

ITEM NO. 15

FILE NO: 16/447119  
RM8 REF NO: PSC2006-0985

**NGIOKA CENTRE ADVISORY PANEL - REVIEW OF TERMS OF REFERENCE  
APPENDIX**

REPORT OF: AARON MALLOY - ACTING COMMUNITY SERVICES SECTION  
MANAGER  
GROUP: FACILITIES & SERVICES

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Rename the Ngioka Horticultural Therapy Business Advisory Panel to the Ngioka Centre Advisory Panel.
  - 2) Revoke the 355(c) Schedule to Constitution for the Ngioka Centre Advisory Panel. **(ATTACHMENT 1).**
  - 3) Adopt the Appendix to the Terms of Reference for the Ngioka Centre Advisory Panel as a 355(c) Committee of Council **(ATTACHMENT 2).**
  - 4) Re-appoint the Ngioka Centre Advisory Panel for a period of 2 years (until 1 December 2018).
- 

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016  
COMMITTEE OF THE WHOLE RECOMMENDATION**

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

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016  
MOTION**

<b>364</b>	<b>Councillor Steve Tucker</b> <b>Councillor Chris Doohan</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Rename the Ngioka Horticultural Therapy Business Advisory Panel to the Ngioka Centre Advisory Panel.</li><li>2) Revoke the 355(c) Schedule to Constitution for the Ngioka Centre Advisory Panel. <b>(ATTACHMENT 1).</b></li><li>3) Adopt the Appendix to the Terms of Reference for the Ngioka Centre Advisory Panel as a 355(c) Committee of Council <b>(ATTACHMENT</b></li></ol>
------------	--

## MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

	<b>2).</b> 4) Re-appoint the Ngioka Centre Advisory Panel for a period of 2 years (until 1 December 2018).
--	---

### BACKGROUND

The purpose of this report is to rename the Ngioka Horticultural Therapy Business Advisory Panel to the Ngioka Centre Advisory Panel and to adopt an amended 355(c) Committee Terms of Reference Appendix for the Ngioka Centre Advisory Panel (**ATTACHMENT 2**).

The Ngioka Centre Advisory Panel requires a new Terms of Reference Appendix as their current Schedule to Constitution is out of date. The existing 355(c) Schedule to Constitution was adopted by Council on 10 September 2013. This is shown in full as (**ATTACHMENT 1**).

It is further recommended that the Ngioka Centre Advisory Panel be re-appointed for a period of two years from the date of adoption, as the current committee has now served the first of two Committee terms. This is to meet the requirements of the Terms of Reference Appendix Item 7 - Term of Committee.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Community Planning and Partnerships.	Council will engage its citizens in developing plans for the future of the Port Stephens local government area.

### FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseen financial or resource implications resulting from the recommendations in this report.

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**

A 355(c) Committee Terms of Reference sets out mandatory provisions for the administration and management of the Committees and their requirements under the *Local Government Act 1993*. The Appendix is the supporting document to the Terms of Reference detailing the individual purpose and roles of each Committee and any clauses within the Terms of Reference that are not relevant to that Committee's functions.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that conflict between 355(c) Ngioka Centre Advisory Panel members may arise due to management and operational requirements not being clearly outlined in a detailed 355 (c) Terms of Reference Appendix.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Council establishes 355(c) Committees to assist in Council operations under the *Local Government Act 1993*.

Council has thirty two 355(c) Committees that are made up of volunteers who assist in the maintenance and operation of Council parks, halls and other facilities and provide input to advisory and cultural committees. They offer a range of services that enhance the environment and the community, promoting positive partnerships and financially sustainable practices. The Ngioka Centre volunteers provide support by assisting staff with horticultural therapy programs, day to day maintenance and operations at the Centre.

**MERGER PROPOSAL IMPLICATIONS**

Adopting the recommendations is not expected to impact on a merger with Newcastle City Council or any other Local Government body. Should a merger occur the new entity will need to review 355(c) committees and their approach to volunteering overall.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Community Services Section.

### Internal

Thorough consultation was undertaken in 2015 in the development of the 355(c) Committee Terms of Reference. The template for individual Committees' Appendix was also a part of this process.

### External

Draft 355(c) Committee Terms of Reference Appendices for each Committee were tabled and reviewed at individual committee meetings for feedback and suggested amendments. Final drafts have been ratified by the Committees and these are the documents being recommended for Council endorsement.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Ngioka 355(c) Schedule to Constitution.
- 2) Appendix to 355(c) Committee Terms of Reference.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.



ITEM 15 - ATTACHMENT 1 NGIOKA 355(C) SCHEDULE TO CONSTITUTION.

**SCHEDULE TO CONSTITUTION**

Item 1	Name of Committee	Ngioka Horticultural Therapy Centre Business Advisory Panel ("The Panel")
Item 2	Name of Council Section	Community Services
Item 3	Functions delegated by Council to committee	<p>The Panel will provide independent strategic advice to the Ngioka Centre Management Team with a focus on business development including, disability programs, planning and service delivery.</p> <p><b>Ngioka Business Plan</b></p> <ul style="list-style-type: none"> <li>• The Panel will follow a business plan review process which will be carefully structured to enable the Advisory Panel to gain an understanding of the key issues within the Ngioka Centre business.</li> <li>• The Panel will, in consultation with the Ngioka Management Team, provide advice/feedback on the performance &amp; fundamentals of all aspects of the Ngioka Centre's Business Plan.</li> </ul> <p><b>Government Legislation &amp; Policies</b></p> <ul style="list-style-type: none"> <li>• The Panel will critically review the Federal Governments (NDIS) National Disability Insurance Scheme regulatory requirements and provide feedback /advice on opportunities to meet and sustain compliance requirements.</li> <li>• The Panel will assist the Ngioka Management Team review and update state governments (ADHC) Aging, Disability &amp; Homecare policies and procedures to meet (ADHC) regulatory Accreditation requirements due in 2015.</li> <li>• The Panel will provide feedback/advice to the Ngioka Management Team to systematically address key risk / compliance and governance issues within the business.</li> </ul> <p><b>Fees &amp; Charges</b></p> <ul style="list-style-type: none"> <li>• The Panel will provide feedback/ advice to the Ngioka Centre Management Team in reviewing fees and charges for the Ngioka Centre to ensure appropriate market increases are applied.</li> </ul> <p><b>Ngioka Centre Reporting</b></p> <p><b>Quarterly</b></p> <ul style="list-style-type: none"> <li>• The Panel will receive reports from the Management Team and will review and provide feedback/advice on these reports.</li> <li>• The Panel will provide feedback/advice to the Ngioka Centre Management Team on the actual performance of the business against the planned outcomes outlined in the Ngioka Centre Business Plan and benchmark those results against the broader industry and business sectors.</li> <li>• The Panel will review and provide feedback/advice to the Ngioka Centre Management Team on Monthly and YTD financial results</li> </ul>

**ITEM 15 - ATTACHMENT 1 NGIOKA 355(C) SCHEDULE TO CONSTITUTION.**

		<p>via a series of key performance measures including; lead and lag indicators, bar charts, spreadsheets, Councils financial reports etc.</p> <p><b>Annually</b></p> <ul style="list-style-type: none"> <li>• The Panel will review and provide feedback /advice to the Ngioka Centre Management Team on the Ngioka Centres Annual Report at the end of each financial year.</li> <li>• The Panel will review the Ngioka Centre's Asset Management Plan and provide feedback/ advice to the Ngioka Centre Management Team on potential risks to maintenance/capital works delivery targets.</li> <li>• The Panel will provide feedback/advice to the Ngioka Management Team in evaluating the business through customer satisfaction results through annual on-line customer surveys.</li> </ul>
Item 4	Restrictions on functions delegated	<ul style="list-style-type: none"> <li>• Any works undertaken will be with the knowledge and approval of the Ngioka Centre Co-ordinator, Contracts &amp; Services Co-ordinator and Community Services Manager.</li> </ul>
Item 5	Policies, legislation & directives the committee is required to comply with	<p>Principle Policies &amp; Legislation including but not limited to:</p> <ul style="list-style-type: none"> <li>• Work Health &amp; Safety, Act 2011</li> <li>• Local Government Act, 1993</li> <li>• Disability Discrimination Act 1992(Aust)</li> <li>• NSW Disability Service Act(NSW)</li> <li>• PPIPA, 1988</li> <li>• Code of Conduct</li> <li>• Code of Meeting Practice</li> <li>• Accessing Information Policy</li> <li>• Volunteer Strategy Framework</li> <li>• Disability Access Policy</li> <li>• Child Protection Policy</li> <li>• Port Stephens Local Environmental Plan, 2000</li> <li>• Environmental and Assessment Act 1979</li> </ul> <p><b>Business Excellence</b></p> <ul style="list-style-type: none"> <li>• The Panel will operate in accordance with the Business Excellence Framework which guides Port Stephens Councils organisational improvement and success.</li> </ul>
Item 6	Date on which constitution concludes	<ul style="list-style-type: none"> <li>• September of Council Election each four years. Council to re adopt constitution within three months following election.</li> </ul>

ITEM 15 - ATTACHMENT 1 NGIOKA 355(C) SCHEDULE TO CONSTITUTION.

Item 7	Maximum number and make up of committee members	<p><b>Membership</b></p> <p>The Panel;</p> <ul style="list-style-type: none"> <li>• Will consist of 4 members from nominations received.</li> <li>• Will be broad ranging and include members involved with disability services, business with finance and marketing experience and community members involved with disability service or clients.</li> <li>• Will be balanced in terms of expertise and gender.</li> <li>• All members will be appointed as individuals and are not to represent a particular organization and its views.</li> </ul> <p><b>Sub Committees</b></p> <ul style="list-style-type: none"> <li>• The Panel may establish ad hoc sub committees of up to 5 people (for determined amount of time) as required.</li> <li>• Any such subcommittee is subject to all the same conditions as an Advisory Panel member.</li> <li>• The Panel when establishing sub committees will: <ul style="list-style-type: none"> <li>○ determine membership</li> <li>○ establish aims</li> <li>○ clearly define a process for decision making</li> <li>○ determine timeframe for subcommittee membership</li> </ul> </li> </ul> <p><b>Vacancies on the Panel;</b></p> <ul style="list-style-type: none"> <li>• Will be advertised in the Port Stephens newspapers including newsletters and Port Stephens Councils web site. Interested people will be invited to nominate and participate in a selection process.</li> </ul> <p><b>Term of Office</b></p> <ul style="list-style-type: none"> <li>• Panel Members will be appointed for two years to create continuity with the business development of the Ngioka Centre.</li> <li>• Panel members may reapply on the expiry of the two year term but no member should serve more than two consecutive terms.</li> <li>• Interested individuals may apply again after a one-year break from the Advisory Panel.</li> </ul>
Item 8	Councillors	<ul style="list-style-type: none"> <li>• As resolved by Council.</li> </ul>
Item 9	Council employees	<p>Port Stephens Council staff as required including but not limited to;</p> <ul style="list-style-type: none"> <li>• Ngioka Centre Co-ordinator</li> <li>• Ngioka Centre Program Co-ordinator</li> <li>• Contracts &amp; Services Co-ordinator</li> <li>• Community Services Manager</li> <li>• Ngioka Centre Volunteers will report directly to the Ngioka Centre Management Team and <b>not</b> to the Advisory Panel.</li> </ul>

**ITEM 15 - ATTACHMENT 1 NGIOKA 355(C) SCHEDULE TO CONSTITUTION.**

		<b>Chairperson</b> <ul style="list-style-type: none"> <li>In the first two year term of the Panel the Ngioka Centre Coordinator will act as the chairperson for the Panel.</li> <li>The Panel will vote to elect a new chair at the start of each new term.</li> <li>In the chairs absence an acting chair will be determined by the Panel as required.</li> <li>Councilors have the right to chair committee meetings as determined in the Standard 355c Committee Constitution.</li> </ul>
Item 10	Name of financial institution and type of account	N/A
Item 11	Name of any account operated by the committee	N/A
Item 12	Area assigned to committee	<ul style="list-style-type: none"> <li>Panel providing feedback/ advice to Ngioka Centre Management Team.</li> </ul>
Item 13	Additional clauses or amendments to Standard Constitution or Schedule.	Clause 10 of constitution N/A. <ul style="list-style-type: none"> <li>Advisory Panel will have no financial management responsibility.</li> </ul>
Item 14	To be listed in full - body of constitution not to be altered. Changes to constitution or Schedule – Adopted by Council: Meeting Date: Minute No: Resolution	

**ITEM 15 - ATTACHMENT 2 APPENDIX TO 355(C) COMMITTEE TERMS OF REFERENCE.**
**APPENDIX TO 355(c) COMMITTEE TERMS OF REFERENCE**

<b>Item 1</b>	<b>Name of Committee</b>	<b>Ngioka Centre Advisory Panel</b>
<b>Item 2</b>	<b>Purpose of Committee</b>	<p>6.1.1 Council will engage it's citizens in developing plans for the future of the Port Stephens Local Government Area</p> <p>7.1.1 Plan for and promote multiculturalism and Port Stephens' heritage, arts and culture</p>
<b>Item 3</b>	<b>Functions delegated by Council to committee (Objectives)</b>	<p><b>Ngioka Business Plan</b></p> <ul style="list-style-type: none"> <li>The Advisory Panel will follow a business plan review process which will be carefully structured to enable the Advisory Panel to gain an understanding of the key issues within the Ngioka Centre business.</li> <li>The Advisory Panel will, in consultation with the Ngioka Management Team, provide advice/feedback on the performance and fundamentals of all aspects of the Ngioka Centre's Business Plan.</li> </ul> <p><b>Government Legislation and Policies</b></p> <ul style="list-style-type: none"> <li>The Advisory Panel will critically review the Federal Governments National Disability Insurance Scheme (NDIS) regulatory requirements and provide feedback/advice on opportunities to meet and sustain compliance requirements.</li> <li>The Advisory Panel will assist the Ngioka Management Team review and update state governments Aging, Disability and Homecare (ADHC) policies and procedures to meet ADHC regulatory accreditation requirements due in 2017.</li> <li>The Advisory Panel will provide feedback/advice to the Ngioka Management Team to systematically address key risk/compliance and governance issues within the business.</li> </ul> <p><b>Fees and Charges</b></p> <ul style="list-style-type: none"> <li>The Advisory Panel will provide feedback/ advice to the Ngioka Centre Management Team in reviewing fees and charges for the Ngioka Centre to ensure appropriate market increases are applied.</li> </ul> <p><b>Ngioka Centre Reporting</b></p> <ul style="list-style-type: none"> <li>Refer to Item 13 – Reporting</li> </ul>
<b>Item 4</b>	<b>Restrictions on functions delegated</b>	Any works undertaken will be with the knowledge and approval of the Ngioka Centre Co-ordinator, Contracts & Services Co-ordinator and Community Services Manager.
<b>Item 5</b>	<b>Policies, legislation &amp; directives the committee is required to comply with</b>	<p><b>Principle Policies and Legislation</b> including but not limited to:</p> <ul style="list-style-type: none"> <li>Local Government Act, 1993</li> <li>WHS Act 2011</li> <li>PSC WHS Statement of Commitment</li> </ul>

ITEM 15 - ATTACHMENT 2 APPENDIX TO 355(C) COMMITTEE TERMS OF REFERENCE.

		<ul style="list-style-type: none"> <li>▪ Disability Discrimination Act 1992(Aust)</li> <li>▪ NSW Disability Service Act(NSW)</li> <li>▪ Privacy and Personal Information Act 1998</li> <li>▪ State Records Act, 1998</li> <li>▪ PSC Code of Conduct</li> <li>▪ PSC Code of Meeting Practice</li> <li>▪ Accessing Information Policy</li> <li>▪ Volunteer Strategy Framework 2012</li> <li>▪ PSC Disability Policy</li> <li>▪ Child Protection Policy</li> <li>▪ Port Stephens Local Environmental Plan, 2000</li> <li>▪ Environmental and Assessment Act 1979</li> </ul> <p><b>Business Excellence</b> The Advisory Panel will operate in accordance with the Business Excellence Framework which guides Port Stephens Councils organisational improvement and success.</p>
Item 6	Term of Committee	<p>September of Council Election each four years. Council to re-adopt Terms of Reference and Appendix within three months following election.</p> <p>Advisory Panel Members will be appointed for two years to create continuity with the business development of the Ngioka Centre.</p> <p>Advisory Panel members may reapply on the expiry of the two year term but no member should serve more than two consecutive terms.</p> <p>Interested individuals may apply again after a one-year break from the Advisory Panel.</p>
Item 7	Maximum number and make up of committee members	<p>The Advisory Panel will consist of a minimum of four (4) to a maximum of ten (10) members.</p> <p>Members will include those involved with disability services, business with finance and marketing experience and community members involved with disability service or clients, and will be balanced in terms of expertise and gender.</p> <p>All members will be appointed as individuals and are not to represent a particular organization and its views.</p> <p>The Advisory Panel may establish subcommittees for determined amount of time as required. Any such subcommittee is subject to all the same conditions as an Advisory Panel member.</p> <p>The Advisory Panel, when establishing subcommittees, will:</p> <ul style="list-style-type: none"> <li>▪ determine membership requirements</li> <li>▪ establish aims</li> <li>▪ clearly define a process for decision making</li> </ul>

**ITEM 15 - ATTACHMENT 2 APPENDIX TO 355(C) COMMITTEE TERMS OF REFERENCE.**

		<ul style="list-style-type: none"> <li>determine timeframe for subcommittee membership</li> </ul> <p>Vacancies on the Ngioka Centre Advisory Panel will be advertised in the Port Stephens and Newcastle newspapers and Port Stephens Council newsletters and social media. Interested people will be invited to nominate and participate in a selection process.</p>
<b>Item 8</b>	Executive and Advisory members	N/A
<b>Item 9</b>	Councillors	One (1) Councillor as resolved by Council.
<b>Item 10</b>	Council employees	<p>Port Stephens Council staff as required including but not limited to:</p> <ul style="list-style-type: none"> <li>Ngioka Centre Coordinator</li> <li>Ngioka Centre Program Coordinator</li> <li>Contracts and Services Coordinator</li> <li>Community Services Manager</li> </ul> <p>Ngioka Centre Volunteers will report directly to the Ngioka Centre Management Team and not to the Advisory Panel.</p> <p><b>Chairperson</b></p> <ul style="list-style-type: none"> <li>The Contracts and Services Coordinator will act as the Chairperson for the Advisory Panel.</li> <li>In the absence of the Chair, an acting Chair will be determined by the Advisory Panel as required.</li> <li>Councillors have the right to chair committee meetings as determined in the Standard 355c Committee Terms of Reference.</li> </ul>
<b>Item 11</b>	Name of financial institution and type of account	N/A
<b>Item 12</b>	Name of any account operated by the committee	N/A
<b>Item 13</b>	Reporting	<p><b>Quarterly</b></p> <ul style="list-style-type: none"> <li>The Advisory Panel will receive reports from the Management Team and will review and provide feedback/advice on these reports.</li> <li>The Advisory Panel will provide feedback/advice to the Ngioka Centre Management Team on the performance of the business against the planned outcomes outlined in the Ngioka Centre Business Plan, and benchmark those results against the broader industry and business sectors.</li> <li>The Advisory Panel will review and provide feedback/advice to the Ngioka Centre Management Team on monthly and YTD financial results via a series of key performance measures including: lead and lag indicators; bar charts; spreadsheets; and Council financial reports etc.</li> </ul>

**ITEM 15 - ATTACHMENT 2 APPENDIX TO 355(C) COMMITTEE TERMS OF REFERENCE.**

		<p><b>Annually</b></p> <ul style="list-style-type: none"> <li>▪ The Advisory Panel will review and provide feedback/advice to the Ngioka Centre Management Team on the Ngioka Centres Annual Report at the end of each financial year.</li> <li>▪ The Advisory Panel will review the Ngioka Centre's Asset Management Plan and provide feedback/advice to the Ngioka Centre Management Team on potential risks to maintenance/capital works delivery targets.</li> <li>▪ The Advisory Panel will provide feedback/advice to the Ngioka Management Team in evaluating the business through customer satisfaction results through annual on-line customer surveys.</li> </ul>
<b>Item 14</b>	Changes to Terms of Reference or Appendix Adopted by Council Meeting Date Minute No Resolution.	<p>Terms of Reference Adopted at Council Meeting Date 27 October 2015 Minute No 322</p> <p>Change Clause 4.2 of Terms of Reference to read: "Committees are formally appointed by the Councillors in office, therefore, three months after the General Election of Councillors, all Members will cease to hold office. Membership of the Advisory Panel is on a two year basis, following which members can re-apply for a further two year period. No member should serve more than two consecutive terms, but may re-apply for membership after a one year break."</p> <p>Change Clause 5.1 of the Terms of Reference to read: "There shall be no less than four (4) and no more than ten (10) members of the Advisory Panel."</p> <p>Change the first sentence in Clause 10.2 to read: "The Council Responsible Officer is responsible for:"</p>
<b>Item 15</b>	Additional clauses or amendments to Terms of Reference or Appendix To be listed in full – body of Terms of Reference not to be altered	<p>Clause 5.2 not applicable.</p> <p>Clauses 6.1, 6.3, 6.5, 6.6 and 6.7 not applicable.</p> <p>Clause 8.2 and 8.3 not applicable.</p> <p>Clause 8.4 b) and c) not applicable.</p> <p>Clauses 8.5, 8.7 and 8.8 not applicable.</p> <p>Clause 9 not applicable.</p>



**ITEM NO. 16****FILE NO: 16/461165  
RM8 REF NO: PSC2009-00965****DELEGATIONS: MAYOR AND GENERAL MANAGER****REPORT OF: TONY WICKHAM - GOVERNANCE MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Delegate the Functions in accordance with the Instrument of Delegation to the Mayor attached to this report as **(ATTACHMENT 2)**.
  - 2) Delegate the Functions in accordance with the Instrument of Delegation to the General Manager attached to this report as **(ATTACHMENT 3)**.
- 

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016  
COMMITTEE OF THE WHOLE RECOMMENDATION**

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

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016  
MOTION**

<b>365</b>	<b>Councillor Steve Tucker Councillor Chris Doohan</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Delegate the Functions in accordance with the Instrument of Delegation to the Mayor attached to this report as <b>(ATTACHMENT 2)</b>.</li><li>2) Delegate the Functions in accordance with the Instrument of Delegation to the General Manager attached to this report as <b>(ATTACHMENT 3)</b>.</li></ol>
------------	--

**BACKGROUND**

The purpose of this report is to update the Mayor and General Manager's delegations.

## MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

The Mayor's delegations have been updated to reflect the recent amendment to the *Local Government Act 1993* (the Act), when the amending legislation, the *Local Government (Governance and Planning) Act 2016* was passed by the NSW Parliament. Section 226 of the Act has been amended to provide clarity to the role of mayor and better inform the community. Section 226 of the Act was amended as shown at **(ATTACHMENT 1)**.

The General Manager's delegations have been updated to reflect third party delegations and other amendments in recognition of the *Local Government (Governance and Planning) Act 2016*.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
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		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to have appropriate delegations for the roles of Mayor and General Manager in accordance with the *Local Government Act 1993*. Without such delegations Council is at risk of breaching the law and individuals operating outside their limits of responsibility.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the Mayor and General Manager do not hold the appropriate delegations.	Low	Accept the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**MERGER PROPOSAL IMPLICATIONS**

There are no merger implications arising from this report as new delegation would be required for any new entity.

**CONSULTATION**

There is no requirement for consultation for this report as it is a legislative compliance process report.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Section 226 of the Local Government Act - Role of the Mayor.
- 2) Instrument of Delegation to the Mayor.
- 3) Instrument of Delegation to the General Manager.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 16 - ATTACHMENT 1      SECTION 226 OF THE LOCAL GOVERNMENT ACT -  
ROLE OF THE MAYOR.**

**ROLE OF THE MAYOR – LOCAL GOVERNMENT ACT 1993 AMENDMENT**

**Previous**

**Section 226 - Role of the mayor**

The role of the mayor is:

- to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council
- to exercise such other functions of the council as the council determines
- to preside at meetings of the council
- to carry out the civic and ceremonial functions of the mayoral office.

**New section**

**Section 226 - Role of mayor**

The role of the mayor is as follows:

- (a) to be the leader of the council and a leader in the local community,
- (b) to advance community cohesion and promote civic awareness,
- (c) to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,
- (d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,
- (e) to preside at meetings of the council,
- (f) to ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,
- (g) to ensure the timely development and adoption of the strategic plans, programs and policies of the council,
- (h) to promote the effective and consistent implementation of the strategic plans, programs and policies of the council,
- (i) to promote partnerships between the council and key stakeholders,
- (j) to advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council,
- (k) in conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,
- (l) to carry out the civic and ceremonial functions of the mayoral office,
- (m) to represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,
- (n) in consultation with the councillors, to lead performance appraisals of the general manager,
- (o) to exercise any other functions of the council that the council determines.

## PORT STEPHENS COUNCIL

### INSTRUMENT OF DELEGATION TO Mayor

On Tuesday, 13 December 2016 the Port Stephens Council ("Council") resolved that:

1. All previous delegations of Functions the subject of this Instrument be revoked.
2. Pursuant to section 377 of the LG Act to delegate to the Mayor authority to exercise and/or perform on behalf of the Council the Council's Functions identified in **Schedule 1** subject to any condition or limitation specified.
3. The Mayor be conferred authority to carry out the Policy Authorities listed in **Schedule 2** and undertake any administrative actions necessary to carry out those Policy Authorities.
4. These delegations and authorities are subject to, and are to be exercised in accordance with:
  - a. the requirements of the relevant Legislation;
  - b. any conditions or limitations set out in **Schedule 1** and **Schedule 3**; and
  - c. any resolution or policy, procedure or budget adopted from time to time by the Council.
5. These delegations and authorities are effective from the date of the Resolution of the Council and remain in force until amended or revoked by a resolution of the Council.
6. In this delegation:
  - o 'Functions' means powers, authorities, duties and functions and anything ancillary or related to the exercise or performance thereof.
  - o 'Legislation' includes an Act of the parliament of New South Wales or of the Commonwealth of Australia and a Regulation under an Act.
  - o 'LG Act' means the *Local Government Act 1993* as amended.

#### Schedule 1: Delegated Functions

ITEM 16 - ATTACHMENT 2 INSTRUMENT OF DELEGATION TO THE MAYOR.

Local Government Act 1993

Function Code	Function	Condition/ Limitation (if any)
LG Act 004	<p><b>Mayor Functions –</b></p> <p>Authority to exercise and/or perform the role of the mayor.</p> <p><b>Pursuant To –</b></p> <p>section 226</p>	<p>The following items are to be included on the Instrument of Delegation to the Mayor.</p> <ol style="list-style-type: none"> <li>1. Authority to approve or refuse public access applications in accordance with the Council's policy and Code of Meeting Practice.</li> <li>2. Authority in the cases of emergency, where it is not practical to wait for the next scheduled meeting of Council, to exercise such functions of the Council as necessary in the situation, except those functions listed under Section 377 of the Local Government Act (Act) and those regulatory functions under Chapter 7 of the Act. This delegation applies only to those functions properly held by the Council and does not extend to the statutory functions of the General Manager under Section 335 of the Act.</li> <li>3. To make community awards on the recommendation of the Port Stephens Community Awards Panel and after appropriate consultation with all Councillors.</li> <li>4. Authority to affix the corporate seal of Port Stephens Council to all documents necessary for Port Stephens Council to enter into or be a party to any property or</li> </ol>

**ITEM 16 - ATTACHMENT 2 INSTRUMENT OF DELEGATION TO THE MAYOR.**

		commercial transaction, provided that the transaction has already been authorised by specific resolution of Council.
--	--	--

**Schedule 2: Policy Authorities**

Code	Policy Authority
N/A	N/A

**Schedule 3: General Limitations**

Limitation (if any)
N/A

Pursuant to a Resolution of the Council at its meeting of Tuesday, 13 December 2016,

**Delegate Acknowledgement of Delegation**

I Bruce MacKenzie do hereby acknowledge that I have read and understood this Instrument of Delegation and that I will perform these delegations and authorities in accordance with this Instrument of Delegation and my position description.

\_\_\_\_\_  
Mayor of Port Stephens Council

Date:

© 2016 - Local Government Legal

ITEM 16 - ATTACHMENT 3 INSTRUMENT OF DELEGATION TO THE GENERAL MANAGER.

## PORT STEPHENS COUNCIL

### INSTRUMENT OF DELEGATION TO GENERAL MANAGER

On Tuesday, 13 December 2016 the Port Stephens Council ("Council") resolved that:

1. All previous delegations of Functions the subject of this Instrument be revoked.
2. The person who from time to time holds the position of General Manager of Council ("**General Manager**"), being at the date of this instrument Wayne Wallis, be delegated authority under:
  - 2.a Section 377 of the LG Act, to exercise and/or perform on behalf of Council the Council's Functions under all Acts and Regulations in force and as amended from time to time:
    - i. **Subject to** any condition or limitation on a Function specified in Schedule 1; and
    - ii. **Excluding** those Functions:
      1. that are expressly prohibited from delegation as listed under Section 377 of the LG Act;
      2. which are expressly required by legislation to be exercised by a resolution of the Council.
  - 2.b Section 68 of the NW Act, to exercise and/or perform on behalf of Council the Functions of the Council (other than the power of delegation) under the NW Act.
3. The General Manager be sub-delegated authority to exercise and/or perform on behalf of Council the Functions delegated to the Council under, and in accordance with, the instrument of delegation to the Council set out in **Schedule 2**, **excluding** those Functions which pursuant to the terms of the delegation to the Council may not be sub-delegated.
4. The General Manager be conferred authority to carry out the Policy Authorities listed in **Schedule 3** and undertake any administrative actions necessary to carry out those Policy Authorities.
5. The General Manager be delegated any Function which is taken to be conferred or imposed on the Council pursuant to section 381(1) of the LG Act.



**ITEM 16 - ATTACHMENT 3 INSTRUMENT OF DELEGATION TO THE GENERAL MANAGER.**

6. In the absence of the General Manager that a person appointed by resolution to act as General Manager assume all Functions, delegations, and sub-delegations of the General Manager for the period only of the absence of the General Manager unless otherwise resolved by the Council.
7. These delegations and authorities are subject to, and are to be exercised in accordance with:
- a.a the requirements of the relevant Legislation;
  - a.b any conditions or limitations set out in **Schedule 1**; and
  - a.c any resolution or policy, procedure or budget adopted from time to time by the Council.
8. These delegations and authorities are effective from the date of the Resolution of the Council and remain in force until amended or revoked by a resolution of the Council.
9. In this delegation:
- o **"Acts"** includes legislation enacted by the parliaments of New South Wales and of the Commonwealth of Australia;
  - o **"Functions"** means powers, authorities, duties and functions and anything ancillary or related to the exercise or performance thereof.
  - o **"Legislation"** includes an Act of the parliament of New South Wales or of the Commonwealth of Australia and a Regulation under an Act.
  - o **"LG Act"** means the *Local Government Act 1993* as amended.
  - o **"NW Act"** means *Noxious Weeds Act 1993* as amended.

**Schedule 1: Limitations**

Part A – Limitations applicable to specific statutory Function (if any)	
Legislation	Limitation (if any)
N/A	N/A

**ITEM 16 - ATTACHMENT 3 INSTRUMENT OF DELEGATION TO THE GENERAL MANAGER.**

<b>Part B – General Limitations</b>
N/A

**Schedule 2: Instruments of Delegation to Council**

<b>Delegator</b>	<b>Instrument Name</b>	<b>Date Of Instrument</b>
NSW Government - Planning & Infrastructure	Making of Local Environmental Plans - Authority to exercise the functions of the Minister for Planning and Infrastructure under Section 59 of the Environmental Planning and Assessment Act 1979 that are delegated to Port Stephens Council by instrument of delegation dated 14 October 2012, following receipt of a Written Authorisation to Exercise Delegation. In exercising the Minister's function under section 59, Council officers must comply with the Department's "A guideline for the preparation of local environmental plans" and "A guide to preparing planning proposals".	Sunday, 14 October 2012
Roads and Maritime Services (RMS)	Roads and Maritime Services delegations - Section 50 - The RMS delegates to councils constituted under the Local Government Act 1993 listed in Schedule 1 and 2 respectively ("delegates") the functions of RMS set out in Schedule 3 ("the functions") subject to the limitations set out in Schedule 4 and authorises delegates to sub-delegate the functions to the	Monday, 31 October 2011

**ITEM 16 - ATTACHMENT 3 INSTRUMENT OF DELEGATION TO THE GENERAL MANAGER.**

	persons in Schedule 5 ("sub-delegates") subject to the limitations in Schedule 4.	
--	---	--

**Schedule 3: Policy Authorities**

Code	Policy Authority
CP014 - Media Policy	Authority to issue media releases and to provide supporting factual information and comment in accordance with the Media Policy and associated Management Directive.
CP017 - Annual leave	Authority to approve annual leave applications for staff within his/her section.
CP018 - Sick/carer's leave	Authority to approve staff applications for sick or carer's leave within his/her section.
CP019 - Other leave	Authority to approve staff applications for other leave including but not limited to: long service leave, parental leave, bereavement/compassionate leave or career break, in accordance with any corporate processes.
CP020 - Overtime/leave in lieu	Authority to approve the allocation and payment of overtime, leave in lieu and payment of meal allowances and travelling time to staff within his/her section.
CP022 - Authorised scheduled training	Authority to approve attendance of staff within his/her Group to attend unscheduled training courses or seminars.
CP024 - Examination leave	Authority to approve examination and study leave for staff within his/her area of responsibility, in accordance with any corporate processes.
CP025 - Approve timesheets	Authority to approve timesheets for staff within his/her area of responsibility.
CP026 - Approve flexi time	Authority to approve flexi time leave for staff within his/her area of responsibility.

**ITEM 16 - ATTACHMENT 3 INSTRUMENT OF DELEGATION TO THE GENERAL MANAGER.**

CP028 - Rostered days off and rostering working times	Authority to approve variations to rostered day off patterns and rostered working times.
CP030 - Social Media Spokesperson	Authority to act as a social media spokesperson for the purpose of representing Council's position on matters of policy, and to provide information on Council's activities within their area or responsibility.
CP031 - Speak to the Media	Authority to act as a spokesperson for Council for the purposes of representing Council's position on matters of policy, and to provide factual background information on Council's administration and operations within their area of responsibility.
CP032 - Transfer of vote within a program maximum \$10,000	Authority to transfer a vote within a budget program up to a maximum of \$10,000.
CP033 - Write off bad debts up to \$5,000	Authority to write off bad debts to an amount of \$5,000 in any one instance.
CP034 - Appoint & replace Group Managers	Authority to appoint and replace Group Managers in accordance with the current structure and staff establishment numbers and after consultation with Council.
CP037 - Written and oral communications	Authority to carry out administrative actions, including written and oral communication, necessary to perform the duties and functions of the position.
CP038A - Authority to sign as landowner and/or applicant	Authority to sign as the land owner and/or applicant, applications for approval pursuant to Section 68 of the Local Government Act 1993, and for development consent pursuant to the Environmental Planning and Assessment Act 1979, in relation to land owned by Council.
CP041 - Authority to sign contracts for sale	Authority to sign contracts of sale in accordance with the Resolution of Council to buy or sell land.
CP043 - Authority to endorse cheques, bills and promissory notes	Authority to solely endorse cheques, bills and promissory notes payable to the Order of the Council in accordance with the duties and functions of the delegates position.
CP044 - Authority to enter into a	Authority to sign and enter into a contract on behalf of

**ITEM 16 - ATTACHMENT 3 INSTRUMENT OF DELEGATION TO THE GENERAL MANAGER.**

contract	Council.
CP065 - Authority to use purchasing card	Authority to use purchasing card to pay suppliers within your area of responsibility and within the approved budget.  Note: General Manager and Group Managers only.
CP069 - Authority to approve purchase orders	Authority to approve purchase orders within your area of responsibility and within the approved budget.  Note: General Manager and Group Managers only.
CP074 - Authority to appoint and dismiss staff	Authority to appoint and dismiss staff within your area of responsibility.

Pursuant to a Resolution of the Council at its meeting of Tuesday, 13 December 2016,

---

Bruce MacKenzie

Mayor

Date: Tuesday, 13 December 2016

Review date: Tuesday, 13 December 2016

**General Manager's acknowledgement of Delegations of Authority**

I Wayne Wallis, currently employed by the Council in the position of General Manager, do hereby acknowledge that I have read and understood this Instrument of Delegation and that I will perform these delegations and authorities in accordance with this Instrument of Delegation and my position description.

---

General Manager of Port Stephens Council

Date:

© 2016 - Local Government Legal

**ITEM NO. 17****FILE NO: 16/460847  
RM8 REF NO: PSC2007-3003****POLICY REVIEW: COUNCIL PROSECUTIONS POLICY****REPORT OF: TONY WICKHAM - GOVERNANCE MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Council Prosecutions policy shown at **(ATTACHMENT 1)**.
  - 2) Place the Council Prosecutions policy, as amended, on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.
  - 3) Revoke the Council Prosecutions policy dated 20 June 2000, Minute No. 319 **(ATTACHMENT 2)**, should no submissions be received.
- 

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016  
COMMITTEE OF THE WHOLE RECOMMENDATION**

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

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016  
MOTION**

<b>366</b>	<b>Councillor Steve Tucker Councillor Chris Doohan</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Endorse the revised Council Prosecutions policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the Council Prosecutions policy, as amended, on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.</li><li>3) Revoke the Council Prosecutions policy dated 20 June 2000, Minute No. 319 <b>(ATTACHMENT 2)</b>, should no submissions be received.</li></ol>
------------	---

**BACKGROUND**

The purpose of this report is to seek Council endorsement of the revised Council Prosecutions Policy ('policy').

The Council Prosecutions Policy was first adopted by Council in 2000, the policy is aimed at providing the basis for separation of powers in relation to Council enforcement of legislation. It is also aimed at ensuring effective use of Council resources in relation to legislative enforcement.

The policy recognises the balance between Council's responsibility to enforce legislation and its ongoing objective of enhancing community relations and awareness. It also acknowledges the importance of the separate roles of Council employees, Councillors and the Courts of Law in dealing with alleged offences.

The revised policy retains the same principles as the current policy.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
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		Within existing resources.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The policy recognises the balance between Council's responsibility to enforce legislation and its ongoing objective of enhancing community relations and awareness. Council has a responsibility to try to ensure that breaches of the law are dealt with appropriately and to meet community expectation that pursuit of Council's enforcement functions will be undertaken in a consistent and equitable manner.

**MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016**

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that lack of clear policy and principles will lead to an inconsistent and inequitable approach to Council's enforcement functions.	Medium	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The endorsement of clear policy and principles will help ensure a consistent and equitable approach, and effective use of Council resources in relation to Council's enforcement functions.

**MERGER PROPOSAL IMPLICATIONS**

There are no implications associated with the recommendations.

**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 adoption.

**Internal**

- The Executive team has been consulted to seek management endorsement.
- The General Manager has been consulted to seek approval prior to Council consideration.

**External**

Following Council resolution, the policy will be placed on public exhibition in the Port Stephens Examiner and on Council's website.

In accordance with local government legislation the revised Council Prosecutions policy will go on public exhibition for 28 days.

**OPTIONS**

- 1) Accept the recommendations.



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

#### **ATTACHMENTS**

- 1) Revised Council Prosecutions Policy.
- 2) Current Council Prosecutions Policy.

#### **COUNCILLORS ROOM**

Nil.

#### **TABLED DOCUMENTS**

Nil.

## Policy



**FILE NO:** PSC2007-3003  
**TITLE:** COUNCIL PROSECUTIONS  
**POLICY OWNER:** LEGAL SERVICES MANAGER

### **PURPOSE:**

As part of its role in the community, Council needs to ensure that breaches of law, which it has authority to pursue are dealt with in a consistent and equitable manner. It is also imperative that, in observance of the principles of good government, Council has in place a framework for the proper exercise of powers of enforcement vested in it.

The policy is aimed at providing the basis for separation of powers in relation to Council enforcement of legislation. It is also aimed at ensuring effective use of Council resources in relation to legislative enforcement.

### **CONTEXT/BACKGROUND:**

As part of its regulatory role, Council is responsible for enforcing provisions under a number of NSW Acts and Regulations.

The policy recognises the balance between Council's responsibility to enforce legislation and its ongoing objective of enhancing community relations and awareness. It also acknowledges the importance of the separate roles of Council employees, Councillors and the Courts of Law in dealing with alleged offences.

### **SCOPE:**

It is through the adoption and use of policies that Council can aim to deal with matters consistently, particularly where such matters have a direct effect on the rights, interests or legitimate expectations of individuals within the community.

This policy is designed to provide guidance as to when and under what circumstances Council will pursue legal action in relation to alleged offences for which it has authority to prosecute. The policy pertains only to summary and criminal offences for which Council is the prosecuting authority; it does not apply to civil law matters involving Council.

Council has a responsibility to try to ensure that breaches of the law are dealt with appropriately and to meet community expectation that pursuit of Council's enforcement functions will be undertaken in a consistent and equitable manner. A consistent approach also helps Council to deal with breaches of the law in a procedurally sound and cost effective way.

## Policy

**WARNING:** This is a controlled document. Handcopies 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)



Issue Date: xx/xx/xxxx

Printed:

Review Date: 30/11/2018

Page: 1 of 4

## Policy



### DEFINITIONS:

Councillors	Those elected to represent the ratepayers and residents within the Port Stephens local government area
Employees	Those employed by Port Stephens Council
NSW Acts and Regulations	Various Acts and Regulations passed by the New South Wales Parliament
Policy	A policy that is adopted by Port Stephens Council

### POLICY STATEMENT:

Council's mission is to foster a network of people that focuses on achieving best value services and facilities for our Community.

This envisages that Council will work with the community to achieve its goals. Council sees its role as principally being that of communicating with the community and making each citizen aware of their individual responsibilities in supporting and maintaining a sustainable community.

In its regulatory role, however, Council has a responsibility to use its enforcement functions when necessary. Legal action is one option available to Council when people purportedly break the law.

Council, when it becomes aware of alleged breaches of the law, will aim to ensure alleged offenders are treated equitably by having in place internal procedures and guidelines to address a number of issues including:

- 1) The intent of the alleged offender and the circumstances surrounding the alleged offence.
- 2) Options available to Council to help educate the community and raise awareness about legal obligations and responsibilities with the aim of deterring future similar offences. These options may include alternative dispute resolution procedures as well as sanctions and court action.
- 3) Criteria to help ensure reasonableness and procedural fairness.
- 4) The quality of evidence available to support Court action.
- 5) The legal, administrative and other costs associated with Court action.
- 6) The likelihood of success of any Court action.

## Policy

**WARNING:** This is a controlled document. Handcopies 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)



Issue Date: xx/xx/xxxx

Printed:

Review Date: 30/11/2018

Page: 2 of 4

## Policy



- 7) The potential outcomes of any Court action, including the quantum of any fines that Council might be paid as a result of Court action.
- 8) The deterrent effect of Court action.
- 9) Alternatives to Court action, including the issuing of infringement notices.
- 10) Whether the alleged offence has wider policy implications for Council.

An administrative review panel will be available if required to assess whether or not Council should pursue legal proceedings in relation to alleged offences. Internal review by the administrative review panel will be undertaken at the direction of the General Manager or the General Manager's delegate. Internal procedures will be used to help determine the stages where internal review can take place.

Requests by staff, Councillors or members of the public for internal review of a matter must be made by representations to the General Manager or the General Manager's delegate, who will then determine whether or not such review is to be undertaken. The administrative review panel will make its recommendations to the General Manager or the General Manager's delegate for determination as to whether or not to proceed.

The final decision to prosecute will be made by the General Manager or the General Manager's delegate. The General Manager may, if he or she deems it appropriate, refer particular cases to Council. Council will be kept informed of any prosecutions.

It should be noted that, where possible, Council will attempt to recover all legal costs incurred as a result of legal proceedings it pursues in relation to alleged offences.

### **POLICY RESPONSIBILITIES:**

- 1) Legal Services Manager is responsible for the implementation, complying with, monitoring, evaluating, reviewing and providing advice on this policy.
- 2) General Manager is responsible for the complying with and monitoring this policy.
- 3) Group Managers, Section Managers, Co-ordinator Environmental Health and compliance employees are responsible for complying with this policy

### **RELATED DOCUMENTS:**

Council has authority to prosecute under a number of NSW Acts and Regulations, including but not restricted to:

1. *Local Government Act 1993 (NSW)*
2. *Environmental Planning and Assessment Act 1979 (NSW)*
3. *Protection of the Environment Operations Act 1997 (NSW)*

## Policy

**WARNING:** This is a controlled document. Handcopies 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)



Issue Date: xx/xx/xxxx

Printed:

Review Date: 30/11/2018

Page: 3 of 4

## Policy



4. Roads Act 1993 (NSW)
5. Companion Animals Act 1998 (NSW)
6. Noxious Weeds Act 1993 (NSW)
7. Public Health Act 2010 (NSW)
8. Swimming Pools Act 1992 (NSW)
9. Rural Fires Act 1997 (NSW)
10. Road Transport Act 2013 (NSW)
11. Food Act 2003 (NSW)
12. Impounding Act 1993 (NSW)

In addition to the above, the following also relate to this policy.

1. Government Information (Public Access) Act 2009
2. Port Stephens Council Code of Conduct.

### 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>	PSC2013-05562	<b>RM8 record No</b>	
<b>Audience</b>	Management and staff		
<b>Process owner</b>	Manager Legal Services		
<b>Author</b>	Manager Legal Services		
<b>Review timeframe</b>	Two years	<b>Next review date</b>	30 November 2018
<b>Adoption date</b>	20 June 2000		

### VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	20/06/2000	Legal Officer	Adopted by Council.	319
2.0		Legal Services Manager	Minor administrative review and transfer to new corporate policy template.	

## Policy

**WARNING:** 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)



Issue Date: xx/xx/xxxx

Printed:

Review Date: 30/11/2018

Page: 4 of 4

*Port Stephens*  
**C·O·U·N·C·I·L**  
**POLICY**

Adopted:20/6/2000  
Minute No:319  
Amended:  
Minute No:

**FILE NO:     1395-001**

**TITLE:        COUNCIL PROSECUTIONS**

**BACKGROUND**

As part of its regulatory role, Council is responsible for enforcing provisions under a number of NSW Acts and Regulations.

This policy is designed to provide guidance as to when and under what circumstances Council will pursue legal action in relation to alleged offences for which it has authority to prosecute. The policy pertains only to summary and criminal offences for which Council is the prosecuting authority; it does not apply to civil law matters involving Council.

The policy recognises the balance between Council's responsibility to enforce legislation and its ongoing objective of enhancing community relations and awareness. It also acknowledges the importance of the separate roles of Council employees, Councillors and the Courts of Law in dealing with alleged offences.

**OBJECTIVE**

As part of its role in the community, Council needs to ensure that breaches of law, which it has authority to pursue, are dealt with in a consistent and equitable manner. It is also imperative that, in observance of the principles of good government, Council has in place a framework for the proper exercise of powers of enforcement vested in it.

The policy is aimed at providing the basis for separation of powers in relation to Council actions dealing with the enforcement of legislation. It is also aimed at ensuring effective use of Council resources in relation to legislative enforcement.

**PRINCIPLES**

It is through the adoption and use of policies that Council can aim to deal with matters consistently, particularly where such matters have a direct effect on the rights, interests or legitimate expectations of individuals within the community.

Council has a responsibility to try to ensure that breaches of the law are dealt with appropriately and to meet community expectation that pursuit of Council's enforcement

**ITEM 17 - ATTACHMENT 2 CURRENT COUNCIL PROSECUTIONS POLICY.**

functions will be undertaken in a consistent and equitable manner. A consistent approach also helps Council to deal with breaches of the law in a procedurally sound and cost effective way.

**POLICY STATEMENT**

Council's mission is to foster a network of people that focuses on achieving best value services and facilities for our Community.

This envisages that Council will work with the community to achieve its goals. Council sees its role as principally being that of communicating with the community and making each citizen aware of their individual responsibilities in supporting and maintaining a sustainable community.

In its regulatory role, however, Council has a responsibility to use its enforcement functions when necessary. Legal action is one option available to Council when people purportedly break the law.

Council, when it becomes aware of alleged breaches of the law, will aim to ensure alleged offenders are treated equitably by having in place internal procedures and guidelines to address a number of issues including:

- 1) The intent of the alleged offender and the circumstances surrounding the alleged offence.
- 2) Options available to Council to help educate the community and raise awareness about legal obligations and responsibilities with the aim of deterring future similar offences. These options may include alternative dispute resolution procedures as well as sanctions and court action.
- 3) Criteria to help ensure reasonableness and procedural fairness.
- 4) The quality of evidence available to support Court action.
- 5) The legal, administrative and other costs associated with Court action.
- 6) The likelihood of success of any Court action.
- 7) The potential outcomes of any Court action, including the quantum of any fines that Council might receive as a result of Court action.
- 8) The deterrent effect of Court action.
- 9) Alternatives to Court action, including the issuing of infringement notices.
- 10) Whether the alleged offence has wider policy implications for Council.

An administrative review panel will be available if required to assess whether or not Council should pursue legal proceedings in relation to alleged offences. Internal review by the administrative review panel will be undertaken at the direction of the General Manager or the General Manager's delegate. Internal procedures will be used to help determine the stages where internal review can take place.

Requests by staff, Councillors or members of the public for internal review of a matter must be made by representations to the General Manager or the General Manager's delegate,

**ITEM 17 - ATTACHMENT 2 CURRENT COUNCIL PROSECUTIONS POLICY.**

who will then determine whether or not such review is to be undertaken. The administrative review panel will make its recommendations to the General Manager or the General Manager's delegate for determination as to whether or not to proceed.

The final decision to prosecute will be made by the General Manager or the General Manager's delegate. The General Manager may, if he or she deems it appropriate, refer particular cases to Council. Council will be kept informed of any prosecutions by way of monthly information papers.

It should be noted that, where possible, Council will attempt to recover all legal costs incurred as a result of legal proceedings it pursues in relation to alleged offences.

**RELATED POLICIES**

N/A

**REVIEW DATE**

This policy will be reviewed 12 months after the date on which Council adopted it.

**RELEVANT LEGISLATIVE PROVISIONS**

Council has authority to prosecute under a number of NSW Acts and Regulations, including but not restricted to:

*Local Government Act 1993 (NSW)*  
*Environmental Planning and Assessment Act 1979 (NSW)*  
*Protection of the Environment Operations Act 1998 (NSW)*  
*Roads Act 1993 (NSW)*  
*Companion Animals Act 1998 (NSW)*  
*Noxious Weeds Act 1993 (NSW)*  
*Public Health Act 1991 (NSW)*  
*Swimming Pools Act 1992 (NSW)*  
*Rural Fires Act 1997 (NSW)*  
*Traffic Act 1909 (NSW)*  
*Food Act 1989 (NSW)*  
*Impounding Act 1993 (NSW)*

**IMPLEMENTATION RESPONSIBILITY**

The Corporate Governance Unit is responsible for the implementation of this policy in conjunction with other Departments as appropriate.



**ITEM NO. 18****FILE NO: 16/461658  
RM8 REF NO: PSC2008-9962****POLICY REVIEW: ALTERNATIVE DISPUTE RESOLUTION POLICY****REPORT OF: TONY WICKHAM - GOVERNANCE MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Alternative Dispute Resolution Policy shown at **(ATTACHMENT 1)**.
  - 2) Place the Alternative Dispute Resolution policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.
  - 3) Revoke the current Alternative Dispute Resolution policy dated 28 April 2009, Minute No. 117 **(ATTACHMENT 2)**, should no submissions be received.
- 

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016  
COMMITTEE OF THE WHOLE RECOMMENDATION**

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

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016  
MOTION**

<b>367</b>	<b>Councillor Steve Tucker Councillor Chris Doohan</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Endorse the revised Alternative Dispute Resolution Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the Alternative Dispute Resolution policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.</li><li>3) Revoke the current Alternative Dispute Resolution policy dated 28 April 2009, Minute No. 117 <b>(ATTACHMENT 2)</b>, should no submissions be received.</li></ol>
------------	---

**BACKGROUND**

The purpose of this report is to seek Council endorsement of the revised Alternative Dispute Resolution Policy (the 'policy').

The policy was first adopted by Council in 2009. The purpose of the policy is to provide a process to help resolve disputes that relate to Council in a clear, consistent and fair manner. It relates to planning, development, environment, enforcement, land management, customer and business issues.

The revised policy retains the same principles as the original policy, although reference to its applicability to industrial relations disputes has been removed given this is no longer considered appropriate.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
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		Within existing resources.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

Due to its business, community and regulatory roles, Council can find itself dealing with conflict in many areas including the building, development assessment and planning areas, neighbourhood disputes over trees noise, odours and animals. Many of these disputes may be dealt with effectively by staff as they arise, however at times some disputes may escalate into significant issues which consume considerable time, energy and community money to address.

Mediation, negotiation, facilitation and other forms of Alternative Dispute Resolution can be used when appropriate to assist resolve difficult disputes or as an alternative to the expensive and time-consuming option of litigation.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that lack of clear policy and principles in relation to alternative dispute resolution will lead to time-consuming and costly litigation, and more conflict in dispute handling processes.	Medium	Accept the recommendations.	Yes

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The endorsement of clear policy and principles will help ensure a consistent approach and effective use of Council resources in relation to enforcement and dispute handling.

The Alternative Dispute Resolution process endeavours to:

- establish a clear, consistent and fair process to help address disputes;
- provide an alternative dispute handling process that is less form and more cooperative than litigation;
- save time and costs;
- reduce conflict in the dispute handling process.

### **MERGER PROPOSAL IMPLICATIONS**

There are no implications associated with the recommendations.

### **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 adoption.

#### Internal

- The Executive team has been consulted to seek management endorsement.

## **MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016**

- The General Manager has been consulted to seek approval prior to Council consideration.

### External

Following Council resolution, the policy will be placed on public exhibition in the Port Stephens Examiner and on Council's website.

In accordance with local government legislation the revised Alternative Dispute Resolution policy will go on public exhibition for 28 days.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Revised Alternative Dispute Resolution Policy.
- 2) Current Alternative Dispute Resolution Policy.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

**ITEM 18 - ATTACHMENT 1 REVISED ALTERNATIVE DISPUTE RESOLUTION POLICY.****Policy****FILE NO: PSC2008-9962****TITLE: ALTERNATIVE DISPUTE RESOLUTION POLICY****POLICY OWNER: LEGAL SERVICES MANAGER****PURPOSE:**

The purpose of this policy is to provide a process to help resolve disputes that relate to Port Stephens Council. The policy framework sets out a clear, consistent and fair means to address disputes in an effective and cooperative manner. The Policy also provides an alternative dispute handling process that is less formal and less costly than litigation.

The policy relates to planning, development, environment, enforcement issues, land management, customer and business disputes.

**CONTEXT/BACKGROUND:**

Due to its business, community and regulatory roles, Council can find itself dealing with conflict in many areas including the building, development assessment and planning areas, neighbourhood disputes over trees noise, odours and animals. Many of these disputes may be dealt with effectively by staff as they arise, however at times some disputes may escalate into significant issues which consume considerable time, energy and community money to address.

Mediation, negotiation, facilitation and other forms of Alternative Dispute Resolution can be used when appropriate to assist resolve difficult disputes or as an alternative to the expensive and time-consuming option of litigation.

Not all difficult issues will warrant the use of alternative dispute resolution processes involving independent negotiators or mediators. Many disputes can be dealt with and resolved informally by staff without the need to resort to other means. This policy is only meant to cover the more difficult disputes that Council encounters where it is considered that an alternative dispute handling process is the best option.

The NSW Ombudsman encourages NSW councils to use Alternative Dispute Resolution as an alternative to litigation and as a means to help resolve disputes between members of the community involving councils.

In accordance with NSW Ombudsman's Guidelines for Local Government, this policy must not fetter or limit the range of discretion conferred by a statute on Council staff involved in regulatory or enforcement matters. In exercising that discretion, officers must not act under the dictation or at the behest of any third person or body.

**Policy**

**WARNING:** This is a controlled document. Handcopies 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)



ITEM 18 - ATTACHMENT 1 REVISED ALTERNATIVE DISPUTE RESOLUTION POLICY.

Policy



This policy is meant only to provide guidance in the exercise of those powers and at times, depending on the issues surrounding the particular dispute, mediation or negotiation may not be the best option.

**SCOPE:**

It is through the adoption and use of policies that Council can aim to deal with matters consistently, particularly where such matters have a direct effect on the rights, interests or legitimate expectations of individuals within the community.

Council has a responsibility to try to ensure that breaches of the law are dealt with appropriately and to meet community expectation that pursuit of Council's enforcement functions will be undertaken in a consistent and equitable manner. A consistent approach also helps Council to deal with breaches of the law in a procedurally sound and cost effective way.

**DEFINITIONS:**

Alternative Dispute Resolution (ADR)	The term "alternative dispute resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. ADR systems may be generally categorised as negotiation, conciliation/mediation, or arbitration systems.
Arbitration	Arbitration is a formal dispute resolution process governed by the <i>Commercial Arbitration Act 1984</i> (NSW) (or the equivalent in other states) in which two or more parties refer their dispute to an independent third person (the arbitrator) for determination. Providing that the arbitration is conducted according to the principles of natural justice its procedures may be varied by the parties to suit the size and complexity of their dispute.
Development Application (DA)	A development application is a formal request for permission to carry out development, and includes plans and drawings, a statement of environmental effects and a completed application form.
Facilitation	The term facilitation is broadly used to describe any activity which makes tasks for others easy. For example: Facilitation is used in business and organisational settings to ensure the designing and running of successful meetings or negotiations. A person who takes on such a role is called a facilitator.
Mediation	A process in which parties to a dispute with the assistance of a

Policy

WARNING: This is a controlled document. Handcopies 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)



**ITEM 18 - ATTACHMENT 1 REVISED ALTERNATIVE DISPUTE RESOLUTION POLICY.****Policy**

neutral third party ("the Mediator") identify disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or other determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

**Mediation Agreement** A mediation agreement is a written agreement setting out the terms of settlement reached between the parties to the mediation process. The agreement is confidential except where the terms of the agreement expressly permit part or all of its contents to be divulged to other parties. The agreement must be signed by all parties to the agreement.

**Negotiation** At its most basic, negotiation is an informal bargaining process. It takes place directly between the people in dispute, but can be assisted by others e.g. lawyers and advocates. The people involved in the dispute communicate directly to try to reach an agreement. Communication may be written or spoken and may take some time.

**Neutral Evaluation** This is a process provided by the NSW Land and Environment Court as a form of mediation in some disputes.

**Section 34 Conferences** These are conducted by the Land and Environment Court (NSW). These conferences are more formal than other Court managed ADR processes and are presided over by a single Commissioner.

**POLICY STATEMENT:**

The Alternative Dispute Resolution process endeavours to:

- 1) Establish a clear, consistent and fair process to help address disputes.
- 2) Provide an alternative dispute handling process that is less formal and more cooperative than litigation.
- 3) Save time and costs.
- 4) To reduce conflict in the dispute handling process.

The Alternative Dispute Resolution policy will apply to development, environment and land management disputes and other disputes concerning animals, trees, noise effluent, odours and other forms of pollution. It also applies to business disputes. The following principles relate to the way ADR is applied by Council:

**Policy**

WARNING: This is a controlled document. Handcopies 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)



**ITEM 18 - ATTACHMENT 1 REVISED ALTERNATIVE DISPUTE RESOLUTION POLICY.**

**Policy**



- 1) ADR is a voluntary process.
- 2) To preserve the legitimacy of the process, all parties to ADR are given the opportunity to be represented and have control over the outcomes.
- 3) Where appropriate, ADR is to be initiated as soon as possible to avoid issues escalating.
- 4) Council will ensure confidentiality and respect privacy requirements when dealing with disputes.
- 5) Council will ensure procedural fairness in ADR matters.
- 6) Where mediation is used as one of the ADR options, the mediator is to be suitably qualified, independent and impartial to the dispute at hand.
- 7) Any mediated agreement will be documented and signed by all parties.
- 8) Costs associated with ADR are generally shared between all parties to the dispute unless other arrangements are agreed to by Council.

**Awareness and Cooperation**

Council will encourage parties to a dispute to resolve issues as they arise or come to notice before they escalate into significant matters.

Council will take a proactive approach to minimise the occurrence of disputes.

**Approach**

Council will not enter into ADR:

1. Where there are issues that relate to the content of Council Policies (as opposed to the application of the Policy).
2. Where a dispute may create a planning precedent.
3. Where the parties are not willing to cooperate.
4. Where Council does not believe that ADR is the best option, based on the particular circumstances and broader public interest considerations.

**POLICY RESPONSIBILITIES:**

- 1) Manager Legal Services is responsible for the implementation of this policy in conjunction with other Council officers as appropriate.

**Policy**

WARNING: 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)





**ITEM 18 - ATTACHMENT 1 REVISED ALTERNATIVE DISPUTE RESOLUTION POLICY.**

## Policy

**RELATED DOCUMENTS:**

1. Compliance Policy
2. Complaint Handling Policy
3. Managing Unreasonable Complainant Conduct
4. Council Prosecutions Policy
5. Port Stephens Council Code of Conduct

**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 <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a>			
<b>RM8 container No</b>		<b>RM8 record No</b>	
<b>Audience</b>			
<b>Process owner</b>	Manager Legal Services		
<b>Author</b>	Manager Legal Services		
<b>Review timeframe</b>	Two years	<b>Next review date</b>	
<b>Adoption date</b>			

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1.0	28/04/2009	Environmental Services Manager	Adoption by Council	117
2.0		Manager Legal Services	Revision of Policy and incorporation into new styling format	

## Policy

**WARNING:** 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)



**ITEM 18 - ATTACHMENT 2      CURRENT ALTERNATIVE DISPUTE RESOLUTION  
POLICY.**

*Port Stephens*  
C·O·U·N·C·I·L

**POLICY**

Adopted: 28/04/2009  
Minute No: 117  
Amended:  
Minute No:

**FILE NO:      PSC2008-9962**

**TITLE: ALTERNATIVE DISPUTE RESOLUTION POLICY**

**AUTHOR:      MANAGER ENVIRONMENTAL SERVICES**

**BACKGROUND**

Due to its business, community and regulatory roles, Council can find itself dealing with conflict in many areas including the building, development assessment and planning areas, neighbourhood disputes over trees noise, odours and animals and industrial relations disputes. Many of these disputes may be dealt with effectively by staff as they arise, however at times some disputes may escalate into significant issues which consume considerable time, energy and community money to address.

Mediation, negotiation, facilitation and other forms of Alternative Dispute Resolution can be used when appropriate to assist resolve difficult disputes or as an alternative to the expensive and time- consuming option of litigation.

Not all difficult issues will warrant the use of alternative dispute resolution processes involving independent negotiators or mediators. Many disputes can be dealt with and resolved informally by staff without the need to resort to other means. This Policy is only meant to cover the more difficult disputes that Council encounters where it is considered that an alternative dispute handling process is the best alternative.

The NSW Ombudsman encourages NSW councils to use Alternative Dispute Resolution as an alternative to litigation and as a means to help resolve disputes between members of the community involving councils.

In accordance with NSW Ombudsman's Guidelines for Local Government, this Policy must not fetter or limit the range of discretion conferred by a statute on Council staff involved in regulatory or enforcement matters. In exercising that discretion, officers must not act under the dictation or at the behest of any third person or body.

This Policy is meant only to provide guidance in the exercise of those powers and at times, depending on the issues surrounding the particular dispute, mediation or negotiation may not be the best option.

**ITEM 18 - ATTACHMENT 2 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.****PURPOSE**

The purpose of this Policy is to provide a process to help resolve disputes that relate to Port Stephens Council. The Policy framework sets out a clear, consistent and fair means to address disputes in an effective and cooperative manner. The Policy also provides an alternative dispute handling process that is less formal and less costly than litigation.

The Policy relates to planning, development, environment, enforcement issues, land management, customer, business, and staff and industrial relations disputes.

**DEFINITIONS****Alternative Dispute Resolution - ADR**

The term "alternative dispute resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. ADR systems may be generally categorised as negotiation, conciliation/mediation, or arbitration systems.

**Arbitration**

Arbitration is a formal dispute resolution process governed by the Commercial Arbitration Act 1984 NSW (or the equivalent in other states) in which two or more parties refer their dispute to an independent third person (the arbitrator) for determination. Providing that the arbitration is conducted according to the principles of natural justice its procedures may be varied by the parties to suit the size and complexity of their dispute.

In an industrial relations context, Arbitration is a formal dispute resolution process governed by the Industrial Relations Act 1996 (NSW) as amended.

**Development Application (DA)**

A development application is a formal request for permission to carry out development, and includes plans and drawings, a statement of environmental effects and a completed application form.

**Facilitation**

The term facilitation is broadly used to describe any activity which makes tasks for others easy. For example:  
Facilitation is used in business and organisational settings to ensure the designing and running of successful meetings or negotiations. A person who takes on such a role is called a facilitator.

**Mediation**

A process in which parties to a dispute with the assistance of a neutral third party ("the Mediator") identify disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or other determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

**ITEM 18 - ATTACHMENT 2 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.****Mediation Agreement**

A mediation agreement is a written agreement setting out the terms of settlement reached between the parties to the mediation process. The agreement is confidential except where the terms of the agreement expressly permit part or all of its contents to be divulged to other parties. The agreement must be signed by all parties to the agreement.

**Negotiation**

At its most basic, negotiation is an informal bargaining process. It takes place directly between the people in dispute, but can be assisted by others e.g. lawyers and advocates. The people involved in the dispute communicate directly to try to reach an agreement. Communication may be written or spoken and may take some time.

**Neutral Evaluation**

This is a process provided by the NSW Land and Environment Court. There is no legislative basis for this process, however the Land and Environment Court provides this as a form of mediation in some disputes.

**Section 34 Conferences**

These are conducted by the Land and Environment Court (NSW). These conferences are more formal than other Court managed ADR processes and are presided over by a single Commissioner.

**POLICY OBJECTIVES**

- To establish a clear, consistent and fair process to help address disputes.
- To provide an alternative dispute handling process that is less formal and more cooperative than litigation.
- To save time and costs.
- To reduce conflict in the dispute handling process.

**POLICY PRINCIPLES**

The Alternative Dispute Resolution (ADR) Policy will apply to development, environment and land management disputes and other disputes concerning animals, trees, noise effluent, odours and other forms of pollution. It also applies to business, staff and industrial relations disputes. The following principles relate to the way ADR is applied by Council:

**ITEM 18 - ATTACHMENT 2      CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

- 1) ADR is a voluntary process.
- 2) To preserve the legitimacy of the process, all parties to ADR are given the opportunity to be represented and have control over the outcomes.
- 3) Where appropriate, ADR is to be initiated as soon as possible to avoid issues escalating.
- 4) Council will ensure confidentiality and respect privacy requirements when dealing with disputes.
- 5) Council will ensure procedural fairness in ADR matters.
- 6) Where mediation is used as one of the ADR options, the mediator is to be suitably qualified, independent and impartial to the dispute at hand.
- 7) Any mediated agreement will be documented and signed by all parties.
- 8) Costs associated with ADR are generally shared between all parties to the dispute unless other arrangements are agreed to by Council.

**POLICY STATEMENT**

**Awareness and Cooperation**

Council will encourage parties to a dispute to resolve issues as they arise or come to notice before they escalate into significant matters.

Council will take a proactive approach to minimise the occurrence of disputes.

Council will train appropriate staff in ADR approaches including negotiation.

**Approach**

Council will not enter into ADR:

- Where there are issues that relate to the content of Council Policies (as opposed to the application of the Policy).
- Where a dispute may create a planning precedent.
- Where the parties are not willing to cooperate.
- Where Council does not believe that ADR is the best option, based on the particular circumstances and broader public interest considerations.

**ITEM 18 - ATTACHMENT 2      CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

**APPENDIX ONE** provides a summary of the types of disputes that are suitable for ADR.

**APPENDIX TWO** outlines the principles of ADR.

**RELATED POLICIES**

- Compliance Policy
- Complaints/ Requests Handling Policy
- Council Prosecutions Policy
- Grievance and Disputes Procedures contained in Clause 24 of the Port Stephens Council Enterprise Agreement 2008.

**RELEVANT LEGISLATIVE PROVISIONS**

Not Applicable

**IMPLEMENTATION RESPONSIBILITY**

All staff and Councillors involved in Alternative Dispute Resolution.

**REVIEW DATE**

December 2010.

**ITEM 18 - ATTACHMENT 2 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

**APPENDIX ONE**

**When is ADR Suitable**

**KEY**

ADR = Alternative Dispute Resolution  
CJC = Community Justice Centre  
M = Mediation  
NA = Not Applicable  
NEG = Negotiation

<b>Issue</b>	<b>ADR Yes/ No</b>	<b>Type of ADR</b>	<b>Comments</b>
<b>Neighbourhood Disputes that are not Council's Responsibility.</b>	Yes- however in all likelihood these will be referred to another agency.	NEG & M	Neighbours to be referred to CJC.  Refer also to Council's Compliance Policy regarding issues that are not Council's Responsibility.
<b>DA related Disputes.</b>	Yes	NEG & M	It is best if potential issues can be resolved early through negotiation and facilitation.
<b>DA dispute raises matters, which may create a planning precedent.</b>	No	NA	
<b>Minor compliance Issues where Council is the regulatory authority.</b>	Yes- however if it is deemed by the delegated officer to be an Infringement issue (or an Infringement Notice has been issued), there is another process of appeal that should be followed.	NEG or M	Refer to Council's Compliance Policy.  Depending on the dispute, it may be advantageous to utilise the CJC.

**ITEM 18 - ATTACHMENT 2 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

<b>Issue</b>	<b>ADR Yes/ No</b>	<b>Type of ADR</b>	<b>Comments</b>
<b>Moderate to critical compliance issues.</b>	Yes -however if it is deemed by the delegated officer to be an Infringement issue (or an Infringement Notice has been issued), there is another process of appeal that should be followed.	NEG or M	<p>Mediation can be a suitable alternative to legal action in compliance matters at times.</p> <p>A critical compliance matter can include significant human health, public safety, pollution or environmental harm issues.</p> <p>A moderate compliance matter can include moderate, actual or potential public health, safety or environmental issues.</p> <p>Refer to Council's Compliance Policy for a full definition of compliance issues and preferred responses to these matters.</p>
<b>Illegal acts where the matter is deemed critical and is a criminal offence.</b>	Yes in some instances.	NA	<p>In some cases the issue may be so serious and have such broad impacts that it is best to take some form of regulatory action.</p> <p>Refer to Compliance Policy.</p> <p>A risk management approach is to be taken with these issues when deciding on the best approach.</p>
<b>Contractual Disputes between Council and a third party.</b>	Yes	NEG or M	External Mediator to be selected in accordance with the contract conditions where appropriate.
<b>Industrial Relations issues.</b>	Yes in some cases.	NEG or M	Refer to Council's Grievance & Disputes Procedures contained in the Port Stephens Council Enterprise Agreement 2008.
<b>Industrial Relations disputes that have escalated into a legal</b>	No  See below- Legal Disputes.	See below- Legal Disputes	Refer to Council's Grievance & Disputes Procedures contained in the Port Stephens Council Enterprise Agreement 2008.



**ITEM 18 - ATTACHMENT 2 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

<b>Issue</b>	<b>ADR Yes/ No</b>	<b>Type of ADR</b>	<b>Comments</b>
<b>dispute.</b>			
<b>Staff Vs Staff disputes</b>	Yes but only in accordance with Council's Grievance & Disputes Procedures contained in the Port Stephens Council Enterprise Agreement 2008.	NEG, M	Refer to Council's Grievance & Disputes Procedures contained in the Port Stephens Council Enterprise Agreement 2008.
<b>Customer Vs staff disputes</b>	Yes in some cases.	NEG or M	In some cases, where both parties are agreeable, mediation may be the preferred approach.
<b>Legal Disputes</b>	Yes if the Court is in favour of this & the laws /circumstances allow this to happen.	NEG or M	<p>Court may refer parties to mediation or may insist on some other form of ADR.</p> <p>The Land and Environment Court provide Mediation and Neutral Evaluation Services for matters before it as well as Section 34 – Conciliation Conferences (see definitions)</p>

**ITEM 18 - ATTACHMENT 2      CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

**APPENDIX TWO**

**Principles of Alternative Dispute Resolution**

**A) Mediation**

Mediation is one of the most commonly known forms of formal ADR. It is used to help resolve a wide range of disputes by different agencies.

**Initiation of Mediation**

Mediation may be initiated by the General Manager, a Group Manager/ Section Manager or by a resolution of Council. Mediation may be considered in the following situations:

- At the request of either party in a dispute where both parties are willing.
- After consideration of submissions following a public exhibition period for a planning instrument or development application.
- As an alternative to regulatory action in accordance with Council's Compliance Policy.
- As an alternative to legal action in other disputes outlined in this Policy.

Before mediation is initiated, the following issues need to be considered:

Is the dispute within Council's area of responsibility?

Is it best for another agency to deal with the dispute?

Is mediation the best way to deal with the dispute taking into consideration broader public interest issues and the nature of the dispute?

Are all parties willing to enter into the mediation process?

**Selection of the Mediator**

The mediator must be a neutral and impartial person who does not impose a solution on the parties, nor does he or she make a decision for, or give any legal advice to, the parties.

- The mediator must be independent and must be seen to be independent.
- The mediator must be impartial.

**ITEM 18 - ATTACHMENT 2 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

- The mediator must be adequately trained and must have the appropriate experience.
- The mediator must be neutral and have no vested interest in the outcome of the dispute.

It will not always be possible to use internal mediators to deal with Council related disputes as they may not be considered independent or neutral. There will be exceptions to this rule however.

In some cases it may be necessary to seek the assistance of an external mediator such as the Community Justice Centre for issues that fall within its jurisdiction. In other cases it may be necessary for Council to engage an external mediator from its panel of approved mediators.

**Notification of Mediation**

Council will inform the parties of the name of the appointed mediator, establish suitable dates and times and where appropriate, provide administrative support to the mediator.

**Provision of Information**

Council will provide the mediator with all relevant information. In the case of a development application, this will include plans and any other information provided by the developer in support of the application. The mediator will be briefed by the relevant Council staff prior to the mediation.

Prior to mediation, if time permits parties will be asked to provide a statement of their issues detailing their concerns. This will be given to all parties to the mediation prior to the meeting.

**Representation and Attendance**

Where a dispute involves a group of individuals with common interests or an incorporated organisation, the group/ organisation may be requested to formally nominate a representative to undertake mediation on their behalf.

**The Process**

The process used for mediation will be similar in most cases. However in complex matters such as those that involve many parties, Council will work with the Mediator to establish an appropriate process, in line with accepted industry standards for mediation.

Generally the mediation process will consist of a number of meetings, including:

- 1) The initial meeting between Council staff and the mediator where the mediator will be briefed on the issues and provided with all relevant information.
- 2) A meeting between the mediator and the parties.

**ITEM 18 - ATTACHMENT 2 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

- 3) The mediation meeting (which usually occurs immediately after the above meeting).

It is the responsibility of the mediator to explain the mediation process to all parties.

**Outcomes of the Mediation Process**

Mediation may result in three outcomes:

- 1) Full agreement and settlement.
- 2) Partial settlement.
- 3) No settlement.

Where there has been partial or full settlement of the dispute, the parties will enter into a Mediation Agreement. The Mediation Agreement is a written agreement setting out the terms of settlement reached between the parties to the mediation process. The agreement is confidential except where the terms of the agreement expressly permit part or all of its contents to be divulged to other parties. The agreement must be signed by all parties to the agreement.

**Confidentiality**

Information disclosed in the course of mediation is confidential and must not be divulged by any of the parties or the mediator except where the terms of the agreement expressly allow this.

**Termination of Mediation**

Mediation may be terminated if:

- 1) The parties reach settlement and sign a Mediation Agreement.
- 2) The Mediator declares that further efforts at mediation are unlikely to be successful.
- 3) The parties can't reach settlement.
- 4) The General Manager terminates the mediation process for any of the above reasons or due a breach of time limits on the mediation process.

**Time Limit for Mediation Process**

The General Manager reserves the right to impose a time limit on mediation procedures or terminate the process.

**ITEM 18 - ATTACHMENT 2 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.****B) Negotiation**

Negotiation is fundamentally an informal bargaining process. It takes place directly between the people in dispute, but can at times be assisted by others e.g. lawyers and advocates. The parties involved communicate directly to try to reach an agreement.

Negotiation is also the most basic form of Alternative Dispute Resolution (ADR). It is not as formal as other forms of ADR such as mediation however it is the building block from which all other ADR is built upon.

**Types of approaches**

There are two basic approaches to negotiation, including distributive bargaining and interest based bargaining.

**1) Distributive Bargaining**

An example of this type of negotiation is in labour bargaining with management over wages or salaries or negotiating over the price of goods or services. In this type of bargaining there is little room to move except for the price that is agreed between two parties.

**2) Interest Based Bargaining**

This process is more open and flexible than distributive bargaining and involves problem solving that attempts to reach mutually beneficial outcomes. To achieve this, there is a need for frankness, flexibility and an attempt to understand each other's needs. Examples of this approach include negotiating contract conditions with a supplier, reaching an "out of court" settlement over some dispute or reaching an agreement over the conditions of consent in a difficult development application process.

**Initiation of Negotiation**

In most disputes involving building issues, development assessment and planning matters, neighbourhood disputes (over trees noise, odours and animals), compliance matters and industrial relations, negotiation may be initiated by the staff member dealing with the dispute. Formal negotiation would only be required for high level disputes where the issues have escalated beyond the resources of the staff members to deal with these.

**The Process**

There needs to be a deliberate process supporting all forms of negotiation. The level of work that goes into the negotiation process will vary depending upon the risks involved in the dispute and what is at stake. For example in industrial relations disputes and many large development proposals the stakes can be very high. The basic steps are:

**ITEM 18 - ATTACHMENT 2 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.****Research the Issues**

Determine what the other party wants out of the process. In some cases this may not be obvious without some background reading or conversations.

Begin with a Positive Approach.

Demonstrate a positive attitude and do not form any predetermined negative perceptions of the other party.

Determine how far Council is willing to go in the negotiations. For any significant regulatory matters, industrial relations disputes, contract issues and any other critical matters that need to be negotiated, the staff member involved should come to an agreement with their Manager regarding the limits of negotiation before the process begins.

**Address Issues, not Personalities**

Do not attack the other party's views or opinions. Focus on the issues and show respect for the other person regardless of your own views.

**Be prepared to Bargain and be Flexible**

Not much is cast in stone, including regulatory issues. At times it may appear that there is little room to move in negotiations however attempt to see if there is some way to get past any hurdles in the process. Look for mutually beneficial solutions.

Councils (and delegated staff) have considerable discretion in deciding to enforce the law. If there are good sound reasons not to apply the letter of the law, Council staff may legitimately decide not to enforce the law in some circumstances. In some cases therefore a negotiated decision may not fully meet a particular policy or law however it may result in a better outcome when weighed against the broader public interest.

It is important to document any decisions where this approach has been taken including the reasons. Reference should be made to the NSW Ombudsman's Guidelines in relation to the exercise of discretion.

**Emphasise Win- Win**

It is not always possible to end up with a win- win outcome however win-win should be the mindset. Look for solutions that will give the other party a positive outcome while satisfying Council's objectives. The final solution may not be exactly what both parties originally had in mind however it may satisfy both needs in a different way.

**ITEM 18 - ATTACHMENT 2 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.****Be Open to Third Party Assistance**

At times the negotiation process may not be reaching a satisfactory outcome for either party. If the stakes are high enough, it may be worth bringing in a third party negotiator or engaging in mediation.

**Outcomes of the Negotiation Process**

Where there has been partial or full settlement of the dispute by negotiation, the parties may enter into an agreement. Depending upon the dispute, it is not always necessary to enter into a formal agreement. At times it may be suitable to write to the other party, outlining the main points of agreement or in the case of a development application; the outcomes of negotiation are included in the Conditions of Consent.

If a formal agreement is deemed necessary, it should be a written agreement setting out the terms of settlement reached between the parties to the negotiation process. The agreement is confidential except where the terms of the agreement expressly permit part or all of its contents to be divulged to other parties. The agreement must be signed by all parties to the agreement.

**C) Other Options**

There are times when mediation and negotiation may not be appropriate or the process doesn't work for a particular dispute. At other times the mediation or negotiation process may initially work, however the agreement may not be honoured for various reasons. In these cases, there needs to be other options open to Council. These options can include:

1. Do nothing. This may be a legitimate option if Council considers that it is not in the public interest to pursue a dispute. This is particularly the case where considerable community resources are needed to help resolve an issue where there is little public benefit or there is a low probability of satisfactory resolution.
2. Instigate other measures that help to resolve the issue, not the dispute. For example in contract management there is the opportunity to terminate a contract if both parties are in dispute and it can't be resolved. Another example may include the option of modifying the conditions of an approval issued by Council to address a particular issue that is in dispute.
3. Consider taking legal action to resolve the dispute. If this is considered as a preferred option, the costs of taking action need to be weighed against the benefits. If there is little public benefit in pursuing legal action, or if the action is motivated only on principle, then it may not be worth taking this form of action.

**ITEM NO. 19****FILE NO: 16/462552  
TRIM REF NO: A2004-0284****POLICY REVIEW: PAYMENT OF EXPENSES AND PROVISION OF FACILITIES  
TO COUNCILLORS****REPORT OF: TONY WICKHAM - GOVERNANCE MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Payment of Expenses and Provision of Facilities to Mayor/Councillors Policy shown at **(ATTACHMENT 1)**.
- 2) Place the Payment of Expenses and Provision of Facilities to Mayor/Councillors Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.
- 3) Revoke the Payment of Expenses and Provision of Facilities to Mayor/Councillors Policy dated 23 August 2016, Min No. 242 **(ATTACHMENT 2)**, should no submissions be received.

---

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Mayor Bruce MacKenzie Councillor John Nell</b>  That the recommendation be adopted.
--	--

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016  
MOTION**

<b>368</b>	<b>Councillor Steve Tucker Councillor Chris Doohan</b>  It was resolved that Council: <ol style="list-style-type: none"><li>1) Endorse the revised Payment of Expenses and Provision of Facilities to Mayor/Councillors Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the Payment of Expenses and Provision of Facilities to Mayor/Councillors Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.</li></ol>
------------	--



## MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

	3) Revoke the Payment of Expenses and Provision of Facilities to Mayor/Councillors Policy dated 23 August 2016, Min No. 242 ( <b>ATTACHMENT 2</b> ), should no submissions be received.
--	---

### BACKGROUND

The purpose of this report is to provide Council with the revised Payment of Expenses and Provision of Facilities to Councillors Policy (the 'policy') in accordance with Section 252 of the *Local Government Act 1993* and the Office of Local Government's Guideline.

Council last adopted the policy on 23 August 2016, which included public consultation as required by legislation.

A copy of Council's current policy is shown at (**ATTACHMENT 2**).

It is proposed to amend the policy as follows (highlighted in yellow in the policy) following the recent amendments to the *Local Government Act 1993*, through the *Local Government (Governance and Planning) Act 2016*:

- 1) Changes to the timeframe for adopting a policy.
- 2) Removal of the requirement to notify the Office of Local Government.
- 3) Include a provision to clarify and accommodate expenses payment during the extension of this term of Council, due to the council merger situation.
- 4) Minor administrative amendments.

Sections of the policy to be deleted have been shown with a line through the text. The policy has been provided in this format to minimise the duplication of the length of the policy.

The revised policy is shown at (**ATTACHMENT 1**) and is provided for Council's consideration.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
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

Expenditure associated with this policy is included in Council's 2016-2017 budget.

<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**

Under Section 252 and 253 of the *Local Government Act 1993*, Council must adopt a policy concerning the payment of expenses incurred by Councillors in relation to discharging the functions of civic office.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that Council would be in breach of Section 252 & 253 of the <i>Local Government Act 1993</i> , should this Policy not be adopted.	Low	Accept the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The policy allows Councillors to effectively carry out their responsibilities as members of the Council and as community representatives without suffering financial hardship.

**MERGER PROPOSAL IMPLICATIONS**

Should the merger proposal proceed, the entity will be required to review the policy in accordance with the Proclamation and other NSW State Government requirements.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Governance and Legal Services Unit.

Internal

- The Executive team has been consulted to seek management endorsement.

## **MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016**

- The General Manager has been consulted to seek endorsement prior to Council consideration.

### External

Following Council adoption, the policy will be placed on public exhibition in the Port Stephens Examiner and on Council's website.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Revised Payment of Expenses and Provision of Facilities to Mayor/Councillors policy.
- 2) Current Payment of Expenses and Provision of Facilities to Mayor/Councillors policy.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



**FILE NO:** A2004-0284

**TITLE:** PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO  
MAYOR/COUNCILLORS POLICY

**POLICY OWNER:** GOVERNANCE MANAGER

**PURPOSE:**

The purpose of the Payment of Expenses and Provision of Facilities to Mayor/Councillors Policy ('the Policy') is to ensure that Councillors receive adequate and reasonable expenses and facilities to enable them to carry out their civic duties. It ensures that these are provided in an accountable and transparent manner.

**CONTEXT/BACKGROUND:**

This Policy is made under the *Local Government Act 1993*, including Sections 248 to 254 and 731 and having regard to the provisions of the Division of Local Government Circular No. 09-36, 7 October 2009.

The Act requires that the Council must adopt a policy concerning the payment of expenses and the provision of facilities to the Mayor and Councillors.

~~This Policy is to be adopted by Council annually, within five months after the end of the year.~~

**This Policy is to be adopted by Council within the first 12 months of each term of Council.**

Prior to adoption public notice must be given and public submissions invited for 28 days. Council must then consider all submissions received and make any appropriate changes to the Policy.

Council need not give public notice of a proposed amendment if Council is of the opinion that the proposed amendments are not substantial. The term 'not substantial' should be taken to mean minor changes to wording of the policy or changes to monetary provisions or rates that are less than 5% or changes to the standard of equipment and facilities to be provided. Public notice is required prior to each annual adoption of the policy even if there are no proposed changes.

Section 428 of the Act and Clause 271 of the Regulation requires Councils to include detailed information in their annual reports about the payments of expenses and facilities to Councillors.

**Legislative provisions**

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 1 of 27

**ITEM 19 - ATTACHMENT 1    REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



The relevant legislative provisions are the *Local Government Act 1993* and the *Local Government (General) Regulations 2005*.

**Local Government Act 1993**

**248 FIXING AND PAYMENT OF ANNUAL FEES FOR COUNCILLORS**

- (1) A council must pay each councillor an annual fee.
- (2) A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.
- (3) The annual fee so fixed must be the same for each councillor.
- (4) A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.

**248A ANNUAL FEES OR OTHER REMUNERATION NOT TO BE PAID DURING PERIOD OF SUSPENSION**

A council must not at any time pay any fee or other remuneration, to which a councillor would otherwise be entitled as the holder of a civic office, in respect of any period during which:

- (a) the councillor is suspended from civic office under this Act, or
- (b) the councillor's right to be paid any fee or other remuneration is suspended under this Act, unless another provision of this Act specifically authorises payment to be made, or specifically permits a person to authorise payment to be made, when the suspension is terminated.

**249 FIXING AND PAYMENT OF ANNUAL FEES FOR THE MAYOR**

- (1) A council must pay the mayor an annual fee.
- (2) The annual fee must be paid in addition to the fee paid to the mayor as a councillor.
- (3) A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.
- (4) A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.
- (5) A council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.

**252 PAYMENT OF EXPENSES AND PROVISION OF FACILITIES**

- (1) ~~Within 5 months after the end of each year, a council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.~~

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 2 of 27

ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



- (1) Within the first 12 months of each term, a council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.
- (2) The policy may provide for fees payable under this Division to be reduced by an amount representing the private benefit to the mayor or a councillor of a facility provided by the council to the mayor or councillor.
- (3) A council must not pay any expenses incurred or to be incurred by, or provide any facilities to, the mayor, the deputy mayor (if there is one) or a councillor otherwise than in accordance with a policy under this section.
- (4) A council may from time to time amend a policy under this section.
- (5) A policy under this section must comply with the provisions of this Act, the regulations and any relevant guidelines issued under section 23A.

**253 REQUIREMENTS BEFORE POLICY CONCERNING EXPENSES AND FACILITIES CAN BE ADOPTED OR AMENDED**

- (1) A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.
- (2) Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.
- (3) Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.
- ~~(4) Within 28 days after adopting a policy or making an amendment to a policy for which public notice is required to be given under this section, a council is to forward to the Director-General:~~
  - ~~(a) a copy of the policy or amendment together with details of all submissions received in accordance with subsection (1), and~~
  - ~~(b) a statement setting out, for each submission, the council's response to the submission and the reasons for the council's response, and~~
  - ~~(c) a copy of the notice given under subsection (1).~~
- (5) A council must comply with this section when proposing to adopt a policy each year in accordance with section 252 (1) even if the council proposes to adopt a policy that is the same as its existing policy.

**254 DECISION TO BE MADE IN OPEN MEETING**

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 3 of 27

**ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



The council or a council committee all the members of which are councillors must not close to the public that part of its meeting at which a policy for the payment of expenses or provision of facilities is adopted or amended, or at which any proposal concerning those matters is discussed or considered.

**254A CIRCUMSTANCES IN WHICH ANNUAL FEES MAY BE WITHHELD**

- (1) Despite this Division, a council may resolve that an annual fee will not be paid to a councillor or that a councillor will be paid a reduced annual fee determined by the council:
  - (a) for any period of not more than 3 months for which the councillor is absent, with or without leave, from an ordinary meeting or ordinary meetings of the council, or
  - (b) in any other circumstances prescribed by the regulations.
- (2) Despite this Division, if a councillor is absent, with or without leave of the council, from ordinary meetings of the council for any period of more than 3 months, the council must not pay any annual fee, or part of an annual fee, to that councillor that relates to the period of absence that is in excess of 3 months.

**428 ANNUAL REPORTS**

- (1) Within 5 months after the end of each year, a council must prepare a report (its "annual report") for that year reporting as to its achievements in implementing its delivery program and the effectiveness of the principal activities undertaken in achieving the objectives at which those principal activities are directed.

**Local Government (General) Regulations 2005**

**217 ADDITIONAL INFORMATION FOR INCLUSION IN ANNUAL REPORT**

- (1) For the purposes of [section 428](#) (4) (b) of [the Act](#), an annual report of a council is to include the following information:
  - (a) details (including the purpose) of overseas visits undertaken during the year by councillors, council staff or other persons while representing the council (including visits sponsored by other organisations),
  - (a1) details of the total cost during the year of the payment of the expenses of, and the provision of facilities to, councillors in relation to their civic functions (as paid by the council, reimbursed to the councillor or reconciled with the councillor), including separate details on the total cost of each of the following:

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 4 of 27



ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



- (i) the provision during the year of dedicated office equipment allocated to councillors on a personal basis, such as laptop computers, mobile telephones and landline telephones and facsimile machines installed in councillors' homes (including equipment and line rental costs and internet access costs but not including call costs),
- (ii) telephone calls made by councillors, including calls made from mobile telephones provided by the council and from landline telephones and facsimile services installed in councillors' homes,
- (iii) the attendance of councillors at conferences and seminars,
- (iv) the training of councillors and the provision of skill development for councillors,
- (v) interstate visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,
- (vi) overseas visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,
- (vii) the expenses of any spouse, partner (whether of the same or the opposite sex) or other person who accompanied a councillor in the performance of his or her civic functions, being expenses payable in accordance with the Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors for Local Councils in NSW prepared by the **Chief Executive of the Office of Local Government** Director-General from time to time,
- (viii) expenses involved in the provision of care for a child of, or an immediate family member of, a councillor, to allow the councillor to undertake his or her civic functions

**403 Payment of expenses and provision of facilities**

A policy under [section 252](#) of [the Act](#) must not include any provision enabling a council:

- (a) to pay any councillor an allowance in the nature of a general expense allowance, or
- (b) to make a motor vehicle owned or leased by the council available for the exclusive or primary use or disposition of a particular councillor other than a mayor.

**404 CIRCUMSTANCES IN WHICH COUNCILLORS' ANNUAL FEES MAY BE REDUCED OR NOT PAID**

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 5 of 27



**ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.****Policy**

A definition of what is included and what is excluded from the policy. The scope may also include – what, when and where the policy applies; who will be affected and how it will affect them; what impact the policy will have? Exclusions to policy application should also be included, if applicable.

**SCOPE:**

The scope of this Policy is to detail those Councillor expenses and facilities the cost of which shall be met by Council.

This Policy also aims to ensure compliance of the Port Stephens Council Code of Conduct.

**DEFINITIONS:**

Councillor	Means a Councillor elected to Port Stephens Council, including the Mayor.
Official Business of Council	Meeting of Council; Meetings of Committees of the Whole Site inspection where resolved by Council; Meetings of committees where Council has endorsed the Councillor's membership; Civic receptions hosted or sponsored by Council; Meetings or functions to which the Councillors attendance has been approved by the General Manager and/or the Mayor. Functions or meetings where the invitation to attend arises only as a result of the Councillor's position as a Councillor.
Council term	Period of elected Council (generally 4 years under the Local Government Act 1993, however may vary)
Port Stephens local government area	Local government area of Port Stephens
The Act	Local Government Act 1993
The Regulation	Local Government (General) Regulation 2005

**POLICY STATEMENT:****Part 1 - Payment of Expenses****1.1 General Provisions**

- 1.1.1 Council will determine an annual allowance, to be paid monthly in arrears, in accordance with Section 248 - 251 of the Local Government Act and the determination of the Local Government Remuneration Tribunal.

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 6 of 27

ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



- 1.1.2 This Policy is intended to cover most situations where a Councillor reasonably incurs expenses in discharging the functions of civic office. The annual fees paid to each Councillors is generally not intended to offset those costs.
- 1.1.3 All allowances and reimbursements of expenses made under this Policy shall be in respect to costs directly associated with the functions of civic office.
- 1.1.4 Councillors are not permitted to claim expenses in connection with political activities, including political fundraising as this is considered a personal interest.
- 1.1.5 Councillors will not be provided with general expense allowance. A general expense allowance is a sum of money paid by a Council to a Councillor to expend on an item or a service that is not required to be receipted and/or otherwise reconciled according to a set procedure and within a specific timeframe
- 1.2 Reimbursement and reconciliation of expenses processes**
- 1.2.1 All claims for reimbursement must be made within four (4) months of incurring the expense and shall be subject to the General Manager or delegated officer discretion.
- 1.2.2 All claims shall be submitted to the General Manager and the delegated officer for assessment against the policy on **FORM 1.**"
- 1.2.3 All claims must be supplied with a tax invoice or receipt to support the claim. If a Councillor is not able to provide a tax invoice or receipt then a Statutory Declaration is to be provided.
- 1.2.4 Claims for travel under this Policy shall be lodged using travel **FORM 2**, include:
- Date
  - Place of departure and arrival
  - Distance travelled
  - Fare and parking fees paid
- 1.2.5 The kilometre rate payable to Councillors who travel in their own vehicle shall be the rate payable under the Local Government State Award.
- 1.2.6 Where travel is outside the Hunter Councils Area, Council shall as appropriate meet or reimbursement the lesser amount of the following expenses:
- a) The cost of an economy class air ticket and associated taxi transfers.
  - b) The cost of a first class rail ticket and associated taxi transfers.
  - c) Transportation expenses using a Councillor's own vehicle (calculated under clause 1.2.5).

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 7 of 27

ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



- d) Transportation using a Council-owned vehicles, actual costs incurred.
- 1.2.7 Where possible Council will pay all expenses directly by account or through use of a corporate credit card. In some instances, it may be necessary for Councillors to pay unexpected costs and seek reimbursement.
- 1.2.8 Once expenses of attending conferences, seminars or training course have been finalised, an invoice shall be forwarded to Councillors for any expenses payable by them.
- 1.3 Approval and Dispute resolution**
- 1.3.1 The Executive Assistant – Councillor Support shall assess all claims against this Policy and provide the assessed documentation to the General Manager and Governance Manager Executive Officer for approval.
- 1.3.2 Claims will be paid on a monthly basis, generally the first Friday of the month.
- 1.3.3 Should the General Manager and Governance Manager determine that a claim should not be paid, the Councillor should be advised in writing. Should the Councillor still believe that the claim should be paid, in part or full, it shall be considered that a dispute exists.
- 1.3.4 In the event of a dispute at any time regarding payment of a claim or anything else under this Policy, the parties to this dispute shall each provide a written report on the nature of the dispute. The General Manager shall submit such reports to the next open meeting of Council. The dispute shall then be determined by a resolution of Council having regard to the reports, this Policy, Act and any other relevant laws.
- 1.3.5 The decision of Council pursuant to clause 1.3.4 shall be binding on all parties.
- 1.4 Payment in advance**
- 1.4.1 Councillors may require advance payment for an anticipated expense associated with attendance at a conference, seminar and training course. The amount is \$200 per Councillor per event.
- 1.4.2 In the event of a payment being made in advance, Councillors must full reconcile all expenses against the amount of the advance and submit the reconciliation to Council with 30 days of the event.

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 8 of 27

ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



**1.5 Monetary Limits**

- 1.5.1 Monetary limits set out in this Policy are the maximum amount payable in respect of any facility or expense. Any additional costs above the limit will be incurred by the Councillor. All monetary limits are exclusive of GST.
- 1.5.2 Monetary limits may only be waived by a resolution of Council in exceptional circumstances. Any waiver of a monetary limit will apply to a particular event or circumstance and will not constitute an amendment to this Policy.

**Spouse and Partner Expenses**

- 1.6.1 Accompanying person means a person who has a close relationship with a Councillor and/or provides carer support to the Councillor.
- 1.6.2 In limited circumstances, Council shall meet certain costs incurred by a Councillor on behalf of their spouse, partner or accompanying person which is properly and directly related to accompanying the Councillor when the Councillor is performing his or her official functions with the Port Stephens Local Government Area, including but not limited to costs associated with attendance at official Council functions that are of a formal or ceremonial nature. Each Councillor is entitled to a maximum of \$500 per year of term (or on a pro-rata basis in the event of a Council term being extended), not including the Local Government NSW annual conference.
- 1.6.3 Costs and expense incurred by the Councillor on behalf of their spouse, partner or accompanying person shall be reimbursed if the cost or expense relates specifically to the ticket, meal and/or direct cost of attending the function.
- 1.6.4 In limited circumstances, Council shall meet certain costs incurred by the Mayor on behalf of their spouse, partner or accompanying person which is properly and directly related to accompanying the Mayor within the State of New South Wales or as resolved by Council when performing his or her official functions, including but not limited to costs associated with attendance at official Council functions that are of a formal or ceremonial nature. Each Mayor is entitled to a maximum of \$1000.00 per year of term (or on a pro-rata basis in the event of a Council term being extended), not including the Local Government NSW annual conference.
- 1.6.5 Council shall meet limited expenses of spouse, partner or accompanying person associated with attendance at the Local Government NSW annual conference. These expenses are limited to the costs of registration and the official conference dinner. Expenses such as travel expenses, any additional accommodation expenses and the cost of any accompanying persons program shall not be met by Council.

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 9 of 27

**ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



- 1.6.6 Costs associated with spouse, partner or accompanying person associated with attendance conferences other than the Local Government NSW annual conference, or any seminars or training shall not be met by Council.
- 1.6.7 In no circumstances will the peripheral expenses of spouse, partner or accompanying person, such as grooming, special clothing and transport be considered reimbursable expenses.

**Specific Expenses for Councillors**

**1.7 Attendance at seminars, conferences, training and educational expenses**

- 1.7.1 Council shall meet expenses incurred by Councillors in attending conferences and seminars or undertaking training and educational courses when the attendance is:
- a) To the Local Government NSW annual conference; or
  - b) Authorised by resolution of an open meeting of Council.
- 1.7.2 Councillors should generally have their attendance at a conference, seminar or participation in a training course authorised by Council in accordance with clause 1.7.1 (b).
- 1.7.3 Where it is impractical to have a Councillor's attendance or participation authorised by Council in accordance with clause 1.7.1 (b), Councillors wishing to claim expenses incurred due to their attendance or participation shall obtain the approval of the Mayor and the General Manager prior to attendance. Where the Mayor is seeking approval to claim his or her attendance or participation expenses under this clause, he or she shall obtain the approval of the Deputy Mayor and the General Manager.
- 1.7.4 Councillors shall submit their request for attendance in writing with the appropriate notice detailing the costs and benefits to the Councillor, to Council and the community.
- 1.7.5 In making its decision, the General Manager/Mayor or Council should consider:
- a) The relevance of the seminar, conference, training or educational expenses to Council and the potential benefit that may result from attendance;
  - b) The special interest of the Councillor/s wishing to attend;
  - c) The total cost to Council of attendance relative to the Program budget;
  - d) The fair and equitable division of opportunity for Councillors to attend conferences/seminars.

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 10 of 27



ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



1.7.6 Councillors shall at the conclusion of their attendance at the seminar, conference, or training provide a written report to Council on the aspects of the seminar, conference or training. This report should be submitted to Council within one month of their attendance. Attendance at the Local Government NSW annual conference will not require a report to Council.

1.7.7 The General Manager's Office will make all arrangements for the attendance of Councillors and accompanying persons, where required at a conference, seminar or training.

**1.8 Seminars, Conferences and Training Expenses**

1.8.1 Council will meet the costs for attendance at approved conferences and seminars, training and educational courses to a maximum of \$5,000.00 per Councillor per year of term (or on a pro-rata basis in the event of a Council term being extended), excluding the costs associated with attendance at the Local Government NSW annual conference:

- a) **Registration fees** – Council will meet the cost of the registration fee set by the organiser, including costs of related official lunches and dinners, and associated tours where they are relevant to the business and interests of Council.
- b) **Accommodation** – where a conference, seminar or training course is not located within the Port Stephens Local Government Area, Councillors shall where required be accommodated in the hotel where the event is being held or the nearest hotel to it that is of a similar standard, or as arranged by the conference organiser. Accommodation shall be provided at the rate of a double room. Any additional nights prior to or following the conference, seminar or training course Council will not be included in the expenses paid by Council. **Note:** Movie hire and Mini Bar Facilities will be paid for by the Councillor.
- c) **Transportation** – Councillors attending a conference, seminar or training course shall travel by the most appropriate route, subject to any personal medical requirements. Any costs incurred in undertaking activities not related to attendance at the conference, seminar or training course shall not be included in any expenses paid by Council.
- d) **Educational Materials** – where a Councillor is participating in an approved training or educational course and specific reference materials are required (for example, prescribed textbooks), Council shall purchase such educational materials on the Councillor's behalf. At the completion of the relevant training or educational course, educational materials purchased pursuant to this clause shall be returned to Council and be available for the use of all Councillors in the Councillor's Room.

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 11 of 27

**ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



1.8.2 Conferences, seminars and training held outside the Port Stephens Local Government Area, Council shall as appropriate (having regard to availability, time/cost effectiveness of the transport options) meet or reimburse the lesser amount of the following transportation expenses:

- a) The cost of an economy class air ticket and associated taxi transfers.
- b) The cost of a first-class rail ticket and associated taxi transfers.
- c) Transportation expenses by a Councillor with the Councillor's own vehicle (refer to clause 1.2.5).

1.8.3. If a Council-owned vehicle utilised that cost will be determined by way of actual costs incurred.

**1.9 Meals**

1.9.1 Council shall meet the cost of breakfast, lunch and dinner for Councillors attending a conference, seminar or training course where any such meal is not provided by the organiser. Council shall also meet the reasonable cost of drinks accompanying the meals.

1.9.2 Costs payable by Council under clauses 1.9.1 and 1.9.2 shall be capped at a maximum of **\$100.00** per Councillor per day inclusive. Councillors will be paid actual costs if under **\$100.00** per day.

1.9.3 Council shall meet the reasonable cost of Councillors' meals where due to their attendance to Official Business of Council the Councillor is reasonably unable to partake of a meal at their residence and so incurs additional expense.

1.9.4 Costs payable by Council under clause 1.9.3 shall be capped at a maximum of **\$50.00** per Councillor per day or actual costs, whichever is less.

**1.10 Local Travel Arrangements and Associated Expenses**

1.10.1 Travelling expenses shall be reimbursed to Councillors for travel by public transport or private vehicle on Official Business of Council in the Hunter Councils area, to a maximum amount of **\$6,000.00** per Councillor per year of term (or on a pro-rata basis in the event of a Council term being extended). This includes attendance at Council meetings, committees meetings where the Councillor is a Council delegate and inspection where the inspection has been duly passed by a Council resolution.

1.10.2 Councillors may, where available, use Council owned vehicles to attend to Official Business of Council.

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 12 of 27

ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



1.10.3 Council shall meet the cost of parking fees and road tolls but not the cost of traffic or parking fines, which shall remain the sole responsibility of the Councillor.

1.10.4 Claims for reimbursement under this clause 1.10 shall be made in accordance with clause 1.2.

**1.11 Travel outside the HROC Area including Interstate and Overseas Travel**

1.11.1 Payment of any travel expenses to a Councillor, incurred on Council related business outside of the Hunter Councils area and not otherwise addressed in clause 2.8 requires approval by resolution of Council in an open meeting.

1.11.2 Approval for payment of travel expenses under clause 1.11.1 may be granted subject to any conditions Council so determines, and Council shall meet only those expenses that Council so determines.

**1.12 Communication Device Costs and Expenses**

1.12.1 Council shall reimburse Councillors to a maximum of \$4,000.00 per term (or on a pro-rata basis in the event of a Council term being extended) for the purchase of a personal computer/laptop, multifunction device, peripherals and Microsoft office software.

1.12.2 Council shall not purchase the equipment in item 1.12.1 on a Councillors behalf.

1.12.3 Council shall reimburse Councillors for all maintenance and repairs, which are to be arranged by individual Councillors.

1.12.4 Council shall reimburse Councillors for all consumables such as ink cartridges and reasonable supply of paper for official Council business.

1.12.5 Council shall reimburse Councillors for their communication device costs (including mobile phone, landline rental, landline telephone and facsimile) incurred in attending to Council business to a maximum cost of \$200.00 per Councillor per month of term . All communication device costs incurred above this maximum are at the Councillors own expense.

1.12.6 As an alternative to clause 1.12.5, Council shall reimburse Councillors for their communication device costs where it is part of a bundle plan. This would include landline costs and internet where costs were incurred in attending to Council business to a maximum cost of \$120.00 per Councillor per month of term. The maximum cost for a mobile phone plan would be \$100.00 per Councillor per month of term.

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 13 of 27



ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



All communication device costs incurred above this maximum are at the Councillors own expense.

- 1.12.7 If a Councillor does not have a telephone line or internet connection at their home, Council shall meet the installation costs.
- 1.12.8 Council shall meet the cost of providing and maintaining an internet connection at the residence of the Councillor to a maximum of **\$60.00** per Councillor per month of term. Any internet costs incurred above this maximum are at the Councillors own expense.

**1.13 Care and Other Related Expenses.**

- 1.13.1 In this clause, "relative" shall have the same meaning as set out in the Dictionary in the Act, being at the date of this policy:

*"Relative, in relation to a person, means any of the following:*

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse;*
- (b) the spouse or de facto partner of the person or of a person referred to in paragraph (a)."*

- 1.13.2 Where a Councillor has sole responsibility for the care and support of any relative, Council shall reimburse expenses for carer arrangements, where expenses relate to a relative as defined under clause 1.13.1 and are payable when a Councillor is required to attend the following to discharge the functions of civic office:

- a) Council meetings, committee meetings, inspections, formal briefings, civic and ceremonial functions relating to civic office;
- b) Meetings scheduled by Council and/or the Mayor;
- c) Meetings arising as a result of a Councillor being appointed by Council to an outside body or committee;
- d) A meeting, function or other official role as a representative of the Mayor or Council.

- 1.13.3 The total amount paid to a Councillor under this clause 1.13 shall not exceed **\$2,000** per year of term **(or on a pro-rata basis in the event of a Council term being extended).**

- 1.13.4 Claims for reimbursement under this clause 1.13 shall be made in accordance with clause 1.2.

**1.14 Insurance Expenses**

Councillors shall receive the benefit of insurance cover for:

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 14 of 27

**ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



- 1.14.1 Personal Accident - Personal Accident insurance covers personal injury, which is caused by violent, accidental external and visible means that solely and independently of any other cause results in a Councillor's death or disablement. The cover applies anywhere in the world during and while travelling to and from Council business. The capital benefit for the death of a Councillor is \$500,000. The cover does not include medical expenses.
- 1.14.2 Professional Indemnity - Professional Indemnity insurance covers Council where Council becomes legally liable to pay compensation for financial loss as a result of any negligent act, error or omission in the conduct of Council's business activities arising from a breach of professional duty. Cover is subject to any limitations or conditions set out in the NSW Local Government (Jardine) Mutual Liability Scheme wording.
- 1.14.3 Public Liability - Public Liability insurance covers Council's legal liability to pay compensation to third parties arising in connection with the business activities of Council. Matters arising from Councillors' performance of civic duties or exercise of their functions as Councillors are covered subject to any limitations or conditions set out in the NSW Local Government (Jardine) Mutual Liability Scheme policy wording.
- 1.14.4 Councillors' & Officers' Liability - Councillors' & Officers' Liability insurance protects Councillors and officers from the costs incurred in defending themselves against legal actions that arise from honest mistakes in the management of Council. It covers Councillors for personal liabilities as a result of wrongful acts subject to any limitations or conditions set out in the policy of insurance.

Full details of the abovementioned insurance policies are available in Council's Insurance Handbook held by the Risk Management Coordinator.

**1.15 Legal Expenses**

- 1.15.1 Councillors may be entitled to indemnity for an enquiry, investigation or hearing commenced by of official body.

Legal proceedings being taken against a Councillor, arising out of or in connection with the Councillor's performance of his or her civic duties or exercise of his or her functions as a Councillor (with the exception of defamation proceedings), Council shall reimburse such a Councillor, after the conclusion of the enquiry, investigation, hearing or proceeding, for all legal expenses properly and reasonably incurred, given the nature of the enquiry, investigation, hearing or proceeding, on a solicitor/client basis, PROVIDED THAT:

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 15 of 27

ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



The amount of such reimbursement shall be reduced by the amount of any monies that may be or are recouped by the Councillor on any basis.

The Councillor's performance or exercise of the civic duty or function was in the opinion of Council bona fide and/or proper (Section 731 of the Act).

The amount of such reimbursement be limited to the extent that only fees charged at a rate equivalent to the hourly rate then being charged by Council's Hunter based Solicitors will be paid ie any portion of the expenses representing any hourly charge rate higher than the hourly rate charge rate of Council's Hunter based Solicitors will not be reimbursed.

Defamation proceedings or other proceedings arising from the making of a public statement, where a Councillor is a defendant or anticipated defendant in such proceedings.

**Note:** Council may not meet the costs of any action in defamation taken by a Councillor as plaintiff in any circumstances (DLG Circular 00/22).

To ensure that indemnity or reimbursement in respect of costs of defending an action in defamation or other action is only available in circumstances where the person to be indemnified or reimbursed was acting properly when making the statement complained of, the threshold criteria for the application of the indemnity or reimbursement will apply.

Council may indemnify or reimburse the reasonable legal expenses of a councillor for proceedings before the NSW Civil and Administrative Tribunal or an investigative body PROVIDED the subject of the proceedings arises from the performance in good faith of a function under the Act and the Tribunal or investigative body makes a finding substantially favourable to the Councillor.

Legal expenses incurred in relation to proceedings arising out of the performance by a councillor of his or her functions under the Act should be distinguished from expenses incurred in relation to proceedings arising merely from something, which a councillor has done during his or her term of office. An example of the latter is expenses arising from an investigation as to whether a councillor acted corruptly by using knowledge of a proposed rezoning for private gain.

In addition, legal costs will only be provided where the investigative or review body makes a finding that is not substantially unfavourable to the councillor. This may include circumstances in which a matter does not proceed to a finding. In relation to a councillor's conduct, a finding by an investigative or review body that an inadvertent

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 16 of 27

ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



minor technical breach has occurred may not necessarily be considered a substantially unfavourable outcome.

- 1.15.2 Council shall not meet any Councillor's costs of any enquiry, investigation or hearing initiated at the request of, or to any legal proceedings taken by, Council itself.

General

Where proceedings have been foreshadowed or commenced against any of the Mayor and Councillors arising from a public statement or statements made or acts done by any of them and, in the opinion of Council's appointed solicitor the following "Three Criteria" are satisfied through the required procedure set out below namely:

- (a) The statement was made or the act was done in relation to discharging the functions of civic office;
- (b) The Councillor concerned was acting in good faith; and
- (c) The statement or the act in question was reasonable in the circumstances and not made or done maliciously or frivolously and, in the case of a statement, was not made with knowledge of its falsity or with recklessness as to whether it was true or false,

then Council will indemnify or reimburse the Councillor for:

- (a) all legal expenses properly and reasonably incurred, given the nature of the legal services provided; and
- (b) any other fees, expense, liability or cost incurred (including without limitation any order for the payment of damages, interest and/or costs or any other order for the payment of money made against the Councillor),

In responding to or defending such proceeding **PROVIDED THAT** the amount of such indemnity or reimbursement shall be reduced by the amount of any monies that may be or are recouped by the Councillor on any basis.

Engagement of Legal Representatives – Required Procedure

- 1. The Councillor must, as soon as practicable after they become aware that a claim may be forthcoming or aware that they may have made a statement or action which may give rise to a claim, notify either the General Manager, Public Officer or Mayor that there is a possibility of a claim against the Councillor. This notification must:
  - i. be in written form;
  - ii. include all details including any correspondence from the alleged injured party concerning the possible claim; and

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 17 of 27



**ITEM 19 - ATTACHMENT 1      REVISED PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



- iii. Include the Councillor's comments on whether the Councillor considers that the Three Criteria are satisfied.
2. The Councillor must not respond to any allegations made or accept any liability in respect to any allegations made unless authorised to do so by Council or its solicitor or the insurer or its solicitor. The Councillor must at all times without undue delay keep Council fully informed of any oral or written communications made to the Councillor by the alleged injured party or the injured party's agents or legal representative in respect of the claim.
3. The General Manager must immediately upon becoming aware that a claim may be forthcoming or aware that a statement has been made which may give rise to a claim, notify and forward to Council's insurer any information relating to the matter with a view to obtaining the Insurer's acceptance and carriage of the claim should the three criteria be satisfied.
4.
  - i. If proceedings are threatened (and not commenced), the General Manager must without undue delay inform Council's appointed Solicitor and Council's insurer of the notification. The Council's solicitor at Council's cost must form a view as to whether the Three Criteria are satisfied, and must notify the General Manager who will in turn notify the Councillor concerned in written form of that view.
  - ii. If the Council's solicitor considers that the Three Criteria are satisfied, the General Manager will either instruct Council's solicitors or if Council's Insurers have accepted the matter as a possible claim then it will represent the Councillor concerned.
5. If Council's solicitor forms the view that the Three Criteria are not satisfied under clause (4); the Councillor may request a review of that advice from an independent legal practitioner as agreed in advance between the Councillor concerned and the General Manager and failing agreement as nominated by the President for the time being of the Law Society of NSW or the President of the NSW Bar Association.
6. If the proceedings are commenced and the Three Criteria are satisfied then the following procedure must be followed:
  - In the case that the claim is accepted by Council's insurer it will have carriage of the matter subject to consultation with the General Manager and the Councillor will be required to abide by any reasonable instruction of the insurer or its nominated lawyer.
  - If the Insurer does not accept the claim as it is of the opinion that the matter is outside the policy then the General Manager in consultation with Council's solicitor will nominate a legal practitioner that they consider should represent the Councillor. If the Councillor considers that such representation is appropriate then the procedures in clause 7 must

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 18 of 27

**ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



- be followed. If Council's solicitors are not of the same opinion as the insurers the General Manager in consultation with Council's solicitors will take whatever action is necessary (without unduly holding up the defamation proceedings) to have the question determined.
- If the Councillor considers that the legal practitioner nominated is not appropriate then the Councillor concerned and the General Manager must attempt to reach agreement on an alternative legal practitioner, and failing agreement the legal practitioner must be as nominated by the President for the time being of the Law Society of NSW or the President of the NSW Bar Association.
7. If Council's insurers have not accepted the claim the General Manager must contact the proposed legal practitioner and must require that an agreement be entered into between the legal practitioner and the Council which will include such terms and conditions as the General Manager sees fit including:
- i. Terms and conditions as to costs and disbursements including procedures for costs estimates to be given at appropriate times; and
  - ii. Accounts being considered and approved by the General Manager prior to payment; and
  - iii. All instructions provided to the legal representatives by the Councillor concerned to be subject to the concurrence of the General Manager.
8. Notwithstanding the provisions of paragraph 7 (ii) and 7 above, once proceedings have actually been commenced then the procedures set out in paragraph 7 above must be followed. (Note: The General Manager should regularly review Council's insurance policies with respect to the application of them to the Council's possible liability pursuant to this policy.)

Exclusion from Policy

This policy will not apply to any defamation or other action brought by any Councillor or Council employee against any Councillor, arising from the making of a statement by any of the latter of and concerning any of the former, unless in addition to the Three Criteria set out above:

- i. The statement complained of is made to a person or body in circumstances where it is likely to be subject to qualified privilege or absolute privilege (including without limitation statements made in good faith to the Police or Director of Public Prosecutions, the Office of Local Government, statements made ancillary to, and in giving evidence to, a Court or Tribunal or other body conducting any inquiry, investigation or hearing, statements made to the Office of the Ombudsman and statements made to any Parliamentary Committee) (but in such circumstances the policy will only apply to the extent of the publication of the statement in these circumstances, and not to any other publication of the statement); or

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 19 of 27

**ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



ii. The statement:

- is made at a meeting of Council, a briefing of Councillors or a meeting of a Committee of Council in respect of an item on the agenda for that meeting or briefing; and
- is in accordance with the Local Government (General) Regulations 2005 and Council's Code of Meeting Practice current at the time the statement was alleged to have been made; and
- does not breach any other law.

**Part 2 - Provision of Facilities**

**2.1 Provision of Facilities Generally**

- 2.1.1 Unless otherwise stated, where a facility may be provided by Council in accordance with this Policy and a Councillor chooses to accept the facility, it shall be provided by Council with all establishment, routine maintenance, operating, training, replacement and insurance costs being met by Council, subject to any limits specified and adequate funds being allocated and available in Council's adopted Integrated Strategic Plans.
- 2.1.2 All facilities provided shall be of adequate capacity and functionality to allow the role of Councillor to be fully undertaken.

**2.2 Private Use of Equipment and Facilities**

- 2.2.1 Councillors shall not generally obtain private benefit from the provision of equipment and facilities. This includes benefits such as a travel bonus or other benefit arising from a loyalty scheme. However, incidental personal use of Council equipment and facilities may occur from time to time. No entitlement under this Policy shall be treated as being a private benefit that requires a reduction in the Mayoral fee or the Councillors fee.
- 2.2.2 If a Councillor does obtain a private benefit for the use of a facility provided by Council being more than incidental use, the Councillor shall be invoiced for the amount of the private benefit with repayment to be in accordance with Council's normal terms.
- 2.2.3 The value of a private benefit to be invoiced under this clause 2.2 shall be determined by the General Manager or, at the request of the Councillor in receipt of the private benefit, the General Manager, or any two Councillors, by resolution of an open meeting of Council.
- 2.2.4 Equipment, facilities and services provided under this Policy shall not be used to produce election material or for any other political purposes.

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 20 of 27

**ITEM 19 - ATTACHMENT 1    REVISED PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



**2.3    Councillors' Room**

- 2.3.1    Councillors shall be provided with equipment and facilities at the Raymond Terrace Administration Building. Equipment provided under this clause remains the property of Council.
- 2.3.2    The Councillors' Room furnished for use by all Councillors shall be provided with:
- a)    A telephone, computer with internet access, multifunction device and computer peripherals for use by all Councillors.
  - b)    A library including Council policies, relevant legislation, reports on Development Applications and other relevant documents.

**2.4    Administration Support, Stationery, Postage & Business Cards**

- 2.4.1    Council shall provide the support services of Councillor Support Executive Assistant with suitable experience and skills to support Councillors.
- 2.4.2    Council shall post all correspondence for Councillors relative to the discharge of the functions of civic office.
- 2.4.3    Council shall provide appropriate letterhead stationery, business cards and Christmas cards for use by Councillors.
- 2.4.4    Correspondence by Councillors relative to the discharge of the functions of civic office is considered official correspondence of Council where the matter is referred to the General Manager for attention. The correspondence shall be attached to the appropriate Council file for registration, attention and reply.
- 2.4.5    Under no circumstances shall Councillors use the administration services, staff or other facilities provided in association with Local, State or Federal Government Elections.
- 2.4.6    Under no circumstances shall Councillors use the administration services or other facilities provided for the initiation of circular type letters without prior authority of the Council being obtained.
- 2.4.7    Council shall provide Councillors with official name badges indicating the wearer holds the office of Councillor, to wear at Civic functions.

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 21 of 27



**ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



**2.5 Meals**

- 2.5.1 Councillors will be provided with meals and refreshments following Committee and Council meetings and at other times considered appropriate by the Mayor and General Manager. The standard of the meal will be determined by the Mayor and/or the General Manager.
- 2.5.2 Light refreshments such as biscuits, health bars and beverages will be provided in the Councillors Room.

**2.6 Transport Facilities**

- 2.6.1 Four designated car parking spaces shall be provided for Councillors in the Council car park at the Council administration building, to be shared amongst Councillors.
- 2.6.2 Councillors will be reimbursed for all transport costs (taxi, use of private vehicle, etc) in accordance with clause 2.2 for their attendance at official Council functions. This includes deputising for the Mayor.

**2.7 Corporate Uniform**

- 2.7.1 Councillors may choose from a selection of Corporate Uniform provided by Council's approved supplier. Council will contribute a subsidy to 35% of the initial cost to a maximum of \$250 per annum. A sundry debtor account will then be forwarded to the Councillor for payment of the balance. Alternatively, a deduction can be made from the Councillor's monthly allowance.

**2.8 Superannuation**

- 2.8.1 Councillors may elect to contribute all or part of their Councillor Allowance into an approved Superannuation Scheme by completing **FORM 3**.

**2.9 Health & Wellbeing Initiative**

- 2.9.1 Councillors shall be able to access a Health Initiative program, which includes gym membership at local facilities. The program requires a minimum six (6) month membership with a payment to be made in advance for three (3) months – non refundable.
- 2.9.2 Councillors shall investigate any taxation implications for individual councillors as a result of the membership.

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 22 of 27

**ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



2.9.3 Further details can be obtained through Council's Councillor Support Executive Assistant.

**2.10 Provision of Safety equipment**

2.10.1 Councillors shall be provided with the following Protective Apparel:

- hard hat;
- safety vest;
- safety footwear;
- safety glasses and;
- hearing protection

to accord with the NSW Workplace Health & Safety Act, for on-site inspections.

**Provision of Additional Expenses, Equipment and Facilities for the Mayor**

**2.11 Additional Expenses, Equipment and Facilities**

2.11.1 The Mayor is paid an additional annual fee. The fee is the amount fixed by Council under Division 5 of Part 2 of Chapter 9 of the Act in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

2.11.2 This Policy is intended to cover most situations where the Mayor reasonably incurs additional expenses in discharging the functions of Mayoral office. The annual fee paid to the Mayor is generally not intended to offset those costs.

**2.12 Equipment and Facilities**

2.12.1 The Mayor shall be provided with additional equipment and facilities. Equipment provided under this clause remains the property of Council.

2.12.2 The following facilities and equipment shall be provided to the Mayor:

2.12.3 A furnished office with computer, printer, internet access, phone, facsimile and computer peripherals.

2.12.4 Office refreshments.

2.12.5 Mayoral letterhead.

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 23 of 27

**ITEM 19 - ATTACHMENT 1    REVISED PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



2.12.6 A corporate credit card, to be used only to pay expenses allowed under this policy.

2.12.7 All items provided to the Mayor under this clause 2.12 must be returned to Council when the Mayor ceases to hold office.

**2.13 Mayor's Staff**

2.13.1 Council shall provide the services of the Councillor Support Executive Assistant with suitable experience and skills to support the Mayor.

2.13.2 The Councillor Support Executive Assistant shall provide support to the Deputy Mayor in the absence of the Mayor.

**2.14 Mayoral Motor Vehicle**

2.14.1 The Mayor shall be provided with:

2.14.2 A fully maintained motor vehicle, of a standard appropriate to the Office of the Mayor for the use of discharging function of the Mayor.

2.14.3 A fuel card, to be used for official Council business.

2.14.4 A car parking space at the Raymond Terrace Administration Building.

2.14.5 All items provided to the Mayor under this clause 2.14 must be returned to Council when the Mayor ceases to hold office.

**POLICY RESPONSIBILITIES:**

- 1) The Governance Manager will be responsible for the implementation, monitoring and re-evaluating the policy.

**RELATED DOCUMENTS:**

- Office of Local Government Guidelines for the payment of expenses and the provision of facilities to Mayors and Councillors.
- Port Stephens Council Code of Conduct, as amended.
- Office of Local Government Model Code of Conduct – as amended.
- Independent Commission Against Corruption (ICAC) Publications.
- **Local Government Act 1993**

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 24 of 27

ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



**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 <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a>			
<b>TRIM container No</b>	A2004-0284	<b>TRIM record No</b>	
<b>Audience</b>	Mayor and Councillors		
<b>Process owner</b>	Governance Manager		
<b>Author</b>	Governance Manager		
<b>Review timeframe</b>	Annually	<b>Next review date</b>	July 2017
<b>Adoption date</b>			

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1.0	28/06/1994	Assistant General Manager		342
2.0	13/12/1994	Assistant General Manager		691
3.0	14/11/1995	Assistant General Manager		562
4.0	10/09/1996	Assistant General Manager		528
5.0	23/12/1997	Assistant General Manager		1471
6.0	09/03/2004	Governance Officer		107
7.0	31/01/2006	Governance Coordinator		398
8.0	27/11/2006	Governance Coordinator		758
9.0	25/03/2008	Governance Coordinator		069
10.0	16/12/2008	Executive Officer		398
11.0	24/11/2009	Executive Officer		399
12.0	23/11/2010	Executive Officer		373
13.0	18/11/2011	Executive Officer		385
14.0	27/11/2012	Executive Officer		323

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 25 of 27

**ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



Version	Date	Author	Details	Minute No.
15.0	26/11/2013	Executive Officer		345
16.0	26/08/2014	Executive Officer		229
17.0	22/09/2015	Governance Manager	Transferred policy to new corporate policy template and updated forms. No changes to the intent or objectives of the policy.	295
18.0	23/08/2016	Governance Manager	<p>It is proposed to amend the Policy as follows:</p> <ol style="list-style-type: none"> <li>1) Increase cl. 1.12.1 to increase the allowance from \$3,000 to \$4,000 per term.</li> <li>2) Amend cl. 1.15.1 change name of the Local Government Pecuniary Interest Tribunal to NSW Civil and Administrative Tribunal.</li> <li>3) Cl. 8 change clause references stated in clause 8.</li> <li>4) Under the "Exclusion from Policy" change name of Department of Local Government to Office of Local Government.</li> </ol>	242

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 26 of 27

**ITEM 19 - ATTACHMENT 1 REVISED PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



Version	Date	Author	Details	Minute No.
18.1		Governance Manager	<p>It is proposed to amend the Policy as follows:</p> <ol style="list-style-type: none"> <li>1) Update the context/background to reflect adopt timeframes in accordance with the Local Government Act.</li> <li>2) Update cl.252 (1) page 2.</li> <li>3) Remove cl.253 (4) page 3.</li> <li>4) Update cl 217 (a1) (vii), page 5.</li> <li>5) Update cl 1.3.1, page 8</li> <li>6) Update cl 1.6.2 &amp; 1.6.4, page 9.</li> <li>7) Update cl 1.8.1, page 11.</li> <li>8) Update cl 1.10.1, page 12.</li> <li>9) Update cl 1.12.1, page 13.</li> <li>10) Update cl 1.13.3, page 14.</li> <li>11) Update Related documents, page 24.</li> </ol>	

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 27 of 27

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



**FILE NO:** A2004-0284

**TITLE:** PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY

**POLICY OWNER:** GOVERNANCE MANAGER

**PURPOSE:**

The purpose of the Payment of Expenses and Provision of Facilities to Mayor/Councillors Policy ('the Policy') is to ensure that Councillors receive adequate and reasonable expenses and facilities to enable them to carry out their civic duties. It ensures that these are provided in an accountable and transparent manner.

**CONTEXT/BACKGROUND:**

This Policy is made under the *Local Government Act 1993*, including Sections 248 to 254 and 731 and having regard to the provisions of the Division of Local Government Circular No. 09-36, 7 October 2009.

The Act requires that the Council must adopt a policy concerning the payment of expenses and the provision of facilities to the Mayor and Councillors.

This Policy is to be adopted by Council annually, within five months after the end of the year.

Prior to adoption public notice must be given and public submissions invited for 28 days. Council must then consider all submissions received and make any appropriate changes to the Policy.

Council need not give public notice of a proposed amendment if Council is of the opinion that the proposed amendments are not substantial. The term 'not substantial' should be taken to mean minor changes to wording of the policy or changes to monetary provisions or rates that are less than 5% or changes to the standard of equipment and facilities to be provided. Public notice is required prior to each annual adoption of the policy even if there are no proposed changes.

Section 428 of the Act and Clause 271 of the Regulation requires Councils to include detailed information in their annual reports about the payments of expenses and facilities to Councillors.

**Legislative provisions**

The relevant legislative provisions are the *Local Government Act 1993* and the *Local Government (General) Regulations 2005*.

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 1 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



**Local Government Act 1993**

**248 FIXING AND PAYMENT OF ANNUAL FEES FOR COUNCILLORS**

- (1) A council must pay each councillor an annual fee.
- (2) A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.
- (3) The annual fee so fixed must be the same for each councillor.
- (4) A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.

**248A ANNUAL FEES OR OTHER REMUNERATION NOT TO BE PAID DURING PERIOD OF SUSPENSION**

A council must not at any time pay any fee or other remuneration, to which a councillor would otherwise be entitled as the holder of a civic office, in respect of any period during which:

- (a) the councillor is suspended from civic office under this Act, or
- (b) the councillor's right to be paid any fee or other remuneration is suspended under this Act, unless another provision of this Act specifically authorises payment to be made, or specifically permits a person to authorise payment to be made, when the suspension is terminated.

**249 FIXING AND PAYMENT OF ANNUAL FEES FOR THE MAYOR**

- (1) A council must pay the mayor an annual fee.
- (2) The annual fee must be paid in addition to the fee paid to the mayor as a councillor.
- (3) A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.
- (4) A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.
- (5) A council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.

**252 PAYMENT OF EXPENSES AND PROVISION OF FACILITIES**

- (1) Within 5 months after the end of each year, a council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.
- (2) The policy may provide for fees payable under this Division to be reduced by an amount representing the private benefit to the mayor or a councillor of a facility provided by the council to the mayor or councillor.

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 2 of 26



**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



- (3) A council must not pay any expenses incurred or to be incurred by, or provide any facilities to, the mayor, the deputy mayor (if there is one) or a councillor otherwise than in accordance with a policy under this section.
- (4) A council may from time to time amend a policy under this section.
- (5) A policy under this section must comply with the provisions of this Act, the regulations and any relevant guidelines issued under section 23A.

**253 REQUIREMENTS BEFORE POLICY CONCERNING EXPENSES AND FACILITIES CAN BE ADOPTED OR AMENDED**

- (1) A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.
- (2) Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.
- (3) Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.
- (4) Within 28 days after adopting a policy or making an amendment to a policy for which public notice is required to be given under this section, a council is to forward to the Director-General:
  - (a) a copy of the policy or amendment together with details of all submissions received in accordance with subsection (1), and
  - (b) a statement setting out, for each submission, the council's response to the submission and the reasons for the council's response, and
  - (c) a copy of the notice given under subsection (1).
- (5) A council must comply with this section when proposing to adopt a policy each year in accordance with section 252 (1) even if the council proposes to adopt a policy that is the same as its existing policy.

**254 DECISION TO BE MADE IN OPEN MEETING**

The council or a council committee all the members of which are councillors must not close to the public that part of its meeting at which a policy for the payment of expenses or provision of facilities is adopted or amended, or at which any proposal concerning those matters is discussed or considered.

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 3 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



**254A CIRCUMSTANCES IN WHICH ANNUAL FEES MAY BE WITHHELD**

- (1) Despite this Division, a council may resolve that an annual fee will not be paid to a councillor or that a councillor will be paid a reduced annual fee determined by the council:
  - (a) for any period of not more than 3 months for which the councillor is absent, with or without leave, from an ordinary meeting or ordinary meetings of the council, or
  - (b) in any other circumstances prescribed by the regulations.
- (2) Despite this Division, if a councillor is absent, with or without leave of the council, from ordinary meetings of the council for any period of more than 3 months, the council must not pay any annual fee, or part of an annual fee, to that councillor that relates to the period of absence that is in excess of 3 months.

**428 ANNUAL REPORTS**

- (1) Within 5 months after the end of each year, a council must prepare a report (its "annual report") for that year reporting as to its achievements in implementing its delivery program and the effectiveness of the principal activities undertaken in achieving the objectives at which those principal activities are directed.

**Local Government (General) Regulations 2005**

**217 ADDITIONAL INFORMATION FOR INCLUSION IN ANNUAL REPORT**

- (1) For the purposes of section 428 (4) (b) of the Act, an annual report of a council is to include the following information:
  - (a) details (including the purpose) of overseas visits undertaken during the year by councillors, council staff or other persons while representing the council (including visits sponsored by other organisations),
  - (a1) details of the total cost during the year of the payment of the expenses of, and the provision of facilities to, councillors in relation to their civic functions (as paid by the council, reimbursed to the councillor or reconciled with the councillor), including separate details on the total cost of each of the following:
    - (i) the provision during the year of dedicated office equipment allocated to councillors on a personal basis, such as laptop computers, mobile telephones and landline telephones and facsimile machines installed in councillors' homes (including equipment and line rental costs and internet access costs but not including call costs),

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 4 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

## Policy



- (ii) telephone calls made by councillors, including calls made from mobile telephones provided by the council and from landline telephones and facsimile services installed in councillors' homes,
- (iii) the attendance of councillors at conferences and seminars,
- (iv) the training of councillors and the provision of skill development for councillors,
- (v) interstate visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,
- (vi) overseas visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,
- (vii) the expenses of any spouse, partner (whether of the same or the opposite sex) or other person who accompanied a councillor in the performance of his or her civic functions, being expenses payable in accordance with the Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors for Local Councils in NSW prepared by the Director-General from time to time,
- (viii) expenses involved in the provision of care for a child of, or an immediate family member of, a councillor, to allow the councillor to undertake his or her civic functions

### **403 Payment of expenses and provision of facilities**

A policy under section 252 of the Act must not include any provision enabling a council:

- (a) to pay any councillor an allowance in the nature of a general expense allowance, or
- (b) to make a motor vehicle owned or leased by the council available for the exclusive or primary use or disposition of a particular councillor other than a mayor.

### **404 CIRCUMSTANCES IN WHICH COUNCILLORS' ANNUAL FEES MAY BE REDUCED OR NOT PAID**

A definition of what is included and what is excluded from the policy. The scope may also include – what, when and where the policy applies; who will be affected and how it will affect them; what impact the policy will have? Exclusions to policy application should also be included, if applicable.

## Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 5 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

## Policy



### SCOPE:

The scope of this Policy is to detail those Councillor expenses and facilities the cost of which shall be met by Council.

This Policy also aims to ensure compliance of the Port Stephens Council Code of Conduct.

### DEFINITIONS:

Councillor	Means a Councillor elected to Port Stephens Council, including the Mayor.
Official Business of Council	Meeting of Council; Meetings of Committees of the Whole Site inspection where resolved by Council; Meetings of committees where Council has endorsed the Councillor's membership; Civic receptions hosted or sponsored by Council; Meetings or functions to which the Councillors attendance has been approved by the General Manager and/or the Mayor. Functions or meetings where the invitation to attend arises only as a result of the Councillor's position as a Councillor.
Council term	Period of elected Council (generally 4 years under the Local Government Act 1993)
Port Stephens local government area	Local government area of Port Stephens
The Act	Local Government Act 1993
The Regulation	Local Government (General) Regulation 2005

### POLICY STATEMENT:

## Part 1 - Payment of Expenses

### 1.1 General Provisions

- 1.1.1 Council will determine an annual allowance, to be paid monthly in arrears, in accordance with Section 248 - 251 of the Local Government Act and the determination of the Local Government Remuneration Tribunal.

## Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 6 of 26

ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



- 1.1.2 This Policy is intended to cover most situations where a Councillor reasonably incurs expenses in discharging the functions of civic office. The annual fees paid to each Councillors is generally not intended to offset those costs.
- 1.1.3 All allowances and reimbursements of expenses made under this Policy shall be in respect to costs directly associated with the functions of civic office.
- 1.1.4 Councillors are not permitted to claim expenses in connection with political activities, including political fundraising as this is considered a personal interest.
- 1.1.5 Councillors will not be provided with general expense allowance. A general expense allowance is a sum of money paid by a Council to a Councillor to expend on an item or a service that is not required to be receipted and/or otherwise reconciled according to a set procedure and within a specific timeframe
- 1.2 Reimbursement and reconciliation of expenses processes**
- 1.2.1 All claims for reimbursement must be made within four (4) months of incurring the expense and shall be subject to the General Manager or delegated officer discretion.
- 1.2.2 All claims shall be submitted to the General Manager and the delegated officer for assessment against the policy on **FORM 1.**"
- 1.2.3 All claims must be supplied with a tax invoice or receipt to support the claim. If a Councillor is not able to provide a tax invoice or receipt then a Statutory Declaration is to be provided.
- 1.2.4 Claims for travel under this Policy shall be lodged using travel **FORM 2**, include:
- Date
  - Place of departure and arrival
  - Distance travelled
  - Fare and parking fees paid
- 1.2.5 The kilometre rate payable to Councillors who travel in their own vehicle shall be the rate payable under the Local Government State Award.
- 1.2.6 Where travel is outside the Hunter Councils Area, Council shall as appropriate meet or reimbursement the lesser amount of the following expenses:
- a) The cost of an economy class air ticket and associated taxi transfers.
  - b) The cost of a first class rail ticket and associated taxi transfers.
  - c) Transportation expenses using a Councillor's own vehicle (calculated under clause 1.2.5).

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 7 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

## Policy



- d) Transportation using a Council-owned vehicles, actual costs incurred.
- 1.2.7 Where possible Council will pay all expenses directly by account or through use of a corporate credit card. In some instances, it may be necessary for Councillors to pay unexpected costs and seek reimbursement.
- 1.2.8 Once expenses of attending conferences, seminars or training course have been finalised, an invoice shall be forwarded to Councillors for any expenses payable by them.
- 1.3 Approval and Dispute resolution**
  - 1.3.1 The Executive Assistant – Councillor Support shall assess all claims against this Policy and provide the assessed documentation to the General Manager and Executive Officer for approval.
  - 1.3.2 Claims will be paid on a monthly basis, generally the first Friday of the month.
  - 1.3.3 Should the General Manager and Governance Manager determine that a claim should not be paid, the Councillor should be advised in writing. Should the Councillor still believe that the claim should be paid, in part or full, it shall be considered that a dispute exists.
  - 1.3.4 In the event of a dispute at any time regarding payment of a claim or anything else under this Policy, the parties to this dispute shall each provide a written report on the nature of the dispute. The General Manager shall submit such reports to the next open meeting of Council. The dispute shall then be determined by a resolution of Council having regard to the reports, this Policy, Act and any other relevant laws.
  - 1.3.5 The decision of Council pursuant to clause 1.3.4 shall be binding on all parties.
- 1.4 Payment in advance**
  - 1.4.1 Councillors may require advance payment for an anticipated expense associated with attendance at a conference, seminar and training course. The amount is **\$200** per Councillor per event.
  - 1.4.2 In the event of a payment being made in advance, Councillors must full reconcile all expenses against the amount of the advance and submit the reconciliation to Council with **30 days** of the event.

## Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 8 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



**1.5 Monetary Limits**

- 1.5.1 Monetary limits set out in this Policy are the maximum amount payable in respect of any facility or expense. Any additional costs above the limit will be incurred by the Councillor. All monetary limits are exclusive of GST.
- 1.5.2 Monetary limits may only be waived by a resolution of Council in exceptional circumstances. Any waiver of a monetary limit will apply to a particular event or circumstance and will not constitute an amendment to this Policy.

**Spouse and Partner Expenses**

- 1.6.1 Accompanying person means a person who has a close relationship with a Councillor and/or provides carer support to the Councillor.
- 1.6.2 In limited circumstances, Council shall meet certain costs incurred by a Councillor on behalf of their spouse, partner or accompanying person which is properly and directly related to accompanying the Councillor when the Councillor is performing his or her official functions with the Port Stephens Local Government Area, including but not limited to costs associated with attendance at official Council functions that are of a formal or ceremonial nature. Each Councillor is entitled to a maximum of **\$500** per year of term, not including the Local Government NSW annual conference.
- 1.6.3 Costs and expense incurred by the Councillor on behalf of their spouse, partner or accompanying person shall be reimbursed if the cost or expense relates specifically to the ticket, meal and/or direct cost of attending the function.
- 1.6.4 In limited circumstances, Council shall meet certain costs incurred by the Mayor on behalf of their spouse, partner or accompanying person which is properly and directly related to accompanying the Mayor within the State of New South Wales or as resolved by Council when performing his or her official functions, including but not limited to costs associated with attendance at official Council functions that are of a formal or ceremonial nature. Each Mayor is entitled to a maximum of **\$1000.00** per year of term, not including the Local Government NSW annual conference.
- 1.6.5 Council shall meet limited expenses of spouse, partner or accompanying person associated with attendance at the Local Government NSW annual conference. These expenses are limited to the costs of registration and the official conference dinner. Expenses such as travel expenses, any additional accommodation expenses and the cost of any accompanying persons program shall not be met by Council.

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 9 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



- 1.6.6 Costs associated with spouse, partner or accompanying person associated with attendance conferences other than the Local Government NSW annual conference, or any seminars or training shall not be met by Council.
- 1.6.7 In no circumstances will the peripheral expenses of spouse, partner or accompanying person, such as grooming, special clothing and transport be considered reimbursable expenses.

**Specific Expenses for Councillors**

**1.7 Attendance at seminars, conferences, training and educational expenses**

- 1.7.1 Council shall meet expenses incurred by Councillors in attending conferences and seminars or undertaking training and educational courses when the attendance is:
- a) To the Local Government NSW annual conference; or
  - b) Authorised by resolution of an open meeting of Council.
- 1.7.2 Councillors should generally have their attendance at a conference, seminar or participation in a training course authorised by Council in accordance with clause 1.7.1 (b).
- 1.7.3 Where it is impractical to have a Councillor's attendance or participation authorised by Council in accordance with clause 1.7.1 (b), Councillors wishing to claim expenses incurred due to their attendance or participation shall obtain the approval of the Mayor and the General Manager prior to attendance. Where the Mayor is seeking approval to claim his or her attendance or participation expenses under this clause, he or she shall obtain the approval of the Deputy Mayor and the General Manager.
- 1.7.4 Councillors shall submit their request for attendance in writing with the appropriate notice detailing the costs and benefits to the Councillor, to Council and the community.
- 1.7.5 In making its decision, the General Manager/Mayor or Council should consider:
- a) The relevance of the seminar, conference, training or educational expenses to Council and the potential benefit that may result from attendance;
  - b) The special interest of the Councillor/s wishing to attend;
  - c) The total cost to Council of attendance relative to the Program budget;
  - d) The fair and equitable division of opportunity for Councillors to attend conferences/seminars.

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 10 of 26



ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

Policy



1.7.6 Councillors shall at the conclusion of their attendance at the seminar, conference, or training provide a written report to Council on the aspects of the seminar, conference or training. This report should be submitted to Council within one month of their attendance. Attendance at the Local Government NSW annual conference will not require a report to Council.

1.7.7 The General Manager's Office will make all arrangements for the attendance of Councillors and accompanying persons, where required at a conference, seminar or training.

**1.8 Seminars, Conferences and Training Expenses**

1.8.1 Council will meet the costs for attendance at approved conferences and seminars, training and educational courses to a maximum of **\$5,000.00** per Councillor per year of term, excluding the costs associated with attendance at the Local Government NSW annual conference:

- a) **Registration fees** – Council will meet the cost of the registration fee set by the organiser, including costs of related official lunches and dinners, and associated tours where they are relevant to the business and interests of Council.
- b) **Accommodation** – where a conference, seminar or training course is not located within the Port Stephens Local Government Area, Councillors shall where required be accommodated in the hotel where the event is being held or the nearest hotel to it that is of a similar standard, or as arranged by the conference organiser. Accommodation shall be provided at the rate of a double room. Any additional nights prior to or following the conference, seminar or training course Council will not be included in the expenses paid by Council. **Note:** Movie hire and Mini Bar Facilities will be paid for by the Councillor.
- c) **Transportation** – Councillors attending a conference, seminar or training course shall travel by the most appropriate route, subject to any personal medical requirements. Any costs incurred in undertaking activities not related to attendance at the conference, seminar or training course shall not be included in any expenses paid by Council.
- d) **Educational Materials** – where a Councillor is participating in an approved training or educational course and specific reference materials are required (for example, prescribed textbooks), Council shall purchase such educational materials on the Councillor's behalf. At the completion of the relevant training or educational course, educational materials purchased pursuant to this clause shall be returned to Council and be available for the use of all Councillors in the Councillor's Room

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 11 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



1.8.2 Conferences, seminars and training held outside the Port Stephens Local Government Area, Council shall as appropriate (having regard to availability, time/cost effectiveness of the transport options) meet or reimburse the lesser amount of the following transportation expenses:

- a) The cost of an economy class air ticket and associated taxi transfers.
- b) The cost of a first-class rail ticket and associated taxi transfers.
- c) Transportation expenses by a Councillor with the Councillor's own vehicle (refer to clause 1.2.5).

1.8.3. If a Council-owned vehicle utilised that cost will be determined by way of actual costs incurred.

**1.9 Meals**

1.9.1 Council shall meet the cost of breakfast, lunch and dinner for Councillors attending a conference, seminar or training course where any such meal is not provided by the organiser. Council shall also meet the reasonable cost of drinks accompanying the meals.

1.9.2 Costs payable by Council under clauses 1.9.1 and 1.9.2 shall be capped at a maximum of **\$100.00** per Councillor per day inclusive. Councillors will be paid actual costs if under **\$100.00** per day.

1.9.3 Council shall meet the reasonable cost of Councillors' meals where due to their attendance to Official Business of Council the Councillor is reasonably unable to partake of a meal at their residence and so incurs additional expense.

1.9.4 Costs payable by Council under clause 1.9.3 shall be capped at a maximum of **\$50.00** per Councillor per day or actual costs, whichever is less.

**1.10 Local Travel Arrangements and Associated Expenses**

1.10.1 Travelling expenses shall be reimbursed to Councillors for travel by public transport or private vehicle on Official Business of Council in the Hunter Councils area, to a maximum amount of **\$6,000.00** per Councillor per year of term.

1.10.2 Councillors may, where available, use Council owned vehicles to attend to Official Business of Council.

1.10.3 Council shall meet the cost of parking fees and road tolls but not the cost of traffic or parking fines, which shall remain the sole responsibility of the Councillor.

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 12 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



1.10.4 Claims for reimbursement under this clause 1.10 shall be made in accordance with clause 1.2.

**1.11 Travel outside the HROC Area including Interstate and Overseas Travel**

1.11.1 Payment of any travel expenses to a Councillor, incurred on Council related business outside of the Hunter Councils area and not otherwise addressed in clause 2.8 requires approval by resolution of Council in an open meeting.

1.11.2 Approval for payment of travel expenses under clause 1.11.1 may be granted subject to any conditions Council so determines, and Council shall meet only those expenses that Council so determines.

**1.12 Communication Device Costs and Expenses**

1.12.1 Council shall reimburse Councillors to a maximum of **\$4,000.00** per term for the purchase of a personal computer/laptop, multifunction device, peripherals and Microsoft office software.

1.12.2 Council shall not purchase the equipment in item 1.12.1 on a Councillors behalf.

1.12.3 Council shall reimburse Councillors for all maintenance and repairs, which are to be arranged by individual Councillors.

1.12.4 Council shall reimburse Councillors for all consumables such as ink cartridges and reasonable supply of paper for official Council business.

1.12.5 Council shall reimburse Councillors for their communication device costs (including mobile phone, landline rental, landline telephone and facsimile) incurred in attending to Council business to a maximum cost of **\$200.00** per Councillor per month of term. All communication device costs incurred above this maximum are at the Councillors own expense.

1.12.6 As an alternative to clause 1.12.5, Council shall reimburse Councillors for their communication device costs where it is part of a bundle plan. This would include landline costs and internet where costs were incurred in attending to Council business to a maximum cost of **\$120.00** per Councillor per month of term. The maximum cost for a mobile phone plan would be **\$100.00** per Councillor per month of term.

All communication device costs incurred above this maximum are at the Councillors own expense.

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 13 of 26

ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

## Policy



1.12.7 If a Councillor does not have a telephone line or internet connection at their home, Council shall meet the installation costs.

1.12.8 Council shall meet the cost of providing and maintaining an internet connection at the residence of the Councillor to a maximum of **\$60.00** per Councillor per month of term. Any internet costs incurred above this maximum are at the Councillors own expense.

### 1.13 Care and Other Related Expenses.

1.13.1 In this clause, "relative" shall have the same meaning as set out in the Dictionary in the Act, being at the date of this policy:

*"Relative, in relation to a person, means any of the following:*

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse;*
- (b) the spouse or de facto partner of the person or of a person referred to in paragraph (a)."*

1.13.2 Where a Councillor has sole responsibility for the care and support of any relative, Council shall reimburse expenses for carer arrangements, where expenses relate to a relative as defined under clause 1.13.1 and are payable when a Councillor is required to attend the following to discharge the functions of civic office:

- a) Council meetings, committee meetings, inspections, formal briefings, civic and ceremonial functions relating to civic office;
- b) Meetings scheduled by Council and/or the Mayor;
- c) Meetings arising as a result of a Councillor being appointed by Council to an outside body or committee;
- d) A meeting, function or other official role as a representative of the Mayor or Council.

1.13.3 The total amount paid to a Councillor under this clause 1.13 shall not exceed **\$2,000** per year of term.

1.13.4 Claims for reimbursement under this clause 1.13 shall be made in accordance with clause 1.2.

### 1.14 Insurance Expenses

Councillors shall receive the benefit of insurance cover for:

1.14.1 Personal Accident - Personal Accident insurance covers personal injury, which is caused by violent, accidental external and visible means that solely and independently of any other cause results in a Councillor's death or disablement. The cover applies

## Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 14 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



anywhere in the world during and while travelling to and from Council business. The capital benefit for the death of a Councillor is \$500,000. The cover does not include medical expenses.

- 1.14.2 Professional Indemnity - Professional Indemnity insurance covers Council where Council becomes legally liable to pay compensation for financial loss as a result of any negligent act, error or omission in the conduct of Council's business activities arising from a breach of professional duty. Cover is subject to any limitations or conditions set out in the NSW Local Government (Jardine) Mutual Liability Scheme wording.
- 1.14.3 Public Liability - Public Liability insurance covers Council's legal liability to pay compensation to third parties arising in connection with the business activities of Council. Matters arising from Councillors' performance of civic duties or exercise of their functions as Councillors are covered subject to any limitations or conditions set out in the NSW Local Government (Jardine) Mutual Liability Scheme policy wording.
- 1.14.4 Councillors' & Officers' Liability - Councillors' & Officers' Liability insurance protects Councillors and officers from the costs incurred in defending themselves against legal actions that arise from honest mistakes in the management of Council. It covers Councillors for personal liabilities as a result of wrongful acts subject to any limitations or conditions set out in the policy of insurance.

Full details of the abovementioned insurance policies are available in Council's Insurance Handbook held by the Risk Management Coordinator.

**1.15 Legal Expenses**

- 1.15.1 Councillors may be entitled to indemnity for an enquiry, investigation or hearing commenced by or on behalf of official body.

Legal proceedings being taken against a Councillor, arising out of or in connection with the Councillor's performance of his or her civic duties or exercise of his or her functions as a Councillor (with the exception of defamation proceedings), Council shall reimburse such a Councillor, after the conclusion of the enquiry, investigation, hearing or proceeding, for all legal expenses properly and reasonably incurred, given the nature of the enquiry, investigation, hearing or proceeding, on a solicitor/client basis, PROVIDED THAT:

The amount of such reimbursement shall be reduced by the amount of any monies that may be or are recouped by the Councillor on any basis.

The Councillor's performance or exercise of the civic duty or function was in the opinion of Council bona fide and/or proper (Section 731 of the Act).

Policy

WARNING: 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)



**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



The amount of such reimbursement be limited to the extent that only fees charged at a rate equivalent to the hourly rate then being charged by Council's Hunter based Solicitors will be paid ie any portion of the expenses representing any hourly charge rate higher than the hourly rate charge rate of Council's Hunter based Solicitors will not be reimbursed.

Defamation proceedings or other proceedings arising from the making of a public statement, where a Councillor is a defendant or anticipated defendant in such proceedings.

**Note:** Council may not meet the costs of any action in defamation taken by a Councillor as plaintiff in any circumstances (DLG Circular 00/22).

To ensure that indemnity or reimbursement in respect of costs of defending an action in defamation or other action is only available in circumstances where the person to be indemnified or reimbursed was acting properly when making the statement complained of, the threshold criteria for the application of the indemnity or reimbursement will apply.

Council may indemnify or reimburse the reasonable legal expenses of a councillor for proceedings before the NSW Civil and Administrative Tribunal or an investigative body PROVIDED the subject of the proceedings arises from the performance in good faith of a function under the Act and the Tribunal or investigative body makes a finding substantially favourable to the Councillor.

Legal expenses incurred in relation to proceedings arising out of the performance by a councillor of his or her functions under the Act should be distinguished from expenses incurred in relation to proceedings arising merely from something, which a councillor has done during his or her term of office. An example of the latter is expenses arising from an investigation as to whether a councillor acted corruptly by using knowledge of a proposed rezoning for private gain.

In addition, legal costs will only be provided where the investigative or review body makes a finding that is not substantially unfavourable to the councillor. This may include circumstances in which a matter does not proceed to a finding. In relation to a councillor's conduct, a finding by an investigative or review body that an inadvertent minor technical breach has occurred may not necessarily be considered a substantially unfavourable outcome.

- 1.15.2 Council shall not meet any Councillor's costs of any enquiry, investigation or hearing initiated at the request of, or to any legal proceedings taken by, Council itself.

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 16 of 26

ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

## Policy



### General

Where proceedings have been foreshadowed or commenced against any of the Mayor and Councillors arising from a public statement or statements made or acts done by any of them and, in the opinion of Council's appointed solicitor the following "Three Criteria" are satisfied through the required procedure set out below namely:

- (a) The statement was made or the act was done in relation to discharging the functions of civic office;
- (b) The Councillor concerned was acting in good faith; and
- (c) The statement or the act in question was reasonable in the circumstances and not made or done maliciously or frivolously and, in the case of a statement, was not made with knowledge of its falsity or with recklessness as to whether it was true or false,

then Council will indemnify or reimburse the Councillor for:

- (a) all legal expenses properly and reasonably incurred, given the nature of the legal services provided; and
- (b) any other fees, expense, liability or cost incurred (including without limitation any order for the payment of damages, interest and/or costs or any other order for the payment of money made against the Councillor),

In responding to or defending such proceeding **PROVIDED THAT** the amount of such indemnity or reimbursement shall be reduced by the amount of any monies that may be or are recouped by the Councillor on any basis.

### Engagement of Legal Representatives – Required Procedure

1. The Councillor must, as soon as practicable after they become aware that a claim may be forthcoming or aware that they may have made a statement or action which may give rise to a claim, notify either the General Manager, Public Officer or Mayor that there is a possibility of a claim against the Councillor. This notification must;
  - i. be in written form;
  - ii. include all details including any correspondence from the alleged injured party concerning the possible claim; and
  - iii. Include the Councillor's comments on whether the Councillor considers that the Three Criteria are satisfied.
2. The Councillor must not respond to any allegations made or accept any liability in respect to any allegations made unless authorised to do so by Council or its solicitor or the insurer or its solicitor. The Councillor must at all times without undue delay keep Council

## Policy

WARNING: 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)



ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

## Policy



fully informed of any oral or written communications made to the Councillor by the alleged injured party or the injured party's agents or legal representative in respect of the claim.

3. The General Manager must immediately upon becoming aware that a claim may be forthcoming or aware that a statement has been made which may give rise to a claim, notify and forward to Council's insurer any information relating to the matter with a view to obtaining the Insurer's acceptance and carriage of the claim should the three criteria be satisfied.
4.
  - i. If proceedings are threatened (and not commenced), the General Manager must without undue delay inform Council's appointed Solicitor and Council's insurer of the notification. The Council's solicitor at Council's cost must form a view as to whether the Three Criteria are satisfied, and must notify the General Manager who will in turn notify the Councillor concerned in written form of that view.
  - ii. If the Council's solicitor considers that the Three Criteria are satisfied, the General Manager will either instruct Council's solicitors or if Council's Insurers have accepted the matter as a possible claim then it will represent the Councillor concerned.
5. If Council's solicitor forms the view that the Three Criteria are not satisfied under clause (4); the Councillor may request a review of that advice from an independent legal practitioner as agreed in advance between the Councillor concerned and the General Manager and failing agreement as nominated by the President for the time being of the Law Society of NSW or the President of the NSW Bar Association.
6. If the proceedings are commenced and the Three Criteria are satisfied then the following procedure must be followed:
  - In the case that the claim is accepted by Council's insurer it will have carriage of the matter subject to consultation with the General Manager and the Councillor will be required to abide by any reasonable instruction of the insurer or its nominated lawyer.
  - If the Insurer does not accept the claim as it is of the opinion that the matter is outside the policy then the General Manager in consultation with Council's solicitor will nominate a legal practitioner that they consider should represent the Councillor. If the Councillor considers that such representation is appropriate then the procedures in clause 7 must be followed. If Council's solicitors are not of the same opinion as the insurers the General Manager in consultation with Council's solicitors will take whatever action is necessary (without unduly holding up the defamation proceedings) to have the question determined.
  - If the Councillor considers that the legal practitioner nominated is not appropriate then the Councillor concerned and the General Manager must attempt to reach agreement on an alternative legal practitioner, and failing agreement the legal practitioner must be as

## Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 18 of 26



ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND  
PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.

## Policy



nominated by the President for the time being of the Law Society of NSW or the President of the NSW Bar Association.

7. If Council's insurers have not accepted the claim the General Manager must contact the proposed legal practitioner and must require that an agreement be entered into between the legal practitioner and the Council which will include such terms and conditions as the General Manager sees fit including:
  - i. Terms and conditions as to costs and disbursements including procedures for costs estimates to be given at appropriate times; and
  - ii. Accounts being considered and approved by the General Manager prior to payment; and
  - iii. All instructions provided to the legal representatives by the Councillor concerned to be subject to the concurrence of the General Manager.
8. Notwithstanding the provisions of paragraph 7 (ii) and 7 above, once proceedings have actually been commenced then the procedures set out in paragraph 7 above must be followed. (Note: The General Manager should regularly review Council's insurance policies with respect to the application of them to the Council's possible liability pursuant to this policy.)

### Exclusion from Policy

This policy will not apply to any defamation or other action brought by any Councillor or Council employee against any Councillor, arising from the making of a statement by any of the latter of and concerning any of the former, unless in addition to the Three Criteria set out above:

- i. The statement complained of is made to a person or body in circumstances where it is likely to be subject to qualified privilege or absolute privilege (including without limitation statements made in good faith to the Police or Director of Public Prosecutions, the Office of Local Government, statements made ancillary to, and in giving evidence to, a Court or Tribunal or other body conducting any inquiry, investigation or hearing, statements made to the Office of the Ombudsman and statements made to any Parliamentary Committee) (but in such circumstances the policy will only apply to the extent of the publication of the statement in these circumstances, and not to any other publication of the statement); or
- ii. The statement:
  - is made at a meeting of Council, a briefing of Councillors or a meeting of a Committee of Council in respect of an item on the agenda for that meeting or briefing; and
  - is in accordance with the Local Government (General) Regulations 2005 and Council's Code of Meeting Practice current at the time the statement was alleged to have been made; and

## Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 19 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



- Does not breach any other law.

**Part 2 - Provision of Facilities**

**2.1 Provision of Facilities Generally**

- 2.1.1 Unless otherwise stated, where a facility may be provided by Council in accordance with this Policy and a Councillor chooses to accept the facility, it shall be provided by Council with all establishment, routine maintenance, operating, training, replacement and insurance costs being met by Council, subject to any limits specified and adequate funds being allocated and available in Council's adopted Integrated Strategic Plans.
- 2.1.2 All facilities provided shall be of adequate capacity and functionality to allow the role of Councillor to be fully undertaken.

**2.2 Private Use of Equipment and Facilities**

- 2.2.1 Councillors shall not generally obtain private benefit from the provision of equipment and facilities. This includes benefits such as a travel bonus or other benefit arising from a loyalty scheme. However, incidental personal use of Council equipment and facilities may occur from time to time. No entitlement under this Policy shall be treated as being a private benefit that requires a reduction in the Mayoral fee or the Councillors fee.
- 2.2.2 If a Councillor does obtain a private benefit for the use of a facility provided by Council being more than incidental use, the Councillor shall be invoiced for the amount of the private benefit with repayment to be in accordance with Council's normal terms.
- 2.2.3 The value of a private benefit to be invoiced under this clause 2.2 shall be determined by the General Manager or, at the request of the Councillor in receipt of the private benefit, the General Manager, or any two Councillors, by resolution of an open meeting of Council.
- 2.2.4 Equipment, facilities and services provided under this Policy shall not be used to produce election material or for any other political purposes.

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 20 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

**Policy**



**2.3 Councillors' Room**

- 2.3.1 Councillors shall be provided with equipment and facilities at the Raymond Terrace Administration Building. Equipment provided under this clause remains the property of Council.
- 2.3.2 The Councillors' Room furnished for use by all Councillors shall be provided with:
- a) A telephone, computer with internet access, multifunction device and computer peripherals for use by all Councillors.
  - b) A library including Council policies, relevant legislation, reports on Development Applications and other relevant documents.

**2.4 Administration Support, Stationery, Postage & Business Cards**

- 2.4.1 Council shall provide the support services of Councillor Support Executive Assistant with suitable experience and skills to support Councillors.
- 2.4.2 Council shall post all correspondence for Councillors relative to the discharge of the functions of civic office.
- 2.4.3 Council shall provide appropriate letterhead stationery, business cards and Christmas cards for use by Councillors.
- 2.4.4 Correspondence by Councillors relative to the discharge of the functions of civic office is considered official correspondence of Council where the matter is referred to the General Manager for attention. The correspondence shall be attached to the appropriate Council file for registration, attention and reply.
- 2.4.5 Under no circumstances shall Councillors use the administration services, staff or other facilities provided in association with Local, State or Federal Government Elections.
- 2.4.6 Under no circumstances shall Councillors use the administration services or other facilities provided for the initiation of circular type letters without prior authority of the Council being obtained.
- 2.4.7 Council shall provide Councillors with official name badges indicating the wearer holds the office of Councillor, to wear at Civic functions.

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 21 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

## Policy



### **2.5 Meals**

- 2.5.1 Councillors will be provided with meals and refreshments following Committee and Council meetings and at other times considered appropriate by the Mayor and General Manager. The standard of the meal will be determined by the Mayor and/or the General Manager.
- 2.5.2 Light refreshments such as biscuits, health bars and beverages will be provided in the Councillors Room.

### **2.6 Transport Facilities**

- 2.6.1 Four designated car parking spaces shall be provided for Councillors in the Council car park at the Council administration building, to be shared amongst Councillors.
- 2.6.2 Councillors will be reimbursed for all transport costs (taxi, use of private vehicle, etc) in accordance with clause 2.2 for their attendance at official Council functions. This includes deputising for the Mayor.

### **2.7 Corporate Uniform**

- 2.7.1 Councillors may choose from a selection of Corporate Uniform provided by Council's approved supplier. Council will contribute a subsidy to 35% of the initial cost to a maximum of \$250 per annum. A sundry debtor account will then be forwarded to the Councillor for payment of the balance. Alternatively, a deduction can be made from the Councillor's monthly allowance.

### **2.8 Superannuation**

- 2.8.1 Councillors may elect to contribute all or part of their Councillor Allowance into an approved Superannuation Scheme by completing **FORM 3**.

### **2.9 Health & Wellbeing Initiative**

- 2.9.1 Councillors shall be able to access a Health Initiative program, which includes gym membership at local facilities. The program requires a minimum six (6) month membership with a payment to be made in advance for three (3) months – non refundable.
- 2.9.2 Councillors shall investigate any taxation implications for individual councillors as a result of the membership.

## Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 22 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

## Policy



2.9.3 Further details can be obtained through Council's Councillor Support Executive Assistant.

### **2.10 Provision of Safety equipment**

2.10.1 Councillors shall be provided with the following Protective Apparel:

- hard hat;
- safety vest;
- safety footwear;
- safety glasses and;
- hearing protection

to accord with the NSW Workplace Health & Safety Act, for on-site inspections.

### **Provision of Additional Expenses, Equipment and Facilities for the Mayor**

#### **2.11 Additional Expenses, Equipment and Facilities**

2.11.1 The Mayor is paid an additional annual fee. The fee is the amount fixed by Council under Division 5 of Part 2 of Chapter 9 of the Act in accordance with the appropriate determination of the Local Government Remuneration Tribunal.

2.11.2 This Policy is intended to cover most situations where the Mayor reasonably incurs additional expenses in discharging the functions of Mayoral office. The annual fee paid to the Mayor is generally not intended to offset those costs.

#### **2.12 Equipment and Facilities**

2.12.1 The Mayor shall be provided with additional equipment and facilities. Equipment provided under this clause remains the property of Council.

2.12.2 The following facilities and equipment shall be provided to the Mayor:

2.12.3 A furnished office with computer, printer, internet access, phone, facsimile and computer peripherals.

2.12.4 Office refreshments.

2.12.5 Mayoral letterhead.

## Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 23 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



2.12.6 A corporate credit card, to be used only to pay expenses allowed under this policy.

2.12.7 All items provided to the Mayor under this clause 2.12 must be returned to Council when the Mayor ceases to hold office.

**2.13 Mayor's Staff**

2.13.1 Council shall provide the services of the Councillor Support Executive Assistant with suitable experience and skills to support the Mayor.

2.13.2 The Councillor Support Executive Assistant shall provide support to the Deputy Mayor in the absence of the Mayor.

**2.14 Mayoral Motor Vehicle**

2.14.1 The Mayor shall be provided with:

2.14.2 A fully maintained motor vehicle, of a standard appropriate to the Office of the Mayor for the use of discharging function of the Mayor.

2.14.3 A fuel card, to be used for official Council business.

2.14.4 A car parking space at the Raymond Terrace Administration Building.

2.14.5 All items provided to the Mayor under this clause 2.14 must be returned to Council when the Mayor ceases to hold office.

**POLICY RESPONSIBILITIES:**

- 1) The Governance Manager will be responsible for the implementation, monitoring and re-evaluating the policy.

**RELATED DOCUMENTS:**

- Office of Local Government Guidelines for the payment of expenses and the provision of facilities to Mayors and Councillors.
- Port Stephens Council Code of Conduct, as amended.
- Office of Local Government Model Code of Conduct – as amended.
- Independent Commission Against Corruption (ICAC) Publications.

Policy

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 24 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

Policy



**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>TRIM container No</b>	A2004-0284	<b>TRIM record No</b>	16/426839
<b>Audience</b>	Mayor and Councillors		
<b>Process owner</b>	Governance Manager		
<b>Author</b>	Governance Manager		
<b>Review timeframe</b>	Annually	<b>Next review date</b>	July 2017
<b>Adoption date</b>			

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1.0	28/06/1994	Assistant General Manager		342
2.0	13/12/1994	Assistant General Manager		691
3.0	14/11/1995	Assistant General Manager		562
4.0	10/09/1996	Assistant General Manager		528
5.0	23/12/1997	Assistant General Manager		1471
6.0	09/03/2004	Governance Officer		107
7.0	31/01/2006	Governance Coordinator		398
8.0	27/11/2006	Governance Coordinator		758
9.0	25/03/2008	Governance Coordinator		069
10.0	16/12/2008	Executive Officer		398
11.0	24/11/2009	Executive Officer		399
12.0	23/11/2010	Executive Officer		373
13.0	18/11/2011	Executive Officer		385
14.0	27/11/2012	Executive Officer		323

**Policy**

WARNING: 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 25 of 26

**ITEM 19 - ATTACHMENT 2 CURRENT PAYMENT OF EXPENSES AND PROVISION OF FACILITIES TO MAYOR/COUNCILLORS POLICY.**

## Policy



Version	Date	Author	Details	Minute No.
15.0	26/11/2013	Executive Officer		345
16.0	26/08/2014	Executive Officer		229
17.0	22/09/2015	Governance Manager	Transferred policy to new corporate policy template and updated forms. No changes to the intent or objectives of the policy.	295
18.0	23/08/2016	Governance Manager	<p>It is proposed to amend the Policy as follows:</p> <ol style="list-style-type: none"> <li>1) Increase cl. 1.12.1 to increase the allowance from \$3,000 to \$4,000 per term.</li> <li>2) Amend cl. 1.15.1 change name of the Local Government Pecuniary Interest Tribunal to NSW Civil and Administrative Tribunal.</li> <li>3) Cl. 8 change clause references stated in clause 8.</li> <li>4) Under the "Exclusion from Policy" change name of Department of Local Government to Office of Local Government.</li> </ol>	242

## Policy

**WARNING:** 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)



Issue Date: 30/09/2016

Printed: 30/09/2016

Review Date: 01/07/2017

Page: 26 of 26



## MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

ITEM NO. 20

FILE NO: 16/463631  
RM8 REF NO: PSC2016-00015

### INFORMATION PAPERS

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

---

### RECOMMENDATION IS THAT THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 13 December 2016.

---

No:	Report Title	Page:
1	Coastal Conference 2016 - Feedback Report	363
2	Hunter Regional Growth Plan	348
3	General Manager's Annual Performance Review	360
4	Designated Persons' Return	362
5	Fingal Bay Rock Pool	356

---

### ORDINARY COUNCIL MEETING - 13 DECEMBER 2016 COMMITTEE OF THE WHOLE RECOMMENDATION

	<b>Councillor Chris Doohan</b> <b>Councillor Paul Le Mottee</b>  That the recommendation be adopted.
--	---

Councillor Ken Jordan returned to the meeting at 07:10pm in Committee of the Whole.

<b>369</b>	<b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b>  It was resolved that Council move out of Committee of the Whole.
------------	--

### ORDINARY COUNCIL MEETING - 13 DECEMBER 2016 MOTION

<b>370</b>	<b>Councillor Steve Tucker</b> <b>Councillor Chris Doohan</b>
------------	--

**MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016**

It was resolved that Council receive and notes the Information Papers listed below being presented to Council on 13 December 2016.

---

<b>No:</b>	<b>Report Title</b>
------------	---------------------

- |   |   |
|---|---|
| 1 | Coastal Conference 2016 - Feedback Report   |
| 2 | Hunter Regional Growth Plan                 |
| 3 | General Manager's Annual Performance Review |
| 4 | Designated Persons' Return                  |
| 5 | Fingal Bay Rock Pool                        |

# INFORMATION PAPERS

**ITEM NO. 1**

**FILE NO: 16/456133  
RM8 REF NO: PSC2012-00629**

**HUNTER REGIONAL GROWTH PLAN**

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

**BACKGROUND**

The purpose of this report is to advise Council of the release of the NSW Governments 2016 Hunter Regional Plan 2036 (the 'plan') and outline the key changes and implications for Council.

The plan aims to provide a blueprint for growth in the region for the next 20 years, which will guide the development of land use plans, development proposals and infrastructure funding decisions. The plan replaces the current Lower Hunter Regional Strategy 2006 and follows on from the release of a draft Hunter Regional Plan in December 2015.

Under the *Environmental Planning and Assessment Act 1979 (NSW)* (s117) future planning proposals and reviews of Local Environmental Plans are required to be consistent with the plan.

Council previously provided a submission to the draft plan in February 2016. A summary of the key concerns raised in the submission included:

- Question the inclusion of Raymond Terrace, Newcastle Airport and Medowie within the boundary of Hunter City;
- Lack of clarity around the delivery of the plan including the implementation of the Hunter Regional Plan Coordination and Monitoring Committee and how it would influence decision making and State budgets;
- The inherent risks of providing very general direction without ownership and commitment for actions;
- Lack of transparent and evidenced base planning to inform actions;
- Lack of a clear infrastructure strategy to support actions;
- Inclusion of RAAF Base Williamtown/Defence and employment lands as key strategic centres;
- Lack of direction on rural residential development;
- The draft plan's Newcastle centric focus with limited direction for the landscape sub-regions.

Further detail on these concerns and how the Plan addresses these issues are outlined in **(ATTACHMENT 1)**.

### Hunter Regional Plan

The vision of the plan is to create 'the leading regional economy in Australia with a vibrant new metropolitan city at its heart'. This vision is underpinned by four goals with actions including:

- Leading regional economy in Australia;
- A biodiversity-rich natural environment;
- Thriving communities;
- Greater housing choice and jobs.

The Hunter Development Corporation (HDC) will deliver, coordinate and be accountable for achieving the vision and goals of the plan. The NSW Government has also acknowledged calls to set up a new commission to facilitate this vision.

Key short term actions identified to be undertaken by the State Government include:

- Action 1.1 - Prepare a Greater Newcastle Metropolitan Plan (An indicative boundary has been identified for the Metropolitan Plan which includes Raymond Terrace and the Airport). The HDC will consult with Stakeholders on the boundary for the Plan).
- Action 2.2 - Develop and review strategies and precinct plans for global gateways (Newcastle Airport and Port of Newcastle) and surrounding lands to support their growth, diversification and sustainability.
- Action 14.2 - Identify and strengthen biodiversity corridors as places for priority biodiversity offsets.
- Action 26.6 - Review and finalise the Hunter Special Infrastructure Contributions Plan. The plan aims to define the financial contribution that new development would make towards the cost of infrastructure for the region. A discussion paper has been released to obtain initial feedback on the cost-sharing approach and the scope of infrastructure that could be included. It is anticipated draft Hunter Special Infrastructure Contribution Plan will be released for public consultation in early 2017.
- Action 22.4 - Develop Settlement Planning Principles and a local planning toolkit to assist councils in implementing the plan. It is envisaged the toolkit will provide additional guidance on preparing land use planning strategies including the process required to obtain State Government endorsement.
- Action 22.5 Include guidance in local land use strategies for expanding rural villages and rural-residential development.

### Narratives

Narratives have been prepared for each Local Government Area (LGA) which provide more detailed guidance for each Council and identify housing and employment projections, strategic intent and opportunities, locations for growth for dwellings and jobs and communities of regional significance.

Raymond Terrace and Nelson Bay are identified as Strategic Centres, while significant employment land clusters include Tomago and Heatherbrae. Key priority actions for Port Stephens include:

- Raymond Terrace
  - Investigate increasing social transport and economic connections from Raymond Terrace to surrounding communities and centres across the Greater Newcastle Area.
- Nelson Bay
  - Investigate opportunities for high density development in Nelson Bay that maintains and enhances the tourist, recreational and residential appeal of the centre;
  - Determine potential to grow allied health services on land around hospitals and health services in areas including at Nelson Bay.
- Housing
  - Deliver existing Urban Release Areas at Fern Bay, Medowie and Kings Hill;
  - Investigate and deliver infill potential within the strategic centres of Raymond Terrace and Nelson Bay.
- Newcastle Airport
  - Investigate opportunities to cluster Defence and aerospace related research, manufacturing and businesses around the airport;
  - Manage growth and respond to the natural and cultural values in the area and to mitigate the impacts of drainage and flooding.

## **MERGER PROPOSAL IMPLICATIONS**

There are no known implications for the current Newcastle City Council (NCC) and Port Stephens Council (PSC) merger proposal resulting from the proposed recommendation.

## **ATTACHMENTS**

- 1) Key Matters raised in Councils submission to draft Hunter Regional Plan.

## **COUNCILLORS ROOM**

- 1) Hunter Regional Plan.

## **TABLED DOCUMENTS**

Nil.

**ITEM 1 - ATTACHMENT 1 KEY MATTERS RAISED IN COUNCILS SUBMISSION TO DRAFT HUNTER REGIONAL PLAN.**

**Attachment 1 -  
Key matters raised in Councils submission to Draft Hunter Regional Plan**

	<b>Issue raised in Councils submission to draft Hunter Regional Plan</b>	<b>Hunter Regional Plan Response</b>
Structure and Operation of the Plan	<p>The draft Plans are very general in their objectives and provide numerous actions to be undertaken without a clear understanding of when and how they will be carried out.</p> <p>Recommend a model similar to the NSW Local Councils Integrated Planning and Reporting Framework (IP&amp;R) to hold State Government accountable to the same level as Local Government.</p>	<p>The Hunter Regional Plan now includes an Implementation Plan.</p> <p>The Hunter Development Corporation will deliver, coordinate and be accountable for achieving the vision and goals of the Plan.</p> <p>Further clarification on implementation and governance is expected in 2017.</p> <p>The NSW Government has also acknowledged calls to set up a new commission and will be further investigated.</p>
Draft Plan for Growing Hunter City	<p>Draft Hunter Regional Plan was accompanied by a draft Plan for Growing Hunter City.</p> <p>Questioned the boundary of Hunter City including Raymond Terrace, the Newcastle Airport and Medowie.</p> <p>Raymond Terrace is a strategic centre for LGA and surrounding population in the landscape areas. Connections are required within the more rural regions of the LGA, not within the urban city area. Medowie is predominantly rural residential and largely within a water catchment. It does not have the same urban characteristics of Hunter City.</p>	<p>The proposed Plan for Growing Hunter City was not finalised and has been integrated into Hunter Regional Plan.</p> <p>Action 1.1 - Prepare a Greater Newcastle Metropolitan Plan (An indicative boundary has been identified for the Metropolitan Plan which includes Raymond Terrace and the Airport). The Hunter development Corporation will consult with Stakeholders on the boundary for the Plan).</p>
Infrastructure	<p>Need a clear strategy for infrastructure, planning prioritisation and funding is required in conjunction with a finalised Regional Plan.</p>	<p>Action 26.6 - Review and finalise the Hunter Special Infrastructure Contributions Plan.</p> <p>The Plan aims to define the financial contribution that new development would make towards the cost of infrastructure for the region. A Discussion Paper has been released to obtain initial feedback on the cost-sharing approach and the scope of infrastructure</p>

**ITEM 1 - ATTACHMENT 1 KEY MATTERS RAISED IN COUNCILS SUBMISSION TO DRAFT HUNTER REGIONAL PLAN.**

		<p>that could be included, with discussions underway with Councils and State Agencies.</p> <p>It is anticipated draft Hunter Special Infrastructure Contribution Plan will be released for public consultation in early 2017.</p>
Environment	<p>Concern over the inclusion of a High Environmental Values (HEV) map. The data used is intended to provide a regional level overview for the purposes of strategic planning. The Plan provided limited information on how to apply the maps through subsequent planning.</p>	<p>HEV layer has been removed from the Plan.</p> <p>The plan maintains that strategic land use planning should identify and take into account of the location and extent of these areas of high environmental value. Criteria used to identify and map land with high environmental values has not been defined by the State Government.</p> <p>Action 14.2 - Identify and strengthen biodiversity corridors as places for priority biodiversity offsets.</p>
Housing	<p>The draft Plan outlines that the Hunter already has sufficient supply of land available in established and new release areas to meet anticipated demand. No studies are provided to support this. This includes no indication of market preferences with respect to the type and location of housing Hunter residents will require over their lifetime, along with market entry price points. It is recommended that appropriate housing studies be undertaken and made available for review.</p> <p>Encourage the Department to devote resources to provide Councils with access to the Urban Feasibility Model (UFM). This will lead to significant improvements and time savings in the outcomes that are sought from our land-use strategies.</p>	<p>Action 22.3 Develop local housing strategies to respond to housing needs, including social and affordable housing and support initiatives to increase the supply of affordable housing.</p> <p>Action 22.4 - Develop Settlement Planning Principles and a local planning toolkit to assist councils in implementing the Plan. It is envisaged the toolkit will provide additional guidance on preparing land use planning strategies including the process required to obtain State Government endorsement.</p> <p>Action 25.1 Establish and implement an Urban Development Program to develop data on existing zoned land supply and its servicing status, monitor dwelling production and take up rates and coordinate the staged release and rezoning of land.</p>
Areas specific priorities	<p>Draft Plan included landscape subregions which aimed to acknowledge the different characteristics and needs of each area. There was however limited detail and defined actions.</p>	<p>Landscape subregions have been replaced by Local Government Narratives which provide more detailed guidance for each Council and identify housing and employment projections, strategic intent and</p>



**ITEM 1 - ATTACHMENT 1 KEY MATTERS RAISED IN COUNCILS SUBMISSION TO DRAFT HUNTER REGIONAL PLAN.**

		opportunities, locations for growth for dwellings and jobs and communities of regional significance.
Fern Bay	<p>The current Northern Gateway District map wrongfully designates the Newcastle Golf Club and land to the north already developed as Seniors Housing as either National Park or State Forest.</p> <p>This land should be designated as part of the Fern Bay 'urban area' given the land does not form part of the public open space network. The land has potential to make a positive contribution to the Fern Bay urban area that should be further investigated through more detailed local planning. The wrongful designation of the land within the plan may inadvertently prevent this further investigation at a local level.</p>	<p>Northern gateway District Map has been removed from the Plan.</p> <p>Future housing and urban renewal opportunities identify delivering existing Urban Release Areas at Fern Bay. It does not identify new areas in Fern Bay.</p>
Nelson Bay/ Tomaree Peninsula	<p>Highlights Nelson Bay contains a considerable amount of retail and commercial floorspace; however the nearby Salamander Centre has become the focus for weekly retail shopping as well as being the location of community facilities such as a library and community centre.</p> <p>Due to its attractiveness as a retirement destination, a significant proportion of the population is aging, with 40.4% over the age of 55 years.</p> <p>A key issue for Nelson Bay and the Tomaree Peninsula is achieving an appropriate balance between permanent residential and tourist accommodation.</p>	<p>Identified as a strategic centre. Priorities include:</p> <ul style="list-style-type: none"> <li>• Maintain it as one of the primary tourist centres for the region and a hub for the Tomaree Peninsula.</li> <li>• Maintain retail and professional services for the surrounding communities.</li> <li>• Investigate opportunities for high-density development that maintains and enhances the tourist, recreational and residential appeal of the centre.</li> <li>• Balance the mix of permanent residential and tourist accommodation to enhance the vibrancy and appeal of the centre and surrounds.</li> </ul> <p>Salamander Bay, Anna Bay, Tanilba and Lemon Tree Passage are identified as centres of local significance.</p>
Raymond Terrace	<p>Highlights Raymond Terrace as the LGA's major regional centre and includes the following key actions:</p> <ul style="list-style-type: none"> <li>• Rail connections to Newcastle</li> </ul>	<p>Identified as a strategic centre. Priorities include:</p> <ul style="list-style-type: none"> <li>• Support its role as the main service centre in the Local Government Area, and in providing a range of facilities for</li> </ul>

ITEM 1 - ATTACHMENT 1 KEY MATTERS RAISED IN COUNCILS SUBMISSION TO DRAFT HUNTER REGIONAL PLAN.

	<ul style="list-style-type: none"> <li>Identify as a stand alone key regional centre, focussing on the needs of the LGA, rather than identifying it with Hunter City</li> <li>Contribution towards place making initiatives including upgrades to William Street</li> </ul>	<p>surrounding communities, including retailing, government, civic and professional services.</p> <ul style="list-style-type: none"> <li>Investigate increasing social, transport and economic connections to surrounding communities and centres across the Greater Newcastle area.</li> </ul>
Rural Residential development	<p>Draft Plan identifies a sufficient supply of land for rural living and any additional areas will have to sustain the region's agricultural and environmental values and minimise the costs of providing services.</p> <p>The Draft Plan provided an action to provide further guidance on rural residential subdivision. It was recommended that the approach applied to prepare Councils draft rural residential strategy be used as a benchmark for further analysis.</p>	<p>Action 22.5 Include guidance in local land use strategies for expanding rural villages and rural-residential development so that such developments will:</p> <ul style="list-style-type: none"> <li>not impact on strategic or important agricultural land, energy, mineral or extractive resource viability or biodiversity values;</li> <li>not impact on drinking water catchments;</li> <li>not result in greater natural hazard risk;</li> <li>occur on land that is unlikely to be needed for urban development;</li> <li>contribute to the conservation of important biodiversity values or the establishment of important corridor linkages; and</li> <li>facilitate expansion of existing and new tourism development activities in agricultural or resource lands and related industries across the region.</li> </ul>
Williamstown	<p>Recommends the RAAF Base, Newcastle Airport, DAREZ and Tomago/ Heatherbrae should be included as a strategic centre.</p> <p>In order to support the future development of this area, these strategies have identified a range of infrastructure requirements to assist in the development of these areas.</p> <p>Given the regional importance of the future development of the Newcastle Airport and surrounds and the nature and costs of works involved, Council has identified that collaboration with regional and state bodies is critical for the provision of this infrastructure.</p>	<p>Action 2.2 - Develop and review strategies and precinct plans for global gateways (Newcastle Airport and Port of Newcastle) and surrounding lands to support their growth, diversification and sustainability.</p> <p>Williamstown identified as a Global gateway.</p> <ul style="list-style-type: none"> <li>Support the ongoing operations of the Royal Australian Air Force Base at Williamstown.</li> <li>Investigate opportunities to cluster defence and aerospace-related research, manufacturing and businesses around the airport.</li> <li>Expand passenger services (including international flights) by increasing connections domestically and with the Asia-Pacific.</li> <li>Manage growth and respond to the natural and cultural values in the area and to mitigate the impacts of drainage and flooding.</li> <li>Increase access to the airport from the M1 Pacific Motorway and</li> </ul>

		Newcastle to increase its competitiveness as a passenger and business destination for the Hunter and surrounds.
--	--	---

**ITEM NO. 2**

**FILE NO: 16/461885**  
**RM8 REF NO: PSC2011-02312V3**

**COMMUNITY REQUEST FOR AN OCEAN POOL/BATHS AT FINGAL BAY**

REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER  
GROUP: FACILITIES & SERVICES

**BACKGROUND**

The purpose of this report is to inform Council of a request from a community group called the Fingal Bay Beach Pool Committee. The group requests the building of an ocean pool/baths at the southern end of Fingal Bay Beach (**ATTACHMENT 1**). This is in the area colloquially known as 'Kiddies Corner'.

The desired outcome from the group is to provide a 50 metre by 30 metre ocean pool/baths for people to swim in the ocean that is free of rips and sharks.

The Department of Primary Industries have provided initial advice that suggests that there are significant environmental constraints to deliver such a proposal. At a minimum the following environment reviews would be required in the planning phase:

- Policy and guidelines for fish habitat conservation and management – update 2013.
- *Marine Estate Management Act 2014 No72.*
- *Marine Estate Management Regulation 2009.*
- *Marine Estate Management (Management Rules) Regulation 1999.*

This proposal is currently not included in Council's Community Strategic Plan, Long Term Financial Plan or 10 Year Capital Works Program.

**MERGER PROPOSAL IMPLICATIONS**

There are no known merger implications.

**ATTACHMENTS**

- 1) Correspondence from Fingal Bay Beach Pool Committee.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 2 - ATTACHMENT 1  
POOL COMMITTEE.**

**CORRESPONDENCE FROM FINGAL BAY BEACH**

*copy for Council.*

FINGAL BAY BEACH POOL COMMITTEE.

Hon Secretary: Pat Hall. J.P. Ph.49810681



10<sup>th</sup> November, 2016-11-14

The Manager,

PORT STEPHENS COUNCIL.

Application to have a tidal pool built at southern end of Fingal Bay beach.

Dear sir,

We the Committee wish to apply to have a saltwater tidal swimming pool, situate on the southern end of Fingal Bay beach, commonly called "kiddies corner".

We consider the project will consist of a rock pool with small openings to allow the pool water to be refreshed by the tidal flow, the shallow end will join the natural sand of the beach.

The area requested is sheltered by a small cliff at the northern end of Barry Park.

We consider the pool will make a safe area for children to swim, free of rips and sharks found along the beach.

We wish to mention that building the pool will be carried out in a way to reduce any damage to marine life by using natural rock lined inside with concrete.

We require the pool to be 50 metres in length X 30 metres in width and consider the pool will enhance the beauty and use of the area.

A large number of residents and visitors have informed us that they come to this area to swim in salt water and if they wanted to swim in fresh water they would go to an inland area.

We noted that there was a general fear of attack by sharks by the people spoken to.

I have also conferred with the President of the Nelson Bay Winter Swimming Club, Terry O'Brien and he informed me that the members of that club were very keen on the idea of swimming in salt water again since their baths at Nelson Bay had been demolished.

It is unfortunate that the highly populated area of Nelson Bay, Shoal Bay and Fingal Bay did not have a saltwater ocean pool.

**ITEM 2 - ATTACHMENT 1  
POOL COMMITTEE.**

**CORRESPONDENCE FROM FINGAL BAY BEACH**

-2-

If this project gets under way we intend requesting the New South Wales State Government for funding.

If allowed we intend that all work carried out on the pool will be in accordance with the Environmental Planning and Assessment Act, 1979.

I also ask that you forward attached copies of this application to your three East Ward councillors.

If your approval is forthcoming, please forward to me any requirements necessary to the below address.

Yours faithfully,

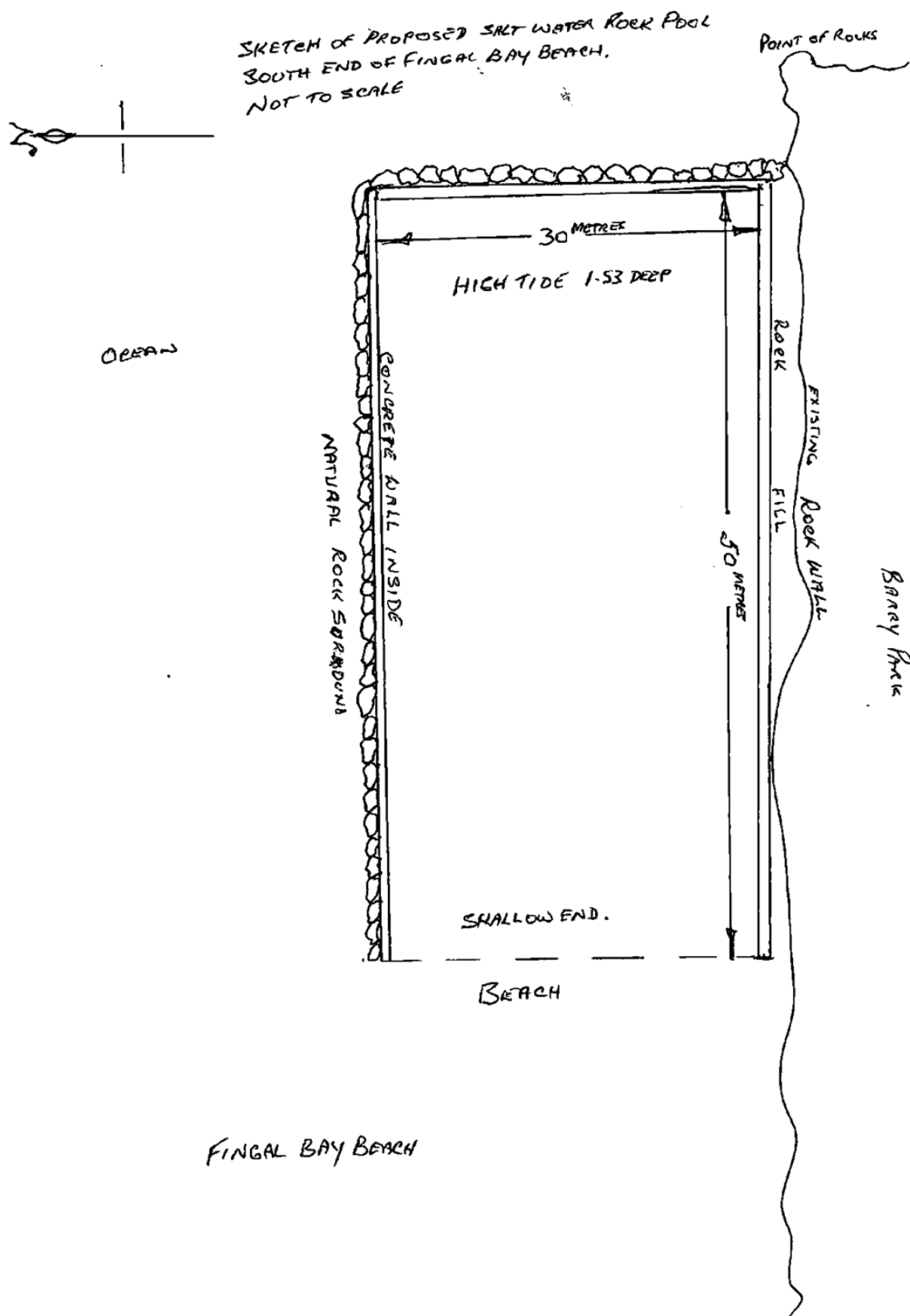


Patrick R. Hall, J.P.



ITEM 2 - ATTACHMENT 1  
POOL COMMITTEE.

CORRESPONDENCE FROM FINGAL BAY BEACH



**ITEM NO. 3**

**FILE NO: 16/457798  
RM8 REF NO: PSC2005-1318**

**GENERAL MANAGER'S ANNUAL PERFORMANCE REVIEW**

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

**BACKGROUND**

The purpose of this report is to receive and note the outcome of the General Manager's Annual Performance Review 1 July 2015 to 30 June 2016, which has been signed by the Mayor and General Manager.

Council established a Performance Evaluation process for the General Manager in accordance with the Guidelines for the Appointment and Oversight of General Managers issued pursuant to Sections 23A and 338 of the *Local Government Act 1993*. This includes the establishment of a Performance Evaluation Panel to review the General Manager's performance against the agreed criteria.

The Annual Performance Review Summary is noted as **(ATTACHMENT 1)**.

**MERGER PROPOSAL IMPLICATIONS**

There are no merger proposal implications.

**ATTACHMENTS**

- 1) General Manager's Performance Review Summary.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



**ITEM 3 - ATTACHMENT 1  
SUMMARY.**
**GENERAL MANAGER'S PERFORMANCE REVIEW**

**ATTACHMENT 1 – GENERAL MANAGER'S PERFORMANCE REVIEW**

Level	Definition
EXCELLENT	<ul style="list-style-type: none"> <li>Performance is clearly outstanding.</li> <li>Performance is superior - it far exceeds standards or expectations.</li> <li>Performance is exceptional on a continuous basis.</li> </ul>
GOOD	<ul style="list-style-type: none"> <li>Performance generally meets or exceeds standards or expectations.</li> <li>Attains all or nearly all of position objectives.</li> </ul>
ACCEPTABLE	<ul style="list-style-type: none"> <li>Performance is adequate - it meets standards or expectations, and is developing within the position.</li> </ul>
NEEDS IMPROVEMENT	<ul style="list-style-type: none"> <li>Fails to meet one or a few expectations.</li> </ul>
UNACCEPTABLE	<ul style="list-style-type: none"> <li>Performance is below accepted levels.</li> <li>Fails to meet most job expectations.</li> </ul>

	Median
1. Business Improvement Program	Excellent
2. Community Strategic Plan/Operational Plan Delivery	Excellent
3. Capital Works Delivery	Excellent
4. Financial Sustainability Program	Excellent
5. Workforce Strategy Implementation	Excellent
6. Infrastructure Planning	Excellent
7. Technology Improvement Program	Excellent
8. Land Use Strategy Development	Excellent
9. Flood and Drainage Study Implementation	Good
10. Integrated Risk Management Program	Excellent
11. Community Engagement and Customer Focus Initiatives	Excellent
<b>Overall Performance</b>	<b>Excellent</b>

**ITEM NO. 4**

**FILE NO: 16/458133  
RM8 REF NO: PSC2016-00018**

**DESIGNATED PERSONS' RETURN**

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

**BACKGROUND**

The purpose of this report is to advise Council of new Council staff who have submitted their Designated Persons' Return/s (Return).

In accordance with Section 450A of the *Local Government Act 1993*, all new staff are required to lodge a Return within three (3) months of commencement. These Returns are to be tabled at the first Council meeting after the lodgement date.

The following is a list of position/s who has submitted Return/s:

- Communication Section Manager (PSC651)
- Senior Development Planner (PSC077)

**MERGER PROPOSAL IMPLICATIONS**

This are no merger proposal implications associated with this Information Paper.

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

- 1) Designated Persons' Return.

**ITEM NO. 5****FILE NO: 16/434277  
TRIM REF NO: PSC2015-02692****COASTAL CONFERENCE 2016 - FEEDBACK REPORT****REPORT OF: JOHN NELL - COUNCILLOR  
GROUP: GENERAL MANAGER'S OFFICE****BACKGROUND**

The purpose of this report is to provide Council with feedback on the Coastal Conference 2016, held 9-11 November 2016 at Coffs Harbour, which was attended by Cr John Nell. The Conference attracted over 255 delegates. It provides for an exchange of ideas and experiences in Coastal Management, to assist local councils to find the most appropriate solution for Foreshore Protection.

One of the most interesting talks was the one by Ms Kathy Jones, Director, new Democracy. She promoted the use of a Citizens' Jury, as a most effective way of Public Consultation, for politically sensitive projects, particularly in the areas of transport, infrastructure and human services. A Citizens' Jury is a mechanism of Participatory Democracy that draws on the symbolism, and some of the practices, of a legal trial by jury. It generally includes three main elements:

1. The 'jury' is made up of people who are usually selected 'at random' to a local or national population, with the selection process open to outside scrutiny.
2. The jurors have access to technical information and can question experts.
3. The Citizens' Jury recommendation goes to the decision makers, eg a Local Council for consideration.

The use of a Citizen's Jury, seems a worthwhile proposition, after all we use juries to determine the outcome of murder trials, so they can be used to advise Council's on how to move forward on politically sensitive projects.

Coastal Councils are going to be faced with increasing costs of coastal protection and the use of a Citizen's Jury is an alternative way of getting public input on the dilemma of who benefits and who pays the bills.

Most Coastal Councils in NSW are coming to terms with coastal erosion caused by rising sea levels and increased storm activity. However, for the time being, most councils are trying to protect both public and private property rather than considering coastal retreat.

The Conference Organisers and participants look forward to holding the Coastal Conference in Shoal Bay in 2017. Many of the delegates from the 2016 Conference look forward to visiting Port Stephens and take part in a field trip. A boat tour of the beach erosion and accretion in the outer harbour or a bus tour of the Stockton Bight sand dunes spring to mind.

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

# NOTICES OF MOTION

## **MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016**

Cr Paul Le Mottee and Cr Ken Jordan returned to the meeting at 07:12pm in Open Council.

### **NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 16/466049**

**RM8 REF NO: PSC2009-1669**

### **MARKETPLACE RAYMOND TERRACE - FEES**

**COUNCILLOR: PETER KAHER**

---

#### **THAT COUNCIL:**

- 1) Reimburse Market Place, Raymond Terrace for the Council fees of \$1,881.98 associated with the recent Westpac Rescue Helicopter Service fundraising day.
- 

### **ORDINARY COUNCIL MEETING - 13 DECEMBER 2016 MOTION**

<b>371</b>	<b>Councillor Peter Kafer Councillor Chris Doohan</b>  It was resolved that Council reimburse Market Place, Raymond Terrace for the Council fees of \$1,881.98 associated with the recent Westpac Rescue Helicopter Service fundraising day.
------------	--

## **BACKGROUND REPORT OF: TONY WICKHAM – GOVERNANCE MANAGER**

### **BACKGROUND**

Market Place Shopping Centre in Raymond Terrace held a fundraising day on 13 November 2016 for the Westpac Helicopter Service, with the arrival of Santa Claus on the former sports ground at the rear of the Centre.

The day involved a number of local emergency services; local Police, Fire and Rescue NSW, NSW State Emergency Service and the Rural Fire Service showcasing the various services. The total funds raised to date are \$5,000 with additional funds being collected through the Centre until Christmas Eve.

The fees stated above are for the hire of the former sports ground, a development application fee for the grounds and a development application fee to land the helicopter.

**MERGER PROPOSAL IMPLICATIONS**

There are no merger implications associated with this Notice of Motion.

**ATTACHMENTS**

Nil.

# CONFIDENTIAL ITEMS

In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of council, councillors, staff or council property and matters that could be prejudice to the maintenance of law.

Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.

## ORDINARY COUNCIL MEETING – 13 DECEMBER 2016 MOTION

<b>372</b>	<b>Councillor Steve Tucker</b> <b>Councillor Ken Jordan</b>  It was resolved that Council Move into confidential session.
------------	--

The following Council officers were present for the Confidential Session:

Communications Section Manager  
Public Relations and Marketing Coordinator  
Property Services Section Manager  
Financial Services Section Manager  
Capital Works Section Manager



**MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016****CONFIDENTIAL****ITEM NO. 1****FILE NO: 16/458759  
RM8 REF NO: PSC2009-02408V4****SALE OF PROPOSED LOT 403 AT 155 SALAMANDER WAY, SALAMANDER BAY****REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER  
GROUP: CORPORATE SERVICES****ORDINARY COUNCIL MEETING - 13 DECEMBER 2016  
MOTION**

<b>373</b>	<b>Mayor Bruce MacKenzie Councillor Ken Jordan</b>  It was resolved that Council:  1) Resolve to sell proposed Lot 403 at 155 Salamander Way, Salamander Bay to the purchaser identified in this report, and enter into a conditional Contract of Sale on the terms and conditions specified in this report.  2) Authorise the Mayor and the General Manager to sign and affix the Seal of Council to all relevant documentation required to secure and finalise the sale.
------------	--

**ORDINARY COUNCIL MEETING – 13 DECEMBER 2016  
MOTION**

<b>374</b>	<b>Councillor Steve Tucker Councillor Ken Jordan</b>  It was resolved that Council Move out of confidential session.
------------	--

There being no further business the meeting closed at 7.25pm.