

# DRAFT

## MINUTES – 12 JULY 2016



# PORT STEPHENS

## C O U N C I L

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 12 July 2016, commencing at 5.30 pm.

**PRESENT:**

Mayor B MacKenzie, Councillors G. Dingle, C. Doohan, K. Jordan, P. Kafer, P. Le Mottee, J. Morello, J Nell, S. Tucker, General Manager, Corporate Services Group Manager, Acting Facilities and Services Group Manager, Development Services Group Manager and Governance Manager.

<b>203</b>	<b>Councillor Ken Jordan</b> <b>Councillor John Morello</b>  It was resolved that the apology from Cr Sally Dover be received and noted.
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<b>MINUTES ORDINARY COUNCIL - 12 JULY 2016</b>
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<b>204</b>	<b>Councillor Steve Tucker</b> <b>Councillor John Nell</b>  It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council Ordinary Council held on 28 June 2016 be confirmed.
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	There were no Declaration of Interest received.
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SUBJECT

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# COUNCIL REPORTS



**ITEM NO. 1**

**FILE NO: 16/349511  
RM8 REF NO: PSC2016-00122**

**PLANNING PROPOSAL FOR PART OF LOT 1 DP 1215257 (795 MEDOWIE ROAD MEDOWIE)**

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION  
MANAGER  
GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Defer from the Planning Proposal Part of Lot 1 DP 1215257 west of Peppertree Road, Medowie.
- 2) Adopt the Planning Proposal at **(ATTACHMENT 4)** for part of Lot 1 DP 1215257 east of Peppertree Road (only) for the purposes of Section 55 of the Environmental Planning and Assessment Act 1979 (NSW) and seek amendment to the Port Stephens Local Environmental Plan 2013 to: rezone the subject land from R2 Low Density Residential to part B2 Local Centre; amend the Height of Buildings Map to apply a height limit of 8m; and amend the lot size map to remove minimum lot size provisions.
- 3) Submit the recommended Planning Proposal to the NSW Department of Planning and Environment for a Gateway Determination.

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**ORDINARY COUNCIL MEETING - 12 JULY 2016  
MOTION**

<b>205</b>	<b>Councillor Paul Le Mottee Councillor Steve Tucker</b>  It was resolved that Council move into Committee of the Whole.
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Councillor John Nell left the meeting at 05:30pm, during Item 1 in Committee of the Whole.

Councillor John Nell returned to the meeting at 05:32pm, during Item 1 in Committee of the Whole.

Councillor John Nell left the meeting at 05:33pm, during Item 1 in Committee of the Whole.

Councillor John Nell returned to the meeting at 05:34pm, during Item 1 in Committee of the Whole.

## **COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Geoff Dingle</b> <b>Councillor Ken Jordan</b>  That the recommendation be adopted.
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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 Geoff Dingle, Chris Doohan, Ken Jordan, Peter Kafer, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Nil.

## **ORDINARY COUNCIL MEETING - 12 JULY 2016** **MOTION**

<b>206</b>	<b>Councillor Ken Jordan</b> <b>Councillor John Nell</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Defer from the Planning Proposal Part of Lot 1 DP 1215257 west of Peppertree Road, Medowie.</li><li>2) Adopt the Planning Proposal at <b>(ATTACHMENT 4)</b> for part of Lot 1 DP 1215257 east of Peppertree Road (only) for the purposes of Section 55 of the Environmental Planning and Assessment Act 1979 (NSW) and seek amendment to the Port Stephens Local Environmental Plan 2013 to: rezone the subject land from R2 Low Density Residential to part B2 Local Centre; amend the Height of Buildings Map to apply a height limit of 8m; and amend the lot size map to remove minimum lot size provisions.</li><li>3) Submit the recommended Planning Proposal to the NSW Department of Planning and Environment for a Gateway Determination.</li></ol>
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

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

Those against the Motion: Nil.

## BACKGROUND

The purpose of this report is to recommend that Council adopt a planning proposal to rezone land east of Peppertree Road (only) for commercial use consistent with the *Medowie Strategy* and to seek a Gateway Determination from the NSW Department of Planning and Environment.

<b>Subject Land:</b>	<b>(ATTACHMENT 1)</b> Part of Lot 1 DP 1215257 (1.7ha) East of Peppertree Road (only)
<b>Current Zoning:</b>	<b>(ATTACHMENT 2)</b> R2 Low Density Residential (1.7ha)
<b>Recommended Zoning:</b>	<b>(ATTACHMENT 3)</b> B2 Local Centre (1.7ha)
<b>Recommended Planning Proposal:</b>	<b>(ATTACHMENT 4)</b>
<b>Proponent Planning Proposal:</b>	<b>(ATTACHMENT 5)</b> RPS Pty Ltd
<b>Land Owner:</b>	Port Stephens Council

## Site Description

The site is located within the Medowie town centre. It has an area of approximately 1.7 hectares and is zoned R2 Low Density Residential. It comprises the part of Lot 1 DP 1215257 located east of Peppertree Road (only) **(ATTACHMENT 1)**. This part is unconstrained being flood-free and cleared of native vegetation. Land to the west of Peppertree Road is of higher environmental value and is recommended to be deferred from the submitted Planning Proposal. The current zoning is shown in **(ATTACHMENT 2)**.

## Recommended Planning Proposal

The Recommended Planning Proposal seeks to rezone unconstrained land east of Peppertree Road from R2 Low Density Residential to B2 Local Centre. The purpose is to facilitate its potential development for commercial use consistent with the current *Medowie Strategy*. The recommended zoning is shown in **(ATTACHMENT 3)** and the recommended Planning Proposal is at **(ATTACHMENT 4)**.

## Proponent Planning Proposal

The Proponent Planning Proposal is at **(ATTACHMENT 5)**. It includes requesting rezoning the land east of Peppertree Road as recommended. In addition it seeks to rezone a strip of vegetated land to the west of Peppertree Road from a majority part R2 Low Density Residential and smaller part RE1 Public Recreation to allow for commercial use consistent with the *Medowie Strategy*. Environmental impacts are proposed to be offset using bio-banking.

Proceeding with part of the land west of Peppertree Road will have environmental implications including:

- The potential removal of 1.7 ha of native vegetation (including 1.2 ha of Swamp Sclerophyll Forest Endangered Ecological Community – this vegetation community also represents Preferred Koala Habitat and koalas have been recorded);
- The removal of potential habitat for 20 fauna species listed under the *Threatened Species Conservation Act 1995* (NSW) and *Environmental Protection and Biodiversity Conservation Act 1999* (Commonwealth); and
- Reduction of an existing wildlife corridor from 240m to 100m.

It is recommended to defer inclusion of the land west of Peppertree Road being sought for rezoning for commercial use for further information and consultation with the NSW Office of Environment and Heritage (notwithstanding its current inclusion in the Medowie Strategy and majority R2 Low Density Residential Zoning). Its inclusion may also delay consideration of the unconstrained land east of Peppertree Road.

Preliminary discussions with officers from the Office of Environment and Heritage and Council's Natural Resources team indicate these issues may impede the progression of the proposal at this time if it is to include lands west of Peppertree Road.

## **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

## **FINANCIAL/RESOURCE IMPLICATIONS**

There are no additional financial/resource implications to assess the Planning Proposal. This report does not address the commercial financial implications for Council in pursuing the Planning Proposal.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	No		
Reserve Funds	No		
Section 94	Yes		Future development will be subject to Section 94 local infrastructure contributions
External Grants	No		

**MINUTES ORDINARY COUNCIL - 12 JULY 2016**

Source of Funds	Yes/No	Funding (\$)	Comment
Other	Yes	10,500	Stage 1 rezoning fee

**LEGAL, POLICY AND RISK IMPLICATIONS****Environmental Planning and Assessment Act 1979 (NSW)**

Council is the relevant Planning Authority for preparing the Planning Proposal under the *Environmental Planning and Assessment Act 1979* (NSW). If Council resolves to adopt the Planning Proposal it will be forwarded to the NSW Department of Planning and Environment for a Gateway Determination.

**Local Government Act 1993 (NSW)**

The site is Council-owned and currently classified as "operational land" under the *Local Government Act 1993* (NSW) (the LGA Act). This classification is to be retained.

**Regional Plans**

The *Lower Hunter Regional Strategy* identifies Medowie as a proposed urban area with boundaries to be defined by local planning (i.e. the *Medowie Strategy*).

Medowie is located with Hunter City Northern Gateways District for the purposes of the *Draft Hunter Regional Plan & Draft Plan for Growing Hunter City*. The Planning Proposal is consistent with the relevant directions and actions for growth. It is not confirmed that the Planning Proposal satisfies the relevant direction to protect the natural environment and biodiversity. Additional information to confirm the satisfactory management of water quality will be provided following a Gateway Determination.

**Local Planning Strategies**

Medowie is identified as an urban growth area in the *Port Stephens Planning Strategy*. The *Medowie Strategy* and *Draft Revised Medowie Planning Strategy* and the *Draft Town Centre Master Plan* identify the unconstrained eastern part of Peppertree road for commercial use. The land west of Peppertree Road is also identified for potential development however it is not demonstrated that the ecological issues can be resolved.

**Port Stephens Local Environmental Plan 2013**

The Planning Proposal will be implemented through the amendment of *Port Stephens Local Environmental Plan 2013* mapping for land zoning, building height and minimum lot size as recommended.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that the Planning Proposal will not receive a Gateway Determination.	Low	Adopt the recommended Planning Proposal for unconstrained land east of Peppertree road (only) and seek a Gateway Determination from the NSW Department of Planning and Environment.	Yes

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The economic implications of the Planning Proposal are to be established by further economic analysis following a Gateway Determination. This includes a retail needs assessment with an updated retail floor space demand and supply estimate for Medowie using expenditure based approach to retail modelling.

There are no environmental implications if Council resolves to proceed with the recommended Planning Proposal limited to changing the zoning to lands east of Peppertree Road.

### **MERGER PROPOSAL IMPLICATIONS**

There are no merger proposal implications.

### **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Strategy and Environment Section to assess the Planning Proposal.

#### Internal

Natural Resources Team advice is the vegetated area west of Peppertree Road has high ecological value and warrants exclusion from development and consideration for rezoning to E2 Environmental Conservation at this time. Further information to justify ecological assessment findings submitted by the Proponent for that part is also recommended.

Facilities and Services Group advises that local infrastructure contribution planning provides for future intersection upgrade works in the town centre. The need for this infrastructure will become more pressing if the land is rezoned and developed for commercial purposes.

### External

Formal consultation requirements will be set by a Gateway Determination issued by the NSW Department of Planning and Environment. It is intended to consult with the Hunter Water Corporation; NSW Roads and Maritime Services; NSW Rural Fire Service; NSW Office of Environment and Heritage; and Worimi Local Aboriginal Land Council; and to notify adjoining landowners.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Site Location. (Provided under separate cover)
- 2) Current Zoning. (Provided under separate cover)
- 3) Recommended Zoning. (Provided under separate cover)
- 4) Recommended Planning Proposal. (Provided under separate cover)
- 5) Proponent Planning Proposal. (Provided under separate cover)

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

**ITEM NO. 2**

**FILE NO: 16/351587  
RM8 REF NO: 16/322999**

**WORKPLACE SURVEILLANCE POLICY**

REPORT OF: MICHELLE GILLIVER-SMITH - ORGANISATION DEVELOPMENT  
SECTION MANAGER  
GROUP: CORPORATE SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive and note the submission.
  - 2) Revoke the Workplace Surveillance Policy dated 13 August 2013 Minute No 228 shown at **(ATTACHMENT 1)**.
  - 3) Adopt the revised Workplace Surveillance Policy shown at **(ATTACHMENT 2)**.
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**ORDINARY COUNCIL MEETING - 12 JULY 2016  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Paul Le Mottee Councillor Chris Doohan</b>  That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 12 JULY 2016  
MOTION**

<b>207</b>	<b>Councillor Ken Jordan Councillor John Nell</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Receive and note the submission.</li><li>2) Revoke the Workplace Surveillance Policy dated 13 August 2013 Minute No 228 shown at <b>(ATTACHMENT 1)</b>.</li><li>3) Adopt the revised Workplace Surveillance Policy shown at <b>(ATTACHMENT 2)</b>.</li></ol>
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**BACKGROUND**

The purpose of this report is to finalise the revision of the Workplace Surveillance Policy which was presented to Council on 10 May 2016 and has since been on public exhibition.



One submission was received from the New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union asking Council to consider clarifying under what circumstances GPS surveillance will be used by Council. These recommended changes are noted in **(ATTACHMENT 3)** and are consistent with the original intention of the policy.

Following feedback from the Union, the following has been incorporated into the scope of the policy:

Information stemming from the use of surveillance, as outlined in this policy, will not be used for the purposes below:

- As the sole and primary means of disciplinary action.
- To target or victimise employees.
- As a form of real time employee performance monitoring.

This means that surveillance information can be used for disciplinary purposes only to substantiate allegations stemming from other sources. This prevents victimisation in the workplace and prevents the potential abuse of power on part of those who have access to the surveillance information.

It has the secondary benefit of not viewing employees under surveillance in terms of Lowest Common Denominator thinking, in that Council expects the worst from their employees. Trust in the workplace is a vital component to increase productivity beyond that of doing merely the bare minimum.

## **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Port Stephens is a community where people feel safe.	Use Council's regulatory powers and Government legislation to enhance public safety.

## **FINANCIAL/RESOURCE IMPLICATIONS**

There are minimal financial implications.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		Costs relating to advertising.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

Review of the Workplace Surveillance Policy provides a continuing framework for workers to operate within to ensure compliance with legislative requirements as well as providing clarity for the public on our surveillance activities and access to information collected.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that without a Workplace Surveillance Policy, Council officers may be in breach of the Code of Conduct when interacting with members of the public.	Low	Accept the recommendations.	Yes
There is a risk that without a Workplace Surveillance Policy, Council officials may be in breach of the relevant legislation when interacting with members of the public or seeking to use surveillance in relation to workplace matters.	Low	Accept the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The *Workplace Surveillance Act 2005* requires that workers and the community are made aware of surveillance undertaken by Council.

**MERGER PROPOSAL IMPLICATIONS**

Newcastle City Council has an Information and Communication Technology Surveillance Policy in place.

## **CONSULTATION**

### Internal

Consultation with key stakeholders has been undertaken by the Organisation Development Section.

The Consultative Committee provides a forum for consultation between Council and its employees. This policy review will be discussed at Consultative Committee and any comments they may have will be forwarded to the General Manager during the public consultation phase.

### External

Following the adoption of the revisions by Council, in accordance with the requirements of the *Local Government Act 1993* the draft Workplace Surveillance Policy will go on public exhibition for a period of 28 days during which time members of the public will be able to comment on the revised policy.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Existing Workplace Surveillance Policy.
- 2) Revised Workplace Surveillance Policy following public exhibition.
- 3) Summary of submission received following public exhibition.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

*Port Stephens*  
C.O.U.N.C.I.L

POLICY

Adopted: 13 August 2013

Minute No: 228

Amended:

Minute No:

FILE NO: PSC2008-8666

TITLE: WORKPLACE SURVEILLANCE

RESPONSIBLE OFFICER: HUMAN RESOURCES MANAGER

**BACKGROUND**

Council recognises its obligations to ensure, where reasonably practicable, a safe and healthy workplace for its workers and others.

The use of certain devices has the potential through the:

- provision of tracking devices, to identify the geographical location of a worker, if they are in need of emergency assistance;
- provision of CCTV, to deter a possible assailant and reduce the safety risks associated with workers and others or, to deter vandalism and criminal activity;
- monitoring of inputs and outputs of data to manage the risks associated with non-compliance to Councils Code of Conduct and WIIS requirements.

Technology advances have made optical devices commonplace through camera capabilities being part of most mobile phones. Council, in the course of its business, uses cameras for the recording of worksites for matters such as marketing and promotional material. Individual workers have similar capabilities with a Council supplied mobile phone, or, their personal mobile phone.

The rights of Council, its workers and others are prescribed in workplace surveillance, and privacy legislation that calls for management processes to ensure continued legislative compliance. This Workplace Surveillance policy establishes the protocol to meet our legislative obligations.

**ITEM 2 - ATTACHMENT 1      EXISTING WORKPLACE SURVEILLANCE POLICY.**

In this policy, a worker has the same meaning as Worker under Section 7 of the Work Health and Safety Act 2011, being:

- (a) an employee, or
- (b) a contractor or subcontractor, or
- (c) an employee of a contractor or subcontractor, or
- (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking, or
- (e) an outworker, or
- (f) an apprentice or trainee, or
- (g) a student gaining work experience, or
- (h) a volunteer, or
- (i) a person of a prescribed class.

**OBJECTIVE**

- 1) The purpose of this policy is to comply with Council's legal obligations by informing workers and others of the surveillance devices used in our workplace and to enhance safety outcomes for Port Stephens Council.

**PRINCIPLES**

- 1) Tracking Devices – Notification.

Council, at times, requires workers to work alone and in isolation to the general workplace. To reduce the risks associated with this, Council may introduce tracking devices to identify the location of the worker, should an emergency response be required.

Increasingly Council's vehicle fleet has equipment that provides back to base, real time capability with regard to location, engine revolutions per minute (RPM), gear ratio and other performance data. This data is invaluable in informing our process improvement activities and for identifying obstacles to our teams that currently prevents them from doing an even better job than they do now. The clear intention of this policy is not to utilise this information for performance management purposes, however, on occasion, available information may be accessed in the course of a workplace investigation.

Existing workers of Council shall be notified of the installation and intent of tracking devices through the dissemination of this policy.

Workers yet to commence with Council shall be given notification of this surveillance policy as part of their offer of employment. By accepting employment with Council the worker will be consenting to the conducting of surveillance in accordance with this policy, immediately upon the commencement of employment with Council.

2) Tracking Devices - Type of Surveillance in Council's Workplace.

Where tracking devices are utilised surveillance will be continuous and ongoing.

For an 'on person' device, workers will be informed that they are required to carry such a device whilst at work based on a risk assessment identifying the need for such a device. This will occur prior to any operation or function of any such device. A Health and Safety Representative (HSR) shall also be involved throughout this risk assessment process.

Where a vehicle is supplied standard with a GPS device the vehicle will display notification that a GPS device is installed in the vehicle.

Where the provision of the device in the vehicle is optional, a risk assessment process shall also be completed to ascertain the need for such device. This will occur prior to any operation or function of such device. A Health and Safety Representative (HSR) shall also be involved throughout this risk assessment process. If the risk assessment deems it necessary to install a GPS device, the vehicle will display notification that a GPS device is installed in the vehicle.

The clear intention of this policy is not to utilise this information for performance management purposes, however, on occasion, available information may be accessed in the course of a workplace investigation.

3) Tracking Devices – Use of Surveillance Records.

CCTV - Notification

Council uses Closed Circuit Television (CCTV) surveillance cameras in and around various Council worksites and facilities.

Existing workers of Council shall be notified of the installation and intent of the use of CCTV cameras through the dissemination of this policy.

Where Council intends to install new CCTV devices, workers will be notified prior to any operation or function of the new installations which occur after the date of acceptance of this policy by Council.

Workers yet to commence with Council shall be given notification of this surveillance policy as part of their offer of employment. By accepting employment with Council, the worker will be consenting to the conducting of surveillance in accordance with this policy, immediately upon the commencement of employment with Council.

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Generally, CCTV surveillance records will not be used or disclosed unless that disclosure is:

- for a legitimate purpose related to employment of workers or legitimate business activities or functions of the employer, or
- to a member or officer of a law enforcement agency for use in connection with the detection, investigation or prosecution of a criminal offence, or
- for a purpose that is directly or indirectly related to the taking of criminal proceedings, or
- that is reasonably believed to be necessary to avert an imminent threat of serious violence to persons or of substantial damage to property.

#### Data Surveillance and Retrieval

The computer usage of workers are not routinely read or monitored however, they are records of Council and shall be managed accordingly. At times, Council may retrieve or review electronic files, records and correspondence of workers. This applies to all Council's Information and Communication systems including telephones, mobile phones and mobile computing technology. Council also provides a number of software systems, which have the ability to track changes made to data. The clear intention of this policy is not to utilise this information for performance management purposes, however, on occasion, available information may be accessed in the course of a workplace investigation.

Designated workers of Port Stephens Council are also required to utilise a variety of security systems such as silkeys and alarm systems, which provide access to Council sites based on unique logins allocated to workers.

Surveillance of workers use of all of these systems and equipment is undertaken by Council on a continual basis.

Existing workers of Council shall be notified of data surveillance through the dissemination of this policy.

Workers yet to commence with Council shall be given notification of this surveillance policy as part of their offer of employment. By accepting employment with Council the worker will be consenting to conducting of surveillance in accordance with this policy, immediately upon the commencement of employment with Council.

#### Camera Devices

Council frequently uses camera devices to take pictures, or videos, eg. For promotions, press releases, training applications, or incident investigations. At times, this may require including workers, and or, others in the picture, or video. To comply with the relevant legislation, the following shall apply:



**ITEM 2 - ATTACHMENT 1      EXISTING WORKPLACE SURVEILLANCE POLICY.**

- A Council worker authorised to operate a Council camera device, shall obtain express, or implied, consent from workers and or others, prior to taking the photograph or video.
- Workers wishing to take pictures or videos, from their personal camera device shall respect a person's privacy and obtain express or implied consent from that person or persons prior to taking the picture or video. Council shall devise such policy and procedures to facilitate this approval.
- Pictures or videos of Council processes, procedures or practices shall not be taken without first obtaining permission from the worker's manager.
- Managers shall ensure that pictures or videos for a use other than for internal purposes shall be approved by the Economic Development and Communications Section Manager, prior to use.

Recordings of Conversations

On occasion Council may wish to record conversations. Council will not record a private conversation without the consent, of the principal parties to the private conversation or the persons who took part in the activity, as per the requirements of the Surveillance Devices Act 2007.

If expressly agreed, when a recording of a conversation is made in relation to a Council worker who is participating in an investigation, the worker will receive a copy of the recording together with a transcript of the recording which they will then be asked to sign and verify as a true and correct record. This recording cannot occur without the express permission of the worker involved. Council at no stage will apply any duress for any interview to be recorded.

Confidentiality and Records

Council workers shall at all times exercise duty of confidentiality. Data shall only be released in compliance with the Workplace Surveillance Act 2005 (NSW) and on a need to know basis as prescribed by this policy or a workers request for such confidential information that applies to them in accordance with this policy's provisions in relation to requesting access to information.

Non compliance with duty of confidentiality requirements shall render a Council worker liable to disciplinary procedures which may include termination of employment.

All documents created in relation to this policy will be kept in accordance with State Records Act 1998 (NSW) and Port Stephens Council's Records Management management directive.

Members of the public can make application to access Council's data in accordance with Government Information Public Access (GIPA) Act 2009 and Privacy and Personal Information Protection Act (PPIPA) 1998.

**ITEM 2 - ATTACHMENT 1      EXISTING WORKPLACE SURVEILLANCE POLICY.**

For the purposes of determining compliance to this policy, random audits will be undertaken of data generation and collection activities by Council's internal auditor. Audit results shall be reported to the relevant Group Manager for determination and the Consultative Committee for review.

4) Training

New users shall be made aware of this policy during the induction process.

Record of user's awareness of their internet obligations under this management directive shall be achieved by on screen declaration prior to internet access.

Record of user awareness and understanding of this management directive will be obtained by the completion of toolboxing of the policy in accordance with the Toolbox Procedure and by publication on Council's Intranet and Internet Site.

Ongoing training and awareness of this policy shall be provided by Council management throughout the employment relationship.

5) Requesting access to information

All requests for information under this policy from members of public will be assessed under the Government Information (Public Access) Act 2009.

All requests for data retrieval or review from workers (other than approved Information and Communication Technology workers) can only be approved by any two of the following workers, with the exception of the General Manager who may request data retrieval or review without the approval of another manager:

- the General Manager; or
- a Group Manager;
- a Section Manager;
- the Executive Officer;
- the Legal Services Manager;
- the Human Resources Manager.

Any request must specify the reason for data retrieval or review, the specific period to be accessed and the Approved Worker(s) undertaking the investigation.

All requests and approvals must be given in writing.

This shall not apply to requests where an individual piece of data directly related to a task being undertaken by a worker is required. In such case a request to gain the individual piece of data shall require approval from the worker's manager.

**POLICY STATEMENT**

- 1) At Port Stephens Council, a number of electronic systems are in place, which are utilised for surveillance.
- 2) The Workplace Surveillance Act 2005 (NSW) ('the Act') requires us to advise workers and the community of the surveillance methods we have in use and how we may use this information in relation to the surveillance of workers.
- 3) In relation to workers, the systems may be utilised to provide relevant data to support investigations into allegations of unacceptable performance or behaviour. Sporadic auditing of data may occur which may lead to investigations in relation to workers performance and/or behaviour if inconsistencies or matters of concern are identified, however, it is Council's clear intention not to monitor the data provided from all of these surveillance systems in relation to worker performance and behaviour.
- 4) These systems are primarily used to assist Council to capture relevant data needed for the operation of Council's business, improve service delivery, enhance safety outcomes and ensure compliance with relevant legislative requirements.
- 5) The types of matters which may result in the use of data collected through surveillance include but are not limited to:
  - If there is an assault, or suspected assault of a person;
  - If theft of Council's property (or that of a related entity of Council) is suspected;
  - Criminal Damage to Council's equipment or facilities (or that of a related corporation of Council) has occurred;
  - A serious work health and safety incident as defined by the Work Health and Safety Act 2011 (NSW);
  - Complaints of poor performance or behaviour made against workers;
  - Allegations of breaches of the Code of Conduct;
  - Other matters that may from time to time arise involving workers performance and behaviour;
  - Or by request of a worker and Union representative regarding any bona-fide investigation.
- 6) Where a worker is required to respond to an investigation or disciplinary matter where data collected through surveillance is utilised, the worker will be entitled to review the data upon which Council is relying as part of any investigation or disciplinary matter prior to responding to any allegations.

**RELATED POLICIES &/OR MANAGEMENT DIRECTIVES**

- 1) Port Stephens Council Enterprise Agreement 2011;
- 2) Code of Conduct;
- 3) Records Management management directive;
- 4) Information & Communication Technologies (ICT) Systems & Information Access management directive;
- 5) Information & Communication Technologies (ICT) Asset Management management directive;
- 6) Mobile Phones management directive;
- 7) Telecommunications management directive;
- 8) Toolbox procedure.

**SUSTAINABILITY IMPLICATIONS****SOCIAL IMPLICATIONS**

The Workplace Surveillance Act 2005 requires that workers and the community are made aware of surveillance undertaken by Council.

**ECONOMIC IMPLICATIONS**

Nil.

**ENVIRONMENTAL IMPLICATIONS**

Nil.

**RELEVANT LEGISLATIVE PROVISIONS**

- 1) State Record Act 1998;
- 2) Local Government Act 1993;
- 3) Workplace Surveillance Act 2005 (NSW);
- 4) Workplace Surveillance Regulations 2012(NSW);
- 5) Surveillance Devices Act 2007 (NSW);
- 6) Privacy and Personal Information Protection Act 1998 (NSW);
- 7) Government Information (Public Access) Act 2009;
- 8) Privacy and Personal Information Protection Act (PPIPA) 1998;
- 9) Industrial Relations Act 1996.

**IMPLEMENTATION RESPONSIBILITY**

- 1) Group Managers;
- 2) Section Managers;
- 3) Coordinators.

**PROCESS OWNER**

- 1) Human Resources Manager.

**REVIEW DATE**

- 1) 13 August 2015.

ITEM 2 - ATTACHMENT 2      REVISED WORKPLACE SURVEILLANCE POLICY  
FOLLOWING PUBLIC EXHIBITION.

Policy



**FILE NO:** PSC2009-02488  
**TITLE:** WORKPLACE SURVEILLANCE  
**POLICY OWNER:** HUMAN RESOURCES MANAGER  
**PURPOSE:**

The *Workplace Surveillance Act 2005 (NSW)* requires that workers and the community are made aware of surveillance undertaken by Port Stephens Council (Council).

The purpose of this policy is to comply with Council's legal obligations by informing workers and others of the surveillance devices used in our workplace and to enhance safety outcomes for Council.

**CONTEXT/BACKGROUND:**

The rights of Council, its employees and others, as prescribed in workplace surveillance and privacy legislation, calls for management processes to ensure continued legislative compliance. This Workplace Surveillance Policy establishes the protocol to meet Council's legislative obligations.

Technology advances have made optical devices commonplace through camera and tracking capabilities being part of most mobile devices. Council, in the course of its business, uses these devices. Individual workers have similar capabilities with a Council supplied mobile device or their personal mobile device.

**SCOPE:**

Council recognises its obligations to ensure, where reasonably practicable, a safe and healthy workplace for its workers and others.

The use of certain devices has the potential through the:

- provision of tracking devices, to identify the geographical location of a worker, if they are in need of emergency assistance;
- provision of CCTV, and surveillance cameras to deter a possible assailant and reduce the safety risks associated with workers and others, to deter assault, vandalism and criminal activity, and/or to capture evidence for environmental investigations;
- monitoring of inputs and outputs of data to manage the risks associated with non-compliance to Council's Code of Conduct and Work Health and Safety (WHS) requirements.

Policy

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ITEM 2 - ATTACHMENT 2 REVISED WORKPLACE SURVEILLANCE POLICY  
FOLLOWING PUBLIC EXHIBITION.

## Policy



Existing workers of Council shall be notified of the installation and intent of tracking devices, CCTV cameras and data surveillance through the dissemination of this policy.

Workers yet to commence with Council shall be given notification of this policy as part of their offer of employment. By accepting employment with Council, the worker will be consenting to the conducting of surveillance in accordance with this policy, immediately upon the commencement of employment with Council.

Information stemming from the use of surveillance, as outlined in this policy, will not be used for the purposes below:

- As the sole and primary means of disciplinary action.
- To target or victimise employees.
- As a form of real time employee performance monitoring.

This means that surveillance information can be used for disciplinary purposes only to substantiate allegations stemming from other sources. This prevents victimisation in the workplace and prevents the potential abuse of power on part of those who have access to the surveillance information.

It has the secondary benefit of not viewing employees under surveillance in terms of Lowest Common Denominator thinking, in that Council expects the worst from their employees. Trust in the workplace is a vital component to increase productivity beyond that of doing merely the bare minimum.

### Tracking Devices

Council, at times, requires workers to work alone and in isolation to the general workplace. To reduce the risks associated with this, Council may introduce tracking devices to identify the location of the worker, should an emergency response be required. Where tracking devices are utilised surveillance will be continuous and ongoing.

Increasingly, Council's vehicle fleet has equipment that provides back to base, real time capability with regard to location, engine revolutions per minute (RPM), gear ratio and other performance data. This data is invaluable in informing our process improvement activities and for identifying obstacles to our teams that currently prevents them from doing an even better job than they do now. Where a vehicle is supplied standard with a GPS device, the vehicle will display notification that a GPS device is installed in the vehicle.

Where the provision of the device in the vehicle is optional, a risk assessment process shall be completed to ascertain the need for such device. This will occur prior to any operation or

## Policy

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FOLLOWING PUBLIC EXHIBITION.

## Policy



function of such device. If the risk assessment deems it necessary to install a GPS device, the vehicle will display notification that a GPS device is installed in the vehicle.

For an 'on person' device, workers will be informed that they are required to carry such a device whilst at work, based on a risk assessment identifying the need for such a device. This will occur prior to any operation or function of any such device.

A Health and Safety Representative (HSR) shall be involved throughout all risk assessments undertaken under this policy.

All Council issued mobile devices that have GPS functionality, can be tracked by Council's Information Communication and Technology Unit.

### Closed Circuit Television (CCTV)

Council uses CCTV surveillance cameras and overt/covert surveillance devices in and around various Council worksites and facilities. This camera surveillance monitors or records visual images of activities on premises or, in any other place. CCTV camera surveillance will be continuous and ongoing.

Signs are located within each site/location to identify the areas affected by the camera surveillance, and are clearly visible at each entrance to that site or location. In the event where Council is conducting an operation in relation to environmental offences and/or investigations, Council will not display signage.

Where Council intends to install new CCTV devices, workers will be notified prior to any operation or function of the new installations which occur after the date of acceptance of this policy by Council.

### Use of Surveillance Records – Tracking Devices and CCTV

Council may use and disclose confidentially the surveillance records where that use or disclosure is for a purpose related to the matter raised below regarding workers and management of Council.

Council may also use and disclose the surveillance records where that use or disclosure is related to Council's business activities including:

- To a law enforcement agency in connection with an environmental offence or alleged environmental offence, a criminal offence or alleged criminal offence;
- In connection with bona-fide legal proceedings; or
- As reasonably believed to be necessary to avert an imminent threat of serious violence or substantial damage to property.

## Policy

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ITEM 2 - ATTACHMENT 2 REVISED WORKPLACE SURVEILLANCE POLICY  
FOLLOWING PUBLIC EXHIBITION.

## Policy



Examples of instances in which use or disclosure of surveillance records might occur include but, are not limited to:

- Allegations of breaches of Council's Code of Conduct;
- Allegations of poor performance or unacceptable behaviour;
- Allegations of illegal dumping or other environmental offences;
- If there is an assault, or suspected assault of a person;
- If theft of Council's property (or that of a related entity of Council) is suspected or;
- Criminal damage to Council's equipment or facilities (or that of a related corporation of Council) has occurred;
- A serious WHS incident as defined by the *Work Health and Safety Act 2011 (NSW)*;
- By request of a worker and Union representative regarding any bona-fide investigation.

All surveillance records are available under the *Government Information (Public Access) Act 2009 (GIPA)*; however, persons wishing to access these records should be aware that there are provisions under GIPA that may override the release of the information.

Generally, CCTV surveillance records will not be used or disclosed unless that disclosure is:

- for a legitimate purpose related to employment of workers or legitimate business activities or functions of the employer; or
- to a member or officer of a law enforcement agency for use in connection with the detection, investigation or prosecution of a criminal offence; or
- for a purpose that is directly or indirectly related to the taking of criminal proceedings; or
- reasonably believed to be necessary to avert an imminent threat of serious violence to persons or of substantial damage to property.

### Data Surveillance and Retrieval

The computer usage of workers is not routinely read or monitored, however, they are records of Council and shall be managed accordingly. At times, Council may retrieve or review electronic files, records and correspondence of workers. This applies to all Council's Information and Communication systems including telephones, mobile phones and mobile computing technology. Council also provides a number of software systems, which have the ability to track changes made to data.

Designated workers of Council are also required to utilise a variety of security systems such as silkeys and alarm systems, which provide access to Council sites based on unique logins allocated to workers. Surveillance of workers' use of all of these systems and equipment is undertaken by Council on a continual basis.

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ITEM 2 - ATTACHMENT 2 REVISED WORKPLACE SURVEILLANCE POLICY  
FOLLOWING PUBLIC EXHIBITION.

## Policy



### Camera Devices

Council frequently uses camera devices to take pictures, or videos, eg for the safety of its employees, promotions, press releases, training applications or incident/environmental investigations. At times, this may require including workers, and/or others in the picture, or video. To comply with the relevant legislation, the following shall apply:

- A Council worker authorised to operate a Council camera device shall obtain express, or implied, consent from workers and or others, prior to taking the photograph or video.
- Workers wishing to take pictures or videos from their personal camera device shall respect a person's privacy and obtain express or implied consent from that person or persons prior to taking the picture or video. Council shall devise such policy and procedures to facilitate this approval. In the event where relevant legislation proves that Council can collect evidence/samples as part of an investigation, Council is not required to obtain consent from the person or persons prior to taking the picture or video.
- Pictures or videos of Council processes, procedures or practices shall not be taken without first obtaining permission from the worker's Manager.
- Managers shall ensure that pictures or videos for a use, other than for internal purposes, shall be approved by the Communications Section Manager, prior to use.

### Recordings of Conversations

On occasion Council may wish to record conversations. Council will not record a private conversation without the consent, of the principal parties to the private conversation or the persons who took part in the activity, as per the requirements of the *Surveillance Devices Act 2007*.

If expressly agreed, when a recording of a conversation is made in relation to a Council worker who is participating in an investigation, the worker will receive a copy of the recording together with a transcript of the recording which they will then be asked to sign and verify as a true and correct record. This recording cannot occur without the express permission of the worker involved. Council, at no stage, will apply any duress for any interview to be recorded.

### Confidentiality and Records

Council workers shall at all times exercise duty of confidentiality. Data shall only be released in compliance with the *Workplace Surveillance Act 2005 (NSW)* and on a need to know basis as prescribed by this policy or by a worker's request.

Non-compliance with duty of confidentiality requirements shall render a Council worker liable to disciplinary procedures which may include termination of employment.

## Policy

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FOLLOWING PUBLIC EXHIBITION.

## Policy



All documents created in relation to this policy will be kept in accordance with the *State Records Act 1998 (NSW)* and Port Stephens Council's Records Management Management Directive.

Members of the public can make application to access Council's data in accordance with the *Government Information Public Access (GIPA) Act 2009* and the *Privacy and Personal Information Protection Act (PPIPA) 1998*.

For the purposes of determining compliance to this policy, random audits will be undertaken of data generation and collection activities by Council's internal auditor. Audit results shall be reported to the relevant Group Manager for determination and the Consultative Committee for review.

### Training

New workers shall be made aware of this policy during the induction process.

Record of worker's awareness of their internet obligations under this management directive shall be achieved by an on-screen declaration prior to internet access.

Record of user awareness and understanding of this management directive will be obtained by the completion of toolboxing of the policy in accordance with the Toolbox Procedure and by publication on Council's Intranet and Internet Site.

Ongoing training and awareness of this policy shall be provided by Council management throughout the employment relationship.

### Requesting access to information

All requests for information under this policy from members of the public will be assessed under the *Government Information (Public Access) Act 2009*.

All requests for data retrieval or review from workers (other than approved Information and Communication Technology workers) can only be approved by any two of the following workers, with the exception of the General Manager who may request data retrieval or review without the approval of another manager:

- the General Manager; or
- a Group Manager;
- a Section Manager;
- the Executive Officer;
- the Legal Services Manager;
- the Human Resources Manager.

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ITEM 2 - ATTACHMENT 2 REVISED WORKPLACE SURVEILLANCE POLICY  
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## Policy



Any request must specify the reason for data retrieval or review, the specific period to be accessed and the Approved Worker(s) undertaking the investigation.

All requests and approvals must be given in writing.

This shall not apply to requests where an individual piece of data directly related to a task being undertaken by a worker is required. In such case a request to gain the individual piece of data shall require approval from the worker's manager.

Where a worker is required to respond to an investigation or disciplinary matter where data collected through surveillance is utilised, the worker will be entitled to review the data upon which Council is relying as part of any investigation or disciplinary matter prior to responding to any allegations.

### DEFINITIONS:

An outline of the key definitions of terms included in the policy.

Worker	<p>In this policy, a Worker has the same meaning as Worker under Section 7 of the <i>Work Health and Safety Act 2011</i>, being:</p> <ul style="list-style-type: none"><li>a) an employee, or</li><li>b) a contractor or subcontractor, or</li><li>c) an employee of a contractor or subcontractor, or</li><li>d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking, or</li><li>e) an outworker, or</li><li>f) an apprentice or trainee, or</li><li>g) a student gaining work experience, or</li><li>h) a volunteer, or</li><li>i) a person of a prescribed class.</li></ul>
Council	Port Stephens Council.
WHS	Work Health and Safety.
HSR	Health & Safety Representative.
Workplace	Means premises, or any other place, where employees work, or any part of such premises or place.

### Policy

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**ITEM 2 - ATTACHMENT 2 REVISED WORKPLACE SURVEILLANCE POLICY FOLLOWING PUBLIC EXHIBITION.****Policy****POLICY STATEMENT:**

Council recognises they have a number of electronic systems in place which are utilised for surveillance. The surveillance devices used by Council are primarily in place to assist Council to capture relevant data needed for the operation of Council's business, improve service delivery, enhance safety outcomes and ensure compliance with relevant legislative requirements.

**POLICY RESPONSIBILITIES:**

- 1) The Human Resources Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.

**RELATED DOCUMENTS:**

- 1) Port Stephens Council Enterprise Agreement.
- 2) Code of Conduct.
- 3) Records Management Management Directive.
- 4) Information & Communication Technologies (ICT) Systems & Information Access Management Directive.
- 5) Information & Communication Technologies (ICT) Assets Management Management Directive.
- 6) Use of Mobile Devices Management Directive.
- 7) Telecommunications Management Directive.
- 8) Toolbox Procedure.
- 9) *State Records Act 1998 (NSW)*.
- 10) *Local Government Act 1993 (NSW)*.
- 11) *Workplace Surveillance Act 2005 (NSW)*.
- 12) *Workplace Surveillance Regulations 2012 (NSW)*.
- 13) *Surveillance Devices Act 2007 (NSW)*.
- 14) *Privacy and Personal Information Protection Act 1998 (NSW)*.
- 15) *Government Information (Public Access) Act 2009 (NSW)*.
- 16) *Industrial Relations Act 1996 (NSW)*.

**CONTROLLED DOCUMENT INFORMATION:**

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<b>RM8 container No</b>	PSC2009-02488	<b>RM8 record No</b>	16/318726
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**ITEM 2 - ATTACHMENT 2 REVISED WORKPLACE SURVEILLANCE POLICY FOLLOWING PUBLIC EXHIBITION.**

## Policy



<b>Audience</b>	All employees		
<b>Process owner</b>	Human Resources Manager		
<b>Author</b>	Human Resources Manager		
<b>Review timeframe</b>	Two years	<b>Next review date</b>	xx/xx/2018
<b>Adoption date</b>	13 August 2013		

**VERSION HISTORY:**

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Details</b>	<b>Minute No.</b>
1	13/08/13	Human Resources Manager	Adopted.	228
2	11/04/16	Human Resources Manager	<p>The Workplace Surveillance Policy was reviewed and updated in the new policy template.</p> <p>Reference was changed to the Port Stephens Council Enterprise Agreement 2015.</p> <p>Policy reviewed and updated to ensure less duplication.</p> <p>Reference to Mobile Phones has been updated to Mobile Devices.</p> <p>Surveillance used for environmental investigations and offences has been included in this policy.</p> <p>Scope updated to clarify the circumstances that GPS surveillance will be used by Council.</p>	

## Policy

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**ITEM 2 - ATTACHMENT 3 SUMMARY OF SUBMISSION RECEIVED  
FOLLOWING PUBLIC EXHIBITION.****Workplace Surveillance Policy  
Summary of submission/s received**

Author of submission/s	Concern/s raised	Council's response
NSW Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union.	That Council consider clarifying under what circumstances GPS surveillance will be used by Council.	Feedback noted and incorporated into the revised policy for endorsement by Council.

**ITEM NO. 3**

**FILE NO: 16/353655  
RM8 REF NO: PSC2010-00008**

**POLICY: MANAGING UNREASONABLE COMPLAINANT CONDUCT**

REPORT OF: TONY WICKHAM - GOVERNANCE MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receives and notes the submission.
  - 2) Adopt the Managing Unreasonable Complainant Conduct policy shown at **(ATTACHMENT 1)**.
- 

**ORDINARY COUNCIL MEETING - 12 JULY 2016  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Morello Councillor John Nell</b>  That the recommendation be adopted.
--	--

**ORDINARY COUNCIL MEETING - 12 JULY 2016  
MOTION**

<b>208</b>	<b>Councillor Ken Jordan Councillor John Nell</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Receives and notes the submission.</li><li>2) Adopt the Managing Unreasonable Complainant Conduct policy shown at <b>(ATTACHMENT 1)</b>.</li></ol>
------------	---

**BACKGROUND**

The purpose of this report is to provide Council with the comments received as part of the public exhibition of the new Managing Unreasonable Complainant Conduct policy (policy).

The comments received have been summarised in **(ATTACHMENT 2)** of the report. It is proposed that no further amendments to the draft policy are required at this time.



The policy has been introduced as part of Council's ongoing policy review program where it was identified that there is a need for this policy. This policy will support Council's Complaint Handling policy.

The policy is based on the model managing unreasonable complainant conduct policy developed by the NSW Ombudsman.

It provides a framework for managing unreasonable conduct by complainants. The policy details roles and responsibilities of all parties to a complaint, expected behaviours and how the process will be managed by Council.

The policy is presented for Council's determination.

### **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Port Stephens has strong governance and civic leadership.	Manage the civic leadership and governance functions of Council. Manage relationships with all levels of government, stakeholder organisations and Hunter Councils Inc.

### **FINANCIAL/RESOURCE IMPLICATIONS**

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

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

This policy will support Council's complaint management framework and assist to reduce unnecessary diversion of Council resources in complaint management. Council strives to provide the best outcome for all parties within the relevant legislative framework.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that without such a policy Council could have situations where Council resources are unnecessarily utilised in resolving matters due to unreasonable conduct by complainants.	Low	Adopt the recommendation	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**MERGER PROPOSAL IMPLICATIONS**

There are no implications associated with the recommendation.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the General Manager's Office Section.

The *Local Government Act 1993* requires Council to conduct public consultation on policies prior to final adoption.

**Internal**

- The Executive Team have been consulted to seek management endorsement.
- The General Manager has been consulted to seek endorsement prior to Council consideration on 10 May 2016.

**External**

- Following Council endorsement, the policy was placed on public exhibition in the Port Stephens Examiner and on Council's website.
- The draft policy was advertised in the Port Stephens Examiner from 19 May 2016 to 17 June 2016.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Managing Unreasonable Complainant Conduct policy.
- 2) Summary of amendments raised from public exhibition of the draft policy.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 3 - ATTACHMENT 1      MANAGING UNREASONABLE COMPLAINANT CONDUCT POLICY.**

**Policy**



**FILE NO:** PSC2010-00008

**TITLE:** MANAGING UNREASONABLE COMPLAINANT CONDUCT POLICY

**POLICY OWNER:** GOVERNANCE MANAGER

**PURPOSE:**

This policy is to assist all staff members to better manage unreasonable complainant conduct ('UCC').

Its aim is to ensure that all staff:

- Feel confident and supported in taking action to manage UCC.
- Act fairly, consistently, honestly and appropriately when responding to UCC.
- Are aware of their roles and responsibilities in relation to the management of UCC and how this policy will be used.
- Understand the types of circumstances when it may be appropriate to manage UCC using one or more of the following mechanisms:
  - The strategies provided in the Managing Unreasonable Complainant Conduct Practice Manual (2nd edition) ('practice manual') including the strategies to change or restrict a complainant's access to our services.
  - Alternative dispute resolution strategies to deal with conflicts involving complainants and members of our organisation.
  - Legal instruments such as trespass laws/legislation to prevent a complainant from coming onto our premises and orders to protect specific staff members from any actual or apprehended personal violence, intimidation or stalking.
- Have a clear understanding of the criteria that will be considered before we decide to change or restrict a complainant's access to our services.
- Are aware of the processes that will be followed to record and report UCC incidents as well as the procedures for consulting and notifying complainants about any proposed actions or decisions to change or restrict their access to our services.
- Are familiar with the procedures for reviewing decisions made under this policy, including specific timeframes for review.

**CONTEXT/BACKGROUND:**

Council has developed this policy to support the Complaint Handling Policy.

This policy is based on the NSW Ombudsman's Unreasonable Complainant Conduct Model Policy.

The policy provides an open and transparent process for the management of UCC at Council.

**Policy**

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**ITEM 3 - ATTACHMENT 1      MANAGING UNREASONABLE COMPLAINANT CONDUCT POLICY.**

## Policy



### SCOPE:

#### 1.0 Defining unreasonable complainant conduct

##### 1.1 Unreasonable complainant conduct

Most complainants who come to our organisation act reasonably and responsibly in their interactions with us, even when they are experiencing high levels of distress, frustration and anger about their complaint. However in a very small number of cases some complainants behave in ways that are inappropriate and unacceptable – despite our best efforts to help them. They are aggressive and verbally abusive towards our staff. They threaten harm and violence, bombard our organisation with unnecessary and excessive phone calls and emails, make inappropriate demands on our time and our resources and refuse to accept our decisions and recommendations in relation to their complaints. When complainants behave in these ways we consider their conduct to be 'unreasonable'.

Unreasonable complainant conduct ('UCC') is any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for our organisation, our staff, other service users and complainants or the complainant himself/herself.

UCC can be divided into five categories of conduct:

- Unreasonable persistence
- Unreasonable demands
- Unreasonable lack of cooperation
- Unreasonable arguments
- Unreasonable behaviours

##### 1.2 Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on our organisation, staff, services, time and/or resources. Some examples of unreasonably persistent behaviour include:

- An unwillingness or inability to accept reasonable and logical explanations including final decisions that have been comprehensively considered and dealt with.
- Persistently demanding a review simply because it is available and without arguing or presenting a case for one.
- Pursuing and exhausting all available review options when it is not warranted and refusing to accept further action cannot or will not be taken on their complaints.
- Reframing a complaint in an effort to get it taken up again.
- Bombarding our staff/organisation with phone calls, visits, letters, and emails (including cc'd correspondence) after repeatedly being asked not to do so.
- Contacting different people within our organisation and/or externally to get a different

## Policy

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**ITEM 3 - ATTACHMENT 1      MANAGING UNREASONABLE COMPLAINANT CONDUCT POLICY.**

## Policy



outcome or more sympathetic response to their complaint – internal and external forum shopping.

### **1.3 Unreasonable demands**

Unreasonable demands are any demands (express or implied) that are made by a complainant that have a disproportionate and unreasonable impact on our organisation, staff, services, time and/or resources. Some examples of unreasonable demands include:

- Issuing instructions and making demands about how we have/should handle their complaint, the priority it was/should be given, or the outcome that was/should be achieved.
- Insisting on talking to a senior manager or the General Manager personally when it is not appropriate or warranted.
- Emotional blackmail and manipulation with the intention to guilt trip, intimidate, harass, shame, seduce or portray themselves as being victimised – when this is not the case.
- Insisting on outcomes that are not possible or appropriate in the circumstances – eg. for someone to be sacked or prosecuted, an apology and/or compensation when no reasonable basis for expecting this.
- Demanding services that are of a nature or scale that we cannot provide when this has been explained to them repeatedly.

### **1.4 Unreasonable lack of cooperation**

Unreasonable lack of cooperation is an unwillingness and/or inability by a complainant to cooperate with our organisation, staff, or complaints system and processes that results in a disproportionate and unreasonable use of our services, time and/or resources. Some examples of unreasonable lack of cooperation include:

- Sending a constant stream of comprehensive and/or disorganised information without clearly defining any issues of complaint or explaining how they relate to the core issues being complained about – only where the complainant is clearly capable of doing this.
- Providing little or no detail with a complaint or presenting information in 'drips and drabs'.
- Refusing to follow or accept our instructions, suggestions, or advice without a clear or justifiable reason for doing so.
- Arguing frequently and/or with extreme intensity that a particular solution is the correct one in the face of valid contrary arguments and explanations.
- Displaying unhelpful behaviour – such as withholding information, acting dishonestly, misquoting others, and so forth.

### **1.5 Unreasonable arguments**

Unreasonable arguments include any arguments that are not based in reason or logic, that are incomprehensible, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon our organisation, staff, services, time, and/or resources. Arguments are unreasonable when they:

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- fail to follow a logical sequence
- are not supported by any evidence and/or are based on conspiracy theories
- lead a complainant to reject all other valid and contrary arguments
- are trivial when compared to the amount of time, resources and attention that the complainant demands
- are false, inflammatory or defamatory.

### 1.6 Unreasonable behaviour

Unreasonable behaviour is conduct that is unreasonable in all circumstances – regardless of how stressed, angry or frustrated that a complainant is – because it unreasonably compromises the health, safety and security of our staff, other service users or the complainant himself/herself. Some examples of unreasonable behaviours include:

- Acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks
- Harassment, intimidation or physical violence.
- Rude, confronting and threatening correspondence.
- Threats of harm to self or third parties, threats with a weapon or threats to damage property including bomb threats.
- Stalking (in person or online).
- Emotional manipulation.

All staff should note that Port Stephens Council has a zero tolerance policy towards any harm, abuse or threats directed towards them. Any conduct of this kind will be dealt with under this policy and in accordance with our duty of care and work, health and safety responsibilities.

## 2.0 Roles and responsibilities

### 2.1 All staff

All staff are responsible for familiarising themselves with this policy as well as the Individual Rights and Mutual Responsibilities of the Parties to a Complaint in Appendix A. Staff are also encouraged to explain the contents of this document to all complainants particularly those who engage in UCC or exhibit the early warning signs for UCC.

Staff are also encouraged and authorised to use the strategies and scripts provided in Part 5 of the practice manual to manage UCC, in particular:

- Strategies and script ideas for managing unreasonable persistence.
- Strategies and script ideas for managing unreasonable demands.
- Strategies and script ideas for managing unreasonable lack of cooperation.
- Strategies and script ideas for managing unreasonable arguments.
- Strategies and script ideas for managing unreasonable behaviours.

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However, it must be emphasised that any strategies that effectively change or restrict a complainant's access to our services must be considered at the senior management level or higher as provided in this policy.

Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to the Governance Manager within 24 hours of the incident occurring, using the UCC incident form. A file note of the incident should also be recorded in Council's records management system – HP Record Manager (RM8).

### **2.2 The Governance Manager**

The Governance Manager, in consultation with relevant staff, has the responsibility and authority to change or restrict a complainant's access to our services in the circumstances identified in this policy. When doing so they will take into account the criteria in Part 5.2 below and will aim to impose any service changes/restrictions in the least restrictive ways possible. Their aim, when taking such actions will not be to punish the complainant, but rather to manage the impacts of their behaviour.

When applying this policy the Governance Manager will also aim to keep at least one open line of communication with a complainant. However, we do recognise that in extreme situations all forms of contact may need to be restricted for some time to ensure the health and safety and security of our staff and/or third parties.

The Governance Manager is also responsible for recording, monitoring and reviewing all cases where this policy is applied to ensure consistency, transparency and accountability for the application of this policy. They will also manage and keep a file record of all cases where this policy is applied.

### **2.3 Senior Managers**

All senior managers are responsible for supporting staff to apply the strategies in this policy, as well as those in the practice manual. Senior managers are also responsible for ensuring compliance with the procedures identified in this policy and ensuring that all staff members are trained to deal with UCC – including on induction.

Following a UCC and/or stressful interaction with a complainant, senior managers are responsible for providing affected staff members with the opportunity to debrief and vent their concerns either formally or informally. Senior managers will also ensure that staff are provided with proper support and assistance including medical and/or police assistance and support through programs such as Employee Assistance Program (EAPS), if necessary.

Depending on the circumstances senior managers may also be responsible for arranging other forms of support for staff which are detailed in Part 10 of this policy.

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### 3.0 Responding to and managing unreasonable complainant conduct

#### 3.1 Changing or restricting a complainant's access to our services

UCC incidents will generally be managed by limiting or adapting the ways that we interact with and/or deliver services to complainants by restricting:

- **Who they have contact with** – eg. limiting a complainant to a sole contact person/staff member in our organisation.
- **What they can raise with us** – eg. restricting the subject matter of communications that we will consider and respond to.
- **When they can have contact** – eg. limiting a complainant's contact with our organisation to a particular time, day, or length of time, or curbing the frequency of their contact with us.
- **Where they can make contact** – eg. limiting the locations where we will conduct face-to-face interviews to secured facilities or areas of the office.
- **How they can make contact** – eg. limiting or modifying the forms of contact that the complainant can have with our organisation. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to our premises, contact through a representative only, taking no further action or terminating our services altogether.

When using the restrictions provided in this section we recognise that discretion will need to be used to adapt them to suit a complainant's personal circumstances, level of competency, literacy skills, etc. In this regard, we also recognise that more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy.

#### 3.2 Who – limiting the complainant to a sole contact point

Where a complainant tries to forum shop internally within our organisation, changes their issues of complaint repeatedly, reframes their complaint, or raises an excessive number of complaints it may be appropriate to restrict their access to a single staff member (a sole contact point) who will exclusively manage their complaint(s) and interactions with our organisation. This may ensure they are dealt with consistently and may minimise the chances for misunderstandings, contradictions and manipulation.

To avoid staff 'burn out' the sole contact officer's supervisor will provide them with regular support and guidance – as needed. Also, the Governance Manager will review the arrangement every six months to ensure that the officer is managing/coping with the arrangement.

Complainants who are restricted to a sole contact person will however be given the contact details of one additional staff member who they can contact if their primary contact is unavailable – eg. they go on leave or are otherwise unavailable for an extended period of time.

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### **3.3 What – restricting the subject matter of communications that we will consider**

Where complainants repeatedly send written communications, letters, emails, or online forms that raise trivial or insignificant issues, contain inappropriate or abusive content or relate to a complaint/issue that has already been comprehensively considered and/or reviewed (at least once) by our office, we may restrict the issues/subject matter the complainant can raise with us/we will respond to. For example, our organisation may:

- Refuse to respond to correspondence that raises an issue that has already been dealt with comprehensively, that raises a trivial issue, or is not supported by clear/any evidence. The complainant will be advised that future correspondence of this kind will be read and filed without acknowledgement unless our organisation decides that we need to pursue it further in which case, we may do so on our 'own motion'.
- Restrict the complainant to one complaint/issue per month. Any attempts to circumvent this restriction, for example by raising multiple complaints/issues in the one complaint letter may result in modifications or further restrictions being placed on the complainant's access.
- Return correspondence to the complainant and require them to remove any inappropriate content before our organisation will agree to consider its contents. A copy of the inappropriate correspondence will also be made and kept for our records to identify repeat/further UCC incidents.

### **3.4 When – limiting when and how a complainant can contact our organisation**

If a complainant's telephone, written or face-to-face contact with our organisation places an unreasonable demand on our time or resources because it is overly lengthy (eg. disorganised and voluminous correspondence) or affects the health, safety and security of our staff because it involves behaviour that is persistently rude, threatening, abusive or aggressive, we may limit when and/or how the complainant can interact with us. This may include:

- Limiting their telephone calls or face-to-face interviews to a particular time of the day or days of the week.
- Limiting the length or duration of telephone calls, written correspondence or face-to-face interviews. For example:
  - Telephone calls may be limited to [10] minutes at a time and will be politely terminated at the end of that time period.
  - Lengthy written communications may be restricted to a maximum of [15] typed or written pages, single sided, font size 12 or it will be sent back to the complainant to be organised and summarised – This option is only appropriate in cases where the complainant is capable of summarising the information and refuses to do so.
  - Limiting face-to-face interviews to a maximum of [45] minutes.
- Limiting the frequency of their telephone calls, written correspondence or face-to-face interviews. Depending on the nature of the service(s) provided we may limit:
  - Telephone calls to [1] every two weeks/ month.
  - Written communications to [1] every two weeks/month.
  - Face-to-face interviews to [1] every two weeks/month.

For irrelevant, overly lengthy, disorganised or frequent written correspondence we may also:

- Require the complainant to clearly identify how the information or supporting materials

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- they have sent to us relate to the central issues that we have identified in their complaint.
- Restrict the frequency with which complainants can send emails or other written communications to our organisation.
- Restrict a complainant to sending emails to a particular email account (eg. the organisation's main email account) or block their email access altogether and require that any further correspondence be sent through Australia Post only.

### Writing only restrictions

When a complainant is restricted to 'writing only' they may be restricted to written communications through:

- Australia Post only
- Email only to a specific staff email or our general office email account
- Fax only to a specific fax number
- Some other relevant form of written contact, where applicable.

If a complainant's contact is restricted to 'writing only', the Governance Manager will clearly identify the specific means that the complainant can use to contact our office (eg. Australia Post only). Also if it is not suitable for a complainant to enter our premises to hand deliver their written communication; this must be communicated to them as well.

Any communications that are received by our office in a manner that contravenes a 'writing only' restriction will either be returned to the complainant or read and filed without acknowledgement.

### 3.5 Where – limiting face-to-face interviews to secure areas

If a complainant is violent or overtly aggressive, unreasonably disruptive, threatening or demanding or makes frequent unannounced visits to our premises, we may consider restricting our face-to-face contact with them.

These restrictions may include:

- Restricting access to particular secured premises or areas of our premises – such as the reception area or secured room/facility.
- Restricting their ability to attend our premises to specified times of the day and/or days of the week only – for example, when additional security is available or to times/days that are less busy.
- Allowing them to attend our office on an 'appointment only' basis and only with specified staff. Note – during these meetings staff should always seek support and assistance of a colleague for added safety and security.
- Banning the complainant from attending our premises altogether and allowing some other form of contact – eg. 'writing only' or 'telephone only' contact.

### Contact through a representative only

In cases where our organisation cannot completely restrict our contact with a complainant and their conduct is particularly difficult to manage, we may also restrict their contact to contact through a support person or representative only. The support person may be nominated by the

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complainant but must be approved by the Governance Manager.

When assessing a representative/support person's suitability, the Governance Manager should consider factors like: the nominated representative/support person's competency and literacy skills, demeanour/behaviour and relationship with the complainant. If the Governance Manager determines that the representative/support person may exacerbate the situation with the complainant the complainant will be asked to nominate another person or our organisation may assist them in this regard.

### **3.6 Completely terminating a complainant's access to our services**

In rare cases, and as a last resort when all other strategies have been considered and/or attempted, the General Manager may decide that it is necessary for our organisation to completely restrict a complainant's contact/access to our services.

A decision to have no further contact with a complainant will only be made if it appears that the complainant is unlikely to modify their conduct and/or their conduct poses a significant risk for our staff or other parties because it involves one or more of the following types of conduct:

- Acts of aggression, verbal and/or physical abuse, threats of harm, harassment, intimidation, stalking, assault.
- Damage to property while on our premises.
- Threats with a weapon or common office items that can be used to harm another person or themselves.
- Physically preventing a staff member from moving around freely either within their office or during an off-site visit – eg. entrapping them in their home.
- Conduct that is otherwise unlawful.

In these cases the complainant will be sent a letter notifying them that their access has been restricted as outlined in Part 5.4 below.

A complainant's access to our services and our premises may also be restricted (directly or indirectly) using the legal mechanisms such as trespass laws/legislation or legal orders to protect members of our staff from personal violence, intimidation or stalking by a complainant.

## **4.0 Alternative dispute resolution**

### **4.1 Using alternative dispute resolution strategies to manage conflicts with complainants**

If the General Manager determines that we cannot terminate our services to a complainant in a particular case or that we/our staff bear some responsibility for causing or exacerbating their conduct, they may consider using alternative dispute resolution strategies ('ADR') such as mediation and conciliation to resolve the conflict with the complainant and attempt to rebuild our relationship with them. If ADR is considered to be an appropriate option in a particular case, the ADR will be conducted by an independent third party to ensure transparency and impartiality.

However, we recognise that in UCC situations, ADR may not be an appropriate or effective strategy particularly if the complainant is uncooperative or resistant to compromise. Therefore,

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each case will be assessed on its own facts to determine the appropriateness of this approach. Council has an existing Alternative Dispute Resolution policy in these circumstances.

### **5.0 Procedure to be followed when changing or restricting a complainant's access to our services**

#### **5.1 Consulting with relevant staff**

When the Governance Manager receives a UCC incident form from a staff member they will contact the staff member to discuss the incident. They will discuss:

- The circumstances that gave rise to the UCC/incident.
- The impact of the complainant's conduct on our organisation, relevant staff, our time, resources, etc.
- The complainant's responsiveness to the staff member's warnings/requests to stop the behaviour.
- The actions the staff member has taken to manage the complainant's conduct, if any.
- The suggestions made by relevant staff on ways that the situation could be managed.

#### **5.2 Criteria to be considered**

Following a consultation with relevant staff the Governance Manager will search the case management system for information about the complainant's prior conduct and history with our organisation. They will also consider the following criteria:

- Whether the conduct in question involved overt anger, aggression, violence or assault (which is unacceptable in all circumstances).
- Whether the complainant's case has merit.
- The likelihood that the complainant will modify their unreasonable conduct if they are given a formal warning about their conduct.
- Whether changing or restricting access to our services will be effective in managing the complainant's behaviour.
- Whether changing or restricting access to our services will affect the complainant's ability to meet their obligations, such as reporting obligations.
- Whether changing or restricting access to our services will have an undue impact on the complainant's welfare, livelihood or dependents etc.
- Whether the complainant's personal circumstances have contributed to the behaviour? For example, the complainant is a vulnerable person who is under significant stress as a result of one or more of the following:
  - homelessness
  - physical disability
  - illiteracy or other language or communication barrier
  - mental or other illness
  - personal crises
  - substance or alcohol abuse.
- Whether the complainant's response/ conduct in the circumstances was moderately disproportionate, grossly disproportionate or not at all disproportionate.
- Whether there any statutory provisions that would limit the types of limitations that can be

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put on the complainant's contact/access to our services.

Once the Governance Manager has considered these factors they will decide on the appropriate course of action. They may suggest formal or informal options for dealing with the complainant's conduct which may include one or more of the strategies provided in the practice manual and this policy.

### 5.3 Providing a warning letter

Unless a complainant's conduct poses a substantial risk to the health and safety of staff or other third parties, the Governance Manager will provide them with a written warning about their conduct in the first instance.

The warning letter will:

- Specify the date, time and location of the UCC incident.
- Explain why the complainant's conduct/ UCC incident is problematic.
- List the types of access changes and/or restrictions that may be imposed if the behaviour continues. (Note: not every possible restriction should be listed only those that are most relevant).
- Provide clear and full reasons for the warning being given
- Include an attachment of the organisation's ground rules and/or briefly state the standard of behaviour that is expected of the complainant. See Appendix A.
- Provide the name and contact details of the staff member who they can contact about the letter.
- Be signed by the Governance Manager.

### 5.4 Providing a notification letter

If a complainant's conduct continues after they have been given a written warning or in extreme cases of overt aggression, violence, assault or other unlawful/unacceptable conduct the Governance Manager has the discretion to send a notification letter immediately restricting the complainant's access to our services (without prior written warning).

This notification letter will:

- Specify the date, time and location of the UCC incident(s).
- Explain why the complainant's conduct/UCC incident(s) is problematic.
- Identify the change and/or restriction that will be imposed and what it means for the complainant.
- Provide clear and full reasons for this restriction.
- Specify the duration of the change or restriction imposed, which will not exceed 12 months, without a review of the circumstances.
- Indicate a time period for review.
- Provide the name and contact details of the senior officer who they can contact about the letter and/or request a review of the decision.
- Be signed by the General Manager.

### 5.5 Notifying relevant staff about access changes/restrictions

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The Governance Manager will notify relevant staff about any decisions to change or restrict a complainant's access to our services, in particular reception and security staff in cases where a complainant is prohibited from entering our premises.

The Governance Manager will also update the case management system with a record outlining the nature of the restrictions imposed and their duration.

### **5.6 Continued monitoring/oversight responsibilities**

Once a complainant has been issued with a warning letter or notification letter the Governance Manager will review the complainant's record/restriction every 3 months, on request by a staff member, or following any further incidents of UCC that involve the particular complainant to ensure that they are complying with the restrictions/the arrangement is working.

If the Governance Manager determines that the restrictions have been ineffective in managing the complainant's conduct or are otherwise inappropriate they may decide to either modify the restrictions, impose further restrictions or terminate the complainant's access to our services altogether.

### **6.0 Appealing a decision to change or restrict access to our services**

#### **6.1 Right of appeal**

Complainants are entitled to one appeal of a decision to change/restrict their access to our services. This review will be undertaken by a senior staff member who was not involved in the original decision to change or restrict the complainant's access. This staff member will consider the complainant's arguments along with all relevant records regarding the complainant's past conduct. They will advise the complainant of the outcome of their appeal by letter which must be signed off by the General Manager. The staff member will then refer any materials/records relating to the appeal to the Governance Manager to be kept in the appropriate file.

If a complainant continues to be dissatisfied after the appeal process, they may seek an external review from an oversight agency such as the Ombudsman. The Ombudsman may accept the review (in accordance with its administrative jurisdiction) to ensure that we have acted fairly, reasonably and consistently and have observed the principles of good administrative practice including, procedural fairness.

### **7.0 Non-compliance with a change or restriction on access to our services**

#### **7.1 Recording and reporting incidents of non-compliance**

All staff members are responsible for recording and reporting incidents of non-compliance by complainants. This should be recorded in a file note in HP Records Manager (RM8) and a copy forwarded to the Governance Manager who will decide whether any action needs to be taken to modify or further restrict the complainant's access to our services.

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### **8.0 Periodic reviews of all cases where this policy is applied**

#### **8.1 Period for review**

All UCC cases where this policy is applied will be reviewed every 3 months or 6 months (depending on the nature of the service provided) and not more than 12 months after the service change or restriction was initially imposed or continued/upheld.

#### **8.2 Notifying the complainant of an upcoming review**

The Governance Manager will invite all complainants to participate in the review process unless they determine that this invitation will provoke a negative response from the complainant (ie. further UCC). The invitation will be given and the review will be conducted in accordance with the complainant's access restrictions (eg. if contact has been restricted to writing only then the invitation to participate will be done in writing).

#### **8.3 Criteria to be considered during a review**

When conducting a review the Governance Manager will consider:

- Whether the complainant has had any contact with the organisation during the restriction period.
- The complainant's conduct during the restriction period.
- Any information/arguments put forward by the complainant for review.
- Any other information that may be relevant in the circumstances.
- 

The Governance Manager may also consult any staff members who have had contact with the complainant during the restriction period.

Note – Sometimes a complainant may not have a reason to contact our organisation during their restriction period. As a result, a review decision that is based primarily on the fact that the complainant has not contacted our organisation during their restriction period (apparent compliance with our restriction) may not be an accurate representation of their level of compliance/reformed behaviour. This should be taken into consideration, in relevant situations.

#### **8.4 Notifying a complainant of the outcome of a review**

The Governance Manager will notify the complainant of the outcome of their review using the appropriate/relevant method of communication as well as a written letter explaining the outcome, as applicable. The review letter will:

- Briefly explain the review process.
- Identify the factors that have been taken into account during the review.
- Explain the decision/outcome of the review and the reasons for it.

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If the outcome of the review is to maintain or modify the restriction the review letter will also:

- Indicate the nature of the new or continued restriction.
- State the duration of the new restriction period.
- Provide the name and contact details of the Governance Manager who the complainant can contact to discuss the letter.
- Be signed by the Governance Manager.

### **8.5 Recording the outcome of a review and notifying relevant staff**

Like all other decisions made under this policy, the Governance Manager is responsible for keeping a record of the outcome of the review, updating case management system and notifying all relevant staff of the outcome of the review including if the restriction has been withdrawn.

See Parts 2.2 and 5.5 above.

## **9.0 Managing staff stress**

### **9.1 Staff reactions to stressful situations**

Dealing with complainants who are demanding, abusive, aggressive or violent can be extremely stressful and at times distressing or even frightening for all our staff – both experienced and inexperienced. It is perfectly normal to get upset or experience stress when dealing with difficult situations.

As an organisation, we have a responsibility to support staff members who experience stress as a result of situations arising at work and we will do our best to provide staff with debriefing and counselling opportunities, when needed. However, to do this we also need help of all Port Stephens Council staff to identify stressful incidents and situations. As a result, all staff have a responsibility to notify relevant supervisors/senior managers of UCC incidents and any stressful incidents that they believe require management involvement.

### **9.2 Debriefing**

Debriefing means talking things through following a difficult or stressful incident. It is an important way of 'off-loading' or dealing with stress. Many staff members naturally do this with colleagues after a difficult telephone call, but debriefing can also be done with a supervisor or senior manager or as a team following a significant incident. We encourage all staff to engage in an appropriate level of debriefing, when necessary.

Staff may also access an external professional service on a needs basis. All staff can access the Employee Assistance Program with AccessEAP – a free, confidential counselling service. To make an appointment call: 1800 81 87 28 or (02) 8247 9191

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## Policy



### **10.0 Other remedies**

#### **10.1 Compensation for injury**

Any staff member who suffers injury as a result of aggressive behaviour from complainants is entitled to make a workers' compensation claim. Organisation Development will assist wherever possible in processing claims. If you are the victim of an assault, they may also be able to apply to the Victim's Compensation Tribunal for compensation.

#### **10.2 Compensation for damage to clothing or personal affects**

Where damage is suffered to clothing or personal effects as a result of aggression by a complainant, compensation may be sought. A written application should be lodged with Council detailing the circumstances and the value of the loss.

#### **10.3 Legal Assistance**

If a staff member is physically attacked, or is a victim of employment generated harassment and the police do not lay charges, the General Manager will consider providing reasonable legal assistance if the staff members wishes to take civil action. This will be at the discretion of the General Manager.

#### **10.4 Threats outside the office or outside working hours**

Where threats are directed at a particular staff member and it appears those threats may be carried out outside normal working hours or outside the office, the staff member will receive the support of the office. Requests for such assistance should be made to the Governance Manager.

#### **10.5 Escorts home**

When a staff member fears for their safety following a threat from a complainant, another staff member may accompany them home or the organisation can meet the cost of the staff member going home in a taxi. Enquiry with the Governance Manager for more information.

#### **10.6 Telephone threats on home numbers**

If a staff member or their family have been harassed by telephone at their home and they believe it is connected with their employment they may apply to have the office meet the cost of having their telephone number changed and/or made silent. The staff member should also contact their telephone carrier, as they may provide an interception/monitoring service.

If assistance is approved, the office will meet the cost incurred for a period up to 12 months. Once approval is given, the staff member is responsible for making the necessary arrangements and will be reimbursed after producing a paid account.

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## Policy



Applications for reimbursement must be approved by the Governance Manager and/or the General Manager.

### 10.7 Other security measures

If other security measures are necessary, the office will give consideration to providing all reasonable support to ensure the safety and welfare of the staff member.

### 11.0 Training and awareness

Port Stephens Council is committed to ensuring that all staff are aware of and know how to use this policy. All staff who deal with complainants in the course of their work will also receive appropriate training and information on using this policy and on managing UCC on a regular basis in particular, on induction.

### 12.0 Ombudsman may request copies of our records

Port Stephens Council will keep records of all cases where this policy is applied, including a record of the total number of cases where it is used every year. This data may be requested by the Ombudsman to conduct an overall audit and review in accordance with its administrative functions and/or to inform its work on UCC.

## DEFINITIONS:

### Complaint

Expression of dissatisfaction made to or about us, our services, staff or the handling of a complaint where a response or resolution is explicitly or implicitly expected or legally required.

A complaint covered by this Policy can be distinguished from:

- staff grievances [see our grievance procedure]
- public interest disclosures made by our staff [see our internal reporting policy]
- code of conduct complaints [see our code of conduct]
- responses to requests for feedback about the standard of our service provision [see the definition of 'feedback' below]
- reports of problems or wrongdoing merely intended to bring a problem to our notice with no expectation of a response [see definition of 'feedback']
- service requests [see definition of 'service request' below], and
- requests for information [see our access to information policy].

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## Policy



Complaint management system	All policies, procedures, practices, staff, hardware and software used by Council the management of complaints.
Complainant	Person/s who makes a complaint.
Dispute	An unresolved complaint escalated either within or outside of the organisation.
Feedback	Opinions, comments and expressions of interest or concern, made directly or indirectly, explicitly or implicitly, to or about us, about our services or complaint handling where a response is not explicitly or implicitly expected or legally required.
Grievance	A clear, formal written statement by an individual staff member about another staff member or a work related problem.
Organisation	Port Stephens Council
Policy	A statement or instruction that sets out how we should fulfil our vision, mission and goals.
Practice Manual	The NSW Ombudsman's Managing Unreasonable Complainant Conduct Practice Manual (2nd edition)
Premises	Any property or land owned by Port Stephens Council.
Procedure	A statement or instruction that sets out how our policies will be implemented and by whom.
Senior Manager	Group Managers and Section Managers of Port Stephens Council.
Service request	Service request includes: <ul style="list-style-type: none"> <li>• requests for approval</li> <li>• requests for action</li> <li>• routine inquiries about the organisation's business</li> <li>• requests for the provision of services and assistance</li> <li>• reports of failure to comply with laws regulated by the</li> </ul>

## Policy

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## Policy



- organisation
- requests for explanation of policies, procedures and decisions.

Unreasonable complainant conduct (UCC)

Any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for our organisation, our staff, other service users and complainants or the complainant himself/herself.

UCC can be divided into five categories of conduct:

- Unreasonable arguments
- Unreasonable behaviour
- Unreasonable demands
- Unreasonable lack of cooperation
- Unreasonable persistence

### POLICY STATEMENT:

Port Stephens Council is committed to being accessible and responsive to all complainants who approach our organisation for assistance and/or with a complaint. At the same time the success of our organisation depends on:

- our ability to do our work and perform our functions in the most effective and efficient ways possible
- the health, safety and security of our staff, and
- our ability to allocate our resources fairly across all the complaints we receive.

When complainants behave unreasonably in their dealings with us, their conduct can significantly affect our success. As a result, Port Stephens Council will take proactive and decisive action to manage any complainant conduct that negatively and unreasonably affects us and will support our staff to do the same in accordance with this policy.

### POLICY RESPONSIBILITIES:

- 1) All staff are responsible for implementing and complying with this policy.
- 2) The Governance Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.

### RELATED DOCUMENTS:

- 1) *Local Government Act 1993*
- 2) *Public Interest Disclosure Act 1994*
- 3) *Ombudsman Act 1974*

## Policy

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## Policy



- 4) *Independent Commission Against Corruption 1988*
- 5) *Government Information (Public Access) Act 2009*
- 6) *Code of Conduct*

This policy is compliant with and supported by the following documents:

- Work, Health and Safety Management Directive
- Complaint Handling Policy
- Alternative Dispute Resolution Policy
- NSW Ombudsman - Managing Unreasonable Complainant Conduct Practice Manual (2nd edition)

## Policy

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### Appendix A

#### **Individual Rights and Mutual Responsibilities of the Parties to a Complaint**

In order for Port Stephens Council to ensure that all complaints are dealt with fairly, efficiently and effectively and that work health and safety standards and duty of care obligations are adhered to, the following rights and responsibilities must be observed and respected by all of the parties to the complaint process.

#### **Individual rights<sup>ii</sup>**

##### **Complainants have the right:**

- to make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate<sup>iii</sup>
- to a reasonable explanation of the organisation's complaints procedure, including details of the confidentiality, secrecy and/or privacy rights or obligations that may apply
- to a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case<sup>iv</sup>
- to a fair hearing<sup>v</sup>
- to a timely response
- to be informed in at least general terms about the actions taken and outcome of their complaint<sup>vi</sup>
- to be given reasons that explain decisions affecting them
- to at least one right of review of the decision on the complaint<sup>vii</sup>
- to be treated with courtesy and respect
- to communicate valid concerns and views without fear of reprisal or other unreasonable response.<sup>viii</sup>

##### **Staff have the right:**

- to determine whether, and if so how, a complaint will be dealt with
- to finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances<sup>ix</sup>
- to expect honesty, cooperation and reasonable assistance from complainants
- to expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint
- to be treated with courtesy and respect
- to a safe and healthy working environment<sup>x</sup>
- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.<sup>xi</sup>

##### **Subjects of a complaint have the right:**

- to a fair and impartial assessment and, where appropriate, investigation of the allegations made against them
- to be treated with courtesy and respect by staff of the [name of organisation]

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- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated<sup>xii</sup>
- to be informed about the substance of any proposed adverse comment or decision
- to be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made<sup>xiii</sup>
- to be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them
- to be protected from harassment by disgruntled complainants acting unreasonably.

### Mutual responsibilities

#### Complainants are responsible for:

- treating staff of Port Stephens Council with courtesy and respect
- clearly identifying to the best of their ability the issues of complaint, or asking for help from the staff of Port Stephens Council to assist them in doing so
- providing to the best of their ability Port Stephens Council with all the relevant information available to them at the time of making the complaint
- being honest in all communications with Port Stephens Council
- informing Port Stephens Council of any other action they have taken in relation to their complaint<sup>xiv</sup>
- cooperating with the staff who are assigned to assess/ investigate/resolve/determine or otherwise deal with their complaint.

If complainants do not meet their responsibilities, Port Stephens Council may consider placing limitations or conditions on their ability to communicate with staff or access certain services. Port Stephens Council has a zero tolerance policy in relation to any harm, abuse or threats directed towards its staff. Any conduct of this kind may result in a refusal to take any further action on a complaint or to have further dealings with the complainant.<sup>xv</sup> Any such conduct of a criminal nature will be reported to police and in certain cases legal action may also be considered.

#### Staff are responsible for:

- providing reasonable assistance to complainants who need help to make a complaint and, where appropriate, during the complaint process
- dealing with all complaints, complainants and people or organisations the subject of complaint professionally, fairly and impartially
- giving complainants or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the complainant
- giving people or organisations the subject of complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made<sup>xvi</sup>
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them<sup>xvii</sup> and the substance of any proposed adverse comment or decision that they may need to answer or address<sup>xviii</sup>
- keeping complainants informed of the actions taken and the outcome of their complaints<sup>xix</sup>
- giving complainants reasons that are clear and appropriate to their circumstances and

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- adequately explaining the basis of any decisions that affect them
- treating complainants and any people the subject of complaint with courtesy and respect at all times and in all circumstances
- taking all reasonable and practical steps to ensure that complainants<sup>xx</sup> are not subjected to any detrimental action in reprisal for making their complaint<sup>xxi</sup>
- giving adequate warning of the consequences of unacceptable behaviour.

If Port Stephens Council or its staff fail to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

### Subjects of a complaint are responsible for:

- cooperating with the staff of Port Stephens Council who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction<sup>xxii</sup>
- providing all relevant information in their possession to Port Stephens Council or its authorised staff when required to do so by a properly authorised direction or notice
- being honest in all communications with Port Stephens Council and its staff
- treating the staff of Port Stephens Council with courtesy and respect at all times and in all circumstances
- refraining from taking any detrimental action against the complainant<sup>xxiii</sup> in reprisal for them making the complaint.<sup>xxiv</sup>

If subjects of a complaint fail to comply with these responsibilities, action may be taken under relevant laws and/or codes of conduct.

### Port Stephens Council is responsible for:

- having an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints
- decisions about how all complaints will be dealt with
- ensuring that all complaints are dealt with professionally, fairly and impartially<sup>xxv</sup>
- ensuring that staff treat all parties to a complaint with courtesy and respect
- ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence
- finalising complaints on the basis of outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances<sup>xxvi</sup>
- implementing reasonable and appropriate policies/procedures/practices to ensure that complainants<sup>xxvii</sup> are not subjected to any detrimental action in reprisal for making a complaint<sup>xxviii</sup>, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints
- giving adequate consideration to any confidentiality, secrecy and/or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

If Port Stephens Council fails to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

## Policy

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<sup>ii</sup> The word 'rights' is not used here in the sense of legally enforceable rights (although some are), but in the sense of guarantees of certain standards of service and behaviour that a complaint handling system should be designed to provide to each of the parties to a complaint.

<sup>iii</sup> Differences of opinion are normal: people perceive things differently, feel things differently and want different things. People have a right to their own opinions, provided those opinions are expressed in acceptable terms and in appropriate forums.

<sup>iv</sup> While degrees of independence will vary between complaint handlers, all should assess complaints fairly and as impartially as possible, based on a documented process and the merits of the case.

<sup>v</sup> The 'right to be heard' refers to the opportunity to put a case to the complaint handler/decision-maker. This right can be modified, curtailed or lost due to unacceptable behaviour, and is subject to the complaint handler's right to determine how a complaint will be dealt with.

<sup>vi</sup> Provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings.

<sup>vii</sup> Such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision.

<sup>viii</sup> Provided the concerns are communicated in the ways set out in relevant legislation, policies and/or procedures established for the making of such complaints/allegations/disclosures/etc.

<sup>ix</sup> Some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint [see also Endnote 25].

<sup>x</sup> See for example WH&S laws and the common law duty of care on employers.

<sup>xi</sup> Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc.

<sup>xii</sup> Other than where there is an overriding public interest in curtailing the right, for example where to do so could reasonably create a serious risk to personal safety, to significant public funds, or to the integrity of an investigation into a serious issue. Any such notifications or opportunities should be given as required by law or may be timed so as not to prejudice that or any related investigation.

<sup>xiii</sup> Depending on the circumstances of the case and the seriousness of the possible outcomes for the person concerned, a reasonable opportunity to put their case, or to show cause, might involve a face to face discussion, a written submission, a hearing before the investigator or decision maker, or any combination of the above.

<sup>xiv</sup> For example whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings at foot.

<sup>xv</sup> Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant.

<sup>xvi</sup> See Endnote 11.

<sup>xvii</sup> Other than where an allegation is so lacking in merit that it can be dismissed at the outset.

<sup>xviii</sup> See Endnote 11.

<sup>xix</sup> See Endnote 5.

<sup>xx</sup> 'Complainants' include whistleblowers/people who make internal disclosures.

<sup>xxi</sup> 'Complaints' includes disclosures made by whistleblowers/people who make internal disclosures.

<sup>xxii</sup> This does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute.

<sup>xxiii</sup> See Endnote 19.

<sup>xxiv</sup> See Endnote 20.

<sup>xxv</sup> See Endnote 3.

<sup>xxvi</sup> Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc, the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.

<sup>xxvii</sup> See Endnote 19.

**Policy**

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<sup>xxviii</sup> See Endnote 20.

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<b>RM8 container No</b>	PSC2010-00008	<b>RM8 record No</b>	
<b>Audience</b>	Port Stephens community and Council employees		
<b>Process owner</b>	Governance Manager		
<b>Author</b>	Governance Manager		
<b>Review timeframe</b>	Two years	<b>Next review date</b>	February 2018
<b>Adoption date</b>			

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1.0		Governance Manager	Drafted new policy based on the model policy of the NSW Ombudsman.	

## Policy

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**ITEM 3 - ATTACHMENT 2 SUMMARY OF AMENDMENTS RAISED FROM PUBLIC EXHIBITION OF THE DRAFT POLICY.**

Summary of amendments raised from the public exhibition of the Managing Unreasonable Complainant Conduct policy.

Author of submission/s	Amendments raised	Council's response
Member of the public	1. The author believes that the Complaints Handling policy and the Managing Unreasonable Complainant Conduct policy (MUCC) is intended to be merged and that they should be a stand-alone documents.	The Managing Unreasonable Complaints Conduct policy (MUCC) is a separate policy to the Complaints Handling policy and will remain as two separate policies.
	2. That Council plagiarised/copied and pasted the policy from the website of the NSW Ombudsman.	The MUCC policy is based on the NSW Ombudsman's model policy provided to the local government sector for operational purposes. This was stated in the Council report of 10 May 2016.
	3. That Council developed the draft policy as a result of a formal GIPA application.	The MUCC policy was developed from a review of the Complaint Handling policy. The policy development is not related to any applications received by Council.
	4. That the Model policy developed by the NSW Ombudsman is a guideline document only and that Councils are not mandated by them.	The MUCC policy is based on the NSW Ombudsman's model policy provided to local government for operational purposes. This was stated in the Council report of 10 May 2016.
	5. Provide the complainant with full disclosure of an investigation into an alleged unreasonable complainants conduct,	Council will provide information to any party/s where the legislation and policy enables release of information. Should information not be

ITEM 3 - ATTACHMENT 2 SUMMARY OF AMENDMENTS RAISED FROM PUBLIC EXHIBITION OF THE DRAFT POLICY.

	including who reported it and/or conducted the investigation.	available using these avenues, an application can be submitting under the <i>Government Information (Public Access) Act 2009</i> .
	6. That such restriction of access to services be brought forward for the consideration of the elected Council.	It is not the role of the elected Council to be involved in operational matters. Council's role is to consider and adopt relevant policy framework to be implemented by the General Manager. The General Manager is responsible under the <i>Local Government Act 1993</i> for the day to day management of Council.
	7. That the alleged unreasonable complainant to nominate any councillor as support person and representative, deleting any reference to the requirement of Council approval for any support person.	<p>The MUCC policy (see s3.5) makes provision for a support person should one be required. The NSW Ombudsman's model MUCC policy includes this provision and it should be retained. This section should not be limited to a councillor.</p> <p>There would be limited occasions where a support person is needed as an alternative contact person, however the draft MUCC policy provides a framework for this to occur with due consideration to all factors.</p>
	8. Ensure the nominated councillor is present at any meeting or conciliation conference or interview and is provided with copies of all correspondence.	<p>See response to 7 above with relation to a councillor being the nominated support person.</p> <p>It is also not the role of a councillor to be involved on a conciliation conference or such proceedings. These matters are of an</p>

**ITEM 3 - ATTACHMENT 2 SUMMARY OF AMENDMENTS RAISED FROM PUBLIC EXHIBITION OF THE DRAFT POLICY.**

		operational nature and as such fall under the responsibility of the General Manager.
	9. Provide the alleged unreasonable complainant the opportunity to present their side of the story before the elected council.	The management of matters that may fall under the MUCC policy are deemed to be operational matters and therefore should not involve the elected council, as such matters are the responsibility of the General Manager.  Council already makes provision for members of the public to address Council through Public Access prior to a Council meeting.
	10. Provide the alleged unreasonable complainant the opportunity to call a character witness to speak on their behalf before the elected council.	See response to 9 above.
	11. Provide the support councillors the opportunity to speak before the elected council on the individual's behalf.	Councillors are able to talk to any matter on the Council meeting agenda.
	12. Allow the unreasonable complainant the opportunity to appeal any Council decision to continue the restriction after the initial nominated period, deleting the 'one time only appeal' reference.	The MUCC policy is based on the NSW Ombudsman's model policy, including this provision and the drafted provision in the policy should be retained.
	13. Stipulate a maximum overall timeframe for restriction of access to services of (1) one year, which	The MUCC policy contains timeframes to ensure the process is managed appropriately. These timeframes are part of the

**ITEM 3 - ATTACHMENT 2 SUMMARY OF AMENDMENTS RAISED FROM PUBLIC EXHIBITION OF THE DRAFT POLICY.**

	should see the majority of matters and complaints resolved and completed.	NSW Ombudman's model policy and should be retained.
	14. Ensure any decision of restrict access to services does not give rise for Council to make or publish defamatory statements about the alleged unreasonable complainant on Council's website or any other Council publication.	It is not Council practice to make such statements that would identify individuals.
	15. Include clear reference to "Avoiding Misuses and Overuses of UCC policies".	The MUCC policy contains a number of levels of control and approvals of different staff members, therefore misuse and over use should not occur.  It should be noted that Council does not impose restriction of service lightly.
	16. Make Council staff fully accountable under the Code of Conduct for any misrepresentations of the facts relating to allegations of unreasonable complainant conduct.	All council officials are bound by the provisions of the Code of Conduct and all matters are considered under the relevant procedures, with action taken where allegations are substantiated and/or warranted.

**ITEM NO. 4**

**FILE NO: 16/353690**  
**RM8 REF NO: PSC2010-00008**

**POLICY REVIEW: COMPLAINT HANDLING POLICY**

REPORT OF: TONY WICKHAM - GOVERNANCE MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receives and notes the submission.
  - 2) Revoke the Complaints Handling Policy dated 9 April 2013, Minute No. 088 **(ATTACHMENT 1)**.
  - 3) Adopts the revised Complaint Handling Policy shown at **(ATTACHMENT 2)**.
- 

**ORDINARY COUNCIL MEETING - 12 JULY 2016**  
**COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Peter Kafer</b> <b>Councillor Chris Doohan</b>  That the recommendation be adopted.
--	--

**ORDINARY COUNCIL MEETING - 12 JULY 2016**  
**MOTION**

<b>209</b>	<b>Councillor Ken Jordan</b> <b>Councillor John Nell</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Receives and notes the submission.</li><li>2) Revoke the Complaints Handling Policy dated 9 April 2013, Minute No. 088 <b>(ATTACHMENT 1)</b>.</li><li>3) Adopts the revised Complaint Handling Policy shown at <b>(ATTACHMENT 2)</b>.</li></ol>
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**BACKGROUND**

The purpose of this report is to provide Council with the comments received as part of the public exhibition of the Complaint Handling Policy ('Policy').



The comments received have been summarised in **(ATTACHMENT 3)** of the report. No further action is required as a result of the submission.

The Policy is based on the model Complaint Handling Policy developed by the NSW Ombudsman and Council's Policy has been updated to reflect the new model policy.

It provides a framework for complaint management across Council and introduces an opportunity for continuous improvement with Council's service delivery to the community.

The Policy details roles and responsibilities of all parties to a complaint and the expected behaviours.

The Policy is presented for Council's determination.

### **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Port Stephens has strong governance and civic leadership.	Manage the civic leadership and governance functions of Council. Manage relationships with all levels of government, stakeholder organisations and Hunter Councils Inc.

### **FINANCIAL/RESOURCE IMPLICATIONS**

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

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

As part of good governance this Policy will assist Council in managing complaints with the view to improving service delivery.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that without the appropriate complaints management framework in place, Council would not be compliant.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Through openness, transparency and accountability, Council will be able to reduce the impact of complaints on Council resources and focus on provision of Council services.

Management of complaints can require a high level of Council resources. By reducing the number of complaints and by following the structured complaints system, Council will be able to focus resources into delivery of Council services.

**MERGER PROPOSAL IMPLICATIONS**

There are no implications associated with the recommendation.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the General Manager's Office.

The *Local Government Act 1993* requires Council to conduct public consultation on policies prior to final adoption.

Internal

- The Executive Team has been consulted to seek management endorsement.
- The General Manager has been consulted to seek endorsement prior to Council consideration on 10 May 2016.

External

- Following Council endorsement, the Policy was placed on public exhibition in the Port Stephens Examiner and on Council's website.
- The draft Policy was advertised in the Port Stephens Examiner from 19 May 2016 to 17 June 2016.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Current Complaints Handling Policy.
- 2) Revised Complaint Handling Policy.
- 3) Summary of submission received from public exhibition of the draft Policy.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

# *Port Stephens*

## C·O·U·N·C·I·L

### **POLICY**

Adopted: 14/12/2010  
Minute No: 410  
Amended: 9 April 2013  
Minute No: 088

**FILE NO:      PSC2010-00008**

**TITLE:          COMPLAINTS HANDLING POLICY**

**REPORT OF   EXECUTIVE OFFICER**

#### **BACKGROUND**

Council adopted its previous Complaint/Request Handling policy in 1999 following the development of a number of NSW Ombudsman's guidelines and policies.

It is acknowledged that there is a difference between a complaint and a request for service. This policy specifically deals with complaints that are received concerning matters that are under Council's control and management.

#### **OBJECTIVE**

The objective of the Policy is to provide the community with a structured process to follow when lodging a complaint with Council. This will allow openness, transparency and accountability of both Council and for all parties involved.

#### **PRINCIPLES**

1. Council is committed to resolving complaints to achieve the best outcome for all parties concerned.
2. Council will respond to all complaints lodged under the policy and provide a written response.
3. All parties involved in a complaint handling matter are required to interact in an appropriate manner.

#### **POLICY STATEMENT**

This policy has been developed in line with the NSW Ombudsman Guidelines – *"Effective Complaint Handling 2004"* and *"Managing Unreasonable"*

**ITEM 4 - ATTACHMENT 1      CURRENT COMPLAINTS HANDLING POLICY.**

*Complainant Conduct Practice Manual 2009". Council will manage all unreasonable complainant conduct in accordance with the NSW Ombudsman Guidelines.*

The Policy strives to provide a structured and timely manner in dealing with complaints.

A complaint is defined as *"An expression of dissatisfaction with Council's policies, procedures, fees and charges, Council officials, quality of service or goods provided"*.

Those matters exempt from this policy are:-

- 1) Staff personnel matters – refer to Council's Grievance procedure
- 2) Public Interest Disclosure declaration – refer to the Code of Conduct
- 3) Allegations of corruption – refer to the Code of Conduct
- 4) Complaints concerning National Competition Policy – refer to Competitive Neutrality Complaints Policy.
- 5) Request for a Council service – refer to Council's Customer request service.

The complaints handling framework is developed on a 3 Tier approach.

**Tier 1** – Staff empowered with clear delegations to resolved complaints wherever possible at first contact. Staff log complaint details for later analysis of data.

**Tier 2** – More senior staff or designated person reviews/investigates unresolved complaints.

**Tier 3** Still unresolved complaints referred externally.

**Tier 1 – Front line complaints handling**

1. All staff will receive complaints in **person**, writing, by telephone, email or fax. They will listen courteously, record all the facts and initiate appropriate action.
2. Written complaints will be acknowledged in accordance with Council's Customer Service Charter.
3. All verbal complaints will be recorded in Council's Customer Request System and/or within the Electronic Records System (TRIM).
4. If a complainant's conduct becomes unreasonable or inappropriate, staff will inform the person that their conduct is unreasonable and must cease. The complainant may put their concerns in writing. If necessary staff will call their supervisor who may decide to request the person to leave the premises or call the police to escort the person from the premises.
5. All requests for information regarding complaints are to be assessed under Council's Assessing Information Policy and the Government Information (Public Access) Act 2009.
6. Anonymous complaints will be recorded and refer to Tier 2 to determine if action is required. Tier 2 staff will consider the nature of the complaint and if it is an offence and where there is sufficient information to warrant investigation. If no action is taken then reasons for the decision will be recorded.
7. Complainants wishing to speak to the Mayor or General Manager at Tier 1 will be referred to the relevant officer to deal with the enquiry.

**Tier 2 – Internal Review or Investigation**

1. All complaints will be determined and/or investigated by the appropriate officer.
2. To ensure procedural fairness, the person will be informed of any allegation of wrong doing or adverse comment made about them where this is the basis of any action by Council. A copy of the complaint will be available in accordance with various legislation requirements.
3. The person will be able to provide an explanation of his or her actions.
4. Upon examination of all the facts appropriate action will be taken to resolve the matter. If no action is to be taken reasons will be given for the decision.
5. All parties will be advised of the outcome of any investigation.
6. All information forming part of the investigation will be released in accordance with the Government Information (Public Access) Act 2009.
7. If a member of staff is unable to resolve the complaint or the conduct of a complainant becomes unreasonable, the matter will be referred to:-
  - The staff member's supervisor and/or Section or Group Manager;
  - Council's Public Officer or other officer as determined by the General Manager, to conduct an internal review on behalf of the General Manager.
8. When assessing a complaint the Public Officer or other officers will consider: the matter in accordance with the NSW Ombudsman's Guidelines.
9. If the internal review does not reveal any evidence to support the complaint the Public Officer or other officers may decide not to investigate the matter any further. Advice will be given to the complainant that Council will not pursue the matter further and that if they are not happy with the response they may refer the matter to an external body as identified in Tier 3.
10. Neighbourhood Disputes - In the case of neighbourhood disputes if the matter does not relate to Council's services or functions. Staff may advise the complainant of the Community Justice Centre mediation services. The CJC may then be informed of the dispute to arrange mediation where possible. Council will not be a party to complaints that fall outside its services or functions.

**Tier 3 – External Review**

1. Persons dissatisfied with Council's response may refer the matter to the NSW Ombudsman, Division of Local Government or the Independent Commission Against Corruption.
2. The services of the Community Justice Centre are available to mediate where all parties are agreeable and Council is unable to satisfy the complainant's request. Staff will inform a complainant of any appeal procedure available to resolve their grievance.

**RELATED POLICIES**

Code of Conduct  
Assessing Information Policy  
Competitive Neutrality Complaints Policy  
Compliance Policy  
Alternative Dispute Resolution Policy

**SUSTAINABILITY IMPLICATIONS**

**SOCIAL IMPLICATIONS**

Through openness, transparency and accountability, Council will be able to reduce the impact of complaints on Council resources and focus on provision of Council services.

**ECONOMIC IMPLICATIONS**

Management of complaints can require a high level of Council resources. By reducing the number of complaints and by following the structured complaints system, Council will be able to focus resources into delivery of Council services.

**ENVIRONMENTAL IMPLICATIONS**

Nil

**RELEVANT LEGISLATIVE PROVISIONS**

*Local Government Act 1993*  
*Public Interest Disclosure Act 1994*  
*Ombudsman Act 1974*  
*Independent Commission Against Corruption 1988*  
*Government Information (Public Access) Act 2009*

**IMPLEMENTATION RESPONSIBILITY**

General Manager, Group Managers and Section Managers

**PROCESS OWNER**

Executive Officer

**REVIEW DATE**

Biennial



## Policy



**FILE NO:** PSC2010-00008  
**TITLE:** COMPLAINT HANDLING POLICY  
**POLICY OWNER:** GOVERNANCE MANAGER

### **PURPOSE:**

This policy is intended to ensure that we handle complaints fairly, efficiently and effectively. Port Stephens Council's complaint management system is intended to:

- enable us to respond to issues raised by people making complaints in a timely and cost-effective way
- boost public confidence in our administrative process, and
- provide information that can be used by us to deliver quality improvements in our services, staff and complaint handling.

This policy provides guidance to our staff and people who wish to make a complaint on the key principles and concepts of our complaint management system.

### **CONTEXT/BACKGROUND:**

Council has had a Complaint Handling policy for many years which have been in alignment with the NSW Ombudsman's model complaint handling policy.

The model policy has been updated following a review of the Australia/New Zealand Standard: Guidelines for complaint management in organisations (AS/NZ 10002:2014).

The policy provides an open and transparent process for the management of complaints at Council.

Council views a complaint as an opportunity to improve on service delivery when all circumstances have been considered.

### **SCOPE:**

Port Stephens Council expects staff at all levels to be committed to fair, effective and efficient complaint handling. The following table outlines the nature of the commitment expected from staff and the way that commitment should be implemented.

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## Policy



Who	Commitment	How
General Manager	Promote a culture that values complaints and their effective resolution	<p>Report publicly on Port Stephens Council's complaint handling.</p> <p>Provide adequate support and direction to key staff responsible for handling complaints.</p> <p>Regularly review reports about complaint trends and issues arising from complaints.</p> <p>Encourage all staff to be alert to complaints and assist those responsible for handling complaints resolve them promptly.</p> <p>Encourage staff to make recommendations for system improvements.</p> <p>Recognise and reward good complaint handling by staff.</p> <p>Support recommendations for service, staff and complaint handling improvements arising from the analysis of complaint data.</p> <p>Views a complaint as an opportunity for improved service delivery.</p>
Manager responsible for complaint handling	Establish and manage our complaint management system.	<p>Provide regular reports to the General Manager on issues arising from complaint handling work.</p> <p>Ensure recommendations arising out of complaint data analysis are canvassed with the General Manager and implemented where appropriate.</p> <p>Recruit, train and empower staff to resolve complaints promptly and in accordance with Port Stephens Council's policies and procedures.</p> <p>Encourage staff managing complaints to provide suggestions on ways to improve the organisation's complaint management system.</p> <p>Encourage all staff to be alert to complaints and assist those responsible for handling complaints resolve them promptly.</p> <p>Recognise and reward good complaint handling by staff.</p>

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Staff whose duties include complaint handling	Demonstrate exemplary complaint handling practices	<p>Treat all people with respect, including people who make complaints.</p> <p>Assist people make a complaint, if needed.</p> <p>Comply with this policy and its associated procedures.</p> <p>Keep informed about best practice in complaint handling.</p> <p>Provide feedback to management on issues arising from complaints.</p> <p>Provide suggestions to management on ways to improve the organisation's complaints management system.</p> <p>Implement changes arising from individual complaints and from the analysis of complaint data as directed by management.</p>
All staff	Understand and comply with Port Stephens Council's complaint handling practices.	<p>Treat all people with respect, including people who make complaints.</p> <p>Be aware of Port Stephens Council's complaint handling policies and procedures.</p> <p>Assist people who wish to make complaints access the Port Stephens Council's complaints process.</p> <p>Be alert to complaints and assist staff handling complaints resolve matters promptly.</p> <p>Provide feedback to management on issues arising from complaints.</p> <p>Implement changes arising from individual complaints and from the analysis and evaluation of complaint data as directed by management.</p>

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## Policy



### Guiding principles



### 1.0 Facilitate complaints

#### People focus

Port Stephens Council is committed to seeking and receiving feedback and complaints about our services, systems, practices, procedures, products and complaint handling. Such complaints provide Council with an opportunity for improved service delivery.

Any concerns raised in feedback or complaints will be dealt with within a reasonable time frame, in accordance with Council's Customer Service Charter.

People making complaints will be:

provided with information about our complaint handling process

provided with multiples and accessible ways to make complaints; such as in person, by letter, email or through assistance by other parties including staff.

listened to, treated with respect by staff and actively involved in the complaint process where possible and appropriate, and

provided with reasons for our decision/s and any options for redress or review.

#### No detriment to people making complaints

Port Stephens Council will take all reasonable steps to ensure that people making complaints are not adversely affected because a complaint has been made by them or on their behalf.

#### Anonymous complaints

Port Stephens Council accepts anonymous complaints and will carry out an investigation of the issues raised where there is enough information provided. It should be acknowledged that by making an anonymous complaint it may not be obvious to you what action Council has taken.

#### Accessibility

Port Stephens Council will ensure that information about how and where complaints may be

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made to or about us is well publicised. Council will ensure that our systems to manage complaints are easily understood and accessible to everyone, particularly people who may require assistance.

If a person prefers or needs another person or organisation to assist or represent them in the making and/or resolution of their complaint, we will communicate with them through their representative if this is their wish. Anyone may represent a person wishing to make a complaint with their consent (e.g. advocate, family member, legal or community representative, member of Parliament, another organisation).

### **No charge**

Complaining to Port Stephens Council is free.

## **2.0 Respond to complaints**

### **Early resolution**

Where possible, complaints will be resolved at first contact with Port Stephens Council.

### **Responsiveness**

Council will promptly acknowledge receipt of complaints.

Council will assess and prioritise complaints in accordance with the urgency and/or seriousness of the issues raised. If a matter concerns an immediate risk to safety or security the response will be immediate and will be escalated appropriately.

Port Stephens Council are committed to managing people's expectations, and will inform them as soon as possible, of the following:

- the complaints process
- the expected time frames for our actions
- the progress of the complaint and reasons for any delay
- their likely involvement in the process, and
- the possible or likely outcome of their complaint.

Council will advise people as soon as possible when we are unable to deal with any part of their complaint and provide advice about where such issues and/or complaints may be directed (if known and appropriate).

Council will also advise people as soon as possible when we are unable to meet our time frames for responding to their complaint and the reason for our delay.

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### **Objectivity and fairness**

Council will address each complaint with integrity and in an equitable, objective and unbiased manner.

Council will ensure that the person handling a complaint is different from any staff member whose conduct or service is being complained about.

Conflicts of interests, whether actual or perceived, will be managed responsibly. In particular, internal reviews of how a complaint was managed will be conducted by a person other than the original decision maker.

### **Responding flexibly**

Council staff are empowered to resolve complaints promptly and with as little formality as possible, where appropriate. Council will adopt flexible approaches to service delivery and problem solving to enhance accessibility for people making complaints and/or their representatives.

Council will assess each complaint on its merits and involve people making complaints and/or their representative in the process as far as possible.

### **Confidentiality**

Council protect the identity of people making complaints where this is practical and appropriate.

Personal information that identifies individuals will only be disclosed or used by the Council as permitted under the relevant privacy laws, secrecy provisions and any relevant confidentiality obligations.

## **3.0 Manage the parties to a complaint**

### **Complaints involving multiple agencies**

Where a complaint involves multiple organisations, we will work with the other organisation/s where possible; to ensure that communication with the person making a complaint and/or their representative is clear and coordinated.

Subject to privacy and confidentiality considerations, communication and information sharing between the parties will also be organised to facilitate a timely response to the complaint.

Where a complaint involves multiple areas within our organisation, responsibility for communicating with the person making the complaint and/or their representative will also be coordinated.

Where our services are contracted out, Council expect contracted service providers to have an accessible and comprehensive complaint management system. Council take complaints not only about the actions of Council staff but also the actions of service providers.

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### **Complaints involving multiple parties**

When similar complaints are made by related parties we will try to arrange to communicate with a single representative of the group.

### **Empowerment of staff**

All staff managing complaints are empowered to implement our complaint management system as relevant to their role and responsibilities.

Staff are encouraged to provide feedback on the effectiveness and efficiency of all aspects of our complaint management system.

### **Managing unreasonable conduct by people making complaints**

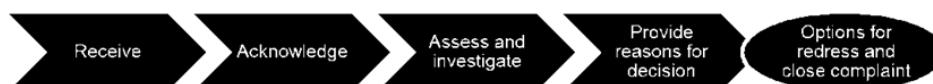
Council is committed to being accessible and responsive to all people who approach us with feedback or complaints. At the same time our success depends on:

Council's ability to do our work and perform our functions in the most effective and efficient way possible the health, safety and security of our staff, and Council's ability to allocate our resources fairly across all the complaints we receive.

When people behave unreasonably in their dealings with Council, their conduct can significantly affect the progress and efficiency of Council work. As a result, we will take proactive and decisive action to manage any conduct that negatively and unreasonably affects Council and will support Council staff to do the same in accordance with this policy.

For further information on managing unreasonable conduct by people making complaints, please refer to Council's Managing Unreasonable Complainant Conduct policy.

### **Complaint management system**



### **Introduction**

When responding to complaints, staff should act in accordance with our complaint handling procedures as well as any other internal documents providing guidance on the management of complaints.

Staff should also consider any relevant legislation and/or regulations when responding to complaints and feedback.

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The five key stages in our complaint management system are set out below.

### **Receipt of complaints**

Unless the complaint has been resolved at the outset, Council will record the complaint and its supporting information. Council will also assign a unique identifier to the complaint file.

The record of the complaint will document:

- the contact information of the person making a complaint
- issues raised by the person making a complaint and the outcome/s they want
- any other relevant and
- any additional support the person making a complaint requires.

### **Acknowledgement of complaints**

Council will acknowledge receipt of each complaint promptly, and preferably within seven (7) working days.

Consideration will be given to the most appropriate medium (e.g. email, letter) for communicating with the person making a complaint.

### **Initial assessment and addressing of complaints**

#### **Initial assessment**

After acknowledging receipt of the complaint, Council will confirm whether the issue/s raised in the complaint is/are within Council's control. Council will also consider the outcome/s sought by the person making a complaint and, where there is more than one issue raised, determine whether each issue needs to be separately addressed.

When determining how a complaint will be managed, Council will consider:

- How serious, complicated or urgent the complaint is
- Whether the complaint raises concerns about people's health and safety
- How the person making the complaint is being affected
- The risks involved if resolution of the complaint is delayed, and
- Whether a resolution requires the involvement of other organisations.

#### **Addressing complaints**

After assessing the complaint, we will consider how to manage it. To manage a complaint we may:

- Give the person making a complaint information or an explanation
- Gather information from the product, person or area that the complaint is about, or investigate the claims made in the complaint.

Council will keep the person making the complaint up to date on our progress, particularly if there are any delays. We will also communicate the outcome of the complaint using the most

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appropriate medium. Which actions we decide to take will be tailored to each case and take into account any statutory requirements.

### **Providing reasons for decisions**

Following consideration of the complaint and any investigation into the issues raised, Council will contact the person making the complaint and advise them:

- the outcome of the complaint and any action we took
- the reason/s for our decision
- the remedy or resolution/s that we have proposed or put in place, and
- any options for review that may be available to the complainant, such as an internal review, external review or appeal.

If in the course of investigation, Council make any adverse findings about a particular individual, we will consider any applicable privacy obligations under the *Privacy and Personal Information Protection Act 1998* and any applicable exemptions in or made pursuant to that Act, before sharing our findings with the person making the complaint.

### **Closing the complaint, record keeping, redress and review**

Council will keep comprehensive records about:

- How we managed the complaint
- The outcome/s of the complaint (including whether it or any aspect of it was substantiated, any recommendations made to address problems identified and any decisions made on those recommendations, and
- Any outstanding actions that need to be followed up.

Council will ensure that outcomes are properly implemented, monitored and reported to the complaint handling manager and/or senior management.

### **Alternative avenues for dealing with complaints**

Council will inform people who make complaints to or about us about any internal or external review options available to them (including, but not limited, to the NSW Ombudsman and/or the NSW Office of Local Government).

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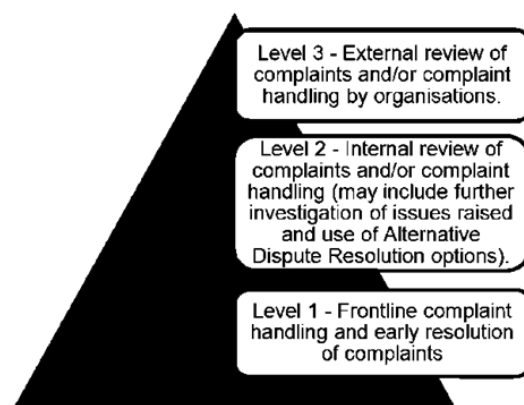
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## Policy



### The three levels of complaint handling



Council aims to resolve complaints at the first level, the frontline. Wherever possible staff will be adequately equipped to respond to complaints, including being given appropriate authority, training and supervision.

Where this is not possible, Council may decide to escalate the complaint to a more senior officer within Council. This second level of complaint handling will provide for the following internal mechanisms:

- assessment and possible investigation of the complaint and decision/s already made, and/or
- facilitated resolution (where a person not connected with the complaint reviews the matter and attempts to find an outcome acceptable to the relevant parties).

Where a person making a complaint is dissatisfied with the outcome of Council's review of their complaint, they may seek an external review of our decision by the NSW Ombudsman.

### Accountability and learning

#### Analysis and evaluation of complaints

Council will ensure that complaints are recorded in a systematic way so that information can be easily retrieved for reporting and analysis. Council currently uses two system; HP Records Manager (RM8) and Customer Request Management system (CRM).

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Regular reports will be run on:

- the number of complaints received
- the outcome of complaints, including matters resolved at the frontline
- issues arising from complaints
- systemic issues identified, and
- the number of requests we receive for internal and/or external review of our complaint handling.

Regular analysis of these reports will be undertaken to monitor trends, measure the quality of our customer service and make improvements.

Both reports and their analysis will be provided to the General Manager and senior management for review.

### Monitoring of the complaint management system

Council will continually monitor our complaint management system to:

- ensure its effectiveness in responding to and resolving complaints, and
- identify and correct deficiencies in the operation of the system.
- monitoring may include the use of audits, complaint satisfaction surveys and online listening tools and alerts.

### Continuous improvement

Council are committed to improving the effectiveness and efficiency of our complaint management system. To this end, we will:

- support the making and appropriate resolution of complaints
- implement best practices in complaint handling
- recognise and reward exemplary complaint handling by staff
- regularly review the complaints management system and complaint data, and
- implement appropriate system changes arising out of our analysis of complaints data and continual monitoring of the system.

### DEFINITIONS:

An outline of the key definitions of terms included in the policy.

#### Complaint

Expression of dissatisfaction made to or about us, our services, staff or the handling of a complaint where a response or resolution is explicitly or implicitly expected or legally required.

A complaint covered by this Policy can be distinguished from:

- staff grievances [see our grievance procedure]
- public interest disclosures made by our staff [see our internal reporting policy]

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ITEM 4 - ATTACHMENT 2 REVISED COMPLAINT HANDLING POLICY.

## Policy



- code of conduct complaints [see our code of conduct]
- responses to requests for feedback about the standard of our service provision [see the definition of 'feedback' below]
- reports of problems or wrongdoing merely intended to bring a problem to our notice with no expectation of a response [see definition of 'feedback']
- service requests [see definition of 'service request' below], and
- requests for information [see our access to information policy].

Complaint management system	All policies, procedures, practices, staff, hardware and software used by Council the management of complaints.
Dispute	An unresolved complaint escalated either within or outside of our organisation.
Feedback	Opinions, comments and expressions of interest or concern, made directly or indirectly, explicitly or implicitly, to or about us, about our services or complaint handling where a response is not explicitly or implicitly expected or legally required.
Grievance	A clear, formal written statement by an individual staff member about another staff member or a work related problem.
Policy	A statement or instruction that sets out how we should fulfil our vision, mission and goals.
Procedure/process	A statement or instruction that sets out how our policies will be implemented and by whom.
Public interest disclosure	A report about wrong doing made by a public official in New South Wales that meets the requirements of the <i>Public Interest Disclosures Act 1994</i> .
Service request	Service request includes: <ul style="list-style-type: none"> <li>• requests for approval</li> <li>• requests for action</li> <li>• routine inquiries about the organisation's business</li> <li>• requests for the provision of services and assistance</li> <li>• reports of failure to comply with laws regulated by the organisation</li> <li>• requests for explanation of policies, procedures and decisions.</li> </ul>

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## Policy



### POLICY STATEMENT:

This policy applies to all staff receiving or managing complaints from the public made to or about us, regarding our services, staff and complaint handling.

Staff grievances, code of conduct complaints and public interest disclosures are dealt with through separate mechanisms.

### POLICY RESPONSIBILITIES:

- 1) General Manager, Group Managers and Section Managers are responsible for implementing and complying with this policy.
- 2) Governance Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.

### RELATED DOCUMENTS:

- 1) *Local Government Act 1993*
- 2) *Public Interest Disclosure Act 1994*
- 3) *Ombudsman Act 1974*
- 4) *Independent Commission Against Corruption 1988*
- 5) *Government Information (Public Access) Act 2009*
- 6) *Code of Conduct*
- 7) *NSW Ombudsman - Managing Unreasonable Complainant Conduct Practice Manual*

### CONTROLLED DOCUMENT INFORMATION:

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

<b>RM8 container No</b>	PSC2010-00008	<b>RM8 record No</b>	
<b>Audience</b>	Port Stephens community and Council employees		
<b>Process owner</b>	Governance Manager		
<b>Author</b>	Governance Manager		
<b>Review timeframe</b>	Two years	<b>Next review date</b>	February 2018

## Policy

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Issue Date: xx/xx/xxxx

Printed: 29/05/2015

Review Date: xx/xx/xxxx

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## Policy



Adoption date	
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### VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	16/02/1999	Assistant General Manager	Adopted by Council	069
2.0	14/12/2010	Executive Officer	Adopted by Council	410
3.0	09/04/2013	Executive Officer	Adopted by Council	088
4.0		Governance Manager	A major re-drafting in line with the model complaint handling policy of the NSW Ombudsman. Transferred into the new policy template and corporate branding.	

## Policy

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**ITEM 4 - ATTACHMENT 3 SUMMARY OF SUBMISSION RECEIVED FROM PUBLIC EXHIBITION OF THE DRAFT POLICY.**

Summary of amendments raised from the public exhibition of the Complaints Handling policy.

Author of submission/s	Amendments raised	Council's response
Member of the public	1. The author believes that the Complaints Handling policy and the Managing Unreasonable Complainant Conduct policy (MUCC) is intended to be merged and that they should be a stand-alone documents.	The Managing Unreasonable Complaints Conduct policy (MUCC) is a separate policy to the Complaints Handling policy and will remain as two separate policies.

**ITEM NO. 5**

**FILE NO: 16/361308  
RM8 REF NO: PSC2014-00244**

**JOINT ORGANISATIONS - A NEW MODEL FOR REGIONAL COLLABORATION**

REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the draft submission to the Joint Organisations model review as detailed in **(ATTACHMENT 3)**.
- 

**ORDINARY COUNCIL MEETING - 12 JULY 2016  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Morello Councillor Paul Le Mottee</b>  That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 12 JULY 2016  
MOTION**

<b>210</b>	<b>Councillor Ken Jordan Councillor John Nell</b>  It was resolved that Council endorse the draft submission to the Joint Organisations model review as detailed in <b>(ATTACHMENT 3)</b> .
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**BACKGROUND**

The purpose of this report is to provide Council with information on the Joint Organisations (JOs) new model for regional collaboration **(ATTACHMENT 1)**. This model provides a snapshot on progress to date in establishing Joint Organisations, key elements of the proposed Joint Organisations model and next steps for new Joint Organisations. The Government's objective is to establish stronger, more connected and Fit for the Future councils in regional and rural NSW.

An accompanying Joint Organisations Background Paper **(ATTACHMENT 2)** provides more detail about how a network of Joint Organisations could be enabled across the State through legislation, guidance and tools to inform feedback. It asks a series of questions about the proposed Joint Organisations model to inform



## MINUTES ORDINARY COUNCIL - 12 JULY 2016

implementation. Council's proposed response to the review questions are detailed in **(ATTACHMENT 3)**.

The views of councils, Regional Organisations of Councils and others will help inform the successful roll out of Joint Organisations from early 2017, to ensure they bring real benefits to their communities.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Port Stephens has strong governance and civic leadership.	Manage the civic leadership and governance functions of Council. Manage relationships with all levels of government, stakeholder organisations and Hunter Councils Inc.

### FINANCIAL/RESOURCE IMPLICATIONS

Under the proposed model, JO's are to be funded by participating member contributions.

In the current Hunter Councils model, membership contributions are funded from the commercial activities of its subsidiary business, Strategic Services Australia. It is anticipated that a similar funding model would continue across the Hunter under the new JO model.

The Government has provided \$300,000 seed funding to the Pilot Hunter JO.

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

### LEGAL, POLICY AND RISK IMPLICATIONS

The proposed JO model is generally consistent with the operation of Hunter Councils and Pilot Hunter JO and the regionally cooperative approach undertaken by Council.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that the new JO model will fail to meet stated objectives and outcomes.	Low	Participation in the Pilot Hunter Councils JO has demonstrated a workable model, subject to finalisation of the model.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no significant sustainability issues identified.

**MERGER PROPOSAL IMPLICATIONS**

No merger issues are anticipated. Representation on the new JO will be determined following finalisation of the JO model review process.

**CONSULTATION**

Consultation with key stakeholders has been undertaken.

Internal

- Councillors have been briefed previously at two way conversations about the JO pilot process and Council has submitted a submission to the emerging directions JO review process in November 2015.

External

- Hunter Councils has provided presentations to member councils about the JO model review.
- The Mayor and General Manager have participated in the Hunter Pilot Joint Organisation.
- The Office of Local Government delivered a seminar on the JO model review at a meeting held at Hunter Councils on 29 June 2016.

Submissions to the JO model review close on 15 July 2016.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Joint Organisations: Towards a new model for regional collaboration.
- 2) Joint Organisations Background Paper. (Provided under separate cover)
- 3) Port Stephens Council's Response: Joint Organisations Model Review.

**COUNCILLORS ROOM**

Nil

**TABLED DOCUMENTS**

Nil

ITEM 5 - ATTACHMENT 1 JOINT ORGANISATIONS: TOWARDS A NEW  
MODEL FOR REGIONAL COLLABORATION.

Fit for the Future



# Joint Organisations

Towards a new model for  
regional collaboration

JUNE 2016



Office of  
Local Government

ITEM 5 - ATTACHMENT 1 JOINT ORGANISATIONS: TOWARDS A NEW MODEL FOR REGIONAL COLLABORATION.

## Delivering Joint Organisations for regional NSW



**Joint Organisations (JOs) will provide a forum for local councils and the State to work together on issues of regional strategic priority and deliver the things that matter most to regional communities.**

The NSW Government is committed to building stronger communities supported by stronger local councils.

Joint Organisations are a crucial part of the NSW Government's plan to revitalise and strengthen regional NSW.



**The Hon Paul Toole MP**  
Minister for Local Government

**Joint Organisations will change the way that councils and State Government work together on regional planning and help to provide better services and infrastructure for regional communities through sharing resources, lowering costs and reducing red tape.**

They are already delivering real outcomes for regional NSW: improving freight transport, tackling youth unemployment and attracting investment in regional economies and infrastructure.

The NSW Government is investing \$5.3 million in seed funding for this important initiative. We are now ready to finalise the model and recognise through legislation the role that Joint Organisations will play in regional planning, collaboration, leadership and advocacy.

### Pilot JOs are already:

- ✓ Improving freight transport in the Riverina
- ✓ Increasing youth employment in the Illawarra
- ✓ Attracting agricultural investment in the Namoi
- ✓ Prioritising infrastructure investment in Central NSW
- ✓ Growing the tourism industry in the Hunter.

### What have we achieved so far?

The NSW Government has listened to regional communities and JOs are a direct response to their calls for stronger and more effective regional planning and collaboration.

Throughout 2015 we piloted different JO models in five regions—Central NSW, Hunter, Illawarra, Namoi and Riverina—to test and reflect the different working relationships and priorities of each area.

The JO pilot successfully brought policy development 'into the field', encouraging active participation from the local government sector and NSW Government agencies.

The independent evaluation has found the JO pilot was a success and that JOs can really work for regional communities.

### How will Joint Organisations work?

JOs will be strong enough to drive consistent regional planning and collaboration, but flexible enough to recognise and support the unique differences of each region.

They will transform the way that the State and local government collaborate, plan, set priorities and deliver important projects—such as jobs, education, transport and secure water supplies—to strengthen regional communities across council boundaries.

### A clear set of principles has guided the development of JOs so they:

- ① Feature a consistent core with flexible elements
- ② Are run, owned by and accountable to member councils
- ③ Create minimal red tape, cost and risk
- ④ Protect council staff entitlements
- ⑤ Enable significant projects and initiatives—and associated funding and assets—to be managed regionally
- ⑥ Serve the best interest of regions and their communities.

ITEM 5 - ATTACHMENT 1 JOINT ORGANISATIONS: TOWARDS A NEW MODEL FOR REGIONAL COLLABORATION.

## Overview of the proposed JO model

A summary of the proposed JO model is provided below. For a more detailed explanation, refer to the detailed [background paper](#)



### LEGAL ENTITY

- JOs will be proclaimed as bodies corporate in the Local Government Act



### FUNCTIONS

#### Core functions

- JO core functions will be embedded in legislation and include strategic planning and priority setting, intergovernmental collaboration, and regional leadership and advocacy
- All JOs will perform these core functions

#### Optional functions

- JO optional functions—such as service delivery and capacity building—will be enabled but not prescribed by legislation
- JOs can select which of these functions, if any, they will carry out



### MEMBERSHIP

- Mayors of member councils will sit on the JO Board for their term of office
- The JO Board will appoint its own Chair
- There will be equal voting rights between members and no casting vote for the Chair
- Additional councillors may be appointed to the JO Board, provided representation remains equal among councils
- General Managers of member councils will advise and contribute to the JO Board
- The NSW Government representative will be an associate (non-voting) member
- Other organisations—such as county councils and cross-border partners—may be associate (non-voting) members



### BOUNDARIES

- JO boundaries will be set by Proclamation. All councils in regional and rural NSW will be a voting member of one JO
- JO boundaries will be aligned with, or nest within, State Government Regional Plan boundaries
- JOs will demonstrate a strong community of interest between member councils
- JOs will be based around a regional centre, where possible, and big enough to form strong partnerships



### RESOURCING

#### Funding

- JOs will each receive \$300,000 seed funding from the NSW Government
- JOs will be able to apply for grants and generate income to help fund their ongoing operations

#### Staffing

- JOs will employ an Executive Officer with appropriate skills under a flexible standard contract
- JOs will employ staff under the Local Government (State) Award



### SERVICE SHARING AND CAPACITY BUILDING

- Once the core JO model is established, JOs will be able to carry out optional functions such as shared service delivery through JO-formed corporations or other entities. This will be enabled after the core JO model is established
- JOs may choose to carry out optional functions directly or through member councils

## ITEM 5 - ATTACHMENT 1 JOINT ORGANISATIONS: TOWARDS A NEW MODEL FOR REGIONAL COLLABORATION.

### Making it happen

There are exciting possibilities ahead as the JO Pilot program has shown the proposed JO model to be both practical and effective.

We will be working hard over the next 12 months to get the model right, make any final adjustments required, agree boundaries and ensure these important changes are embedded in legislation and ready for roll-out from 2017.

**The NSW Government is committed to the future of regional NSW and the pivotal role JOs will play in making our regions stronger and will:**

- ✓ Provide seed funding of \$5.3 million to help establish JOs
- ✓ Support JOs through a central State Agency Advisory Group and Regional Leadership Groups to help connect JOs with relevant State agencies and planning and funding opportunities
- ✓ Work with JOs to support them on their journey, share lessons learned, and help develop useful tools and resources to support their operations and roll out
- ✓ Amend legislation to remove existing barriers and pave the way for more effective and efficient regional collaboration, service provision and procurement.

### Get involved

Consultation with key stakeholders so far shows great support for JOs from a range of councils, pilot JOs, Regional Organisations of Councils, NSW Government agencies and others.

Now we would like your feedback on the proposed JO model. The timeline below shows where we are in the process, and next steps for recruiting early-starter JOs and implementing the required legislative changes.



### We want your feedback!

- 1 Read the detailed background paper [here](#).
- 2 Complete the online questionnaire [here](#) or visit the NSW Government Have Your Say site.
- 3 Submissions close at 5pm on Friday 15 July 2016.

#### 2015 Pilot Process

- Pilot in five regions
- Develop a working model
- Strengthen relationships between local and State agencies
- Build a regional focus and identify priorities
- Evaluate the JO Pilot program

#### 2016 Consolidation

- Consult and decide on the final JO model
- Refine options for non-core activities
- Test the model in two early starter regions. Pilot groups can continue
- Finalise merger proposal process and boundaries
- Amend legislation

#### 2017 Implementation

- Establish JOs in remaining regions
- Work with the new regional governance and planning framework
- Monitor roll-out and results
- Embed JOs within the State's regional governance, planning and delivery framework



**For more information visit:**

[www.fitforthefuture.nsw.gov.au](http://www.fitforthefuture.nsw.gov.au)

and follow the link to Joint Organisations

**ITEM 5 - ATTACHMENT 3 PORT STEPHENS COUNCIL'S RESPONSE: JOINT ORGANISATIONS MODEL REVIEW.**
**PORT STEPHENS COUNCIL'S RESPONSE – JOINT ORGANISATIONS MODEL REVIEW**

Item	Issue	Decision
Core functions	<ul style="list-style-type: none"> <li>Joint Organisations (JO) core functions will be embedded in legislation and include strategic planning and priority setting, intergovernmental collaboration, and regional leadership and advocacy.</li> <li>All JOs will perform these core functions.</li> </ul>	Supported.
Optional functions	<ul style="list-style-type: none"> <li>JO option functions – such as service delivery and capacity building – will be enabled but not prescribed by legislation.</li> <li>JOs can select which of these functions, if any, they will carry out.</li> </ul>	Supported.
Representation	<ul style="list-style-type: none"> <li>The Mayor will be the legislated member council representative on the JO.</li> <li>The Deputy Mayor, or another councillor where there is no Deputy Mayor, will be the alternative representative at a Board meeting in certain instances, such as illness or leave.</li> <li>Additional elected representatives may be appointed to the Board, so long as representation remains equal amongst member councils and supports effective decision making.</li> <li>General Managers will participate in JO meetings in an advisory capacity and may form a General Manager's Advisory Committee to the Board.</li> <li>The State Government will be represented on each JO Board as an associate (non-voting) member.</li> <li>Other associate non-voting members may be represented on the JO to recognise cross border and other important relationships.</li> </ul>	<p>Supported.</p> <p>Not supported.</p> <p>Not supported.</p> <p>Supported.</p> <p>Supported.</p> <p>Not supported.</p>
Board term	<ul style="list-style-type: none"> <li>JO Board members will be appointed for a two year term which aligns with the proposed Mayoral term. Popularly elected Mayors will sit on JO Boards for the term of their office.</li> </ul>	Supported.



**ITEM 5 - ATTACHMENT 3 PORT STEPHENS COUNCIL'S RESPONSE: JOINT ORGANISATIONS MODEL REVIEW.**

Item	Issue	Decision
Chair and voting	<ul style="list-style-type: none"> <li>The Chair of the JO will be a Mayor chosen by the Board for a period of two years. It is not proposed that there be a limit on the number of consecutive terms a Chair can hold.</li> </ul>	Supported.
	<ul style="list-style-type: none"> <li>JOs will be enabled, but not required, to have an independent, non-voting Chair who is the Mayor of one of the member councils. The relevant council would then appoint an additional voting representative to make decisions on behalf of that member council.</li> </ul>	Not supported.
Role	<ul style="list-style-type: none"> <li>The role of voting Board members and the Chair will be generally modelled on the respective roles of a councillor (in their capacity as a member of the governing body, not in their elected capacity) and the Mayor in the Local Government area.</li> </ul>	Supported.
	<ul style="list-style-type: none"> <li>The role will additionally require representatives to act in the interests of the region as a whole. While concerns about potential conflict between a councillor's local and regional roles are recognised, this is not new for councillors balancing their governing and elected role.</li> </ul>	Supported.
Voting and decision making	<ul style="list-style-type: none"> <li>There will be equal voting rights for full member councils within a JO on legislated core functions.</li> </ul>	Supported.
	<ul style="list-style-type: none"> <li>As the legislated representative to the JO, the Mayor will be authorised to vote on behalf of the council.</li> </ul>	Supported.
	<ul style="list-style-type: none"> <li>A simple majority at which a quorum is present at a meeting will be needed for a decision to be made. This aligns with council voting requirements.</li> </ul>	Supported.
	<ul style="list-style-type: none"> <li>Where the JO deems it appropriate, a matter may be referred to member councils for consideration. For instance, it would most likely be appropriate to put decisions relating to funding commitments back to member councils.</li> </ul>	Supported.

ITEM 5 - ATTACHMENT 3 PORT STEPHENS COUNCIL'S RESPONSE: JOINT ORGANISATIONS MODEL REVIEW.

Item	Issue	Decision
	<ul style="list-style-type: none"> <li>The quorum for councils will partially apply to JOs. That is a quorum applies where the majority of the councillors who hold office for the time being are present at the meeting. However, where a representative to the JO is suspended or the position is otherwise vacant, an alternative representative to the JO must be appointed by the member council.</li> <li>Proxy and remote voting should be enabled for JOs to counteract the impact of travel to attend meetings in regional areas.</li> <li>Voting structures for optional functions, such as shared service delivery, should be determined by the JO recognising that different resourcing, governance arrangements and membership arrangements may apply.</li> </ul>	<p>Supported.</p> <p>Supported.</p> <p>Supported.</p>
Sitting fees	<ul style="list-style-type: none"> <li>JO Board members will not be paid sitting fees. Instead, to recognise the important role of Mayors on JO Boards, it is proposed that a one-off increase to the Mayoral fee be considered as part of the councillor remuneration review. This also enables Deputy Mayors attending on behalf of a Mayor unable to attend to potentially be paid a portion of the Mayoral fee.</li> </ul> <p>Note that councillor JO board members will not, under the proposed model, be given fee support.</p>	Not supported.
How will shared services be delivered?	<ul style="list-style-type: none"> <li>It is proposed that, optional functions, including shared service delivery, may occur through a JO, a member council, a JO-formed entity or in other ways.</li> <li>Where shared services are provided directly by a JO, it is expected that this be done in a limited way so that delivery of core strategic functions is not adversely affected and so that there is adequate separation of strategic and operational functions. This applies particularly to commercial services.</li> </ul>	<p>Supported.</p> <p>Supported.</p>

**ITEM 5 - ATTACHMENT 3 PORT STEPHENS COUNCIL'S RESPONSE: JOINT ORGANISATIONS MODEL REVIEW.**

Item	Issue	Decision
	<ul style="list-style-type: none"> <li>As shared service delivery catchments do not necessarily align with JO boundaries, associate membership will allow flexibility for councils within and outside the JO to opt in and out of shared services on a negotiated basis.</li> <li>It is proposed that the Local Government (State) Award would apply. Beyond this, governance and resourcing for shared services should be negotiated. Arrangements should be subject to monitoring and review, as determined by the JO and participating members, to ensure value for money.</li> </ul>	<p>Not supported.</p> <p>Supported as it applies to the JO, not the services entity.</p>
Funding	<ul style="list-style-type: none"> <li>Based on the principle that JOs are owned by the voting member councils and support a core leadership and advocacy function, it is proposed that member councils fund the ongoing core functions of the JO with contributions based on a formula negotiated by each JO.</li> <li>JOs must also have a range of other funding options available, including the ability to apply for grants and generate income.</li> <li>The OLG is looking to amend s.377 to allow councils to delegate to the JO the acceptance of tenders. The OLD does not know whether that will effectively mean prescribed status.</li> </ul>	<p>Supported.</p> <p>Supported.</p> <p>Supported.</p>
Staffing	<ul style="list-style-type: none"> <li>JOs will employ staff exclusively under the Local Government (State) Award as will and JO-formed corporations or other entity established by a JO. This will protect entitlements for staff and facilitate staff transfers between member councils and the JO.</li> </ul>	<p>Not supported as it applies to the corporation.</p>

**ITEM 5 - ATTACHMENT 3      PORT STEPHENS COUNCIL'S RESPONSE: JOINT ORGANISATIONS MODEL REVIEW.**

Item	Issue	Decision
	<ul style="list-style-type: none"> <li>It is proposed that JOs be required to appoint an Executive Officer with appropriate skills and capabilities to undertake this crucial role based on a standard contract. This will ensure consistency and certainty for the JO Board and the Executive Officer, as well as transparency and accountability. It will also allow flexibility around duration of appointment, structure and level of the remuneration package and performance-based requirements.</li> <li>While experience from the pilot process suggests that the Executive Officer role will need to be full time – and this is strongly preferred to support the JO to effectively carry out core functions – JOs will be able to determine and set resourcing requirements beyond this core standard.</li> </ul>	Supported.
JO should	<ul style="list-style-type: none"> <li>Be enabled to undertake optional functions directly, through member councils and through corporations and other entities.</li> <li>Have appropriate controls, including possibly a financial cap, on undertaking optional functions directly.</li> <li>Choose the most appropriate vehicle to deliver optional functions.</li> <li>Be enabled to undertake optional functions directly, through member councils and through corporations and other entities.</li> <li>Have appropriate controls, including possibly a financial cap on undertaking optional functions directly.</li> <li>Choose the most appropriate vehicle to deliver optional functions.</li> <li>Delegate the operation of optional functions to the Executive Officer or General Managers.</li> <li>Not own significant assets.</li> </ul>	Supported.

**ITEM 5 - ATTACHMENT 3 PORT STEPHENS COUNCIL'S RESPONSE: JOINT ORGANISATIONS MODEL REVIEW.**

Item	Issue	Decision
	<ul style="list-style-type: none"> <li>Be subject to the same regulatory controls as councils and relevant partners, where applicable, for delivering commercial activities.</li> </ul>	
Corporations and other entities formed by JOs should	<ul style="list-style-type: none"> <li>Only be approved based on clear oversight and criteria, as for corporations and other entities set up by councils.</li> <li>Be at least 50% owned by councils, allowing sufficient control and flexibility for partnership with the private sector and others.</li> <li>Not be subject to competitive tendering to deliver projects for the JO to and on behalf of member councils.</li> <li>Be able to establish membership, resourcing and governance based on need and appropriate core regulatory standards.</li> <li>Be able to own assets.</li> </ul>	Supported.
The process to set up corporations and other entities should	<ul style="list-style-type: none"> <li>Be developed in tandem with a review of the process for councils to form corporations and other entities under the <i>Local Government Act 1993</i>.</li> <li>Vary for the type of entity being formed in terms of requirements or allowable functions.</li> <li>Be based on clear criteria to be developed, potentially including that the entity:                             <ol style="list-style-type: none"> <li>Employs staff under the Local Government (State) Award;</li> <li>Demonstrates member interest and public interest tests;</li> <li>Limits activities to not-for-profit or require profits to be spent on public services;</li> <li>Demonstrates a sound business case and financial viability;</li> <li>Provides legal, financial and governance separation to address liability risk and manage stakeholder expectations;</li> </ol> </li> </ul>	<p>Supported with the exception of 1 and 6 (not supported).</p> <p>Not supported.</p> <p>Supported.</p> <p>Supported.</p> <p>Supported.</p> <p>Supported.</p>

**ITEM 5 - ATTACHMENT 3 PORT STEPHENS COUNCIL'S RESPONSE: JOINT ORGANISATIONS MODEL REVIEW.**

Item	Issue	Decision
	6. Undertakes community consultation in certain circumstances, if appropriate.	Not supported.
Options to control JO formed entities may include	<ul style="list-style-type: none"> <li>• Requiring approval to change the activities of the JO-formed entity.</li> <li>• Suspending JO-formed entity activities, board members and/or to wind up JO-formed entities in certain circumstances, such as maladministration, corruption or inappropriate activity.</li> </ul>	Undecided - requires further detail as to how this might be achieved.
Agreements between the JO and JO-formed entity and participating councils may include	<ul style="list-style-type: none"> <li>• Annual agreement with the JO governing body to ensure activities and priorities align and monitor performance.</li> <li>• Commitment from councils to participate for a period of time to ensure stability.</li> </ul>	Supported.
Delegation to JOs of regulatory functions	<ul style="list-style-type: none"> <li>• Consultation is currently occurring on proposed phase 1 Local Government Act amendments that include a proposal for councils to be able to delegate regulatory functions to a JO if deemed appropriate to do so by the member councils. JOs may then choose to undertake these functions directly or potentially through JO-formed entities once an appropriate frameworks is established.</li> <li>• To enable JOs to carry out regulatory functions, other legislation would also need to be amended for example, environmental management under the <i>Environmental Planning and Assessment Act 1979</i> to enable authorized officers of JOs to be delegated regulatory functions by member councils.</li> <li>• Given the specialist skill required to undertake regulatory functions, delegation of regulatory functions to a JO would need to be supported through adequate guidance and training provided by the delegating member councils and others. Importantly, member councils will retain responsibility to ensure those regulatory functions are carried out effectively by the JO.</li> </ul>	Supported with some reservation especially in regard to detail.

**ITEM 5 - ATTACHMENT 3 PORT STEPHENS COUNCIL'S RESPONSE: JOINT ORGANISATIONS MODEL REVIEW.**

Item	Issue	Decision
Regional Service Delivery and County Councils	<ul style="list-style-type: none"> <li>The NSW Government plans to review the current regional service delivery models, including the relationship of JOs to county councils. This will help to determine the most appropriate means to undertake regional service delivery in the future.</li> <li>Meanwhile the current proposal is that existing county councils be associate (non-voting) members of JO Board/s relevant to their catchment, which may nest within a JO or cross JO boundaries. This recognizes the valuable contribution county councils make to strategic discussions relevant to their scope of operation.</li> </ul>	Not supported.
Liability and oversight	<ul style="list-style-type: none"> <li>It is proposed that appropriate protections from liability are provided for JOs, members and individuals acting for JOs.</li> <li>Duties of individual board members and officers that could expose them to liability risk will also be limited, and separately governed JO-formed entities may quarantine members from the potential additional liabilities and risk of optional functions.</li> <li>JOs as public local government bodies should meet the standards of conduct and good governance expected of councils and councilors to protect the public interest.</li> <li>It is proposed that independent oversight be provided for JOs drawing on oversight mechanisms in place for councils under the Local Government Act and other laws. This would apply JO representatives and staff as individuals acting on behalf of JOs. These may include a Ministerial power to issue directions and take other actions through inquiries, investigations, performance improvement orders and suspensions.</li> </ul>	Supported.
Boundaries	<ul style="list-style-type: none"> <li>JO boundaries will be set by Proclamation. All councils in regional and rural NSW will be a voting member of one JO.</li> </ul>	Supported.

**ITEM 5 - ATTACHMENT 3 PORT STEPHENS COUNCIL'S RESPONSE: JOINT ORGANISATIONS MODEL REVIEW.**

Item	Issue	Decision
	<ul style="list-style-type: none"><li>• JO boundaries will be aligned with or nest within State Government Regional Plan boundaries.</li></ul>	Supported.
	<ul style="list-style-type: none"><li>• JOs will demonstrate a strong community of interest between member councils.</li></ul>	Supported.
	<ul style="list-style-type: none"><li>• JOs will be based around a regional centre, where possible, and big enough to form strong partnerships.</li></ul>	Not supported.



**ITEM NO. 6****FILE NO: 16/363513  
RM8 REF NO: PSC2016-00178****REQUEST FOR FINANCIAL ASSISTANCE****REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE****RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves provision of financial assistance under Section 356 of the *Local Government Act 1993* from the respective Mayor and Ward Funds to the following:-
  - a. West Ward Funds – Cr Ken Jordan – Hinton Rugby League Football Club – Donation towards updating BBQ for home games - \$500.

**ORDINARY COUNCIL MEETING - 12 JULY 2016  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Chris Doohan Councillor John Nell</b>  That the recommendation be adopted.
<b>211</b>	<b>Councillor Chris Doohan Councillor Ken Jordan</b>  It was resolved that Council move out of Committee of the Whole.

**ORDINARY COUNCIL MEETING - 12 JULY 2016  
MOTION**

<b>212</b>	<b>Councillor Ken Jordan Councillor John Nell</b>  It was resolved that Council approve provision of financial assistance under Section 356 of the <i>Local Government Act 1993</i> from the respective Ward Fund to the following:- <ol style="list-style-type: none"><li>a. West Ward Funds – Cr Ken Jordan – Hinton Rugby League Football Club – Donation towards updating BBQ for home games - \$500.</li></ol>
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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 either to grant or to refuse any requests.

Council's 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 1993*. This would mean that the financial assistance would need to be included in the Operational 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:-

**WEST WARD – Councillors Jordan, Kafer & Le Mottee**

Hinton Rugby League Football Club	Donation towards updating BBQ for home games.	\$500
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**COMMUNITY STRATEGIC PLAN**

Strategic Direction	Delivery Program 2013-2017
Port Stephens has strong governance and civic leadership.	Manage the civic leadership and governance functions of Council. Manage relationships with all levels of government, stakeholder organisations and Hunter Councils Inc.

**FINANCIAL/RESOURCE IMPLICATIONS**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	500	Within existing budget.
Reserve Funds	No		
Section 94	No		

**MINUTES ORDINARY COUNCIL - 12 JULY 2016**

Source of Funds	Yes/No	Funding (\$)	Comment
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	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may set a precedent when allocating funds to the community and an expectation those funds will always be available.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**MERGER PROPOSAL IMPLICATIONS**

There are no merger implications.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the General Managers Unit.

Consultation has been taken with the key stakeholders to ensure budget requirements are met and approval.

Internal

- 1) Mayor
- 2) Councillors

External

- 1) Port Stephens Community

**OPTIONS**

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

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

# NOTICES OF MOTION

**NOTICE OF MOTION****ITEM NO. 1****FILE NO: 16/358695****PSC2015-01000****RM8 REF NO: PSC2015-03945****ALLOCATION OF CENTRAL WARD COUNCILLOR FUNDS****COUNCILLOR: CHRIS DOOHAN  
STEVE TUCKER**

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**THAT COUNCIL:**

- 1) Endorse the allocation of Central Ward Councillor Funds to the following projects that have been previously advertised within Council's Integrated Plans 2016-2026:
    - a) Anna Bay – Shade sail at the proposed playground at Robinson Reserve - \$20,000.
    - b) Lemon Tree Passage – Installation of banner flags in the town area - \$10,000.
    - c) Lemon Tree Passage – Tilligerry Arts Group fit out of new building - \$5,000.
    - d) Medowie – Installation of additional components at Medowie Skate Park - \$15,000.
    - e) Medowie – Installation of a water station for people and dogs at Coachwood Reserve Dog Exercise Area - \$7,000.
    - f) Tilligerry – Installation of additional components at Mallabula Skate Park - \$10,000.
- 

**ORDINARY COUNCIL MEETING - 12 JULY 2016  
MOTION**

<b>213</b>	<b>Councillor Steve Tucker Councillor Chris Doohan</b> <p>It was resolved that Council endorse the allocation of Central Ward Councillor Funds to the following projects that have been previously advertised within Council's Integrated Plans 2016-2026:</p> <ol style="list-style-type: none"><li>a) Anna Bay – Shade sail at the proposed playground at Robinson Reserve - \$20,000.</li><li>b) Lemon Tree Passage – Installation of banner flags in the town area - \$10,000.</li><li>c) Lemon Tree Passage – Tilligerry Arts Group fit out of new building - \$5,000.</li><li>d) Medowie – Installation of additional components at Medowie Skate Park - \$15,000.</li></ol>
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## **MINUTES ORDINARY COUNCIL - 12 JULY 2016**

	e) Medowie – Installation of a water station for people and dogs at Coachwood Reserve Dog Exercise Area - \$7,000.
	f) Tilligerry – Installation of additional components at Mallabula Skate Park - \$10,000.

### **BACKGROUND REPORT OF: Steve Bernasconi – Acting Group Manager Facilities and Services**

#### **BACKGROUND**

The purpose of this report is to seek Council endorsement for the allocation of the remaining Central Ward Councillor Funds.

The Central Ward Councillor Fund currently has approximately \$67,000 remaining for the 2015/16 financial year. The projects proposed equate to this amount which will exhaust this fund.

The projects that have been identified fall within three categories:

1. Projects that are already identified in the adopted Integrated Plans.
2. Projects that are already identified in Council's Section 94 Plan.
3. Projects that have been adopted by Council.

This allows for the projects identified, if endorsed by Council, to be included into Council's 2016/17 Operational Plan for completion. If a project is added that has not been previously advertised by Council in one of these forms, it must be put on public exhibition to seek community comment before being endorsed by Council as a new project in the Integrated Plans.

#### **MERGER PROPOSAL IMPLICATIONS**

There are no implications arising from this Notice of Motion for the merger proposal.

#### **ATTACHMENTS**

Nil.

## **MINUTES ORDINARY COUNCIL - 12 JULY 2016**

Mayor vacated the Chair and left the meeting at 5.50pm and the meeting was Chaired by Deputy Mayor, Cr Chris Doohan for the remainder of the meeting.

### **NOTICE OF MOTION**

**ITEM NO. 2**

**FILE NO: 16/360236  
RM8 REF NO: 2013-02086**

### **RATE RELIEF FOR RESIDENTS LOCATED IN THE WILLIAMTOWN CONTAMINATION INVESTIGATION AREA**

COUNCILLOR: PETER KAFER

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#### **THAT COUNCIL:**

- 1) Call upon the General Manager to investigate how Port Stephens Council can give rate relief to property owners and residents in the 'red zone' of the Williamtown contamination investigation area, for a period of 12 months.
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### **ORDINARY COUNCIL MEETING - 12 JULY 2016 MOTION**

<b>214</b>	<b>Councillor Peter Kafer Councillor Ken Jordan</b>  It was resolved that Council write to the Premier, The Hon. Mike Baird asking for the rates to be waived for property owners in the 'red zone' of the Williamtown contamination investigation area, for a period of 12 months.
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A division was moved by Cr John Nell and seconded by Cr Peter Kafer.

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

Those against the Motion: Nil.

### **BACKGROUND REPORT OF: CARMEL FOSTER – GROUP MANAGER CORPORATE SERVICES**

#### **BACKGROUND**

Since the announcement of the Williamtown contamination investigation area in September last year, concerns have been raised by affected ratepayers about various difficulties encountered, including obtaining loans and selling their properties. Some ratepayers have estimated the value of their properties to be significantly



impacted. Council property records indicate there have been eight completed sales within the investigation area since the announcement, with a total sale value of \$3.295M or an average of \$411,000.

Council is required to levy rates on all rateable land within the Local Government Area. How rates are determined, levied and collected is contained in the *Local Government Act 1993*. While Council determines the rating structure within the constraints of the *Local Government Act 1993*, land rates are determined according to the land value of individual properties. Land is valued for rating purposes under the *Valuation of Land Act 1916*. Land in Port Stephens is re-valued each three years by the NSW Valuer General.

The *Local Government Act 1993* provides Council with some flexibility in the way it collects rate revenue and imposes penalty interest on unpaid rates where ratepayers are experiencing hardship. Council is not empowered to write-off or reduce rates except in a very narrow set of circumstances, none of which apply in the case of the Williamstown contamination investigation area. Council can extend the time to pay rates by agreement with individual ratepayers and reduce or write-off interest charges. Under the provisions of Council's Hardship Policy, the preference is to negotiate regular, manageable repayments with ratepayers experiencing financial hardship unless the nature of the financial hardship is short term.

Additionally, Council has referred ratepayers with concerns about the amount of their rate bill as calculated on what they perceive to be an excessive land value, to the NSW Valuer General to seek a review of their land value. Council has been in regular contact with the NSW Valuer General's office and has recently been provided with re-ascertained land values for 376 properties out of 438 within, or partly within, the contamination investigation area. These re-ascertained land values are required to be used for rating purposes for 2016-2017. The average land value reduction provided by the NSW Valuer General for residential properties is \$32,300 which will result in a rate saving of \$111. The average land value reduction for farmland properties is \$63,300 which will result in a rate saving of \$218. The average land value reduction for business properties is \$51,500 which will result in a rate saving of \$421. Some properties, primarily business properties, did not have their land values reduced.

There will be a measure of rate relief provided to most properties within the contamination investigation area as a result of the action of the NSW Valuer General, and it is proposed that Council continue to work with ratepayers on an individual basis to reach manageable repayment agreements and, should a ratepayer seek assistance with regard to interest charges, that such requests be considered in accordance with Council's Debt Recovery and Hardship Policy and delegations to the General Manager to write-off interest in appropriate circumstances.

## **MERGER PROPOSAL IMPLICATIONS**

There are few implications of the land value reduction within the contamination investigation area on the merger proposals.

**ATTACHMENTS**

Nil.

<b>MINUTES ORDINARY COUNCIL - 12 JULY 2016</b>
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There being no further business the meeting closed at 6.15pm.