



QUALITY NATURE - QUALITY HERITAGE - QUALITY LIFESTYLE

**BUSINESS PAPER
EXTRAORDINARY COUNCIL
MEETING
16 JANUARY 2019**

Notice is hereby given in accordance with the provisions of the *Local Government Act 1993*, and pursuant to Clause 2.3 of Council's Code of Meeting Practice that a **Extraordinary Council Meeting** will be held in the Tenterfield Shire Council Chamber, on **Wednesday 16 January 2019** commencing at **9.00 am**.

Terry Dodds
Chief Executive

COMMUNITY CONSULTATION – PUBLIC ACCESS

Community Consultation (Public Access) relating to items on this Agenda can be made between 9.30 am and 10.30 am on the day of the Meeting. Requests for public access should be made to the General Manager no later than COB on the Monday before the Meeting.

Section 8 of the Business Paper allows a period of up to 30 minutes of Open Council Meetings for members of the Public to address the Council Meeting on matters INCLUDED in the Business Paper for the Meeting.

Members of the public will be permitted a maximum of five (5) minutes to address the Council Meeting. An extension of time may be granted if deemed necessary.

Members of the public seeking to represent or speak on behalf of a third party must satisfy the Council Meeting that he or she has the authority to represent or speak on behalf of the third party.

Members of the public wishing to address Council Meetings are requested to contact Council either by telephone or in person prior to close of business on the Monday prior to the day of the Meeting. Persons not registered to speak will not be able to address Council at the Meeting.

Council will only permit two (2) speakers in support and two (2) speakers in opposition to a recommendation contained in the Business Paper. If there are more than two (2) speakers, Council's Governance division will contact all registered speakers to determine who will address Council. In relation to a Development Application, the applicant will be reserved a position to speak.

Members of the public will not be permitted to raise matters or provide information which involves:

- Personnel matters concerning particular individuals (other than Councillors);
- Personal hardship of any resident or ratepayer;
- Information that would, if disclosed confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business;
- Commercial information of a confidential nature that would, if disclosed:
 - Prejudice the commercial position of the person who supplied it, or
 - Confer a commercial advantage on a competitor of the Council; or
 - Reveal a trade secret;
- Information that would, if disclosed prejudice the maintenance of law;
- Matters affecting the security of the Council, Councillors, Council staff or Council property;
- Advice concerning litigation or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege;
- Information concerning the nature and location of a place or an item of Aboriginal significance on community land;
- Alleged contraventions of any Code of Conduct requirements applicable under Section 440; or
- On balance, be contrary to the public interest.

Members of the public will not be permitted to use Community Consultation to abuse, vilify, insult, threaten, intimidate or harass Councillors, Council staff or other members of the public. Conduct of this nature will be deemed to be an act of disorder and the person engaging in such behaviour will be ruled out of order and may be expelled.

CONFLICT OF INTERESTS

What is a "Conflict of Interests" - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary - a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

Remoteness

A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

Who has a Pecuniary Interest? - A person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- The person, or
- Another person with whom the person is associated (see below).

Relatives, Partners

A person is taken to have a pecuniary interest in a matter if:

- The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. "Relative", in relation to a person means any of the following:

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

No Interest in the Matter

However, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
 - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
 - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - A person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

Non-pecuniary Interests - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

Disclosures to be Recorded (s 453 Act)

A disclosure (and the reason/s for the disclosure) made at a meeting of the Council or Council Committee or Sub-Committee must be recorded in the minutes of the meeting.

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## ORDER OF BUSINESS

1. Opening & Welcome
2. Civic Prayer & Acknowledgement of Country
3. Apologies
4. Disclosure & Declarations of Interest
5. Tabling of Documents
6. Notices of Motion
7. Meeting Close



# AGENDA

## 1. OPENING & WELCOME

### 2. (A) OPENING PRAYER

*"We give thanks for the contribution by our pioneers, early settlers and those who fought in the various wars for the fabric of the Tenterfield Community we have today.*

*May the words of our mouths and the meditation of our hearts be acceptable in thy sight, O Lord."*

### (B) ACKNOWLEDGEMENT OF COUNTRY

*"I would like to acknowledge the traditional custodians of this land that we are meeting on today. I would also like to pay respect to the Elders both past and present of the Jukembal, Kamilaroi and Bundjalung nations and extend that respect to other Aboriginal people present."*

## 3. APOLOGIES

## 4. DISCLOSURES & DECLARATIONS OF INTEREST

## 5. TABLING OF DOCUMENTS

## 6. NOTICES OF MOTION

(ITEM NM1/19) MOTION TO RESCIND COUNCIL RESOLUTION NO.  
292/18 .....5

## 7. MEETING CLOSED

|                      |                                                        |
|----------------------|--------------------------------------------------------|
| <b>Department:</b>   | <b>Office of the Chief Executive</b>                   |
| <b>Submitted by:</b> | Councillor                                             |
| <b>Reference:</b>    | <b>ITEM NM1/19</b>                                     |
| <b>Subject:</b>      | <b>Motion to Rescind Council Resolution No. 292/18</b> |

#### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK**

|                             |                                                                                                                                   |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <b>CSP Goal:</b>            | <b>Environment</b> - ENVO 9 - Our natural environment will be protected, enhanced and promoted for future generations.            |
| <b>CSP Strategy:</b>        | Land use planning provisions support and promote sustainable land use and management in the Shire.                                |
| <b>CSP Delivery Program</b> | Provision of advice and guidance on legislative compliance for the construction of dwellings and commercial/industrial buildings. |

#### **SUMMARY**

The purpose of this report is to consider a rescission motion in relation to Council Resolution Number 292/18 with regard to Development Application Number 2018.087 - Funeral Home and Mortuary 60 Polworth Street Tenterfield, submitted by Councillors Rogan, Murray and Forbes on 19 December 2018 and a motion to reject the said development application should the rescission motion be adopted.

#### **COUNCILLOR RECOMMENDATION:**

- 1) That resolution 292/18 of the Ordinary Council Meeting held on 19 December 2018 in relation to Item ENV 26/18 'Development Application Number 2018.087 - Funeral Home and Mortuary 60 Polworth Street Tenterfield', namely:**

*"That Council:*

- (1) Approve Development Application 2018.087 for a Funeral Home and Mortuary at 60 Polworth Street, Tenterfield subject to the conditions contained in Attachment 2 (Booklet 1).*
- (2) Notify those persons who made submissions of Council's determination."*

**be and is hereby rescinded.**

**The following recommendation is only to be voted on should Recommendation 1 be Adopted**

- 2) That Council:**  
**Reject Development Application 2018.087 for a Funeral Home and Mortuary at 60 Polworth Street, Tenterfield including the Draft Development Application conditions.**

#### **BACKGROUND**

At the 19 December 2018 Ordinary Council Meeting, Item ENV 26/18 regarding 'Development Application Number 2018.087 - Funeral Home and Mortuary 60 Polworth Street Tenterfield', namely:

Notice of Motion No. 1 Cont...

*"That Council:*

- (1) Approve Development Application 2018.087 for a Funeral Home and Mortuary at 60 Polworth Street, Tenterfield subject to the conditions contained in Attachment 2 (Booklet 1).*
- (2) Notify those persons who made submissions of Council's determination."*

Was resolved in the affirmative, 7 votes to 3 with the votes being recorded as:

**Voting in favour of the motion:**

Deputy Mayor Sauer  
Councillor Verri  
Councillor Peters  
Councillor B Petrie  
Councillor M Petrie  
Councillor Macnish  
Mayor Petty

**Voting against the motion:**

Councillor Rogan  
Councillor Murray  
Councillor Forbes

Councillor Brian Murray immediately foreshadowed a rescission motion.

In compliance with Section 372 of the Local Government Act NSW (1993), (the Act), and Council's Code of Meeting Practice, Council received a written request for a rescission motion signed by Councillors Rogan, Murray and Forbes on 19 December 2018 (**Attachment 1**).

This rescission motion would have been held over to the February 2019 Ordinary Council Meeting (as there is no Ordinary Council Meeting in January) however Council received a request in the approved form under Section 366 of the Act on 7 January 2019 for an Extraordinary Council Meeting to be held as soon as possible and within 14 days of receipt of the request. This request was signed by Mayor Petty and Deputy Mayor Sauer. (**Attachment 2**).

The Extraordinary Council meeting was scheduled for 16 January 2019.

A copy of the report and attachments presented to the 19 December 2018 Council Meeting is attached as additional background material. (**Attachment 3 & 4**).

**REPORT:**

People make decisions based on a great many influences, emotion being one. When looking at what could influence property sales in the future we believe that emotion may play a part.

Reference 'Emotions in Decision-Making'.

[https://en.wikipedia.org/wiki/Emotions\\_in\\_decision-making](https://en.wikipedia.org/wiki/Emotions_in_decision-making) (**Attachment 5**)

## Notice of Motion No. 1 Cont...

*One way of thinking holds that the mental process of decision-making is (or should be) **rational**: a formal process based on optimizing **utility**.<sup>[1]</sup> Rational thinking and decision-making does not leave much room for **emotions**.<sup>[2]</sup> In fact, emotions are often considered irrational occurrences that may distort reasoning.<sup>[3]</sup>*

*However, there are presently both theories and research focusing on the important role of **emotions in decision-making**. Loewenstein and Lerner divide emotions during decision-making into two types: those anticipating future emotions and those immediately experienced while deliberating and deciding. Damasio formulated the somatic marker hypothesis (SMH), that proposes a mechanism by which emotional processes can guide (or bias) **behavior**, particularly decision-making. Pfister and Böhm believe that "the issue of rationality should be based on the validity of emotional evaluations rather than on formal coherence."*

We believe the presence of a mortuary (or funeral home) conjures up mixed emotions. This is evidenced by the type and number of comments made by those residents not in favour of the development who have spoken to us. We have heard the statements /opinions made by three valuers engaged by the applicant. However, we believe that being reminded of your own mortality and witnessing activities related to death does bring mixed emotional responses and opinions.

Some people wouldn't mind a development such as a funeral home being next to their residence. Others, as indicated by the petition and speakers against the development are opposed. We understand that there are a great many people whose decisions wouldn't be influenced one way or another. But we are not convinced that the type of emotions that may be felt by some people would not be detrimental.

We believe the presence of a funeral home may negatively influence a prospective purchaser in the first instance and in doing so reduce competition and potential opportunities regarding sale prices.

### **Comment from Senior Planner**

As discussed and assessed in the report presented to Council on 19 December 2018, there is an acknowledgement that there is genuine concern from residents in relation to the proposed development.

*As evidenced by case law in the Land and Environment Court, "...A fear of concern without rational or justified foundation is not a matter which, in itself, can be considered as an amenity or social impact pursuant to S79C(1) of the EP & A Act...where there is no evidence to support a rational fear it will be irrelevant that members of the community may have modified their behavior arising from such an unjustified fear."*

When considering the application it is relevant that Council take in to account the case law in relation to, not only similar developments, but to the planning principles established through the Court.

### **COUNCIL IMPLICATIONS:**

#### **1. Community Engagement / Communication (per engagement strategy)**

The application was advertised and notified as detailed in the Report that went to the 19 December 2018 Ordinary Council Meeting.

Notice of Motion No. 1 Cont...

## 2. Policy and Regulation

- Council Policy 'Limit of Delegated Authority in Dealing with Development Applications and Complying Development Certificates' is applicable as the proposal is considered under Part 3 Applications of public interest.

## 3. Financial (Annual Budget & LTFFP)

Nil.

## 4. Asset Management (AMS)

Nil.

## 5. Workforce (WMS)

Nil.

## 6. Legal and Risk Management

Should Council resolve to refuse the Development Application the applicant has a right of appeal pursuant to Clause 8.7 of the *Environmental Planning and Assessment Act 1979*. *Council would incur legal costs in defending such an appeal and if unsuccessful there is potential for an order of costs for the developers to be awarded against Council.*

There is also a reputational risk to Council as it should also be noted that the time frame for notifying the developers of a decision in this matter has expired and the developers could, if they had so desired, lodged an application for this Development Application to be determined by the Land & Environment Court.

## 7. Performance Measures

Nil.

## 8. Project Management

Nil.

**Terry Dodds**  
Chief Executive

|                               |                                                                                                                              |              |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------|--------------|
| Prepared by staff member:     | Bob Rogan, Councillor; Brian Murray, Councillor;<br>Donald Forbes, Councillor                                                |              |
| Approved/Reviewed by Manager: | Terry Dodds, Chief Executive                                                                                                 |              |
| Department:                   | Office of the Chief Executive                                                                                                |              |
| Attachments:                  | <b>1</b> Recission Motion - Reject<br>Development Application 2018.087                                                       | 1<br>Page    |
|                               | <b>2</b> Request for an Extraordinary<br>Council Meeting                                                                     | 1<br>Page    |
|                               | <b>3</b> Copy of Report - Development<br>Application 2018.087 - Funeral<br>Home and Mortuary, 60 Polworth<br>St, Tenterfield | 25<br>Pages  |
|                               | <b>4</b> Attachment 4 (Booklet 1) -<br>Attachments that were provided                                                        | 101<br>Pages |

Notice of Motion No. 1 Cont...

with Report 'Development  
Application 2018.087 - Funeral  
Home and Mortuary, 60 Polworth  
St, Tenterfield' presented at 19  
December Ordinary Council  
Meeting 2018

- |          |                                         |            |
|----------|-----------------------------------------|------------|
| <b>5</b> | Wikipedia - Emotions in decision-making | 6<br>Pages |
|----------|-----------------------------------------|------------|

**Recession Motion**

It is the thoughts of the undersigned that due to late research which has unearthed conflicting information regards the effect on property valuations that matter be rescinded.

Motion:

That Council:

Reject Development Application 2018.087 for a Funeral Home and Mortuary at 60 Polworth Street, Tenterfield including the draft Development Application conditions.

19/12/2018

Councillors :

Bob Rogan

Brian Murray

Don Forbes

|                   |        |      |
|-------------------|--------|------|
| TENTERFIELD SHIRE |        |      |
| COUNCIL           |        |      |
| G0140             |        |      |
| 19 DEC 2018       |        |      |
| ICR 2018 9845     |        |      |
|                   | Person | Info |
| CL                |        |      |
| CCD               |        |      |
| COO               |        |      |
| ER                | ✓      |      |



**REQUEST FOR AN EXTRAORDINARY COUNCIL MEETING**

We, the undersigned Councillors, hereby request that an Extraordinary Council Meeting be held as soon as possible and within 14 days of receipt of this request as is required under the Local Government Act\*.

The purpose of the meeting is to determine the rescission motion moved by Councillors Rogan, Murray and Forbes on 19 December 2018 and any related motion that may arise as a result of the outcome of that motion.

A handwritten signature in black ink, appearing to read "Peter Petty", written over a horizontal line.

**Councillor Peter Petty**  
**Mayor**

A handwritten signature in black ink, appearing to read "Greg Sauer", written over a horizontal line.

**Councillor Greg Sauer**  
**Deputy Mayor**

**Date: 7 January 2019**

\*LOCAL GOVERNMENT ACT 1993 - SECT 366

Calling of extraordinary meeting on request by councillors

366 Calling of extraordinary meeting on request by councillors

If the mayor receives a request in writing signed by at least 2 councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable but in any event within 14 days after receipt of the request.

Please note that the mayor can be one of the two councillors requesting the meeting.



ORDINARY COUNCIL

19 DECEMBER 2018

|                      |                                                                                                          |
|----------------------|----------------------------------------------------------------------------------------------------------|
| <b>Department:</b>   | <b>Office of the Chief Corporate Officer</b>                                                             |
| <b>Submitted by:</b> | Senior Planner                                                                                           |
| <b>Reference:</b>    | <b>ITEM ENV26/18</b>                                                                                     |
| <b>Subject:</b>      | <b>DEVELOPMENT APPLICATION NO. 2018.087 - FUNERAL HOME AND MORTUARY, 60 POLWORTH STREET, TENTERFIELD</b> |

|                                                               |                                                                                                                                   |
|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <b>LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK</b> |                                                                                                                                   |
| <b>CSP Goal:</b>                                              | <b>Environment</b> - ENVO 9 - Our natural environment will be protected, enhanced and promoted for future generations.            |
| <b>CSP Strategy:</b>                                          | Land use planning provisions support and promote sustainable land use and management in the Shire.                                |
| <b>CSP Delivery Program</b>                                   | Provision of advice and guidance on legislative compliance for the construction of dwellings and commercial/industrial buildings. |

#### SUMMARY

Development Application 2018.087 for a Funeral Home and Mortuary is presented to Council for consideration and determination. The proposal involves converting an existing building and construction of a new building on the site at 60 Polworth Street, Tenterfield. Council is in receipt of written objections and a petition in relation to the proposal. Pursuant to the provisions of *Tenterfield Local Environmental Plan 2013* The proposed development is permitted with Council consent in the RU5 Village Zone, is consistent with the objectives of the Zone and is recommended to Council for approval subject to conditions.

#### OFFICER'S RECOMMENDATION:

##### That Council:

- (1) Approve Development Application 2018.087 for a Funeral Home and Mortuary at 60 Polworth Street, Tenterfield subject to the conditions contained in Attachment 2 (Booklet 1).**
- (2) Notify those persons who made submissions of Council's determination.**

#### BACKGROUND

##### Background and The Site and Surrounding Development

1. Development Application 2018.087 for a Funeral Home and Mortuary was lodged with Council for assessment and determination on 4<sup>th</sup> October 2018. The application proposes the following as defined under *Tenterfield Local Environmental Plan 2013*;

**"funeral home** means premises that are used to arrange, conduct and cater for funerals and memorial services, whether or not the premises include facilities for the short-term storage, dressing and viewing of bodies of deceased persons.

**Note.**

Funeral homes are a type of **business premises**—see the definition of that term in this Dictionary.

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**19 DECEMBER 2018**

Our Environment No. 26 Cont...

***mortuary** means premises that are used, or intended to be used, for the receiving, preparation, embalming and storage of bodies of deceased persons pending their interment or cremation."*

2. An inspection of the site was undertaken during the Councillor Workshop held in December.
3. The site is located on the south western corner of the intersection of Polworth Street and Cowper Street (New England Highway) with an area of approximately 4972sq. metres. It has primary street frontage of 99.5m to Polworth Street, and secondary frontage of 46.36m to Cowper Street.
4. The site currently contains a building, storage shed, maze and associated car parking, previously operated as a Restaurant and Garden Maze approved by Council under DA 1998/031 on 25 March 1999, subject to conditions. The consent was subsequently modified on 17 July 2007, where amendments were made to the floor plan and associated signage for the development were approved.
5. Immediately surrounding land uses comprise residential dwellings and Millrace Hostel, with a mixture of retail and service businesses (Mechanic workshop, Produce store, motels) located further to the east.
6. The site is not a heritage item and is not located in a heritage conservation area.
7. Plans of the proposed development and applicant's information are provided at Attachment 3 (Booklet 1). Select drawings and plans of the development are provided below:

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Our Environment No. 26 Cont...



**Figure 1: Aerial image of subject site and surrounds**



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**Proposal**

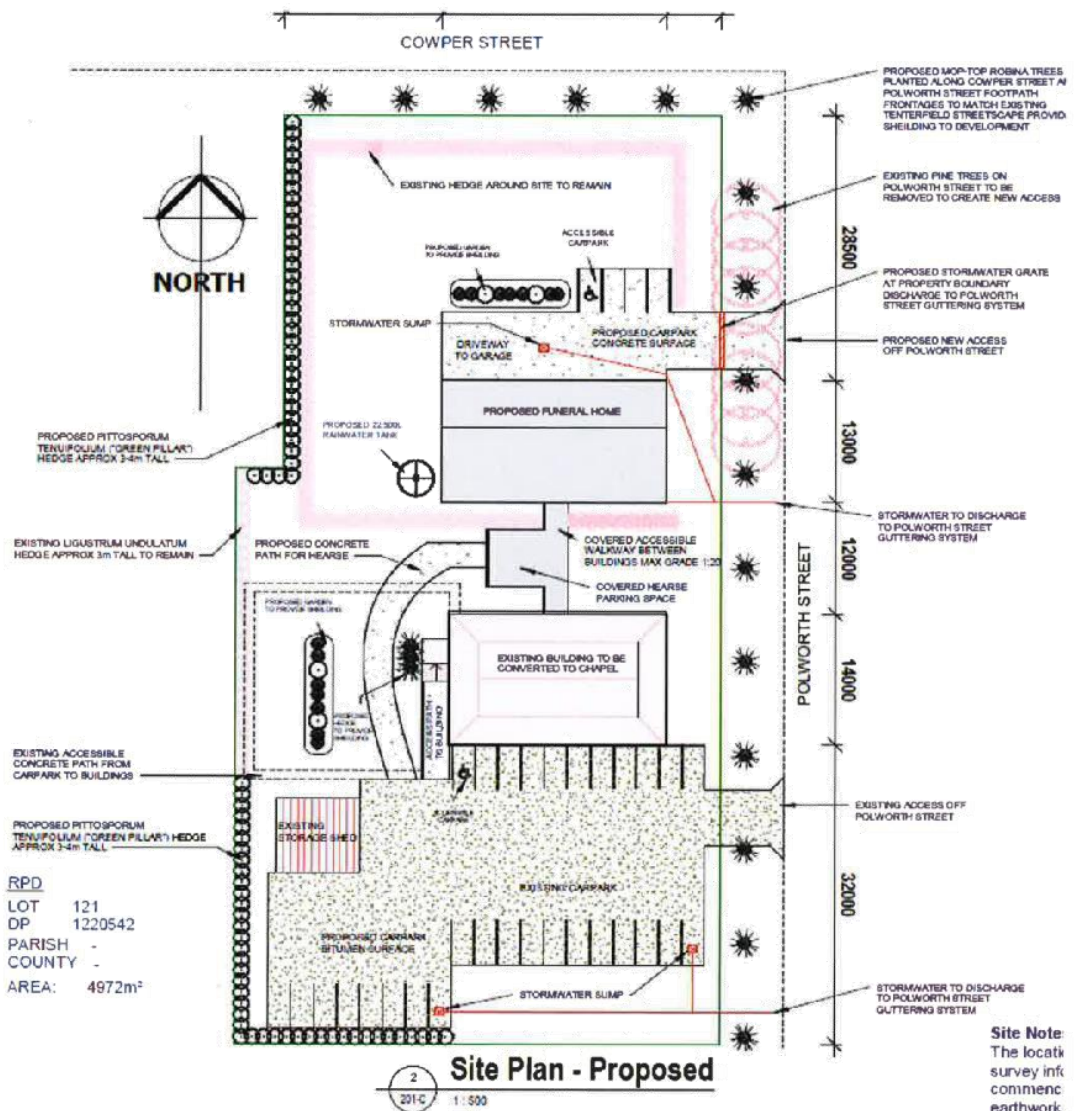
The application seeks consent for;

1. The change of use of the existing building from the approved use as a "Maze and Coffee Shop" as described in the existing consent (DA 1998/31) to a 'Funeral Home' where it is proposed to conduct funeral services and associated after service receptions. Whilst the floor plans accompanying the application refer to the proposed use as 'chapel' - a 'chapel' is not listed as a defined use development in *Tenterfield LEP 2013* and the definition of a 'Funeral Home' allows for the carrying out of services. Alterations to the existing building comprise;
  - a. Enclosure of the south facing verandah
  - b. Insert new stack sliding doors to northern façade
  - c. Batten screening to 2100mm above floor level at western entrance to building
  - d. Enclosure of west facing entrance area incorporating tinted windows
2. The construction of a new building to the north of the existing building, being approximately 24m x 13m, containing a mortuary, reception/office area, viewing room and associated storage, with a covered walkway between the two buildings and covered hearse parking area.
3. Installation of landscaping and screening.
4. Construction of a new concrete car park to the north of the proposed building.
5. Extension of the existing bitumen carpark to the south of the existing building.
6. Removal of the interior of the existing "maze" vegetation.
7. Construction of a new access off Polworth Street, with a request to remove all existing trees located on the road reserve/footpath area.
8. Erection of business identification signage on the existing advertising pole structure located on the Cowper Street frontage.

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**Figure 2: Site Plan**

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**REPORT:**

Pursuant to the provisions of Section 4.15 of the *Environmental Planning & Assessment Act, 1979*, in determining a Development Application, Council must take into consideration such of the following matters as are of relevance to the development the subject of the Development Application. The application has been assessed under Section 4.15 of the EP & A Act, 1979, including consideration of the following matters:

**(a) the provisions of:**

**(i) any environmental planning instrument**

***State Environmental Planning Policy (Infrastructure) 2007***

The provisions of Clause 101 state that the consent authority (Council in this instance) "...must not grant consent to development that has a frontage to a classified road unless it is satisfied that:

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
  - (i) the design of the vehicular access to the land, or*
  - (ii) the emission of smoke or dust from the development, or*
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and**
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Response to above

- (a) Cowper Street is a classified road in accordance with the provisions of the SEPP and access to the site is provided via Polworth Street, which is not a classified road.
- (b) Cowper Street has a speed limit of 50km/h which is regulated through the presence of a speed camera to the west of the subject site. Access to and from the site is existing and has been in operation since commencement of the existing approved development. It is intended that when transfer from the Funeral Home to Tenterfield cemetery occurs, the hearse and funeral cortege will turn left from Polworth Street and head west on Cowper Street, then turn left on to Pelham Street.
- (c) The development is not sensitive to traffic noise from the highway traffic.

Clause 104 Traffic-generating development does not apply to the proposed development as it does not meet the criteria as set down in Column 1 of the Table to Schedule 3 of the Infrastructure SEPP. On average, the applicant indicates between 30-35 vehicles are in attendance at funeral services, with expected larger funerals held at venues such as Memorial Hall, Anglican or Catholic Church. On average attendance at funerals is between 50-60 persons.

***Tenterfield Local Environmental Plan 2013 (LEP)***



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Our Environment No. 26 Cont...

The subject site is known as Lot 121, DP 1220542, 60 Polworth Street, Tenterfield and is subject to the provisions of *Tenterfield Local Environmental Plan 2013*. The land lies within the RU5 Village zone, where the proposed development of a Funeral Home and Mortuary are permitted with consent in the zone. Tenterfield LEP defines the use as;

**"funeral home** means premises that are used to arrange, conduct and cater for funerals and memorial services, whether or not the premises include facilities for the short-term storage, dressing and viewing of bodies of deceased persons.

**Note.**

*Funeral homes are a type of **business premises**—see the definition of that term in this Dictionary.*

**mortuary** means premises that are used, or intended to be used, for the receiving, preparation, embalming and storage of bodies of deceased persons pending their interment or cremation."

The site is subject to the RU5 Village zoning table provisions, which state;

**Zone RU5 Village**

**1 Objectives of zone**

- To provide for a range of land uses, services and facilities that are associated with a rural village.
- To enable development of a scale that is compatible with the general residential character of village areas and that will not prejudice the viability of established shopping and commercial centres.

**2 Permitted without consent**

*Building identification signs; Environmental protection works; Home occupations; Roads; Water reticulation systems*

**3 Permitted with consent**

*Centre-based child care facilities; Community facilities; Dwelling houses; Liquid fuel depots; Neighbourhood shops; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Schools; Any other development not specified in item 2 or 4.*

**4 Prohibited**

*Agriculture; Air transport facilities; Airstrips; Cellar door premises; Correctional centres; Eco-tourist facilities; Farm buildings; Farm stay accommodation; Forestry; Heavy industrial storage establishments; Heavy industries; Resource recovery facilities; Roadside stalls; Rural workers' dwellings; Waste disposal facilities; Wharf or boating facilities*

The proposed development is permitted with consent. The proposed development is consistent with the objectives of the RU5 Village zone in the provision of a service which is associated with the functioning of the village of Tenterfield. The development is of such a scale that it is compatible with the general residential character of the Tenterfield village area and does not prejudice existing shopping/commercial centre viability.

**New England North West Regional Plan**

**ORDINARY COUNCIL**

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The proposed development is consistent with the intent of the NENW Regional Plan which aims to support growing regional economies and associated services required for the communities across the region.

**(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and**

No proposed or draft instruments applicable.

**(iii) any development control plan,**

*Tenterfield Development Control Plan 2014* (DCP) applies to the subject land and development proposal, with the following sections of relevance;

**Chapter 2 - Notification Procedures**

Table 1 identifies that 'funeral home' and 'mortuary' are required to be notified in the RU5 Village Zone. In accordance with the DCP, Council provided written notice of the proposed development to those persons owning adjoining and neighbouring land.

During the notification period Council became aware of considerable community interest in the proposal and as such, an additional extended notification period was commenced with written notice provided to all owners in George Street (south to Riley Street) and all owners on Cowper Street between Duncan and Rouse Streets.

In addition a public advertisement was placed in Your Local News, with the proposed development plans and information available on Council's website and at Council's Administration Office, Rouse Street, Tenterfield. All submissions received during both notification periods have been taken in to account in the assessment of the application.

**Chapter 6 - Access and Parking**

Table F1 contained in Chapter 6 requires 1 space per 30sq.m of Gross Floor Area for business premises, which 'funeral home' is defined as pursuant to *Tenterfield LEP 2013* dictionary definition (above).

As such, the new building attracts a requirement for seven (7) car parking spaces, based on a gross floor area of 214sq.m. Adequate spaces have been provided, comprising four (4) spaces external to the building and three (3) spaces available internally in the garage, used by operators.

The proposed converted building attracts a requirement for ten (10) spaces, based on a gross floor area of 322 sq.m (including verandahs). A total of thirty four (34) spaces have been provided.

In practice, it is likely that this form of development will attract a need for more car parking than is set down by the provisions of the DCP.



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If the car parking requirements for "place of public worship" are utilised this may be more reflective of the intended future use. In this instance, the required car parking for the reception building would be twenty one (21) car parking spaces. This number has been exceeded with the provision of thirty four (34) spaces.

**(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),**

Consistent with the regulations.

**(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,**

**Context and Settings**

The site contains an existing approved commercial use, in the form of a restaurant and maze, with approved operating hours of Monday to Thursday 10.00am to 6.00pm and Fridays and Saturdays from 10.00am to 10.00pm.

The design of the development incorporates alterations to the existing building and construction of a new building to the north of the existing building. The predominant public views of the development are from Cowper Street, with the proposed building located 28.5m from the Cowper Street frontage. The building is of a simple, single storey design, with garage doors and windows along the northern elevation. The size of the building is in scale and keeping with the residential form, bulk and scale of the locality.

The proposed use is of a lesser impact in terms of hours of operation and attendance than that of an approved restaurant/maze facility. Given the nature of the business, numbers of future funeral services and receptions cannot be exact. The application indicates that funerals conducted by the company to date have not exceeded 30 in any one year - refer below for funeral numbers and locations;

Actual Funerals conducted by Tenterfield Family Funerals

|        | Church   | Graveside | Other  | Direct   | Total         |
|--------|----------|-----------|--------|----------|---------------|
| 2016   | 14       | 7         | 1      | 5        | 27            |
| 2017   | 14       | 5         | 3      | 4        | 26            |
| 2018   | 7        | 7         | 2      | 3        | 19 (29/10/18) |
| Totals | 35 (49%) | 19 (26%)  | 6 (8%) | 12 (17%) | 72            |

(Other includes RSL Pavilion, Funeral Home & Own Residence)

(Direct – Cremation without a service)

The operation of the mortuary facility located in the proposed new building will be conducted on an as needs basis, with delivery occurring as required. It is not considered that the use of the site by a single vehicle entering and exiting on limited occasions will cause any detrimental impact on the locality.

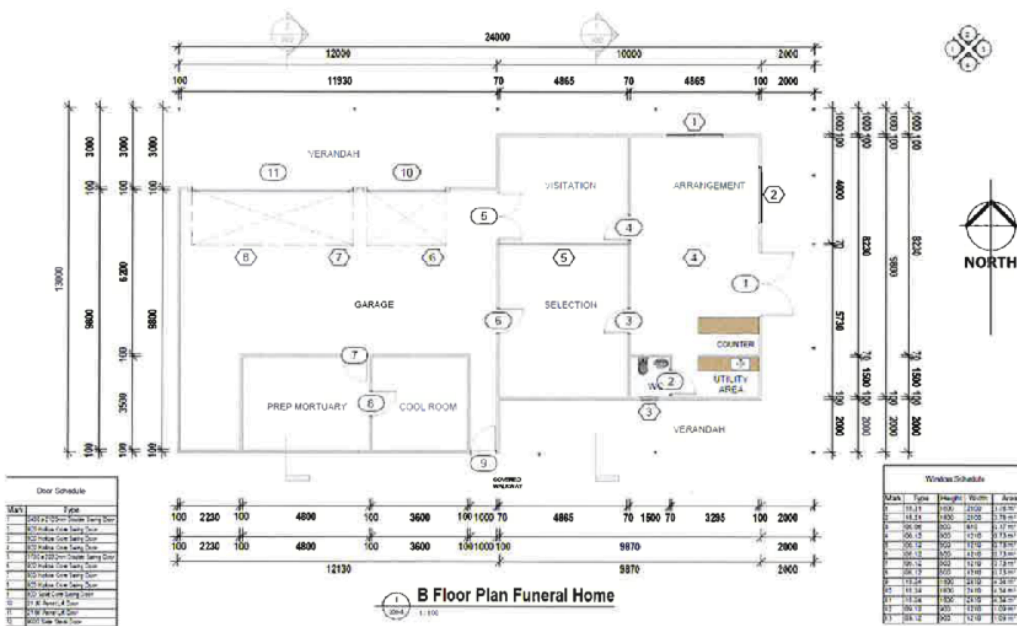
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The site adjoins the New England Highway/Cowper Street which has traffic and associated vehicle noise and lighting 24 hours a day and the proposed usage would be less than that experienced by a single dwelling on a daily basis.

The internal layout of the mortuary component of the development enables delivery vehicles to manoeuvre inside the building and transfers of the body to be undertaken within the enclosed building. This method should not cause any substantive amenity impacts.



Proposed hours of operation for the reception facility are as follows;

Monday to Friday - 9.00am to 6.00pm

Saturday - 9.00am to 12.00noon

Sunday - 9.00am to 12.00noon

Last Wednesday in November each year - Reflection Service held for families and friends who have lost loved ones in the prior year - until 9.00pm

The facility is not licensed for service of alcohol and historically funeral services are held between 10.00am to 2.00pm.

The application proposes to install screens and enclose existing open areas of verandah and the entry to the building such that views in to the building from adjoining and adjacent dwellings (primarily located on George Street) are screened. There is existing landscaping located along the western boundary of the subject land that provides a filtering effect to the proposed development from some residences. A sample of photographs below provides an indication of the existing landscaping. Residents have however raised concerns that this landscaping does become thinner and less dense during winter months.



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**Photo 1: Existing landscaping- image taken from rear of 55 George Street**



**Photo 2: View to proposed development site from entry to 51 George Street**

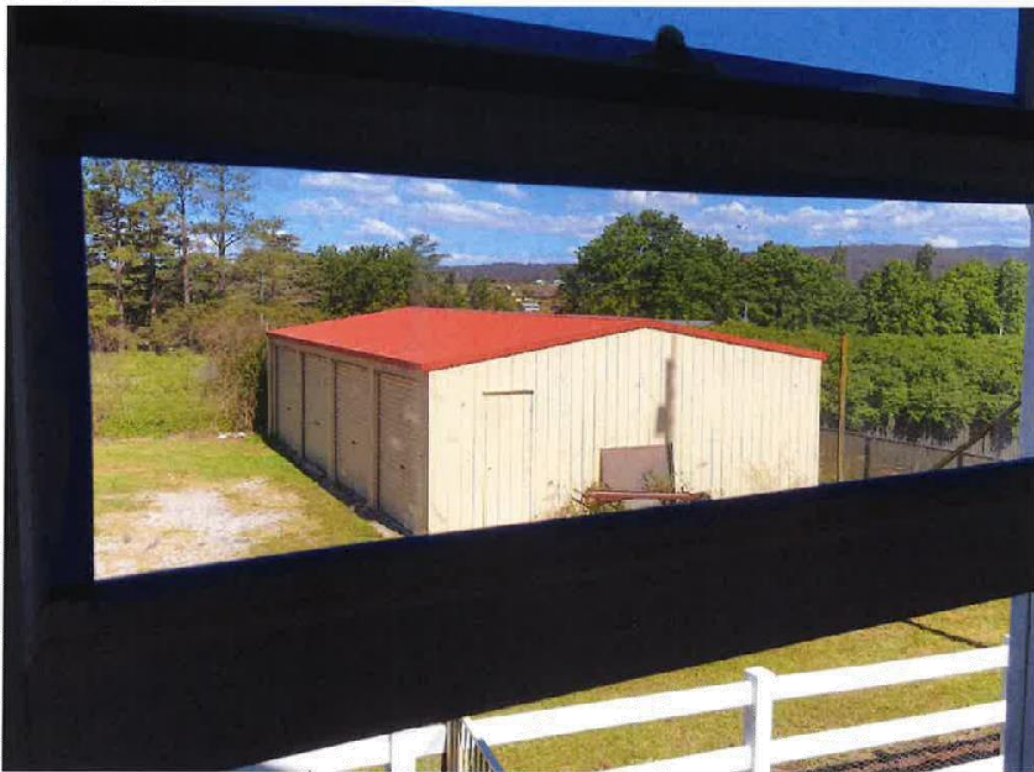
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**Photo 3: View to proposed development site from rear of 51 George Street**



**Photo 4: View from residence on corner of Cowper and George Streets**



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**Photo 5: View from rear of 53 George Street**

Visibility of the development from adjoining and adjacent residences varies from being filtered to exposed for those residents further south along George Street. The above photographs are a representative sample from those residences located in the closest proximity to the proposed development. It is proposed to enclose the existing open verandah on the southern side of the existing building and to enclose the entry on the western elevation of the building and incorporate landscaping as indicated on the plans below;



**ELEVATION SOUTH EXISTING BUILDING WITH LANDSCAPING**  
1:100

**Figure 3: Proposed south elevation**

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**ELEVATION WEST EXISTING BUILDING WITH LANDSCAPING**  
1:100

**Figure 4: Proposed west elevation.**

The applicant was requested to place the hearse in its intended location during a service on the site, the below image indicates this location;



**Figure 5: Location of hearse during service.**

The arrival and departure of the hearse will be partially visible from adjoining/adjacent residences, however will be screened when parked.

**Access, transport and traffic**

Existing consent for the site permits usage every day for up to 89 persons (as per the approved floor plan layout) during the approved hours of operation. Associated traffic movements consistent with this number of patrons were assessed under the original Development Application and deemed to be satisfactory.

Traffic movements for the operation of a funeral home and mortuary can be expected to be more targeted in terms of the timing, with vehicles arriving and departing the site within a set time either side of a service being held.



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Consultation with the Roads and Maritime Services (RMS) is not required given that the proposal does not trigger the 'Traffic-generating development to be referred to Roads and Maritime Services' under the provisions of State Environmental Planning Policy (Infrastructure) 2007 as detailed above.

Parking considerations have been addressed above and deemed to meet the requirements as per Council's Development Control Plan 2014.

**Waste, Noise, Security**

Operation of the mortuary component of the facility does not generate significant waste products and a condition of consent has been recommended in this regard to ensure the facility operates in accordance with relevant Public Health Act and Regulation requirements. Solid waste from the facility would comprise general waste associated with the operation of a reception/service and can be dealt with by existing waste service servicing the facility.

Noise associated with the operation of the facility would include vehicles and persons arriving/departing for consultations and services, conversations prior and post services. By the general nature of funeral services, it is anticipated that operational noise from the proposed development will be of less impact than the existing approved use, resulting in less impact on adjoining and adjacent residential uses.

Cool room/compressor unit will be buffered given the proposed location within the building and air conditioning unit located to the east of the garage access is equivalent, or less, to that within residential premises, with operation only carried out when meetings with family are conducted.

**Social Impacts**

There are no impacts to the community in terms of health and safety.

Strong sentiments have been expressed by those persons making submissions about the possible psychological impacts of residents in the locality, however no expert evidence or opinions have been put forward. It is obvious that the feelings of unease are genuine and legitimately felt, and whilst they may be taken in to account, they do not, in themselves, warrant refusal of the application, or contribute significantly to the refusal of an application. By way of historic relevance of similar matters which have been considered by the NSW Land and Environment Court, the following is provided;

In *Harris v Hurstville City Council [2012] NSWLEC 1224* the Court considered a Development Application for the use of a premises for funeral home and mortuary, where issues similar to this proposal were considered. The Court granted development consent to the proposal subject to conditions.

Below is an extract from Commissioner Hussey's decision which makes various references to case law which are of value in consideration of the current proposal before Council.

*"...Justice Lloyd's findings on amenity in New Canterbury Developments Pty Limited v Baulkham Hills Shire Council [2003] NSWLEC 154 (30 July 2003), he said;*

*60 In analysing the substance of such contributions from the public, issues of taste and morality are not necessarily set aside when determining whether or not a development is appropriate (Venus Enterprises at 69, Fairfield City Council v*

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*Liu Lonza & Beauty Holdings, NSWCA, Mason P and Dunford AJA, 17 February 1997, unreported). Indeed, as Mr Officer QC submitted, it is not difficult to envisage a development which causes such great offence to a large portion of the community that for that reason it ought not to be permitted on town planning grounds (Venus Enterprises per Cripps J at 70, see also Perry Properties Pty Ltd v Ashfield Municipal Council (2000) 110 LGERA 345 at 349 per Cowdroy J). Such antagonism would amount to a detrimental social impact (Dixon v Burwood Council [2002] NSWLEC 190 at [66] per Pain J). These sentiments in relation to the element of subjectivity involved in assessing such impact upon amenity are echoed in the decision of Novak at 237, with the caution that there is room for opinions to differ in weighing the same objective criteria.*

*61 In circumstances such as the present case, however, the consent authority must not blindly accept the subjective fears and concerns expressed in the public submissions. Whilst such views must be taken into consideration, there must be evidence that can be objectively assessed before a finding can be made of an adverse effect upon the amenity of the area (Dixon at [53]). In Broad, de Jersey J explained (at 304) that whilst the court is clearly entitled to have regard to the views of residents of the area, those views will be accorded little, if any weight if there is no objective, specified, concrete, observable likely consequence of the establishment of the proposed use.*

*62 A fear of concern without rational or justified foundation is not a matter which, by itself, can be considered as an amenity or social impact pursuant to s 79C(1) of the EP & A Act (Newton v Wyong Shire Council, NSWLEC, McClelland J, 6 September 1983, unreported, Jarasius v Forestry Commission of New South Wales (1990) 71 LGRA 79 at 93 per Hemmings J; Perry Properties Pty Ltd v Ashfield Municipal Council (2000) 110 LGERA 345 at 350 per Cowdroy J). Where there is not evidence to support a rational fear it will be irrelevant that members of the community may have modified their behaviour arising from such an unjustified fear (Dixon at [71]).*

*63 It follows that in forming an opinion on the probable impact of a proposed development on the amenity of an area, tangible or otherwise, a court would prefer views from residents which are based upon specific, concrete, likely effects of the proposed development. This is consistent with the statement of Mason P in Fairfield City Council v Liu at [2] that "...the demonstrable social effect of a particular ... use is relevant under s 90(1)(d) [now s 79C]" (see also Dixon at [48]).*

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*The decision in New Century Developments makes the following points on amenity:*

- Issues of taste and morality are not necessarily set aside in the consideration of amenity,*
- If there is such great offence to a large portion of the community then this may be a valid consideration,*
- There is room for opinions to differ in weighting the same objective criteria,*
- Evidence on amenity impacts must be objectively assessed before a finding can be made of an adverse effect on the amenity of the area.*
- Little, if any, weight can be given to amenity impacts if there is no objective, specific, concrete, observable likely consequence,*



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- *A fear or concern without rational or justified foundation is not a matter which, by itself, can be considered as an amenity or social impact pursuant*
- *A Court would prefer views from residents which are based upon specific, concrete, likely effects of the proposed development.*

There is obvious concern relating to the proposed development from some members of the community. When assessing a development application all matters of relevance must be taken in to consideration and balanced as a whole in the determination of the proposal. In this instance there is insufficient evidence to warrant refusal of the proposal primarily on the grounds of perceived amenity impacts.

**Site design and internal design**

The design of the facility incorporates alterations to the existing building and construction of a new building as detailed on the proposed plans. The proposed building works and internal accesses comply with the relevant provisions of the National Construction Code.

Landscaping has been indicated on the plans, however is labelled as "indicative only" for some components. It is clear that the application intends to incorporate landscaping to provide both visual softening of the proposed building and to provide visual screening to adjoining and adjacent residential development. It is recommended that a detailed landscaping plan be provided identifying species, planting schedule and maintenance to ensure that the aesthetic and privacy aims of the landscaping are adequately achieved based on suitable plant species for the locality.

**(c) the suitability of the site for the development.**

The site adjoins and is adjacent to residential development with the current consent and historic use of the site being for a business in the form of a restaurant and garden maze. The site has historic use for business purposes and has operated to this point without any issues reported to Council in terms of patrons, noise, parking, traffic or other general matters associated with the operation of the business. The proposed development of a Funeral Home and Mortuary will have less potential patronage and use than the existing approved development.

Comparatively, Funeral Homes and mortuaries can be found in a variety of locations in towns across Australia, varying from commercial precincts to mixed use and residential areas. For example;

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

The application was notified in writing to owners in the vicinity of the proposed development on two (2) occasions and publicly advertised in Your Local News and on Council's website, with submissions received as per below;

First consultation (9/10/18 to 23/10/18)- Seven (7) submissions received by way of objection (Attachment 4 (Booklet 2)). At the request of some of the residents a meeting was held between the applicant and residents who had made a submission on the site on 7 November 2018, where the proposal was discussed. After the close of this meeting Council staff determined that additional notification should be undertaken to broaden the audience who were consulted.

Second consultation (19/10/18 to 30/11/18)- twenty three (23) submissions received, twenty (20) by way of objection, three (3) in support and a petition containing forty nine (49) signatories (Attachment 5 (Booklet 2)). A separate report has been tabled detailing the petition received by Council, which requests "Council to refuse DA for mortuary and funeral home on the corner of Polworth St. and New England Highway."

Many of the matters raised in the submissions have been dealt with above in the assessment of the application, however in summary the matters raised by way of objection include;

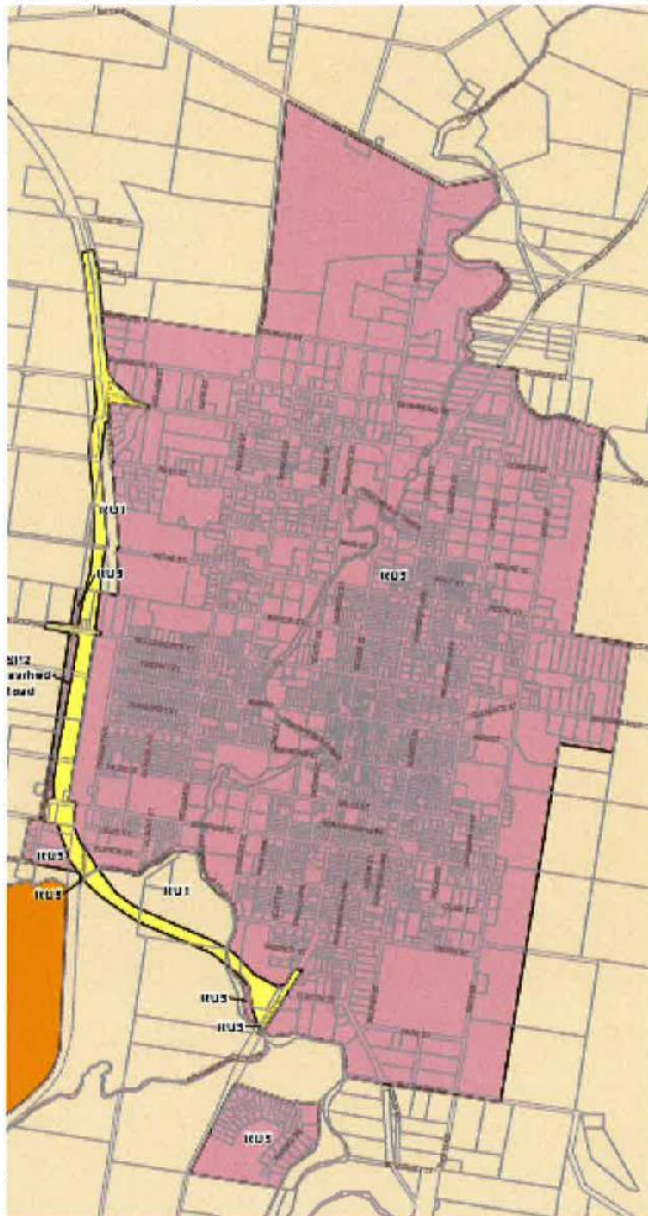
- a) Notification procedure/No DA notice placed on site  
**Response** - The application was notified originally in accordance with the provisions of Chapter 2 of *Tenterfield DCP 2014* and then further notification undertaken after considerable community interest in the proposal by way of extended written notification, advertising in 'Your Local News' and Council's website. Reference to a notice placed on site is not a requirement under *Tenterfield LEP 2013* or *Tenterfield DCP 2014*.
- b) Zoning of the property  
**Response** - The site is zoned RU5 Village, which is the land use planning zone for all of Tenterfield village as identified below, there are no lands specifically

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zoned for residential, industrial, commercial or other uses as set down by the Standard Instrument LEP;



- c) Stormwater drainage - potential for issues on neighbouring properties and capacity of existing infrastructure to contain expected flows

**Response** - Council's engineering staff have reviewed the proposal and inspected the site and deemed that the proposed development, including stormwater control measures are adequate. The proposed building is of no greater size than a medium to large residential dwelling structure and stormwater measures including stormwater sumps and grates have addressed any potential issues from



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car parking areas. Drainage in Polworth street is via open swale drains, similar to the majority of street stormwater drainage in Tenterfield.

d) Waste management/Potential for odours

**Response** - The activities of a mortuary are strictly controlled in accordance with the relevant provisions of the *Local Government Act and Public Health Regulation* and the applicant currently runs an approved facility in Rouse Street, Tenterfield, where Council has no record of any issues associated with this site. Waste management matters have been addressed above. It is proposed to place a condition of consent requiring the operator to advise Council of the type and quantity of any chemicals intended to be used on the site to ensure that such chemicals will have no impact on Council's wastewater treatment plant.

e) Visual impact in residential area

**Response** - The proposed development is of a scale that is consistent with adjoining and adjacent development, which is primarily single storey construction. The proposed building is set back 28.5 metres from Cowper Street behind the existing building line of dwellings on the street.

f) Residential area

**Response** - the site is zoned RU5 Village which allows for development compatible with existing development in the locality. The existing building has development consent for operation as a restaurant and maze with longer operating hours and higher patronage rates than that which is proposed under the proposed development.

Based on the applicants historic figures for funeral services provided in Tenterfield in the preceding three (3) years, being a total of 27, 25 and 19 (to date), a total of six (6) have been conducted at locations other than a Church or graveside. The opening of the proposed facility may lead to an increase in services outside of Church or Graveside, however the likely number is limited by the existing population, limited growth rate and sharing of services with another funeral director in Tenterfield.

g) Car parking adequacy

**Response** - car parking has been assessed above and deemed to meet Council's requirements.

h) Psychological impacts

**Response** - As discussed above under Social Impacts, psychological impacts although legitimately felt, are not of significant weight to warrant refusal of the application when balanced against all matters must take in to consideration pursuant to Section 4.15 of the *Environmental Planning & Assessment Act, 1979*.

i) Inconvenience to daily lives of residents, with activities within residential premises likely to coincide with funeral events.

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**Response** - Residents are not restricted in their normal day to day activities by the presence or operation of the facility.

j) Access and traffic generation

**Response** - matters relating to access and traffic have been addressed above. Concerns were also raised in relation to Polworth Street and its capacity to handle traffic, for vehicles to 'cut through' the dead end street and the lack of a turning area at the southern end of Polworth Street. The proposed development does not generate any greater volume of traffic than the existing approved development and with adequate signage, patrons will be directed in to the car parking area and able to turn around within this car parking area without the need to traverse to the southern end of Polworth Street. Polworth Street is clearly signposted as a No Through Road and has a large reflective barrier board sign at its southern extent.

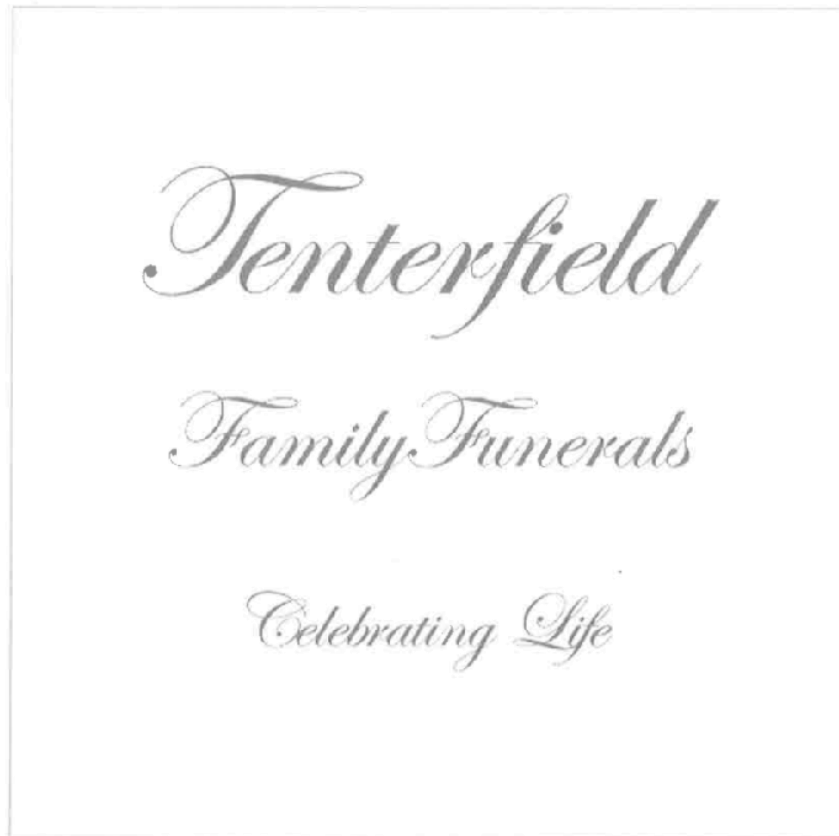
k) Signage and outdoor advertising - what signage is proposed and will it be discreet?

**Response** - The existing pylon sign located on the Cowper Street frontage was approved under DA 1998/31 and subsequent Construction Certificate. Details of the signage were provided during the 2<sup>nd</sup> round of consultation and comprise the following;

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l) Removal of Pine Trees in Polworth Street

**Response** - The applicant has made application to Council pursuant to Section 138 of the Roads Act to install a new access off Polworth Street, with a request to remove all of the pine trees located in Council's road reserve. Council's engineering department has reviewed the proposed and determined that only three (3) of the trees will require removal to create the new access point. Approval is yet to be issued, pending determination of the Development Application.

m) Future plans for a crematorium - many submissions raise concerns as to the future plans of the operators to install a crematorium on the site.

**Response** - The application before Council is for a Funeral Home and Mortuary, there is no application before Council for a crematorium on this site, or any other site in the LGA. Should a crematorium be proposed at any future time, a development application is required to be lodged with Council for assessment.

n) Inadequacy of existing hedge screening

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**Response-** Upon a site visit the existing hedge was providing effective screening along part of the western boundary of the development site, however residents have indicated that during winter the hedge becomes sparse and does not afford as great a level of screening. The application proposes additional screening landscaping along the western boundary, west of the reception building and north of the new building. It is also recommended that a detailed landscaping plan, including species, mature height, planting schedule and ongoing maintenance be prepared and lodged with Council.

o) Impact on property values

**Response -** Many submissions raise concerns in relation to perceived impacts on property values in the vicinity of the proposed development. There is no evidence to suggest that this is the case and evidence has been provided in support of the application from three (3) valuers which indicates that there is no evidence to suggest that the change of use from the current approved use to a Funeral Home and Mortuary would impact on property values. A copy of the valuers reports is included in Attachment 6 (Booklet 2).

p) Backup generator

It is unlikely that power outages for extended periods will impact on the mortuary facility, with the *Public Health Regulation* allowing for removal of a body from refrigeration for a maximum of 8 hours a day for various purposes.

q) Proximity of two (2) aged care facilities to the proposed development

**Response -** The proposed development is not predominantly visible to residents of either facility.

Three (3) submissions were received in support of the proposal and are contained in Attachment 7 (Booklet 2) where the following matters were raised;

- a) Pressure placed on writer to sign a petition and was advised that the applicant had intentions to eventually install a crematorium on the site.
- b) Praise for the applicant and their undertaking of a recent family funeral.
- c) Focus on the facts instead of pressure from public scrutiny.
- d) Proposal is in an inconspicuous part of town, tasteful and respectful and proposed hours is less intrusive than previous approved business.
- e) Suggestion of the use moving to the industrial estate is flawed with a funeral service surrounded by dust, noise and business

**(e) the public interest.**

It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

**COUNCIL IMPLICATIONS:**

**1. Community Engagement / Communication (per engagement strategy)**

The application was advertised and notified as detailed above.

**2. Policy and Regulation**



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- Council Policy 'Limit of Delegated Authority in Dealing with Development Applications and Complying Development Certificates' is applicable as the proposal is considered under Part 3 Applications of public interest.

**3. Financial (Annual Budget & LTFP)**

No implications

**4. Asset Management (AMS)**

No implications

**5. Workforce (WMS)**

No implications

**6. Legal and Risk Management**

Should Council resolve to refuse the Development Application the applicant has a right of appeal pursuant to Clause 8.7 of the *Environmental Planning and Assessment Act 1979*.

**7. Performance Measures**

No implications

**8. Project Management**

No implications

**Kylie Smith**  
**Chief Corporate Officer**

|                               |                                                                                                                  |
|-------------------------------|------------------------------------------------------------------------------------------------------------------|
| Prepared by staff member:     | Tamai Davidson, Senior Planner                                                                                   |
| Approved/Reviewed by Manager: | Kylie Smith, Chief Corporate Officer                                                                             |
| Department:                   | Office of the Chief Corporate Officer                                                                            |
| Attachments:                  | <b>1</b> Attachment 2 (Booklet 1) - 8<br>Conditions of DA Pages                                                  |
|                               | <b>2</b> Attachment 3 (Booklet 1) - Plans 24<br>of Proposed Development Pages                                    |
|                               | <b>3</b> Attachment 4 (Booklet 2) - First 16<br>Consultation - Submissions Pages<br>Received By Way of Objection |
|                               | <b>4</b> Attachment 5 (Booklet 2) - 41<br>Responses Received - Second Pages<br>Consultation                      |
|                               | <b>5</b> Attachment 6 (Booklet 2) - 9<br>Valuers' Reports Pages                                                  |
|                               | <b>6</b> Attachment 7 (Booklet 2) - 3<br>Submissions in Support of the Pages<br>Proposal                         |

WIKIPEDIA

## Emotions in decision-making

One way of thinking holds that the mental process of decision-making is (or should be) rational: a formal process based on optimizing utility.<sup>[1]</sup> Rational thinking and decision-making does not leave much room for emotions.<sup>[2]</sup> In fact, emotions are often considered irrational occurrences that may distort reasoning.<sup>[3]</sup>

However, there are presently both theories and research focusing on the important role of **emotions in decision-making**. Loewenstein and Lerner divide emotions during decision-making into two types: those anticipating future emotions and those immediately experienced while deliberating and deciding. Damasio formulated the somatic marker hypothesis (SMH), that proposes a mechanism by which emotional processes can guide (or bias) behavior, particularly decision-making. Pfister and Böhm believe that "the issue of rationality should be based on the validity of emotional evaluations rather than on formal coherence."

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Immediate emotions

**Damasio's somatic marker hypothesis**

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**Positive and negative emotions**

**State-dependent remembering**

**See also**

**References**

### Impact

Much research has been conducted on the various impacts of emotion on decision-making. Studies indicate the complexity and breadth of those impacts. Listed below are some examples of their results.

- Decision-makers who were made to consider safety concerns that induced negative emotions when deciding which car to purchase, were more likely to "choose not to choose," or to stick with the status quo.<sup>[4]</sup>
- Study participants who experienced "frustrated anger" were more likely to choose a high risk, high reward option in a lottery – a choice the authors categorize as "self-defeating."<sup>[5]</sup>
- "Fearful people made pessimistic judgments of future events whereas angry people made optimistic judgements."<sup>[6]</sup>
- Study participants who had been induced to feel sad were likely to set a lower selling price for an item they were asked to sell; the researchers suggest that selling the item would bring about a change in the participants' circumstances and thus perhaps a positive change in mood.<sup>[7]</sup>

- Participants with "normal emotion processing" were engaged in a card-drawing task. When drawing from "dangerous decks" and consequently experiencing losses and the associated negative emotions, they subsequently made safer and more lucrative choices. Participants with brain damage that had left them unable to experience such emotional responses, did not change their behavior in this way.<sup>[8]</sup>

## The Loewenstein-Lerner classification

### Anticipated emotions

Loewenstein and Lerner divide emotions during decision-making into two types: those anticipating future emotions and those immediately experienced while deliberating and deciding. Anticipated (or expected) emotions are not experienced directly, but are expectations of how the person will feel once gains or losses associated with that decision are experienced.<sup>[9]</sup> A great deal of research has focused on the risk/return spectrum that is considered in most decisions. For example, students may anticipate regret when deciding which section of a class is best to register for,<sup>[10]</sup> or participants in a weight-loss plan might anticipate the pleasure they will feel if they lose weight, versus the negative feelings unsuccessful efforts may engender.<sup>[11]</sup>

Generally, it is the contemplation of incremental losses or gains that generates anticipated emotions in decision-makers, as opposed to their overall condition. This means that an investor who imagines losing a small amount of money will generally focus with disappointment on the lost investment, rather than with pleasure on the overall amount still owned. Similarly, a dieter who anticipates losing two pounds may imagine feeling pleasure even though those two pounds are a very small percentage of what needs to be lost overall.

Also, decision-makers tend to compare a possible result of a decision against what could have happened, rather than to their current state: for instance, game participants who could win \$1000 and end up with nothing base their disappointment on the loss of the hoped-for prize, rather than on the fact that they have no less money than they had when they began the game. This process, and the anticipation of such emotion, is referred to as a counterfactual comparison.

Finally, decision-makers tend to weight possible outcomes differently based on the amount of delay between the choice and the outcome. Decisions made with a time delay – intertemporal choice – tend to involve different weights on outcomes depending on their delay, involving hyperbolic discounting and affective forecasting. These effects are then connected to anticipated emotions as the decision is being contemplated.

### Immediate emotions

True emotions experienced while decision-making are termed immediate emotions, integrating cognition with somatic or bodily experienced components within the autonomic nervous system and outward emotional expressions. These may or may not be connected to the decision at hand, however; while contemplation of the decision's consequences may give rise to immediate emotions, known as anticipatory or integral influences, immediate emotions can also be related to the current environment or the dispositional affect of the person. Although unrelated to the decision under consideration, this type of emotion can still impact the decision-making process as an incidental influence.<sup>[12]</sup>

Immediate emotions tend to operate differently from anticipated emotions. First, when they are intense they tend to negate the probability of the possible outcome; for example, a fear of flying experienced while deciding how to travel may lead a person to choose driving even though air safety statistics would show air travel to be statistically less likely to present a danger. The intense emotions can exact a higher influence on the decision than the probabilities under consideration. Also, immediate emotions can be very sensitive to how vivid the possible outcome is to the decision-maker. Again, a fear of flying may be enhanced by the vividness of the mental image of a plane crash may be in the mind of the decision-maker. Finally, how soon an outcome may happen impacts the related immediate emotions: the sooner the impending possible outcome, the more intense the emotion associated with that event. Overall, these emotions are real, experienced emotions, as opposed to those anticipated while thinking about possible outcomes, and as such can very powerfully impact decision-making.<sup>[13]</sup>

## **Damasio's somatic marker hypothesis**

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The somatic marker hypothesis (SMH), formulated by Antonio Damasio, proposes a mechanism by which emotional processes can guide (or bias) behavior, particularly decision-making.<sup>[14][15]</sup>

Emotions, as defined by Damasio, are changes in both body and brain states in response to different stimuli.<sup>[16]</sup> Physiological changes (e.g., muscle tone, heart rate, endocrine release, posture, facial expression, etc.) occur in the body and are relayed to the brain where they are transformed into an emotion that tells the individual something about the stimulus that they have encountered. Over time, emotions and their corresponding bodily change(s) become associated with particular situations and their past outcomes.

When making decisions, these physiological signals (or 'somatic markers') and their evoked emotion are consciously or unconsciously associated with their past outcomes and bias decision-making towards certain behaviors while avoiding others.<sup>[16]</sup> For instance, when a somatic marker associated with a positive outcome is perceived, the person may feel happy and motivated to pursue that behavior. When a somatic marker associated with the negative outcome is perceived, the person may feel sad and the emotion may act as an internal alarm to warn the individual to avoid a course of action. These situation-specific somatic states based on, and reinforced by, past experiences help to guide behavior in favor of more advantageous choices and therefore are adaptive.

According to the SMH, two distinct pathways reactivate somatic marker responses. In the first pathway, emotion can be evoked by the changes in the body that are projected to the brain—called the "body loop". For instance, encountering a feared object like a snake may initiate the fight-or-flight response and cause fear. In the second pathway, cognitive representations of the emotions can be activated in the brain without being directly elicited by a physiological response—called the "as-if body loop". For instance, imagining an encounter with a snake would initiate a similar flight-or-flight response "as-if" you were in that particular situation (albeit perhaps a much weaker one). In other words, the brain can anticipate expected bodily changes, which allows the individual to respond faster to external stimuli without waiting for an event to actually occur.<sup>[17]</sup>



According to Dunn, "the somatic marker hypothesis proposes that 'somatic marker' biasing signals from the body are represented and regulated in the emotion circuitry of the brain, particularly the ventromedial prefrontal cortex (VMPFC), to help regulate decision-making in situations of complexity and uncertainty". Therefore, in situations of complexity and uncertainty, the marker signals allow the brain to recognise the situation and respond quickly.<sup>[18]</sup>

## **Pfister and Böhm's framework**

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Pfister and Böhm (2008) have developed a classification of how emotions function in decision-making that conceptualizes an integral role for emotions, rather than simply influencing decision-making.<sup>[19]</sup>

The four roles played by emotions in this framework are:

- **Providing information:** This includes both positive and negative emotions that arise directly from the options being considered by the decision maker, who can then evaluate choices with this "information." This role is especially likely when the felt emotion is reducible; that is, easily reduced to a simple comparison (for example, attraction and repulsion), and unequivocally positive or negative. Pleasure and displeasure make up the spectrum of these emotions.
- **Improving speed:** While making a good decision is important, making a quick decision is also important. Therefore, emotions and associated somatic conditions can offer mechanisms for encouraging a decision maker to decide quickly, especially when one or more options are potentially dangerous. Hunger, anger and fear can all induce a speedy decision.
- **Assessing relevance:** Emotions help decision makers decide whether a certain element of the decision is relevant to their particular situations. Each person's personal history and state(s) of mind leads to a different set of relevant information. The two such emotions most studied to date are regret and disappointment.
- **Enhancing commitment:** In some ways, making the decision best for the self may be construed "the best" overall. However, acting in the best interests of others is also important in human civilization, and moral sentiments, or emotions, serve to help decision makers commit to such a decision rather than being drawn back toward pure self-interest. Emotions such as guilt and love help decision makers make such commitments.

This framework can help in exploring such concepts as ambivalence, tendencies toward particular types of action, and sustaining difficult choices over time.

## **Positive and negative emotions**

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Research done by Isen and Patrick put forth the theory of "mood maintenance" which states that happy decision-makers are reluctant to gamble. In other words, happy people decide against gambling, since they would not want to undermine the happy feeling.<sup>[20]</sup>

Alternatively, the influence of negative feelings at the time of decision-making was studied by Raghunathan and Tuan Pham (1999). They conducted three experiments in gambling decisions and job selection decisions, where unhappy subjects were found to prefer high-risk/high-reward options unlike anxious subjects who preferred low-risk/low-reward options. They stated that "anxiety and sadness convey distinct types of information to the decision-maker and prime different goals." It was found that "while anxiety primes an implicit goal of uncertainty reduction, sadness primes an implicit goal of reward replacement".<sup>[21]</sup> Thus emotions cannot simply be classified as positive or negative as we need to consider the consequences of the emotions in ultimate decision-making.

## **State-dependent remembering**

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Another important factor is the memory of events in decision making. The mood someone has works as "a retrieval cue" whereby happy feelings make positive materials come to mind which in turn have great impact on the decisions that are made. The same is true of negative feelings.<sup>[22]</sup> Bower coined the term *state-dependent remembering* for this phenomenon.<sup>[23]</sup> Bower and others stated that emotions and feelings cannot be extracted from the human mind. The emotions felt in a particular situation will be recorded in the emotional memory and can be activated when the person faces a similar situation or has to make a difficult decision in a short period of time. Often the decision maker is unaware of previous experiences in similar situations.<sup>[23][24]</sup>

## See also

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- [Affective forecasting](#)
- [Emotional bias](#)
- [Emotional reasoning](#)
- [Emotionally focused therapy § Emotion response types](#)
- [Intensity of preference](#)
- [Motivated forgetting](#)
- [Motivated reasoning](#)
- [Motivated sequence](#)
- [Motivated tactician](#)
- [Optimism](#)
- [Pessimism](#)
- [The Righteous Mind](#)

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