Funds Policy;
 - 2) Property Investment and Development Policy;
 - 3) Business Development Funding Policy.
- SUSTAINABILITY IMPLICATIONS**
- SOCIAL IMPLICATIONS**
- NIL

Delete:
Financial Services Manager (x2)
Insert:
Accounting and Revenue Coordinator (x2)
Delete:
Acting

ECONOMIC IMPLICATIONS

Nil.

ENVIRONMENTAL IMPLICATIONS

Nil.

RELEVANT LEGISLATIVE PROVISIONS

- 1) Local Government Act 1993 – s 625;
- 2) Local Government Act 1993 – s 625 Investment Order (of the Minister) as made from time to time;
- 3) The Trustee Act 1925 – s 14 - Powers of Investment;
- 4) Local Government (General) Regulation 2005 – cl 212;
- 5) Local Government Act 1993 s 23A Investment Policy Guidelines issued by the Director General of the Division of Local Government;
- 6) Banking Act 1959 – Division 2AA Financial Claims Scheme.

IMPLEMENTATION RESPONSIBILITY

~~Revenue Coordinator~~

Accounting and Revenue Coordinator.

PROCESS OWNER

- 1) Accounting and Revenue Coordinator.

REVIEW DATE

~~28 February 2014~~

- 1) 31 May 2016.

Delete:

Revenue Coordinator

Insert:

1) Accounting and Revenue Coordinator.

Insert:

PROCESS OWNER

1) Accounting and Revenue Coordinator.

Delete:

28 February 2014

Insert:

1) 31 May 2016.

ITEM NO. 7**FILE NO: T06 – 2014****T06-2014 – SALARY PACKAGING TENDER****REPORT OF: MICHELLE GILLIVER-SMITH – ORGANISATION DEVELOPMENT SECTION
MANAGER****GROUP: CORPORATE 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 Item 7 on the Ordinary Council agenda namely **T06-2014 - SALARY PACKAGING TENDER**.
- 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 **T06-2014 - SALARY PACKAGING TENDER**.
- 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 Prosperity Advisors as the successful tenderer for an initial period of two (2) years commencing 1 July 2014 to 30 June 2016 with an option to extend for a further two (2) year period based upon satisfactory performance.

ORDINARY COUNCIL MEETING – 24 JUNE 2014**COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor John Nell Councillor Ken Jordan
	That Council accept Prosperity Advisors as the successful tenderer for an initial period of two (2) years commencing 1 July 2014 to 30 June

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

	2016 with an option to extend for a further two (2) year period based upon satisfactory performance.
--	--

MOTION

157	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved that Council accept Prosperity Advisors as the successful tenderer for an initial period of two (2) years commencing 1 July 2014 to 30 June 2016 with an option to extend for a further two (2) year period based upon satisfactory performance.

BACKGROUND

The purpose of this report is to recommend the preferred tenderer for the provision of services to support Council's salary packaging services.

Council currently provides Remuneration Packaging opportunities for senior staff and other salary sacrifice opportunities for other staff. Council wishes to continue to offer its employees a flexible salary-packaging program. The program will operate on a bureau or outsourced basis with the successful organisation providing individual packaging and financial advice to our employees.

The packaged items will be salary sacrificed with the successful organisation handling all of the administration in regard to payments to third parties. They will also provide timely advice to Council regarding changes, additions, and removals to Council's payroll area.

Services to be provided

Senior Management Team:

The Senior Management team are offered packaging of their total remuneration packages. This program takes a total employment cost approach. Once the package figure is set then the program allows an employee the flexibility to arrange their remuneration in a way that reflects individual needs and preferences.

Some examples of the benefits that can be packaged included the following:

- Superannuation;
- Professional associations;
- Professional development;
- Motor vehicles.

Provide total remuneration package calculations for the Senior Management team, this includes General Manager, group manager positions together with section manager roles.

Other Staff:

The Port Stephens Council Enterprise Agreement 2011 provides for salary sacrifice and packaging arrangements in clause 7.5. Council currently facilitates salary sacrifice of additional superannuation contributions and Council supplied motor vehicles in line with the above award provisions.

All employees, with the exception of the Senior Management team, are to meet any charges to be charged by the provider, which can then be packaged.

In January 2014, Council invited tenders for a Salary Packaging Service provider for an initial period of two (2) years commencing from 1 July 2014 with an option to extend for a further two (2) years.

Six tender submissions were received.

The evaluation weightings and criteria used were:

Criteria	Weighting
Accessibility	35%
Management and Technical Staff	25%
Cost	20%
References	15%
Insurances	5%
TOTAL	100%

Tender evaluations were conducted by an internal panel comprising of human resource management and payroll specialists, using the Weighted Criteria Methodology applying Best Value Principles (refer confidential **ATTACHMENT 1**).

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications for the salary packaging tender, funding is included in the existing Human Resources budget.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	10,000	The funding for Salary Packaging Services is contained in the Human Resources unit budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to tender for services where the contract is for a period of two (2) years or more. This contract is for an initial period of two (2) years with an option to extend for a further period of two (2) years.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that if Council doesn't offer salary packaging/ sacrificing as a key component of an effective remuneration and benefits strategy, then it may be at risk of being able to continue to attract and retain key staff.	Medium	Appoint a salary packaging provider to offer these benefits to staff.	Yes
There is a risk that if Council does not offer salary packaging/ sacrificing that it would be in breach of its enterprise agreement.	High	Appoint a salary packaging provider to offer these benefits to staff.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

By utilising the services of a salary packaging provider, Council can offer a tailored employee salary packaging program which can be an effective tool for employee engagement, increasing morale, recruitment and retention of quality employees.

The administration of an employee benefits program and senior staff salaries can be time consuming and labour intensive. Outsourcing this function to a service provider can help improve an individual's financial situation, and help to achieve a more productive work environment.

There are no significant environmental implications from this recommendation.

CONSULTATION

- 1) Organisation Development section;
- 2) Financial Services section.

OPTIONS

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

ATTACHMENTS – Provided under separate cover (confidential)

- 1) Tender Evaluation Summary.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 8

FILE NO: T09-2014

T09-2014 - SUPPLY OF LINEN SERVICES TO PORT STEPHENS BEACHSIDE HOLIDAY PARKS

REPORT OF: TIM HAZELL – FINANCIAL SERVICES SECTION MANAGER

GROUP: CORPORATE 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 Item 8 on the Ordinary Council agenda namely **T09-2014 - Supply of Linen Services to Port Stephens Beachside Holiday Parks**.
 - 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 **T09-2014 - Supply of Linen Services to Port Stephens Beachside Holiday Parks**.
 - 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 Clean as a Whistle as the successful tenderer for the period commencing 1 July 2014 to 30 June 2016 with an option to extend for a further two (2) year period based upon satisfactory performance.
-

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

ORDINARY COUNCIL MEETING – 24 JUNE 2014

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Nell Councillor John Morello
	That Council accept Clean as a Whistle as the successful tenderer for the period commencing 1 July 2014 to 30 June 2016 with an option to extend for a further two (2) year period based upon satisfactory performance.

MOTION

158	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved that Council accept Clean as a Whistle as the successful tenderer for the period commencing 1 July 2014 to 30 June 2016 with an option to extend for a further two (2) year period based upon satisfactory performance.

BACKGROUND

Port Stephens Beachside Holiday Parks require provision of linen for guests in cabin accommodation and professional laundry services for linen. This service is currently delivered by Clean as a Whistle.

Clean as a Whistle was a new company based in Nelson Bay and approached Council regarding their Linen supply. As Council was not satisfied with their current provider, it was decided to engage Clean as a Whistle for a trial period. Council was supporting a local business and their pricing was competitive.

It was decided in 2013 to run a formal tender and test the market. The tender closed on 15 October 2013 and with only one submission received it was decided to re advertise. T09-2014 closed on 25 March 2014 with two submissions received, however only one of these submissions conformed to the requirements.

The weightings agreed for this tender evaluation were:

Criteria	Weighting
Tender price	40%
Demonstrated capabilities	15%
Stock control and management system	25%
WHS and risk management procedures	10%
Environmental responsibility	10%
TOTAL	100%

The incumbent firm demonstrated that they can fulfil all requirements of the contractual obligations on our behalf and can maintain working relationships with all tenants at the parks, adding significant value through communication, attentiveness, responsiveness and risk management.

FINANCIAL/RESOURCE IMPLICATIONS

Funding is provided through the recurrent annual operational budget of each park.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	120,000	Approximate historical cost – actual charge dependent on volume.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The tender has been conducted according to PSC Procurement Management Directive – Tenders.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the linen supply will fail. Cabins cannot be let and this will have an impact on revenue and customer service.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The recommended tenderer has demonstrated environmental sensitivity in their cleaning and supply processes.

CONSULTATION

- 1) Holiday Park Manager and Housekeeping (discussion regarding needs);
- 2) Leon Hammond – Business Support Coordinator;
- 3) Bernd Kirchhoff - Facilities Officer;
- 4) Graeme Charles – Manager Shoal Bay Holiday Park;

- 5) Neville Wilson - Contracts Coordinator.

OPTIONS

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

ATTACHMENTS – Provided under separate cover (confidential)

- 1) Tender Evaluation Summary;
- 2) Specifications of linen per park.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 9

FILE NO: PSC2014-00322

T011415HUN – SUPPLY AND DELIVERY OF STATIONERY AND ANCILLARY ITEMS

REPORT OF: TIM HAZELL – FINANCIAL SERVICES SECTION MANAGER

GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, Council resolve to close to the public that part of its meetings to discuss Item 9 on the Ordinary Council agenda namely **T011415HUN Supply and Delivery of Stationery and Ancillary Items**.
 - 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 **T011415HUN Supply and Delivery of Stationery and Ancillary Items**.
 - 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 all the tenders for the period 1 July 2014 - 30 June 2016 with an option to rollover for a further twelve (12) months based upon satisfactory supplier performance.
-

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

ORDINARY COUNCIL MEETING – 24 JUNE 2014

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Nell Councillor Ken Jordan
	That Council accept all the tenders for the period 1 July 2014 - 30 June 2016 with an option to rollover for a further twelve (12) months based upon satisfactory supplier performance.

MOTION

159	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved that Council accept all the tenders for the period 1 July 2014 - 30 June 2016 with an option to rollover for a further twelve (12) months based upon satisfactory supplier performance.

BACKGROUND

The purpose of this report is to recommend to Council the preferred tenderers for the provision of stationery items.

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 upward of \$200M to the region through their tenders and contracts. Regional Procurement Initiative optimises resource sharing by working together with other local government Councils in the Hunter Region to provide the most efficient and effective mechanism in service delivery and striving to reduce to cost of 'doing business'.

Regional Procurement Initiative coordinate fourteen (14) of forty five (45) recurring tenders on behalf of Port Stephens Council.

Port Stephens Council has participated in the Regional Procurement stationery tender for over twelve (12) years. Tenders were invited as part of a wider Regional Procurement Initiative and on behalf of eleven (11) participating member councils. A total of four (4) submissions were received for this tender.

FINANCIAL/RESOURCE IMPLICATIONS

While the overall tender was evaluated on a selected range of stationery/office requirements it is considered appropriate to recommend the acceptance of all

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

tender proposals to ensure that the most competitive product can be selected from the range.

Accepting the tender ensures savings to Council. Tenderers have offered further discounts for items purchased outside those evaluated under the tender. By accepting a panel tender, this allows Council a large range of products and the ability to select the best products at the most competitive price.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	140,000	Stationery purchased from recurrent budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The Supply and Delivery of Stationery and Ancillary Items was tendered and evaluated by a Regional Procurement Panel Evaluation team to ensure legal compliance and the prevention of bias.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that rejecting the tender will not allow Council to achieve best value in purchasing.	Low	Adopt the recommendation to allow a panel of suppliers to ensure best value.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

- 1) Regional Procurement.

OPTIONS

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

ATTACHMENTS – Provided under separate cover (confidential)

1) Tender Evaluation Summary.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 10

FILE NO: T07-2014

T07-2014 – CLEANING AND MINOR MAINTENANCE SERVICES AT 437 HUNTER STREET, NEWCASTLE

REPORT OF: CARMEL FOSTER – PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE 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 Item 10 on the Ordinary Council agenda namely **T07 – 2014 Cleaning and Minor Maintenance services at 437 Hunter Street, Newcastle;**
 - 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 **T07 – 2014 Cleaning and Minor Maintenance services at 437 Hunter Street, Newcastle;**
 - 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) Endorse Paramount Commercial Services Pty Ltd as the successful tenderer. The contract is to commence on 1 July 2014 and to expire on 30 June 2016 with two further two (2) year options at the exercise of the Principal and based on performance.
-

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

ORDINARY COUNCIL MEETING – 24 JUNE 2014

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Ken Jordan Councillor Steve Tucker
	That Council endorse Paramount Commercial Services Pty Ltd as the successful tenderer. The contract is to commence on 1 July 2014 and to expire on 30 June 2016 with two further two (2) year options at the exercise of the Principal and based on performance.

MOTION

160	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved that Council endorse Paramount Commercial Services Pty Ltd as the successful tenderer. The contract is to commence on 1 July 2014 and to expire on 30 June 2016 with two further two (2) year options at the exercise of the Principal and based on performance.

BACKGROUND

Port Stephens Council requires the services of a reliable and dependable service provider to provide cleaning and minor general maintenance services for one of its key investment assets being the commercial office building located at 437 Hunter Street, Newcastle.

The cleaning and minor maintenance services contract for the site was last awarded in 2012 and these short term arrangements are now due to expire, hence the formalisation of the Tender.

A total of eleven (11) tender submissions were received from local and interstate companies, with tendered prices ranging from \$26,364 to \$126,480 and a spread of scores from the weighted evaluation criteria of between 18.06 and 65.01. Three firms were very close (a spread of 3.70). Paramount Commercial Services Pty Ltd was the best scoring submission after rigorous and diligent analysis of the selection criteria. The weightings agreed for this Tender evaluation were:

Criteria	Weighting
Price	30%
Management and staff resources	20%
Work, health and safety	20%
Referees	15%
Previous Experience	10%
Insurances	5%

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

The anchor tenant is a NSW Government Organisation (Crown Lands, Trade and Investment). The NSW State Government tenant representative, Government Property NSW, understandably places a high importance on security and exceptional quality services.

Under the current Lease with Crown Lands, Port Stephens Council is obligated to provide cleaning services to three (3) levels of leased area via this contract. The incumbent firm has demonstrated that they can fulfil all requirements of the contractual obligations on our behalf and they continue to foster good relationships with all tenants in the building, adding significant value through excellent communication; attentiveness, responsiveness and risk management.

Reference checks have returned positive responses from a variety of government and industry sources.

FINANCIAL/RESOURCE IMPLICATIONS

Funding for this service is secured through the Council approved annual operating budget.

Note below:

The current cost of providing these services under the Request for Quote is \$86,000 per annum which equates to \$28.43 per m² inclusive of common areas and external terraces but excluding the car park area.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	86,000	Included in annual operating budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The tender has been conducted according to Port Stephens Council Procurement Guideline –Tendering.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that substandard services will lead to damage in reputation for Port Stephens Council and	Medium	Adopt the recommendations.	Yes

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

have a negative effect on future lease negotiations.			
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SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

- 1) Finance Management;
- 2) Procurement;
- 3) Property Services Facilities Coordinator;
- 4) Property Services Asset and Investment Manager.

OPTIONS

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

ATTACHMENTS – Provided under separate cover (confidential)

- 1) Weighted Criteria and Methodology Summary;
- 2) Tender Evaluation Summary.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 11**FILE NO: A2004-0787****THE ANCHORAGE MARINA RESORT – POTENTIAL SALE OF COUNCIL OWNED LAND****REPORT OF: CARMEL FOSTER – PROPERTY SERVICES SECTION MANAGER**
GROUP: CORPORATE SERVICES**RECOMMENDATION IS THAT COUNCIL:**

- 1) Authorise the Mayor and the General Manager to execute all documentation required to surrender the current lease and complete the sale of Lot 2 DP 802914 and Lot 40 DP 747635 at Corlette to the current tenant, being the proprietors of The Anchorage Resort (The Executive Inn Pty. Limited).

ORDINARY COUNCIL MEETING – 24 JUNE 2014**COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor John Nell Councillor Ken Jordan
	That the recommendation be adopted.

MOTION

161	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved that Council authorise the Mayor and the General Manager to execute all documentation required to surrender the current lease and complete the sale of Lot 2 DP 802914 and Lot 40 DP 747635 at Corlette to the current tenant, being the proprietors of The Anchorage Resort (The Executive Inn Pty. Limited).

BACKGROUND

The purpose of this report is to advise that Council has received a request to purchase Council owned land located adjacent to The Anchorage Marina Resort at Corlette.

The land comprises two adjoining lots which in practical terms form the car park of the resort being located adjacent to the Corlette Point Headland and the south western boundary of the resort development. The resort and the adjoining marina are constructed upon land owned by the Crown.

Research has shown that Council acquired 990 hectares in 1955 from the Commonwealth. The Naval Base of Port Stephens occupied the site. The land that is the subject of this report previously formed part of this parcel of land. The land is now described as Lot 2 in DP 802914 and Lot 40 in DP 747635.

The land comprises a total area of approximately 4,867m². The Land formed part of the original development approval from 1987 and is subject to a long term lease to the current operators that expires in 2068. Accordingly Council receives relatively modest annual revenue from the leasing of the site, which is currently \$37,119.

A two way conversation was held with Council in October last year when West's indicated interest in the purchase. Council staff commissioned a valuation and the Wests Group commissioned their own valuation through Colliers Valuers. In February Wests submitted an offer to Council of \$550,000 which was the market value provided to them by Colliers Valuers. Council officers suggested that the two Valuers meet to discuss the difference in value and negotiate an agreed value. Both valuers consequently submitted a letter to Council and the Wests Group that they had agreed on a Value of \$675,000. This value did not consider special value to the Council nor the restrictive market conditions due to the extended tenure of the lease.

The Wests Board on Wednesday 28 May 2014 considered the Valuers letter and have authorised the purchase of the land for \$675,000. \$675,000 is within the range of the original valuation report submitted to Council by its Valuers.

FINANCIAL/RESOURCE IMPLICATIONS

The value of the land in Council's asset system is \$225,000. The sale of the land at the proposed sale price of \$675,000 plus GST will provide Council with a profit of \$450,000. Of this sum, 30% will be directed towards Ward funds with the remaining 70% to be deposited in the Property Services Reserve in accordance with Council's Land Acquisition and Development policy.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	(36,115) pa	There is an impact to the recurrent income budget as the lease income will no longer exist.
Reserve Funds	Yes	675,000	Allocation disbursement to be in accordance with the Land Acquisition and Development policy.
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Council's retained Lawyers will prepare the Contract of Sale and Lease surrender documentation for issuing to The Executive Inn Pty. Limited. There are no encumbrances on the land except for the current lease which will be surrendered.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that The Executive Inn Pty. Limited will not proceed with the purchase.	Low	Accept the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

The resort is a well renowned location on the east coast and continues to provide a major economic benefit to Port Stephens with many local, interstate and overseas visitors availing themselves of the facilities and outstanding water views and activities. The associated marina also provides accommodation for a good many luxury yachts and cruisers moored there.

CONSULTATION

- 1) Property Services Manager;
- 2) Investment and Asset Manager;
- 3) Tew Property Consultants;
- 4) Harris Wheeler Lawyers.

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 12**FILE NO: PSC2013-03793****TANILBA BAY FORESHORE HALL – ADDITIONAL FEE**

REPORT OF: WAYNE WALLIS – GROUP MANAGER
GROUP: CORPORATE SERVICES GROUP

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the proposed private function fee for Tanilba Bay Foreshore Hall on public exhibition for a period of 28 days and invite written submissions from the public;
- 2) Should no submissions be received, adopt the private function fee for Tanilba Bay Foreshore Hall without a further report to Council.

ORDINARY COUNCIL MEETING – 24 JUNE 2014**COMMITTEE OF THE WHOLE RECOMMENDATION**

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

MOTION

162	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved that Council: <ol style="list-style-type: none">1) Place the proposed private function fee for Tanilba Bay Foreshore Hall on public exhibition for a period of 28 days and invite written submissions from the public;2) Should no submissions be received, adopt the private function fee for Tanilba Bay Foreshore Hall without a further report to Council.

BACKGROUND

The purpose of this report is to seek Council's support to place a new fee for the Tanilba Bay Foreshore Hall on public exhibition for a period of 28 days, and should no submissions be received apply the fee from 1 August 2014.

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

In the past this facility has always had a private function fee. In the fees schedule signed off by the Committee the private function fee was omitted. The effect of this omission is that if someone hires the facility, leaves it in an appropriate state, the bond is handed back and the facility is effectively provided free of charge. The private function fee is needed to remove this effect. The proposed fee, including GST is \$137.60.

FINANCIAL/RESOURCE IMPLICATIONS

The exhibition will be by way of Council's notices page in the Port Stephens Examiner.

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

LEGAL, POLICY AND RISK IMPLICATIONS

This proposed fee is required to be placed on public exhibition under Section 610F of the Local Government Act 1993 for a period of 28 days. The proposed fee complies with Council's pricing policy.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that if the fee is not in place, Council's 355c Committee could suffer financial loss.	Medium	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Tanilba Bay Foreshore Hall is a popular facility in an idyllic location and attracts prospective hirers for private functions. The 355c Committee that manages the facility needs the Private Function fee to ensure that it provides a return on the investment of the community in that facility.

CONSULTATION

The proposed fee was raised through the Secretary of the Tanilba Bay Foreshore Halls, Parks & Reserves Committee and discussed with the Acting General Manager.

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

It is proposed that the community would be consulted through the exhibition process for a period of 28 days with written submissions sought.

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 13**FILE NO: 1190-001****REQUEST FOR FINANCIAL ASSISTANCE**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-
- a) West Ward Funds – Cr Peter Kafer – Terrace Central Netball Club Inc. – Donation for Fundraising Shopping Trip - \$250.00;
 - b) Central Ward Funds – Cr Chris Doohan – Birubi Point Surf Life Saving Club – Contribution to costs of Waterbottles for Nippers with Port Stephens Council and Birubi Point SLSC logos - \$500.00
 - c) Mayoral Funds – Mayor Bruce MacKenzie – Guns and Hoses Charity Surf Event - Reimbursement of Site Hire Fees – \$298.00;
 - d) Mayoral Funds – Mayor Bruce MacKenzie – Port Stephens RAAF Williamtown Support Group – Citizen of the Year - \$500.00.
-

ORDINARY COUNCIL MEETING – 24 JUNE 2014**COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Steve Tucker Councillor Paul Le Mottee
	That the recommendation be adopted.

MOTION

163	Councillor Ken Jordan Councillor Paul Le Mottee
	<p>It was resolved that Council approve provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-</p> <ul style="list-style-type: none">a) West Ward Funds – Cr Peter Kafer – Terrace Central Netball Club Inc. – Donation for Fundraising Shopping Trip - \$250.00;b) Central Ward Funds – Cr Chris Doohan – Birubi Point Surf Life Saving Club – Contribution to costs of Waterbottles for Nippers with Port Stephens Council and Birubi Point SLSC logos - \$500.00

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

	<p>c) Mayoral Funds – Mayor Bruce MacKenzie – Guns and Hoses Charity Surf Event - Reimbursement of Site Hire Fees – \$298.00;</p> <p>d) Mayoral Funds – Mayor Bruce MacKenzie – Port Stephens RAAF Williamtown Support Group – Citizen of the Year - \$500.00.</p>
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BACKGROUND

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:-

WEST WARD – Councillors Jordan, Kafer & Le Mottee

Terrace Netball Club Inc.	Donation to Fundraising Shopping Trip	\$250.00
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CENTRAL WARD – Councillors Dingle, Doohan & Tucker

Birubi Point Surf Life Saving Club	Contribution to costs of water bottles for Nippers with Port Stephens Council and Birubi Point SLSC logos	\$500.00
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MAYORAL FUNDS – Mayor MacKenzie

Guns and Hoses Charity Surf Event	Reimbursement of Site Hire Fees	\$298.00
Port Stephens RAAF Williamtown Support Group	Citizen of the Year 2014	\$500.00

FINANCIAL/RESOURCE IMPLICATIONS

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	1,548	West Ward Funds \$250.00 Central Ward Funds \$500.00 Mayoral Funds \$798.00
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

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

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function which it, the Council, would otherwise undertake;
- b) the funding will directly benefit the community of Port Stephens;
- c) applicants do not act for private gain.

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

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

OPTIONS

- 1) Adopt the recommendation;
- 2) Vary the dollar amount before granting each or any request;
- 3) Reject the recommendation.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 14**INFORMATION PAPERS****REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER**
GROUP: GENERAL MANAGERS OFFICE**RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 24 June, 2014.

No:	Report Title	Page:
1	Cash and Investments Held at 31 May 2014	
2	Assignment Of Lease – Peter Dron Street Car Park, Raymond Terrace	

ORDINARY COUNCIL MEETING – 24 JUNE 2014**COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Steve Tucker Councillor Sally Dover
	That the recommendation be adopted.

150	Councillor Paul Le Mottee Councillor Steve Tucker
	It was resolved that Council move out Committee of the Whole.

MOTION

164	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved that Council receives and notes the Information Papers listed below being presented to Council on 24 June, 2014.

INFORMATION PAPERS



INFORMATION ITEM NO. 1

CASH AND INVESTMENTS HELD AT 31 MAY 2014

REPORT OF: TIM HAZELL – FINANCIAL SERVICES SECTION MANAGER

GROUP: CORPORATE SERVICES

FILE: PSC2006-6531

BACKGROUND

The purpose of this report is to present Council's schedule of cash and investments held at 31 May 2014.

ATTACHMENTS

- 1) Cash and investments held at 31 May 2014;
- 2) Monthly cash and investments balance May 2013 to May 2014;
- 3) Monthly Australian term deposit index May 2013 to May 2014.

ATTACHMENT 1

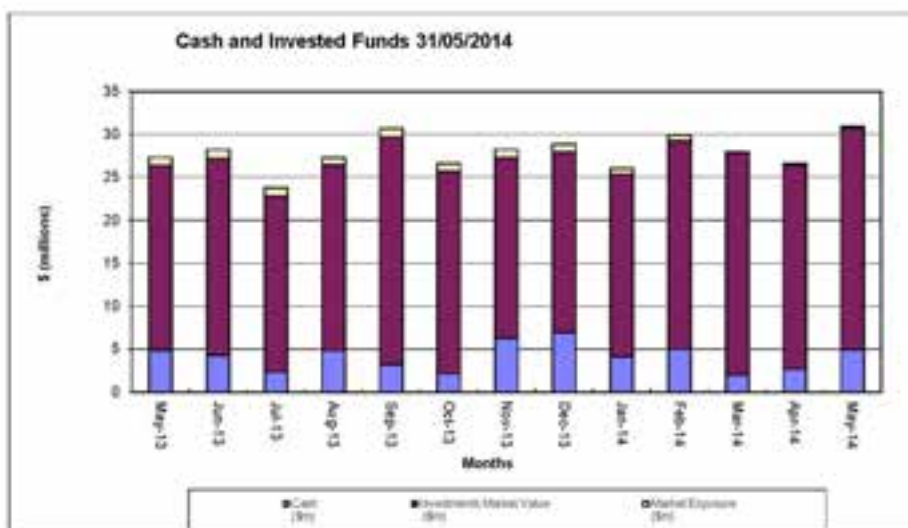
CASH AND INVESTMENTS HELD AT 31 MAY 2014

CASH AND INVESTMENTS HELD AS AT 31 MAY 2014								
ISSUER	BROKER	RATING*	DESC.	YIELD %	TERM DAYS	MATURITY	AMOUNT INVESTED	MARKET VALUE
TERM DEPOSITS								
BANK OF SYDNEY LTD	RIM	N/E	TD	4.00%	184	18-Jun-14	1,000,000	1,000,000
GATEWAY CREDIT UNION LTD	CURVE	N/E	TD	3.61%	98	18-Jun-14	1,000,000	1,000,000
NATIONAL AUSTRALIA BANK LTD	NAB	AA-	TD	3.69%	126	2-Jul-14	1,000,000	1,000,000
INVESTEC BANK (AUSTRALIA) LTD	FIG	BBB-	TD	3.74%	112	2-Jul-14	1,000,000	1,000,000
MYSTATE LTD	RIM	BBB	TD	3.74%	147	14-Jul-14	2,000,000	2,000,000
SUNCORP BANK	SUNCORP	A+	TD	3.92%	182	30-Jul-14	2,000,000	2,000,000
INVESTEC BANK (AUSTRALIA) LTD	CURVE	BBB-	TD	3.88%	182	13-Aug-14	1,000,000	1,000,000
ARAB BANK AUSTRALIA LTD	RIM	BB+	TD	3.75%	182	13-Aug-14	1,000,000	1,000,000
BANK OF QUEENSLAND LTD	BOQ	A-	TD	3.90%	246	10-Sep-14	1,500,000	1,500,000
AMP BANK LTD	CURVE	A+	TD	3.90%	246	10-Sep-14	1,000,000	1,000,000
ME BANK	ME BANK	BBB+	TD	3.80%	183	24-Sep-14	2,000,000	2,000,000
RURAL BANK LTD	CURVE	A-	TD	3.72%	196	8-Oct-14	2,000,000	2,000,000
THE MUTUAL	THE MUTUAL	N/E	TD	3.80%	182	22-Oct-14	1,000,000	1,000,000
WIDE BAY AUSTRALIA LTD	CURVE	BBB	TD	3.75%	182	5-Nov-14	1,000,000	1,000,000
WIDE BAY AUSTRALIA LTD	CURVE	BBB	TD	3.75%	182	5-Nov-14	1,000,000	1,000,000
BANANA-COAST CREDIT UNION LTD	FABQUHARSON	N/E	TD	3.70%	189	19-Nov-14	2,000,000	2,000,000
BANK OF SYDNEY LTD	FIG	N/E	TD	3.75%	196	3-Dec-14	1,000,000	1,000,000
NATIONAL AUSTRALIA BANK LTD	NAB	AA-	TD	3.74%	246	17-Dec-14	1,000,000	1,000,000
SUB TOTAL (\$)							23,500,000	23,500,000
OTHER INVESTMENTS								
DEUTSCHE BANK TELSTRA LNK DEF. NTE	FIG SECURITIES	A	FRN	4.43% 7yrs		30-Nov-14	500,000	485,000
THE MUTUAL	THE MUTUAL	N/E	FRSD	4.99% 10yrs		31-Dec-14	500,000	500,000
NEXUS BONDS LTD "TOPAZ AA-"	GRANGE	A	CDO	0.00% 10yrs		23-Jun-15	412,500	373,317
ANZ ZERO COUPON BOND	ANZ	AA-	BOND	0.00% 9yrs		1-Jun-17	1,017,874	916,494
SUB TOTAL (\$)							2,430,374	2,274,813
INVESTMENTS TOTAL (\$)							25,930,374	25,774,813
CASH AT BANK (\$)							4,944,153	4,944,153
TOTAL CASH AND INVESTMENTS (\$)							30,874,527	30,738,966
CASH AT BANK INTEREST RATE				2.50%				
BBSW FOR PREVIOUS 3 MONTHS				2.71%				
AVG. INVESTMENT RATE OF RETURN				3.42%				
TD = TERM DEPOSIT				FRN = FLOATING RATE NOTE				
CDO = COLLATERALISED DEBT OBLIGATION				FRSD = FLOATING RATE SUBORDINATED DEBT				
*STANDARD AND POORS LONG TERM RATING								
CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER								
I HEREBY CERTIFY THAT THE INVESTMENTS LISTED ABOVE HAVE BEEN MADE IN ACCORDANCE WITH SECTION 625 OF THE LOCAL GOVERNMENT ACT 1993, CLAUSE 212 OF THE LOCAL GOVERNMENT (GENERAL) REGULATION 2005 AND COUNCIL'S CASH INVESTMENT POLICY								
P GESLING								

ATTACHMENT 2
MONTHLY CASH AND INVESTMENTS BALANCE MAY 2013 – MAY 2014

Cash and Investments Held

Date	Cash (\$m)	Investments Market Value (\$m)	Market Exposure (\$m)	Total Funds (\$m)
May-13	4.870	21.531	0.900	27.301
Jun-13	4.302	22.926	1.005	28.232
Jul-13	2.344	20.426	1.005	23.797
Aug-13	4.847	21.578	0.852	27.278
Sep-13	3.221	24.489	0.941	30.452
Oct-13	2.193	23.464	0.946	26.423
Nov-13	6.305	20.992	0.939	28.234
Dec-13	6.932	20.992	0.939	28.863
Jan-14	4.122	21.271	0.659	26.052
Feb-14	5.006	24.274	0.456	29.736
Mar-14	2.048	25.759	0.171	27.978
Apr-14	2.692	23.741	0.169	26.422
May-14	4.944	25.775	0.156	30.895



ATTACHMENT 3
MONTHLY AUSTRALIAN TERM DEPOSIT INDEX MAY 2013 – MAY 2014

Australian Term Deposit Accumulation Index

Date	90 Day Term Deposit Index	PSC
May-13	3.4715	4.12
Jun-13	3.5946	4.12
Jul-13	3.6774	4.05
Aug-13	3.4504	3.94
Sep-13	3.3183	3.84
Oct-13	3.23	3.77
Nov-13	3.1212	3.71
Dec-13	3.3097	3.67
Jan-14	3.2797	3.63
Feb-14	3.2527	3.64
Mar-14	3.2397	3.62
Apr-14	3.2214	3.61
May-14	3.1931	3.62



INFORMATION ITEM NO. 2

ASSIGNMENT OF LEASE – PETER DRON STREET CAR PARK, RAYMOND TERRACE

REPORT OF: CARMEL FOSTER – PROPERTY SERVICES SECTION MANAGER

GROUP: CORPORATE SERVICES

FILE: PSC2007-0060

BACKGROUND

The purpose of this report is to update Council on the status of previous resolution Minute no. 12 adopted by Council on 25 March 2014.

Council resolved to authorise the Mayor and the General Manager to sign and affix the seal to the deed of assignment giving effect to the transfer of the Lease to Indigenous Business Australia (a proposed purchaser of the commercial building located at 15 King Street, Raymond Terrace). The land comprises Lots 10 and 11 in Section E DP 939306 and Lot 21 DP 788588 and is known as Peter Dron Street car park. The car park provides a staff parking area for the tenant/s of the building; the current tenant is the Department of Defence.

Property Services noted that the property is still being marketed for sale by Knight Frank in Newcastle and contacted the marketing agents to obtain a status update of the purchase. Council was advised by Knight Frank that they have been retained to sell the asset and that the previously agreed sale to Indigenous Business Australia will not proceed.

ATTACHMENTS

Nil.

GENERAL MANAGER'S REPORT

PETER GESLING
GENERAL MANAGER

ITEM NO. 1**FILE NO: PSC2014-02006****NSW ROADS ACT**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) That Council refer the discussion paper to local members of Parliament, LGNSW and Hunter Councils seeking their support on the issues raised;
- 2) Prepare a resolution for the LGNSW Conference to support a comprehensive review of the NSW Roads Act which includes representation from Local Government.

ORDINARY COUNCIL MEETING – 24 JUNE 2014
MOTION

165	Councillor Paul Le Mottee Councillor Ken Jordan
	<p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Refer the discussion paper to local members of Parliament, LGNSW and Hunter Councils seeking their support on the issues raised;2) Prepare a resolution for the LGNSW Conference to support a comprehensive review of the NSW Roads Act which includes representation from Local Government.

BACKGROUND

Since the first promulgation of the NSW Road Act in 1993, Local Government officials have been suggesting amendments that would facilitate the resolution of a range of issues.

Attached for information is a discussion paper prepared by Mr Cliff Johnson, one of the authorities on local roads legislation in NSW. He has worked with a Local Roads Group of Council officers, participated in the State Review Committee established by the NSW Government and though now in retirement maintains an interest and works part time with a number of Councils including Port Stephens on these issues.

I support the essence of his comments on each issue and strongly recommend the need for advocacy to the NSW Government.

FINANCIAL/RESOURCE IMPLICATIONS

Advocacy is a core function of Council and costs will be covered from the operating budget. Council does not have control of this activity and referrals as required to State and Federal Government initiatives.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are significant costs transferred to Local Government by State and Federal legislation. Council with its various associations always seeks to identify and minimise impacts to its community.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that if amendments are not made to the Roads Act, Councils will continue to have unnecessary costs incurred and inconsistencies between statutes will increase	Low	Advocate for changes as recommended	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council seeks to maximise sustainability by negotiation and advocacy

CONSULTATION

- 1) General Managers Advisory Group (GMAC);
- 2) Other Councils.

OPTIONS

- 1) Support
- 2) Not support

ATTACHMENTS

- 1) Summary and Report on 1998 Review of Roads Act 1993

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
Note: Staff Comments in Italics

SUMMARY AND REPORT ON 1998 REVIEW OF ROADS ACT 1993

PREAMBLE

Legislation in 1993 required a review of the Roads Act (the Act) 5 years after enactment. A committee was selected to carry out this review into the Act's impacts and issues on or for authorities and other users. The writer was a member of that committee (the committee) which meet in Sydney on several occasions. The committee consisted of 3 officers from RTA, (RMS as in this summary), 2 from DLWC (Lands), 2 from Local Government Shires Association (LGSA) and 1 from each Newcastle City and Port Stephens Councils, with the writer being from Port Stephens Council.

A report of the review was tabled in parliament in 1999, without the writer and some other committee members being aware that a final report had been prepared. At the end of that "report" comments on each submission were given under a heading "Reviews Preferred Direction". In December 2003 the then Minister for Roads advised that the RMS had undertaken an internal review, not on the Act but with a view to prepare a discussion paper for public comment. It appears as if the committee was bypassed. In that same communication the Minister stated "No changes to the Act were made".

One would think with 21 issues raised by RMS itself and 18 separate submissions related to Local Government (LG) and 5 from other authorities there may have been a need for some change(s). Included in the LG submissions was one from LG Roads Legislation Group representing 19 Hunter Valley and North Coast councils, with numerous issues. Some of these issues had been made by other Councils so the report to the committee correctly combined these into one issue as presented. Seven late submissions were also received from state authorities and Councils.

Since the Minister's report of December 2003, no actions of any kind have taken place and the discussion paper has not been prepared or circulated. No relevant information has come forward from the RMS's internal review.

Following are comments resulting from the report on the original review which was tabled in parliament 1999. The writer's comments in this summary are shown in *italics*.

ISSUES RAISED BY LOCAL GOVERNMENT & THE REVIEWS PREFERRED DIRECTION SHOWN

1. (Number 28 in the original report) – Closure of Public Roads.

Unconstructed Council public roads, on closing vest in the Crown. This seems unfair as Councils own these roads in fee simple, as outright owners. Councils should be able to close their roads but only with the Minister responsible for Local Government (LG) approval. Obviously Crown roads should be closed by the Crown. Why should the Crown be able to claim any moneys from sales of Council owed closed roads, regardless of whether they are constructed or not? In the commercial and private world to sell or takeover others fee simple land without their permission would result in legal action. Why are such actions under this Act permitted? The funds from sale of Council roads should go to Councils so that any resulting financial benefit could be put into community facilities within that Council's LGA – not into State coffers.

If LG was able to conduct its own road closure process along the line Lands currently do, it would free more Lands staff to attend to their issues. Process cost would remain very similar to the present and may be less for LG as currently a number of actions are "doubled up" by both

The Review's Preferred Direction: – "This would not be favoured by RMS". *Why should this unfair discrepancy exist where one authority pays compensation for land content and another does not?*

6. (33) – Speed limits on work sites

Approval for temporary speed limits at Councils work sites is time consuming and difficult and almost impossible for unplanned emergency site situations. Councils understand the erection of approved speed limit signs automatically establishes the speed limit in other states legislation. This should be the case in NSW.

The Review's Preferred Direction: – "A matter for the Traffic Act". *How can this be achieved? Surely the government can amend the Traffic Act to bring this action about.*

7. (34) – Licensing of Activities and Structures on Roads

Some councils say more explicit provisions are needed in the Act and/or Regulations for control and licensing for such matters. Sections 125-127 and 137A-143 provide powers for such activities. There is also a need for power to permit levying of charges as a condition of consent under the Act. Some telecommunications carriers are challenging Councils powers under Section 611 LG Act. More specific provisions are also required for control of awnings, verandahs and their supports.

The Review's Preferred Direction: – "Further consideration and discussion with LG and other agencies". *Authorities controlling this matter must have similar legislation in all Acts. Uniformity is necessary Acts and Regulations.*

8. (35) – Responsibilities for public gates and bypasses

There is a need to overcome inconsistency in maintenance requirements of road roadway adjacent to public gates and bypasses. Sections 128 and 133 contain conditions for construction of public gates but the Act and Regulations are not specific for responsibility for maintenance of these items. They are for the property owners benefit, so maintenance should be their responsibility.

The Review's Preferred Direction: – "Further consideration with other agencies and LG needed". *Again nothing has happened to try to overcome the issue which is proving costly for some large area Councils.*

9. (36) – Need for more details for conditions and/or limits on Footway Dining Areas

The Act permits granting of such activities but gives no definition of "restaurant purposes". Changes to the Liquor Licensing Act now allow the serving of liquor without food in restaurants. Was this activity expected in Footway Dining Restaurants?

The Review's Preferred Direction: – "1. Should this be addressed by this review or specific guidelines/ regulations created? 2. Further consideration and discussion with LG and other agencies". *This must take place, as presently some of these restaurants are in "Alcohol Free Zones" for some periods of the day/night and service of alcohol in these times is illegal.*

10. (37) – Lease of unused public road – Limited length of term for leases.

The Acts time limit of 5 years is not sufficient for lessees to gain adequate financial return, if that is what they seek and Council is happy for this to be the case. Section 149 provides for leases up to 99 years can apply for air space above ground or below the surface of a public road. The previous LG Act of 1919 had provided a simple method of accommodating situations where a public road (or part) is enclosed with adjoining land – maybe a similar provision could be made in the Act or even a licence arrangement could be sufficient.

Suggestions from councils are:- 1. Provide leases longer than 5 years at Section 157. – 2. Extend Sec. 149 to include lease of the land surface.-3. Remove requirement for approval by the Director of Planning. – 4. Permit the leasing of unused public road under Sec. 153 to any person, not only adjoining owners. – 5. Permit simple licensing for occupation of parts of public road, in restricted circumstances. – 6. Provide for a minimum of 6 months notice of termination of a lease.

The Reviews Preferred Direction; –“ Further consideration and discussion with other agencies and LG. Private rights to public space should be limited to allow periodic review whether public space should be restored”. *Surely periodic reviews of any of these sorts of tenures can be built into the Act and Regulations. As well reviews should be part of any lease or licence.*

11. (38) – Regulation of weight restrictions on public roads

Powers regarding weight limits in the Act, as compared with previous powers under LG Act. 1919, have limitations. Previous to the Act management of vehicle weights under the old LG Act had a general exemption from load limits for vehicles with destination in that street. This is not catered for in Sec 231 of the current Act. Some Councils state the Act does not allow the imposition of load limits to preserve residential amenity in an area. However under Sec. 112 specific laden weight restrictions can apply to vehicles passing over a road, bridge or causeway without giving a reason for the restriction. Councils suggest amending Secs 112 and 231 to give specific reasons for any restrictions.

The Reviews Preferred Direction; –“ Further consideration and clarification of the councils concerned required”. *Amenity and pollution issues are very important to residential street tenants and should be addressed.*

12. (39) – Weighing of Vehicles

The badges worn by authorised officers weighing vehicles under Road Transport Regulations 1996 must indicate which road authority authorised the officer to carry out these duties under Sec 230 of this Act. In cases where officers are now often employed by groups of councils they are frequently moving from one council area to another. Such requirements require individual officers to continually change badges relative to the area they are currently working. An officer inadvertently wearing the wrong roads authority badge could result in loss of a legal case. Council suggests amending Clause 42 of the regulations to provide for one badge covering all jurisdictions.

The Reviews Preferred Direction; –“Further consideration and discussion with other agencies and LG required”. *Again nothing has happened in regard to this, however, it is important as officers sometimes have to move only 5 metres to unknowingly move from on LG area to another, thus making their jurisdiction not legitimate.*

13. (40) – Issues with Part B – simplification necessary

Problems occur trying to establish which section should be used in the following instances:

- a) temporary road closures,
- b) permanent road closures in cases relating to closure and sale,
- c) on the spot temporary road closures,
- d) events on roads, such as parades,
- e) requirements for advertising proposed closures in local newspapers and Gov. Gazette – simplify Divisions 1 to 4.

The Reviews Preferred Direction; – “Further consideration and discussion with LG required”.

LG generally has issues with these matters – may be with one less roads authority, if Lands legislation changes simplification will result with minor changes to the Act and Regulations.

14. (41) – Roads Authorities (RA)

This concept is proving to be the source of many problems. Under Sec 64 RMS is able to function as a RA on classified roads. This function is exercised over some but not ALL functions of a RA. Under Sec 62 agreement can be made between RMS and another RA for some functions by RMS on a classified road. Determination of which functions Councils retain in respect to Highways is difficult to ascertain. Other legislation eg. Workcover, EPA, Rural Lands Protection needs to be clear of the RA controlling particular activities on a road. Councils suggest the Act should provide a clear and easily accessible list of powers and functions between Councils and the RMS, particularly in regards to classified / unclassified roads, and State / Regional / Local road or any specific section of a road.

The Reviews Preferred Direction; – “Issue to be considered as part of detailed consideration of State and Regional Roads”. *Has or is this to take place?*

15. (42) – Transfer of Crown Roads to Councils

Councils request Lands not be allowed to arbitrarily transfer roads to Councils, as they are at present. Lands as the RA does not spend funds on, or arranges works on crown roads whereas other RAs are required to do so as RAs. Any transfer from Lands puts full RA responsibilities for both construction and maintenance on Councils, without any financial assistance from Lands. Such unexpected extra financial burdens on Councils that were not considered at the time of each budget review, therefore it may be impossible to meet quick maintenance needs after transfer. Some Council or Groups of Councils have made individual protocols/agreements with Lands regarding transfers and improved Regulations could be used to support such protocols/agreements.

The Reviews Preferred Direction; – “No change to current situation”. *The issues still remain and alterations to the Act and or Regulations are needed. The proposed new Lands legislation will assist.*

16. (43) – Form and structure of the Act

The Act is complex and presents problems of interpretation and identifying the sections relevant to a given issue. Problems relating to and resolving relationships between it and other Acts have arisen. Councils suggest restructuring of the Act

providing a comprehensive index with internal cross-referencing between sections relating to the same issue. Provide a cross-reference to other Acts relevant to appropriate to particular sections of the Act.

The Reviews Preferred Direction; – "Detailed consideration required when framing amendments". *No amendments are currently proposed or have been made.*

17. (44) – Cost recovery of constructed drains other than kerb and guttering (K&G).

Section 217 allows RAs to seek contributions from adjoining land owners towards the costs of K&G. Councils have requested amendments be made to allow contributions to be sought in urban areas where structures using other forms of constructed drains, such as edge strips plus grass swale drains and concrete strips are used as an alternative to conventional K&G. Such changes could allow for more even distribution of owners contributions in the street, especially where K&G is provided on the opposite, generally lower side of the street. This would allow more flexibility in reconstruction of existing roads without K&G, for better environmental outcomes and maintain equity of contributions from owners on both sides of the road. Councils suggest this could be achieved by extending Sec 217 to cover other forms of constructed drains.

The Reviews Preferred Direction; – "Further consideration and discussion with LG required". *LG is probably the authority most affected by this but no attempt has been made to adjust legislation.*

18. LGSA's submissions echoed a number of councils issues described above. These are itemised below:-

- Insufficient time for councils and the public to provide comment and submissions
- Transfer of Crown Roads to councils
- Closing of public roads
- Speed restrictions at construction zones
- Contributions to constructed drains other than K&G

19. (45) By LGSA – Unrestricted powers of entry for councils

Unlike the RMS councils do not have power of unrestricted entry to private property except in cases of emergency works. If repairs are required on property, other than that immediately affected by an emergency, Councils are not permitted to enter. Councils must demonstrate a notion of intention to enter and obtain an easement. This is can be costly and time consuming leading to increased levels of damage to property.

The Reviews Preferred Direction; – "Further consideration and discussion with LGSA required". *This has not taken place but should be addressed to improve the situation!*

CONCLUSIONS

1. The report on the review tabled in parliament appears not to reflect the seriousness of the submissions that were initially made to the Review Committee. These submissions all

deserved thorough investigation by the Committee and at the time this was done, however, the Minister's letter of December 2003 seems to trivialise them. I say this because the Minister has accepted an internal review by the RMS and it seems all submissions have been ignored – other than issues that may affect the RMS.

2. No amendments to the Act have resulted, so consequently all the problems by those using the Act (other than RMS) still exist. This causes issues that waste resources, time and money because of uncertainties which continually raise their head but could have been overcome by simple amendments to make management and / or definitions clearer.
3. The "Reviews Preferred Directions" on each issue have not been followed up and because of this no actions have taken place, other than an internal review by the RMS, which did not lead to anything taking place.
4. Local Government must raise these issues again in an attempt have at least the most important amendments made or have explanations brought forward as to why they should not be made. Such actions can only be achieved if supported by all involved in LG ie, Office of Local Government, Councils collectively and individually for issues that concern them. All issues do not affect every Council. Regional Groups of Councils should add their weight for issues they are affected by. State and Shadow Ministers responsible for Roads and Local Government, as well as elected members for electorates throughout the state should be clearly advised and their active support sought.
5. One of the most important aspects affecting issues and possible outcomes are the current proposals to alter Crown Lands (CL) legislation. One of the major impacts would be for Lands not to be a RA in the future as is proposed.
6. If CL is no longer a RA under this Roads Act, the question must be asked, where will the responsibility for existing Crown Roads go? If the answer is, to LG with Councils being the future RA for them this will place huge burdens on Councils.

Cliff Johnson

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217

FLOOD PRONE LAND STRATEGY

COUNCILLOR: KEN JORDAN

THAT COUNCIL:

- 1) Develop a strategy for building in flood prone land.

ORDINARY COUNCIL MEETING – 24 JUNE 2014 MOTION

166	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved that Council develop a strategy for building in flood prone land.

BACKGROUND REPORT OF: MIKE MCINTOSH – GROUP MANAGER DEVELOPMENT SERVICES

BACKGROUND

Currently when Council assesses a development application for buildings/dwellings on flood prone land, they are assessed on a merits basis. This includes factors like the site attributes and the impact and nature of the flooding on the specific property/development.

Over time, Council's assessment of these matters has become more accurate as new and updated flood study data becomes available however assessment of applications has been inconsistent and the cause of frustration with some land owners.

Our current merits based approach allows for development to be approved on flood prone land, provided the Applicant can demonstrate no significant adverse impacts/risk to property and life. For example, applications to build in areas that are considered 'storage areas' (where our flood studies indicate the water only typically backs up, is not deep or with high velocities) have been approved historically. These are typically approved with conditions to reduce the impacts and risk e.g. evacuation procedures and floor level requirements etc. However, applications submitted in flood areas that are characterised in the flood study as 'floodway' (this is

MINUTES FOR ORDINARY MEETING – 24 JUNE 2014

high depth and velocity areas) are not likely to be approved due to the significant risk that it presents to life and property.

It has become apparent in recent times that a policy framework may assist in providing further clarity around assessment criteria and guidance for land owners and developers looking to construct buildings/dwellings on a floodplain. Such a policy would provide improved consistency for the assessment staff and certainty for the affected property owners and wider community.

A future policy could formalise this above mentioned approach and provide a further assessment framework around such. This would likely be included within Council's Development Control Plan.

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217

RURAL LAND STRATEGY

COUNCILLOR: KEN JORDAN

THAT COUNCIL:

- 1) Develop a rural land strategy to provide a policy framework as a basis for making future land use decisions.
-

ORDINARY COUNCIL MEETING – 24 JUNE 2014 MOTION

167	Councillor Ken Jordan Councillor Paul Le Mottee
	<p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Develop a rural land strategy to provide a policy framework as a basis for making future land use decisions.2) Ensure that land use planning proposals and development applications continue to be assessed in accordance with current legislation, controls and standard processing time frames and will not be upheld by the finalisation and adoption of the Rural Land Strategy.

The Motion was put and carried.

AMENDMENT

	Councillor Peter Kafer Councillor Geoff Dingle
	<p>That Port Stephens Council undertake a rural strategy for land within the Western part of the Shire to provide Council a policy framework, as a basis for making future land use decisions with the aim to balance the social, economic and environmental interests of the community, and minimise rural land use conflicts, particularly between residential land uses and other rural land uses.</p>

The amendment was lost.

Council should be aware that Councillors Peter Kafer and Geoff Dingle submitted the following as a Notice of Motion following receipt of the above.

"That Port Stephens Council undertake a rural strategy for land within the Western part of the Shire to provide Council a policy framework, as a basis for making future land use decisions with the aim to balance the social, economic and environmental interests of the community, and minimise rural land use conflicts, particularly between residential land uses and other rural land uses."

BACKGROUND REPORT OF: MIKE MCINTOSH – GROUP MANAGER DEVELOPMENT SERVICES

BACKGROUND

Council is facing increasing pressure in relation to development and rezoning of rural lands with potential land use conflicts.

The Port Stephens Planning Strategy 2011 provides the current planning framework for the future growth of the Local Government Area. The Strategy draws direction from the 2006 Lower Hunter Regional Strategy which focuses urban growth around centres and directing urban expansion to suitable areas near existing centres and services.

Council does not have a specific rural land use strategy that deals with the challenges faced by rural land planning through potential land use and infrastructure conflicts. The development of such a strategy would aim to provide Council and the community with further clarity around the future use and development of rural lands.

The Lower Hunter Growth Strategy is currently under review by the Department of Planning and Environment. It is unclear whether this will provide further guidance to Councils in relation to the future of rural lands and the role of rural residential development. A draft regional Growth Strategy is expected to be released by the Department late 2014.

A rural land use strategy would provide Council with a cohesive framework to respond to ongoing demands from property owners and allow for the adequate assessment of future planning proposals for rural residential land use across the Local Government Area.

There being no further business the meeting closed at 7.43pm.

I certify that pages 1 to 181 of the Open Ordinary Minutes of Council 24 June 2014 were confirmed by Council at its meeting held on 8 July 2014.

.....
Bruce MacKenzie
MAYOR